

**THE MIS/ALIGNMENTS OF LAND USE CONTROLS  
WITH PERCEIVED LOCAL PREFERENCES IN PORTER COUNTY, INDIANA**

Brian Edward Johnson

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Doctoral Committee

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Daniel C. Knudsen, Ph.D.  
Committee Chair

---

Dennis Conway, Ph.D.

---

Charles E. Greer, Ph.D.

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Laurel L. Cornell, Ph.D.

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In the past several decades, exurban areas have grown quickly, and are predicted to continue growing. Two broad schools of thought have emerged to explain low-density growth, one claiming homebuyer preference and the other claiming that local land use controls exclusively require low-density development. Informed by literature on the urban development process and substantive landscapes, this dissertation presents a case study examining how well land use controls in the Chicago exurb of Porter County, Indiana are misaligned or aligned with local preferences. The researcher conducted in-depth interviews with 10 planners, 21 developers, 21 realtors, and 51 residents to garner detailed responses from across the development process regarding both the formal unified development ordinance (UDO) and informal subdivision covenants and restrictions (C&Rs). According to the interviewees' prevailing opinion, the UDO is misaligned with local preferences because it forces densities to be too low, and produces properties that are too costly and too maintenance-intensive. Alternately, a small group of resident and planner interviewees did feel that the UDO matched local preferences because they favored efforts to slow development so that they, as incumbent owners, could continue to enjoy the positive externalities open land provides. Regarding C&Rs, the dominant theme was that covenants fit local

preferences because they attempt to keep subdivisions tidy through maintenance and design guidelines in an effort to protect property values. A minority of resident interviewees did not feel C&Rs matched local preferences because homeowners' associations do not have the power, resources, time, or will to enforce covenants and instead must rely on voluntary compliance. Land use control misalignment or alignment varies greatly depending on whether "local" preferences include only established residents or if new and even potential exurbanites are included.

Developers, realtors, and many newer residents perceived demand for diverse housing options while incumbent residents and planners perceived local preferences for low-density development only. These findings explain the views of the numerous local groups involved in residential development, thereby furthering literature on the urban development process and substantive landscapes. Practically, this research will also inform thoughtful decisions on how to inclusively plan the control of exurban land.

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## **Chapter 1: Introduction**

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Exurbia is the low-density residential landscape beyond the built-up suburbs around central cities. In the past several decades, exurbia has been grown quickly in population and land use (Berube, Singer, Wilson, & Frey, 2006; Clark, McChesney, Munroe, & Irwin, 2009; Fulton, Pendall, Nguyen, & Harrison, 2001; Heimlich & Anderson, 2001; Mackun, 2009; A. C. Nelson, 1992). These low-density places, already making up a sizeable portion of the American populace and land (Berube, et al., 2006; Brown, Johnson, Loveland, & Theobald, 2005; Clark, et al., 2009; Mackun, 2009), are predicted to continue growing in the future (Mackun, 2009).

### **1.1 Research Question**

Two broad schools of thought have emerged to explain low-density growth. On one hand, studies have claimed that low-density residential development is occurring because this is what home buyers prefer (Gordon & Richardson, 2001; Tiebout, 1956). On the other hand, research has shown that in many places, local land use controls exclusively require low-density development, prohibiting higher density development, irrespective of market desire (Fischel, 1997; Levine, 2005; McKenzie, 1994). The former studies, largely based in suburban contexts, consider land use controls an enshrinement of local preferences while the latter group believes that land use controls constrain local preferences. The urban development process is comprised of many different actors including planners, landowners, speculators, developers, consultants, surveyors, engineers, architects, builders,

realtors, bankers, insurers, and households, who control, create, sell, and buy residences. Because of the complexity and diversity in housing development, perceptions of local preferences will likely vary and may not be best constructed as an enshrinement/constraining dichotomy. This research, therefore, presents a qualitative case study of exurban Porter County, Indiana, examining the varying degree to which exurban land use controls are aligned or misaligned with local preferences and reasons why is this the case.

## **1.2 Study Rationale**

This research makes a unique contribution to the urban development and landscape literatures in five ways. First, this dissertation will highlight drivers of development in exurban areas, not development in the suburbs, as extant literature has. Second, this research will investigate the views of disparate housing interests regarding the appropriateness of local land use controls, rather than collapsing diverse opinions into a simple, and less illustrative, dichotomy. Third, this dissertation focuses on a community's new unified development ordinance (UDO), and the reactions of planners, developers, realtors, and residents to its implementation. The new UDO presents a special opportunity to examine a community that has recently undergone a transformation in how its lands are controlled. Fourth, this study will examine not only the formal UDO, but also informal land use controls in the form of subdivision covenants and restrictions (C&Rs). Fifth, because prior work on substantive landscapes only examined a

generalized historical tradition of land use control, this dissertation will study a contemporary community undergoing noteworthy change. In sum, this research contributes to the urban development and landscape literatures individually as well as bridges the two bodies of work. This dissertation holds potential interest to geographers and others interested in exurbanization, urban geography, planning, and landscape studies.

Exurbs are an important topic for geographers and other experts in the academy, government, and business because of their population and land area, as well as their predicted future growth (Mackun, 2009; A. C. Nelson, 1992). Those who wish to understand, explain, provide government services for, and sell products to exurbanites are keenly interested in studying exurbia (Boyle & Halfacree, 1998). In addition, with this growth comes conflict (Duane, 1999; Prevost, 1983; Spain, 1993; Walker & Fortmann, 2003), as change is rarely a seamless process and given the economic and emotional value of dwellings to householders, there exists great potential for discord.

### **1.3 Dissertation Outline**

Having introduced the topic, research question, and rationale, this study now turns to Chapter 2: Literature Review, which presents relevant background regarding contemporary exurbia in the United States, the urban development process, landscape control, and drivers of low-density development. Following that, Chapter 3: Methodology gives the methods for defining exurbia, selecting the study

site, and constructing the case study components. Chapter 4: Unified Development Ordinance Results presents findings on the misalignments and alignments of the UDO with local preferences. Chapter 5: Covenants and Restrictions Results presents findings on the alignments and misalignments of C&Rs with local preferences. Lastly, Chapter 6: Summary, Conclusions, and Future Research summarizes this dissertation by explaining the reasons behind the results, illustrates this study's contribution to general understanding of developing exurban landscapes, and gives suggestions for future study.

## **Chapter 2: Literature Review**

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This chapter presents relevant literature on the control of low-density development in four sections. The first section gives background figures regarding recent growth in exurban populations and land area. The second section reviews literature on the urban development process and landscape control. The third section reviews two commonly cited drivers of growth in low-density areas: local preference and land use controls. The last section explains how this dissertation's research question takes aim at a critical gap in the existing literature.

### **2.1 Recent Exurban Growth**

Exurbia is important because it has been growing in population and area for the past several decades, resulting in a sizeable exurban population in the United States. From 2000 to 2007 the number of persons living in outlying exurban counties around metropolitan statistical areas grew by 13.1% (Mackun, 2009). In comparison, the number of persons living in central counties, containing cities and suburbs, grew at a slower rate of 7.8%. The country's population as a whole increased only 8.2% during this period (Mackun, 2009). Regionally, the population of outlying counties grew faster than that of central counties in all regions of the country except the Northeast (Mackun, 2009). Given an estimated population of 10.8 million exurbanites in 2000 (Berube, et al., 2006), and 2000-2007 exurban population growth of 13.1%, there were approximately 12.2 million Americans living in exurbia in 2007.

In addition to this growth of the exurban population, the proportion of land dedicated to exurban use in the United States has been increasing. In recent decades, exurban land use has been expanding faster than urban land use (Berube, et al., 2006; Clark, et al., 2009; Fulton, et al., 2001; Heimlich & Anderson, 2001). Between 1960 and 1990, exurban acreage grew faster than any other type of land use in the United States (A. C. Nelson, 1992). As a result of rapid conversion to exurban use, 66,908 square miles of the United States is currently exurban (Clark, et al., 2009). According to research that considers exurbia to be the lands which contain households each living on 1 to 40 acres, exurbia accounts for  $\frac{1}{4}$  of the land in the 48 contiguous states (Brown, et al., 2005). In relative terms, the area devoted to exurban use is now approximately equal to that devoted to urban/suburban use (Clark, et al., 2009).

Exurbia is populating and expanding primarily due to net positive domestic migration (Mackun, 2009), not due to natural increase or the arrival of foreign immigrants. Because of exurbia's large population and area, and the substantial effects it is having on the economy, society, government, and environment (A. C. Nelson, 1992), it is important that scholars attempt to explain the process by which such growth occurs and the reasons driving it.

## **2.2 The Urban Development Process and Landscape Control**

This section reviews the relevant literature on the urban development process and landscape control that informs this dissertation. It is vital to

understand the structures (Massey, Minns, Morrison, & Whitbread, 1976) that guide the production of dwellings in the contemporary United States and the agents who work in this context (Giddens, 1986; Healey & Barrett, 1990). A careful consideration of these structures and agents is indeed important because homebuyers make purchasing decisions in a highly constrained context (Bourne, 1986; Castells, 1979; Giddens, 1986; Gray, 1975; Harvey, 2009; Healey & Barrett, 1990; Kirby, 1983; Pacione, 2009; Yeates, 1990).

A variety of interests and comprehensive sets of rules structure the housing development process, and as a result, development does not happen by chance (Healey & Barrett, 1990). Planners, developers, realtors, and their associates all structure the housing development process in differing ways (Harvey, 2009; Kirby, 1973; McNamara, 1984; Pahl, 1975; Whitehand, 1992). Cultural preference for certain types of housing and predicted housing type acceptability to mortgagees (Healey & Barrett, 1990) motivate the creation of controls such as the formal UDO and informal C&Rs. What follows next is a detailed description of the major players involved in the production of housing, and how they fit into the urban development process.

First, the government is involved in the production of the built environment through planning (Pacione, 2009). Planners work both in planning departments and on plan commissions (Lorimer, 1972). Professionally trained bureaucrats work in planning departments, where they engage in day-to-day operations of permitting, subdivision review, and development proposal evaluation (Lorimer, 1972). Planning departments advise plan commissions, which are comprised of appointed

or elected members that approve or deny subdivision and development requests, based on their interpretation of the UDO as well as the advice of the planning department (Lorimer, 1972). Planners are often motivated to artificially restrict development and population growth, which, coupled with increasing demand, will raise property values (Johnston, 1982). Planners use minima for lot size, house square footage, and number of bedrooms to keep the locality's residential property values high and thus unaffordable to anyone except wealthy purchasers (Pacione, 2009). This is done because the local government, funded primarily through local property taxes, wants high-revenue occupants (Yeates, 1990). Because outright discrimination against poor and middle-income homebuyers is illegal, planners employ creative means such as these minima as well as caps on annual building permits awarded. For examples of planner efforts to support property values and exclude affordable housing, see studies on Petaluma, California (Fulton, 1999) and Mt. Laurel Township, New Jersey (Johnston, 1982; Supreme Court of New Jersey, 1975, 1983).

Second, landowners who own large parcels of land for subdivision are an important interest in the urban development process. Landowners are often farmers or ranchers who sell portions of their holdings to raise capital for agricultural operations or to diversify their economic activities (Pacione, 2009). Landowners can also be individual or institutional speculators, who buy, assemble, and hold open land for future subdivision and sale (Mori, 1998)). Landowners are often also engaged in the subdivision of the land as developers and the sale of lots as realtors. The boundaries between different parties in the housing development

process are not discrete. Similar to the planners, the landowners also want to raise property values because this means higher profits. Landowners often desire land use controls which limit development because, coupled with rising population and affluence, tight controls result in an artificial shortage of developable land (Johnston, 1984). However, landowners do guard the property rights that allow them to develop in favorable economic conditions. In the capitalist context, the landowners work to shape land use controls to drive profits up.

Third, developers write proposals to subdivide large parcels for sale to individual homebuyers. Developers work with engineers, surveyors, and architects to design subdivisions and install infrastructure, funded by financing from investors (Pacione, 2009). Consultants inform developers by examining the local demand for particular types of housing in the context of current supply. Mortgagees can also consult regarding the demand for particular home types, as they are concerned with high returns for their development loan investments (Johnston, 1984). Developers are often builders and realtors as well, constructing dwellings and selling directly to the homebuyers (Kirby, 1983). Because more development means more business and higher profits, developers are generally opposed to tight development restrictions and commonly work with their attorneys to fight restrictive land use controls (Pacione, 2009).

Fourth, realtors transfer information between sellers and buyers of housing (Barresi, 1968; Bridge, 2001; Palm, 1985), being important gatekeepers (Barrett, 1973; Herbert, 1973; Palm, 1976; Short, 1977; Yeates, 1990). They work in a local housing submarket and are often confined by the operating territory of their office

and thus do not possess perfect knowledge of the market (Teixeira, 1995; Yeates, 1990). Realtors in new developments commonly represent the subdivision developer selling lots or homebuilder selling dwellings. Since they are paid on commission, realtors seek many transactions, either in the form of new construction or existing home turnover (Bridge, 2001; Pacione, 2009). Realtors are conservative in regards to housing type, often supporting the continued development of housing with which they have sales experience (Barresi, 1968; Palm, 1985; Yeates, 1990). This realtor conservatism also is a result of their close alignment with mortgagees, because realtors often work to secure mortgages for their homebuyers (Johnston, 1984; Palm, 1979). In order to execute more sales, realtors will follow the risk-averse opinions of the mortgagees (Richardson, 1971) and generally support traditional land use controls and resultant development types that allegedly are likely to appreciate in property value. Mortgagees avoid risk because short-term deposits fund their long-term loans. Depositors must be confident that mortgagees are making low-risk loans while at the same time earning acceptable interest returns, lest the depositors withdrawal their funds. Mortgagees cannot back many simultaneous depositor withdrawals because of long-term housing loans; therefore mortgagees must remain reassuringly conservative (Boddy, 1976; P. R. Williams, 1976).

Fifth, households are the end purchasers of new housing. A household buys a house for use value, but also for exchange value, hoping that the dwelling will increase in price (Pacione, 2009). Their purchasing decisions are influenced by the opinions of their realtor, the information agent, who sells a satisfactory home, but

not a perfect one, hoping for repeat business in the future. Also, the mortgagee will only grant financing for the purchase of a home deemed acceptably conservative in design and situation, and thus low-risk (Bassett & Short, 1980; S. Duncan, 1976; Kirby, 1983; Stone, 1980; P. Williams, 1978). The builder and developer have also been subject to similar financing influence at an earlier point in the development process. As a result, the suppliers of housing structure the housing market more than the independent decisions of the buyer (Craven & Pahl, 1975). Households often do support land use controls that are perceived to increase the value of the dwelling.

Landscape studies have also made contributions that inform research on how development is produced and controlled. Landscape is the outcome of human action in the non-human environment (Sauer, 1925). In other words, human cultures shape natural areas to produce developed landscapes. Because they are shaped by human activity, landscapes are representations of society (J. B. Jackson, 1984). The landscape is an embodiment of the beliefs and values of its makers, as symbols of the economies, governments, and philosophies of the local people (Meinig, 1979). Land use controls can be considered a part of these beliefs, values, and attitudes of society.

Landscape literature recognizes the varying influence that groups and individuals have on shaping landscapes. Dominant groups often attempt to mask conflict by presenting images of a harmonious landscape (R. Williams, 1975). For example, paintings of peasants happily working on feudal manors cloak the underlying class conflict by hiding the true material conditions of peasant life and

exploitative land use control (Cosgrove, 1998). Similarly, heritage tourism focusing on an uncontroversial history promoted in a deindustrialized Midwestern downtown by the dominant manufacturing employer and landowner (Crump, 1999) hides historical and material struggle (Daniels, 1989). While heterogeneous interpretations are possible, prevailing constructions of landscape are created and promoted by socioeconomically dominant groups (J. Duncan & Duncan, 1988). Such landscape images serve the interests of the bourgeois ownership as visual ideology (Cosgrove, 1998), just like other types of superstructure in a capitalist society (Matless, 1992). Viewers of landscape should be aware of dominant interpretations and challenge them because landscape is the setting for, and physical manifestation of, social struggle (Mitchell, 1995).

Planners, developers, realtors, and their associates modify the land and produce a residential landscape for sale to homebuyers. Landscape is a physical setting and also an outcome of social organization (Olwig, 1996). Landscape is a unit of territory inhabited by a group of people being subject to formal and informal controls (Olwig, 1996). In other words, landscape is an area of land, its people, and its rules. In the next section, focus turns to the drivers of low-density development.

### **2.3 Drivers of Low-Density Development**

Two competing explanations have emerged in the literature to explain why people move to low density settlements. According to the first explanation, people move to low-density areas because they are actively seeking detached, single family

housing on large parcels of land. This conclusion draws from the literature primarily addressing suburban development. According to the second explanation, people move to low-density areas because zoning and covenants require that new development be low density. Irrespective of what newcomers actually want, they must settle in low-density areas because high-density living is not permitted by land use controls. The following subsections review the literature on these two competing explanations.

### 2.3.1 Local Preference

The literature that argues community preference causes low-density development considers homebuyers to be consumers in a free market. In this vein, Newman and Kenworthy (1992) write that homebuyers pick where they live and at what densities, and development outcomes are a result of homebuyer preferences. Low-density development has occurred, according to Bruegmann (2005), Scott and Soja (1998), Cross (1997), and Rowe (1991), because Americans have long wanted to escape from the city. Brueckner (2000) wrote that an escape from the city has recently been made economically feasible for many by the availability of disposable income and inexpensive commuting. Bruegmann (2005) agrees, writing that majority populations in all affluent countries prefer low-density development. In this view, consumers have been able to act on their desires for exurban and suburban living because of publicly subsidized mortgage financing (Fox, 1985; Garreau, 1991; Wright, 1981), government-funded high-speed road building

(American Association of State Highway and Transportation Officials, 1990; Goddard, 1994; Hart, 1976; Warner, 1995), and low costs of automobile ownership (Duany, Plater-Zyberk, & Speck, 2000; Hall, 1988; K. T. Jackson, 1985).

Boarnet and Sarmiento (1998) find existing market demand for suburban-style development and Altshuler, Womack, and Pucher (1979) find no evidence of support for government action to require higher density development. Instead, there is great support to let consumer preferences determine settlement patterns without active planning interference (Altshuler, et al., 1979), allowing land use controls to follow, and align with, local preference (Wallace, 1988).

Other researchers, such as Litchfield & Darin-Drabkin (1980) have written that land use regulations in the United States are a result of a democratic process, and are thus a codification of local preference. Fischel (1987), Ewing (1995), and Johnston (1982) argue that citizens elect representatives to sit on local plan commissions and zoning boards and that these representatives enact development ordinances and draw zoning maps based on community desire. Therefore such controls are manifestations of local preference (Fischel, 1987) and are taken as a given instead of critically examined (Cheshire, Sheppard, Hooper, & Peterson, 1985).

Fischel's thinking is based, in part, on theories of the benefits of diversity in metropolitan governance. Tiebout (1956) wrote that in a metropolitan area with many municipalities, each small jurisdiction can adjust its land use controls slightly to appeal to a subset of the home buying market. Residents then move to the jurisdiction whose land use controls match their personal preference (Tiebout, 1956). Followers of this thinking state that each suburb in a metropolitan area

enacts its own land use control policies in accordance with municipal demand, without regard to the broader metropolitan area (Cervero, 1989). They write that since zoning, covenants, and restrictions have been around for decades, residents have sorted themselves into communities which employ the land use controls they prefer (Gordon & Richardson, 2001). Minority groups who object to local land use controls, in this view, move to other places that better suit their needs (Gordon & Richardson, 2001).

Minority populations who advocate for higher density land uses are calling for a departure from general local preference. Boarnet and Sarmiento (1998) wrote that it would be an unpopular manipulation of land use controls to capitulate to such marginal requests. Policymakers, according to Downs (2004) and Levinson, Kumar, & Center (1997), have scant authority to dictate density in free markets anyway because such unwanted developments would be stopped by resident opposition.

Those researchers who believe that the current regime of land use controls is a result, and allegedly matches with, local preference, write that the job of planners and developers is to continue this status quo (Bogart, 1993; Lichfield & Darin-Drabkin, 1980). That is why, according to Boarnet and Crane (2001), planners take the current rules of development as a given and merely expand that character into the hinterlands to accommodate future growth of similar type.

This line of research claims that extant land use controls are a codification of local preference. Development approval, however, is not automatically granted for all proposed projects which follow local land use controls (Whitehand, 1992;

Whitehand & Morton, 2006). Instead, developers must negotiate with the plan commission to earn project approval (Whitehand, 1992; Whitehand & Morton, 2006). When a local government fears that a new development will fill schools, crowd land, and/or overwhelm drainage systems, the developer will commonly offer to donate land for a new school, pay for the construction of a park, or build enhancements to drainage ditches in order to win subdivision approval. If the local government considers the compensation to be adequate compared to the potential increased strain on publicly-provided goods and services, subdivision approval is granted (Levinson, et al., 1997). Approval requesting and granting is enormously profitable for local governments (Yeates, 1990).

This horse-trading is very expensive for the developer, particularly in time and litigation costs. Therefore, developers only pursue approval for controversial projects if they are quite certain that their proposed development satisfies a critically unmet demand for a particular type of housing. Such a developer believes that potential homebuyers desire something other than what is currently available.

### 2.3.2 Land Use Controls

In contrast to the view presented above, other research has argued that homebuyer options are tightly controlled by zoning and covenants and that a disconnect exists between what is built and what is wanted (Healey & Barrett, 1990). “No metropolitan area has anything remotely approaching free market land use because of local regulations...Most suburban land use markets are dominated by

local zoning and other regulations" that attempt to keep densities low, according to Downs (1999, p. 963). Most places have zoning (Yeates, 1990), and in these places, unplanned development does not exist (Lansing, Marans, & Zehner, 1970; Lewyn, 2007). In addition to zoning, McKenzie (1994) has found that subdivision covenants have become commonplace, especially in newer developments. Land use controls, whether part of the zoning code or subdivision covenants, keep density low by enacting rules such as minima for lot sizes and road frontage and maxima for structure footprint ratio, building height, and number of stories.

These land use controls cause densities to be lower than market demand, according to a number of researchers (Fischel, 1997; Moss, 1977; Pasha, 1996; Peiser, 1989; Shlay & Rossi, 1981; Thorson, 1994, 1997; White, 1988). In this view, land use controls prevent urban and suburban areas from becoming denser as new residents move in, rather new population must expand into the surrounding countryside (Green, 1999; Quigley & Rosenthal, 2005). Developers are usually unwilling to spend the time and money to seek approval for higher density, write both Fischel (1997) and Gyourko (1991), and as a result merely build within existing land use controls. For all but the very largest, powerful, and well endowed developers, any attempts to change land use controls are impractical (Fischel, 2002; Logan & Molotch, 1987), even though open land that has been granted planning approval for housing development commonly increases in per-acre value several hundred-fold (Monk, Pearce, & Whitehead, 1996; Pacione, 2009).

In urban and suburban America, restrictions on density are pervasive (Levine, 2005). To understand the reasons why this is the case, it is useful to

examine a brief history of land use controls in this country. New York City instituted some of the country's first zoning codes to address density in 1916 (R. Nelson, 1980; Yeates, 1990). In response to Lower East Side Manhattan business and resident pressure, the New York City Department of City Planning (2008) enacted zoning ordinances to freeze densities in order to prevent traffic increases and preserve views. These incumbent business owners and residents at the time feared that buildings taller than their own towers would cause "overcrowding of the land [and] undue concentration" (New York City Department of City Planning, 2008) and such negative externalities would harm the values of their properties (Yeates, 1990). By preventing taller buildings through height and floor maxima, the existing amount of congestion and the current views were preserved while at the same time the city's population grew. This drove property values up and forced the populated area to expand outward (Levine, 2005).

Within a decade, New York's zoning codes were copied by many other cities (Knox & McCarthy, 2005; Toll, 1969) and suburbs around the country (Toll, 1969). Zoning laws stated dense development bred disease, restricted the free flow of air, and concentrated effluent. Zoning expanded to separate noxious activities from residential areas, relegating tanneries and slaughterhouses to industrial districts, as these land uses were deemed incompatible with residences. Zoning was intended to prevent property users from interfering with their neighbors' property uses (Hason, 1977; Yeates, 1990).

The Supreme Court agreed with this principle of separating incompatible uses in its 1926 case *Village of Euclid v. Ambler Realty* (United States Supreme Court,

1926). In the case, a landowner in the Cleveland suburb of Euclid, Ohio, wanted to build a factory on a parcel of land that lay partially in a residential zone. He argued that industrial development was in high demand, and thus would yield higher profits compared to weaker residential demand. The court ruled in favor of the village, stating that zoning was indeed a valid form of “nuisance control” and a reasonable exercise of government power (United States Supreme Court, 1926). The court’s majority decision stated that local public purposes of “promoting public health, safe neighborhoods, upright behavior, and general welfare” were in line with the interests of the state as a whole (United States Supreme Court, 1926). The right to develop was superseded by the right of the villagers to not have their “quality of life” or property values diminished (Fischel, 1997). Zoning was interpreted as a collective property right held in trust for the residents by the municipal, township, or country government (Fischel, 1997), rather than being a restriction on the property rights of an individual property owner.

The court not only stated that municipalities may employ land use regulation to separate industrial from residential parcels, but it also permitted separating apartment buildings from single-family homes because apartments may be “nuisances” and could possibly cause “congested, dark, noisy, and dangerous conditions” (United States Supreme Court, 1926). Any land use control intended to protect “public health, safety, morals, or general welfare” was deemed constitutional (United States Supreme Court, 1926). The Supreme Court’s decision allowed local governments to expand zoning to broadly address the protection of health, comfort, and quietness in their jurisdictions (Weaver & Babcock, 1979; Yeates, 1990).

Multifamily housing, trailers, apartments, and residential hotels were soon considered incompatible with single family, detached homes in jurisdictions throughout the country (Kean & Ashley, 1991), as local governments worked to require new developments to contain dwellings of similar design and square footage on like-sized lots (Yeates, 1990). Zoning laws, especially those requiring low-densities, are now widespread (Boarnet & Crane, 1997; Cervero, 1989; Fischel, 1997; Gordon & Richardson, 2001).

In addition to zoning, land use is commonly controlled by covenants (Knox & McCarthy, 2005; Toll, 1969), especially in suburbs (McKenzie, 1994). Owners in a subdivision agree to additional rules that restrict property use beyond what is required by government regulation (Bradley E. Johnson, 2007). For example, a zoning ordinance may require a minimum lot size while a subdivision covenant may additionally require a minimum house square footage. The local government enforces the zoning while the subdivision homeowners' association (HOA) and/or developer is responsible for enforcing the subdivision covenants.

## **2.4 Project Contribution**

The literature cited above has shown that exurbia is growing in population and land area, and thus makes for a compelling subject of study. The urban development literature describes land use controls such as the UDO and C&Rs that structure the production of housing. The urban development literature also identifies the agents working in this context and their motivations. The landscape

literature recognizes the varying influence different interests have on shaping landscapes. Research on landscape describes inhabited land as the outcome of human modification, importantly guided by formal and informal rules.

Theoretically, this dissertation will make three major contributions. First, this dissertation will examine the land use controls of a community in flux, in an area undergoing population and landscape change. Prior landscape research has instead given historical treatment to landscapes of prior eras. Second, this dissertation will contribute to the literature on the urban development process by detailing how different constituent groups view the rules structuring their development activity. Prior work has instead treated local preference as a monolith, rather than explaining the potentially differing preferences of various local groups involved in housing development. Third, in addition to making these contributions to the landscape and urban development process literatures, this dissertation will be the first to conceptually link the two bodies of research, as both are concerned with how land use is controlled.

As shown above, some research shows that low-density suburban growth is occurring because movers are actively seeking such properties. Other research shows that land use controls only permit new development to be low-density, eliminating any other alternative for new residents. Practically, this dissertation will make three major contributions to the question of what drives low-density development. First, existing research is suburban-based, so this dissertation will take up the issue of low-density development drivers in exurbia. Second, while the existence of some exurban zoning has been noted (T. S. Davis, Nelson, & Dueker,

1994; Fischel, 1997; McConnell, Walls, & Kopits, 2006), no study has yet investigated formal zoning in exurbia nor has the literature considered the influence of informal covenants. Third, no research has yet identified which land use controls in particular are thought to be misaligned and aligned with local preferences, rather than oversimplifying broad acceptance or opposition.

## **Chapter 3: Methodology**

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In this methods chapter, I will first provide the definition of exurbia this dissertation uses. Second, I will explain the selection of Porter County, Indiana, as my field area. Third, I will present the case study method, including rationale and data sources. Last, I attest to my compliance with proper human subjects protection protocol.

### **3.1 Exurban Definition**

As noted above, exurbia is the low-density residential space beyond the urban/suburban realm. Beyond such a general characterization, there is no widely accepted definition of “exurbia” (P. B. Nelson, Forthcoming; Sayre, Forthcoming; Taylor, Forthcoming; Walker, Forthcoming) and a number of meanings have been previously employed (Audirac, Shermyen, & Smith, 1990; Berube, et al., 2006; T. S. Davis, et al., 1994; Brian E. Johnson, 2006, 2008; K. M. Johnson & Beale, 1994; Lamb, 1983; Morrill, 1992; A. C. Nelson, 1991; A. C. Nelson & Sanchez, 1997; Patel, 1980; Taylor, Forthcoming; Theobald, 2001; Walker, Forthcoming). Extant definitions range from broad and theoretical to specific and applied. Whatever the level of detail or methodological use, these definitions have important commonalities. In particular, definitions of exurbia typically have qualifying characteristics in terms of location, density, economy, commuting, growth, and migration. Here I summarize and appraise the use of these varied characteristics.

Location is an important exurban qualification. Studies generally have sited exurbs beyond the city and its surrounding suburbs (Berube, et al., 2006; Bruegmann, 2005; Crump, 2003; Patel, 1980) but still within the urban sphere (Berube, et al., 2006) and not out in the distant rural countryside (A. C. Nelson, 1992). Other research has been more specific, stating that exurbia is the land outside, but near to, a metropolitan area's urban growth boundary (J. S. Davis, 1993; T. S. Davis, et al., 1994; A. C. Nelson & Dueker, 1990). In other research (A. C. Nelson & Sanchez, 1997), exurban places are those outside of an urban area (UA), a group of census blocks with a population density of at least 1,000 persons per square mile and adjacent census blocks that have a density of 500 people per square mile together totaling at least 2,500 persons (U.S. Census Bureau, 2002), but inside of a metropolitan statistical area (MSA), an UA of at least 50,000 persons, its county, and the surrounding counties from which at least 25% of the employed residents commute to the central county or vice-versa (Office of Management and Budget, 2000). Morrill (1992) defined exurbs as those entire counties adjacent to MSAs, Smith and Sharp's (2005) exurbs were the unincorporated areas just inside the edges of an MSA, and Lamb's (1983) exurbs were counties and census places within 50 miles of UAs that contained more than 250,000 residents. Nelson (1992) also utilized the 50-mile radius, adopting a two-tier buffer stating that his exurbs were within 50 miles of a central city boundary in which 500,000 to 2,000,000 people lived while extending the exurbs to 70 miles from a central city boundary in which more than 2,000,000 people lived.

Researchers also commonly consider density when defining exurbia. Generally, exurbia is low in density (Ash & Thrift, 2002; Bruegmann, 2005; Spectorsky, 1955), being more sparsely populated than suburbs (Berube, et al., 2006), but denser than rural areas. As such, the urban/suburban density measures in the UA/MSA definitions described above have been used to define exurbia in a number of studies (Lamb, 1983; Morrill, 1992; A. C. Nelson, 1992; A. C. Nelson & Sanchez, 1997; M. B. Smith & Sharp, 2005). Additional research using density qualifiers includes Crump (2003), whose exurbs had each dwelling situated on at least 5 acres and Theobald (2001), whose exurbs had 11-40 acres per residence. Still others have written that exurbs are those places where population density is less than 1,000 persons per square mile (Bruegmann, 2005), between 300 and 999 persons per square mile (A. C. Nelson & Sanchez, 1997), or between 100 and 1000 persons per square mile (Clark, Munroe, & Irwin, 2006). More generally, Patel (1980), posits exurbia to be comprised of discrete subdivisions located in a rural setting, those subdivisions being denser than the surrounding countryside.

The economic activities occurring in exurban areas are also used as another defining characteristic. Exurbs, for some, are places that have economies similar to cities (Ash & Thrift, 2002), being economically and socially tied to the city (Bruegmann, 2005). Such conceptualizations link exurbs to the manufacturing and service economies of cities on one hand, but on the other, exurbs may contain hobby farmers according to Walker and Fortmann (2003), those who still depend partially on agricultural employment according to Berube (2006), and residents who have important commercial agriculture occupations according to Smith and Sharp

(2005). Another economic characteristic cited is that exurbs are populated by wealthy working or retired professionals in bedroom communities (Spectorsky, 1955; Walker & Fortmann, 2003) or second-home settings (Luka, 2007; Taylor, Forthcoming).

In terms of commuting, exurbs are part of the urban labor market for some researchers (Ash & Thrift, 2002), but are located outside of the close-in commuter zones for others (Crump, 1999). Morrill (1992) stated that exurban places must have at least 10% of residents commute to the census-defined primary city's county and Berube (2006) required exurbs to send at least 20% of residents to work in the urban area.

Scholars recognize that many exurbs are growing in population (T. S. Davis, et al., 1994; K. M. Johnson & Beale, 1994; Morrill, 1992; P. B. Nelson, 1999), but some even use growth as a defining characteristic. For example, Berube's paper (2006) states that for an area to be an exurb, it must have high population growth while Smith and Sharp (2005) write that exurbs must have growing populations leading to increasing densities. Lamb (1983) defines his exurbs as places growing at 5% annually or more.

A certain type of resident, according to some exurban research, is populating these growing exurban places. Exurban areas are populated by newcomers from nearby urbanized areas in some papers (A. C. Nelson & Sanchez, 1997; M. B. Smith & Sharp, 2005). Exurban areas have also been characterized as the destinations for newcomers who have left urban areas for rural lands that have environmental

amenities and open spaces (Larsen, Sorenson, McDermott, Long, & Post, 2007; Walker & Fortmann, 2003).

The studies presented here have commonalities as well as differences in their portrayals of exurbanites. Researchers employed different exurban definitions based on the varied qualitative and quantitative methods used as well as the primary data collected and secondary data analyzed. The works summarized above did not aim to conclusively define exurbia. Drawing on the definitions previously employed, I present a new definition of exurbia in order to clearly identify the term for this dissertation and future research. I discard the growth, migration, and wealth requirements that some other researchers have placed on defining exurban places. Some exurbs may indeed be growing with the arrival of wealthy former urbanites, but other exurbs are stable or declining in population. Additionally, people of modest incomes who may have formerly lived in rural or even other exurban areas populate many exurbs. For no other type of settlement; not urban, suburban, or rural areas, are places defined by their growth rates, type of incoming population, or economic situation. Exurbs are a demographically diverse settlement and this variety should not be washed out.

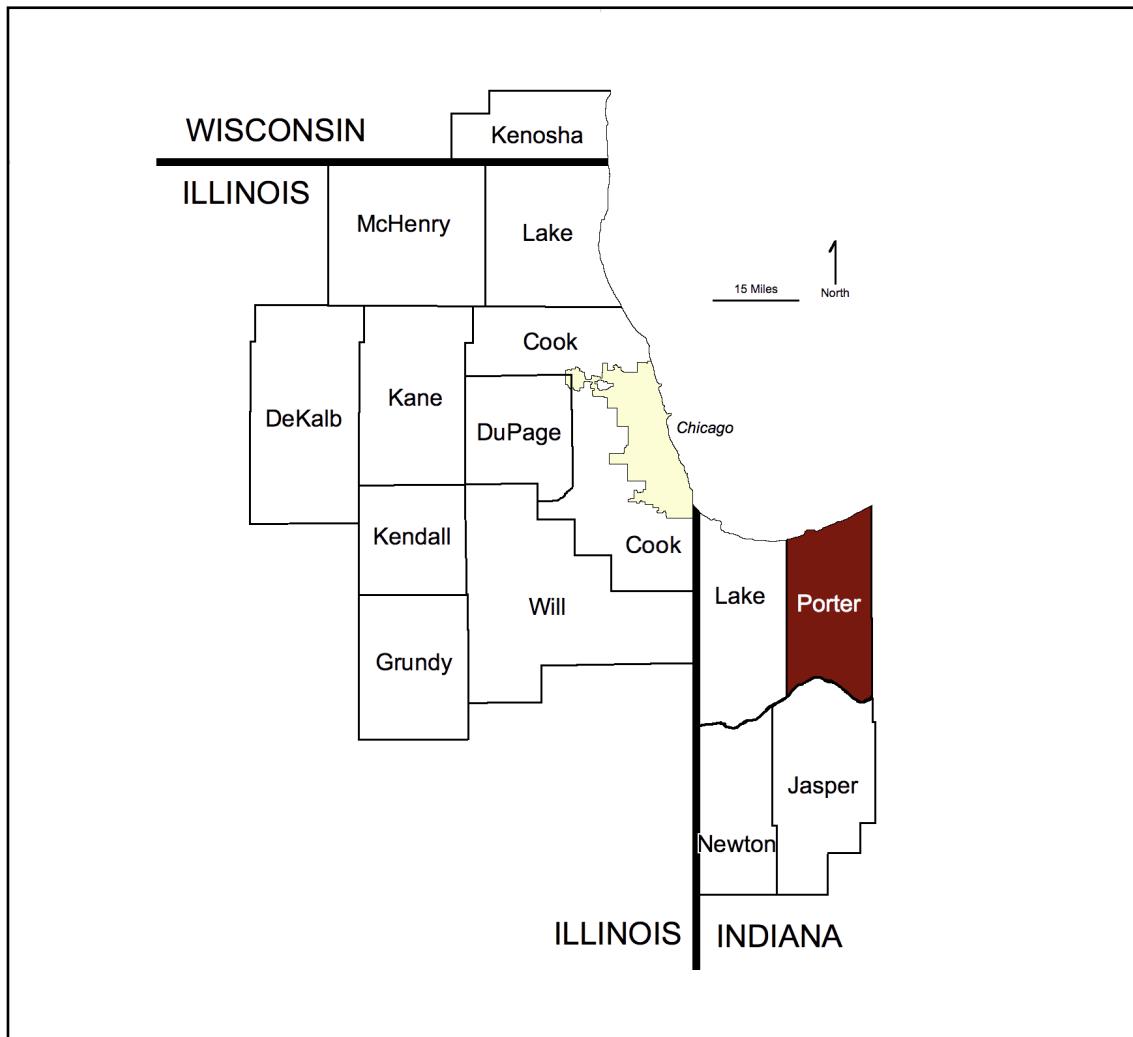
I distill the constructive exurban characterizations noted above to geographic location. Near a city and suburbs on which they rely economically and socially, exurbs are at the same time not part of the urban/suburban jurisdiction. Exurbs are close to the city and its suburbs, yet separate from them. Simply put, *exurban areas are the lands located within the MSA but outside of the municipal boundaries of the MSA's constituting cities and suburbs*. I will use this definition because it clearly and

concisely identifies exurbia in both a conceptual and applied sense. Conceptually, exurbia's connection to the city and suburbs is bundled in the definition of the MSA. This connection is manifest in the exurban residents who commute into the central county of the MSA. Exurbia is distinct from the city and suburbs because it lies outside of municipal jurisdictions. Exurbanites are concerned with nonurban/suburban issues, a fundamental difference. Practically, locating exurbs is straightforward given this definition.

### **3.2 Site Selection**

Porter County is this dissertation's study area for five main reasons. First, places like Porter County have been overlooked in exurban studies. Little exurban research to date has focused on the Midwest, in contrast to important studies on the West (Duane, 1999; Gosnell, Haggerty, & Byorth, 2007; Gosnell, Haggerty, & Travis, 2006; Gosnell & Travis, 2005; Larsen, et al., 2007; M. D. Smith & Krannich, 2000; Theobald, Gosnell, & Riebsame, 1996; Walker & Fortmann, 2003), the South (Audirac, et al., 1990; Clay & Orr, 1972; Eiesland, 2000; Hayes, 1976; Lucy & Phillips, 1997), and the Mid-Atlantic (Garreau, 1991; Lang, 2003; Lang & LeFurgy, 2003). What major studies that do exist regarding Midwestern exurbia have focused on quantification and mapping of past land use change (Ban & Ahlqvist, 2007; Irwin & Reece, 2002; Sharp & Clark, 2008; M. B. Smith & Sharp, 2005) and not the reasons behind such changes.

Second, Porter County is exurban in character, being located (see Figure 1: Chicago-Naperville-Joliet IL-IN-WI Metropolitan Statistical Area) within the Chicago-Naperville-Joliet IL-IN-WI Metropolitan Statistical Area (U.S. Census Bureau, 2004). Situated in the northwestern part of the state, bordered on the north by Lake Michigan, on the east by La Porte County, Indiana, on the south by the Kankakee River and Jasper County, Indiana, and on the west by Lake County, Indiana, Porter County is located approximately 50 miles southeast of the Chicago Loop.



**Figure 1: Chicago-Naperville-Joliet IL-IN-WI Metropolitan Statistical Area**

Third, population growth occurring in Porter County provides compelling reasons for its site selection. While all exurbs are not by definition growing in population, those exurbs that are increasing in population are grappling with the changes caused by population growth. Inhabited by 162,181 persons (U.S. Census Bureau, 2008), the entire county has grown 10.5% in the period from 2000 to 2008 (U.S. Census Bureau, 2008). Exurban Porter County (see Figure 2: Unincorporated Porter County) has 67,014 residents (U.S. Census Bureau, 2009), up 9.3% from 2000 (U.S. Census Bureau, 2009). This growth is largely due to in-migration, as 7.5% of those living in Porter County in 2006 had lived outside the county the year before (U.S. Census Bureau, 2006). The median age is 37.1 years with 23% of the population under 18 years and 11% over 65 years (U.S. Census Bureau, 2006). In terms of race, 99% of the population reports being of one race, the most reported are White with 94% and Black or African American with 2% (U.S. Census Bureau, 2006). Of those over 25 years old, 91% have a high school diploma, while 15% of the persons hold a bachelor's degree and 8% hold a graduate or professional degree (U.S. Census Bureau, 2006). The economy of the area has been shifting from industrial to service-based, but the steel-producing heritage of the area is still present. Educational services/health care/social assistance employs 22% of the employed population, manufacturing employs 17% (in particular the county's large ArcelorMittal/Bethlehem integrated steel mill), and retail employs 11% (U.S. Census Bureau, 2006). Workers largely commute alone by automobile, 81% doing so in a mean time of 26.3 minutes per trip each way (U.S. Census Bureau, 2006). The median income in 2006 was \$56,710 for all households, 26% of

households received Social Security (U.S. Census Bureau, 2006), and 10% of households fall under the federal poverty level (U.S. Census Bureau, 2006).

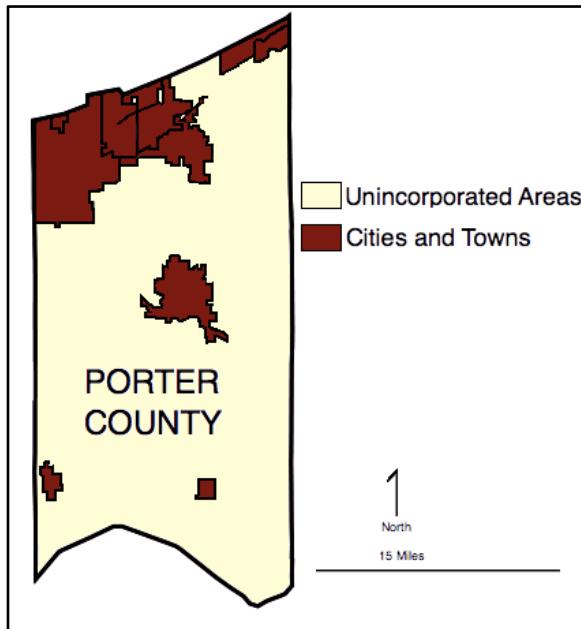


Figure 2: Unincorporated Porter County

Fourth, Porter County has recently undergone a sea change in how exurban development is controlled. In 2007, the county government implemented a new UDO (Porter County Board of Commissioners, 2007). This research will look deeply into how these new regulations fit current local preferences. Land use is also controlled by the C&Rs, which are required in virtually every new subdivision. Through the UDO and C&Rs, the entire range of land use controls, from formal to informal controls, are prevalent in Porter County.

Last, the study site must also be one that the researcher can access institutions and individuals who shape and react to the land use controls. Having grown up in a suburb approximately 20 miles from Porter County, I have long-

standing contacts to those living and working in the county. I am both a knowledgeable observer of the area and a disinterested outsider.

### **3.3 Case Study Components**

Land use control is a result of complex past and present social interactions, and therefore lends itself to qualitative examination via the case study method. A case study is appropriate when asking 'how' and 'why' a phenomenon is occurring (Yin, 1989). This project asks how and why physical/built environments, inhabitants, societies, and rules shape landscapes. Because of the uniqueness of individual landscapes and the multitude of jurisdictions and communities, it would be futile to attempt to study them all. For these reasons, this research investigates Porter County in order to craft an in-depth understanding. The case study is an appropriate method for conducting such a detailed investigation (Yin, 1981a, 1981b).

The case study is fitting for this research because unlike in a controlled laboratory setting, exurban development is occurring in real life and in real time (Yin, 2003). While potentially fascinating, the researcher does not have the option to set up an experimental exurban community to study. Unlike the controlled laboratory experiment, the boundaries between land use controls in exurbia and the social context in which they exist are not clearly defined. One chosen variable cannot therefore be isolated and studied, disqualifying an experimental study. This project's interest in the totality of exurban land use control and its social geographic

milieu bars a survey-based approach as well because of the propensity for surveys to be shallow and contextually detached (Yin, 2003).

Rather than superficially survey all of American exurbia, this research explores the peculiarities of Porter County, and provides a great deal of detail on one exurban landscape (P. Atkinson & Hammersley, 1994; Boyle, Halfacree, & Robinson, 1998). While the results of this case study will not be statistically generalizable because of the large number of undefined variables (Boyle, et al., 1998) this work has the potential to be generalizable in a theoretical sense (Yin, 2003). This case study is based on different types of evidence in order to triangulate and verify findings (Yin, Bateman, & Moore, 1985). This study has validity because it documents the chain of evidence from multiple sources (Yin, et al., 1985). Sources are discussed next, first sources of data on local preference, and second sources of data on land use controls.

### 3.3.1 Local Preferences Data Sources

Unfortunately, comprehensive data on local preferences did not exist prior to this research; therefore I interviewed relevant stakeholders in Porter County. I interviewed in person, or over the phone when more convenient for the interviewee, rather than mailing a survey questionnaire because interviews allowed for lengthier answers and thus had the potential to garner in-depth responses while avoiding artificial *a priori* categorization (Boyle, et al., 1998; Cook & Crang, 1995; Schoenberger, 1991). When conducting the semi-structured interviews, I allowed

for free flowing conversation and a breadth of responses, but at the same time I did not permit interviewees to wander off topic in order to strike a balance between narrow focus and wide scope (Schoenberger, 1991). Before conducting interviews in Porter County, I conducted test interviews to judge the intelligibility, appropriateness, and length of the guiding questions. During the actual interviews, I asked questions aloud to ensure the interviewee understood what I was asking (Schoenberger, 1991). The interviewees then responded verbally to the questions in their own words because this enabled them to more easily articulate exactly what they meant (Schoenberger, 1991). After each audio-recorded meeting, I transcribed the interview and analyzed my field notes.

Interviewees included persons involved in all facets of the housing development process. The industry is marked by vertical and horizontal integration, with overlapping functions and motivations among individuals and organizations involved (Yeates, 1990). One person or company may be landowner, developer, realtor, mortgagee, and so on. As a result, I chose interviewees whose activities and motivations represented the breadth of the housing development process, from plan to purchase.

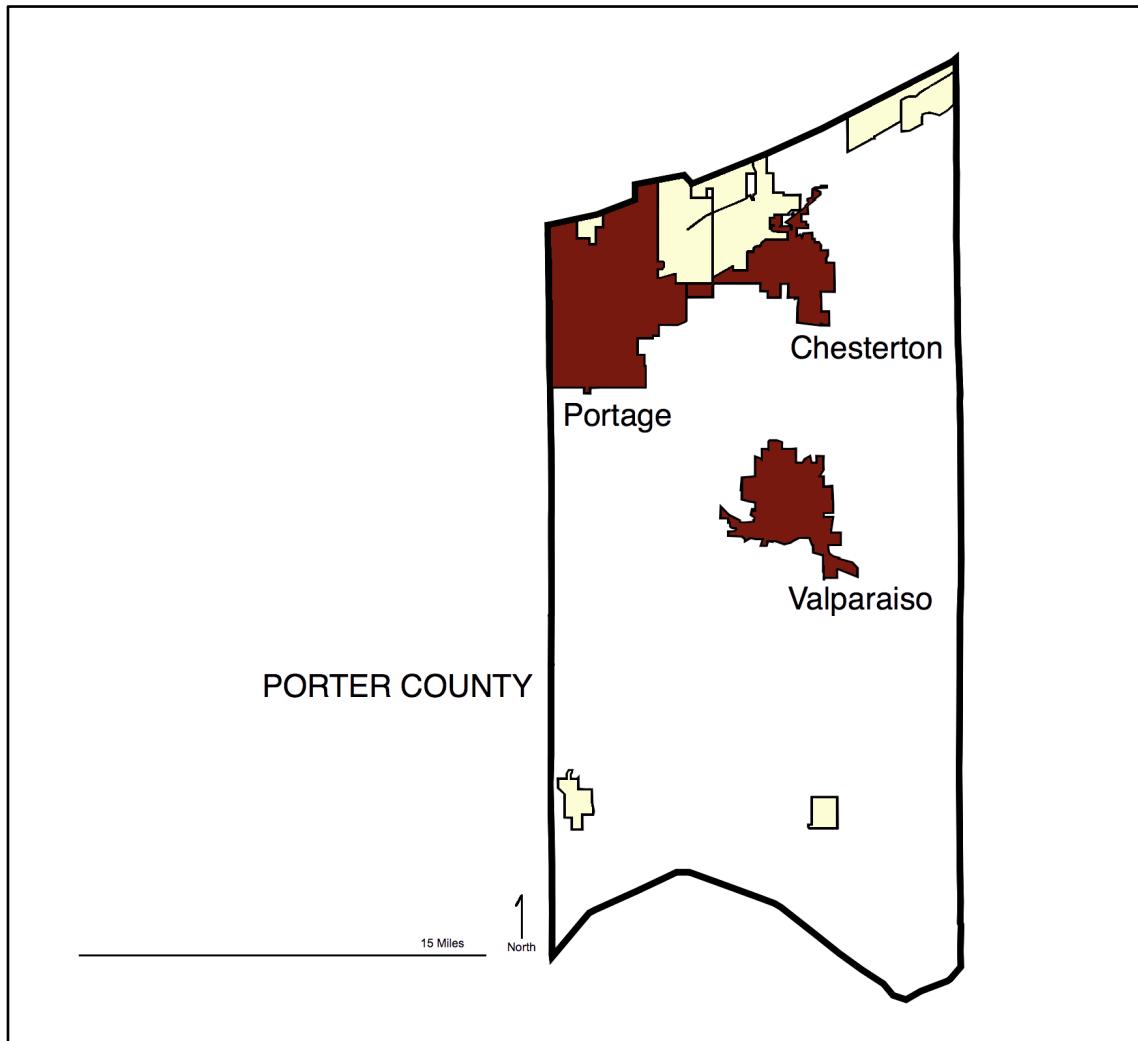
Planners hold formal positions of power in county government and are important in guiding how the landscape will look. I found these officials by searching the Porter County Government website, by visiting the county office building in Valparaiso (Thompson, 2008), and through referrals. In total, I interviewed 10 planning officials. The list of guiding interview questions for planning officials is in Appendix B.1 Planner Interview Questions. I supplemented

these interviews with analysis of their published reports, rulings, meeting minutes, and news coverage.

Developers are also important in shaping the landscape. I interviewed 21 developers, nearly the entire population of those active in Porter County. Guiding questions for these interviews are in Appendix B.2 Developer Interview Questions. I located the developers by searching new subdivision advertisements and subdivision approval requests. I also received developer contacts from some planners, and from developers themselves. Once I reached a point where I could not procure any new contacts, I stopped seeking additional developer interviewees.

Realtors are important sources of information on local preference. Through their attention to the home buying market, realtors are aware of what buyers prefer, as well as what buyers eschew. Realtors are thus uniquely positioned as important nodes in regional homeowner networks. Because realtors are numerous, it would be unwise to attempt to interview their entire population in Porter County. Instead, I interviewed 21 realtors gathered through a geographically stratified sample. I contacted realtors working in the three major population centers of the county, Portage (population 36,300), Valparaiso (population 29,516), and Chesterton (population 12,456) (U.S. Census Bureau, 2008). These three places are respectively located in the northwest, north-central, and central regions of the county (see Figure 3: Major Population Centers in Porter County). By interviewing realtors in these three cities, I spoke with agents who cover all parts of the county and all segments of the home buying market, understanding that individual realtor

knowledge is geographically and socially limited (Palm, 1976). Realtor interview guiding questions are in Appendix B.3 Realtor Interview Questions.



**Figure 3: Major Population Centers in Porter County**

Residents themselves are essential because their opinions are important for planning future growth of Porter County. Both general democratic tradition and the law require that the opinions of the populace be taken into account when formulating land use ordinances. Because residents are so numerous, sampling was important in attempting to gauge resident reaction to land use controls. I used snowball sampling for several important reasons. Snowball sampling is helpful for

finding isolated populations (R. Atkinson & Flint, 2001). Prior study has shown that many exurbanites move to such areas for privacy (Brian E. Johnson, 2006, 2008). Therefore, finding cooperative exurbanites can be challenging. Snowball sampling, where one interviewee refers another, and so on (R. Atkinson & Flint, 2001; Vogt, 1999), establishes trust and rapport between interviewee and interviewer because the interviewer is recommended by an acquaintance (P. Atkinson & Hammersley, 1994; R. Atkinson & Flint, 2001; Berg, 1988; Fontana & Frey, 1993). Because trust is established rapidly, status and gender differences are minimized (Boyle, et al., 1998; Fontana & Frey, 1993), and honest, candid responses are given. While snowball sampling has many advantages, it does not follow statistical protocols, as samples are not random. Because snowball samples can be biased (R. Atkinson & Flint, 2001), this dissertation, as noted above, does not attempt to statistically generalize the results of this case study.

I found exurban residents starting with interviewees from my previous work in Porter County (Brian E. Johnson, 2006, 2008). In addition, my planner, developer, and realtor contacts provided names of willing exurban resident interviewees. By having multiple referral chains, I was able to diversify the residents interviewee pool by geography, demographics, and property characteristics (R. Atkinson & Flint, 2001). This was important because the tightness of some social networks can lead to a homogeneous snowball sample, as interviewees may recommend others who are similar to themselves (R. Atkinson & Flint, 2001). I was particularly careful to interview individuals who lived inside subdivisions as well those residing on county and state highways. I interviewed people whose properties were subject to the UDO

only, as well as those bound by the UDO and C&Rs. Of those subject to covenants, I interviewed a diverse group, from those with few covenants to those subject to comprehensive controls. In total, I interviewed 51 residents, using the guiding questions in Appendix B.4 Resident Interview Questions.

The quotes are organized below according to the themes that emerged from the interviews. Within each theme, quotes that are most emblematic of the theme appear first. Interviewees of the same subgroup (planner, developer, realtor, or resident) often gave similar opinions, so their quotes are commonly clustered together. To keep one interview subgroup from dominating, I varied the subgroup whose quotes appear first in each theme.

### 3.3.2 Land Use Controls Data Sources

In addition to interviews, I examined the source documents behind the UDO and C&Rs of Porter County. The county's new UDO: *Porter County Unified Development Ordinance*, was written in 2007 by the consulting firm Ground Rules Incorporated (Bradley E. Johnson, 2007). This document governs zoning regulations and subdivision procedures. Covenants vary from one subdivision to another, and for this reason I obtained copies of C&Rs from each interviewee. If the interviewee did not have a copy of their C&Rs, I obtained a copy from a neighbor, realtor, or from the county records office.

### **3.4 Human Subjects Protection**

The Indiana University Bloomington Human Subjects Office approved this data collection and I have followed all compliance procedures. I, as principal investigator, passed the required human subjects protection test on November 15, 2004. The protocol for my data collection, number 08-13554 entitled "Controlling the Exurban Landscape of Porter County, Indiana", was approved on December 9, 2008. The approval from Indiana University is in Appendix A: Human Subjects Office Study Acceptance Letter.

## **Chapter 4: Unified Development Ordinance Results**

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### **4.1 Introduction**

I give the results of the interviews in two chapters. In Chapter 4: Unified Development Ordinance Results, I present the perceptions of interviewees regarding the misalignments and alignments of the UDO with local preferences. Following this is Chapter 5: Covenants and Restrictions Results, in which I present the perceptions of interviewees regarding the alignments and misalignments of C&Rs with local preferences.

All interviewees discussed the UDO, and the vast majority of comments regarding the appropriateness of the document focused on density requirements, executed through regulations on individual lots and subdivisions. In this chapter, I will first present arguments from interviewees who felt that the UDO density requirements did not fit local preferences. Specifically, these interviewees claimed that the density requirements forced development to be too spread out and thus too costly and too maintenance intensive. According to these interviewees, the UDO caused developers to build on large farm parcels rather than in more desirable wooded areas. These interviewees also argued that the UDO mandated unwanted sprawl. Second, I will present the views of interviewees who argued that the UDO does fit local preferences because the document limits growth, as people want. They claimed that the UDO popularly forces what little development is permitted to municipal-adjacent, annexable land.

## **4.2 Unified Development Ordinance Background**

Before turning to the interview results, I must explain the density-limiting provisions of the UDO. In 2004, the county hired bid-winning central Indiana planning consultants Ground Rules, Incorporated (Urbanik, 2006) to write a new UDO. Previously, development was regulated through a variety of ordinances originally written in 1983 and amended several times since (Urbanik, 2006). The new UDO was adopted on May 1, 2007 and went into effect on June 15, 2007 (Bradley E. Johnson, 2007). The new Porter County UDO has been recognized by the planning profession, being a subject of study at several conferences (Norris, Emerson, & Thompson, 2008; Thompson, 2006).

Specifically, for single family, detached homes using septic systems, the density requirements come from three parts of the UDO: the restrictions on homesites, subdivision type, and open space itself. First, in regards to open space resulting from restrictions on individual homesites, single family detached homes are permitted in the following zoning districts: General Agriculture (A1), Prime Agriculture (A2), Rural Residential (RR), and Low Density Single-family Residential (R1). The UDO limits density by imposing minima for lot area, lot width, front/rear/side setbacks, and dwelling size, as well as maxima for impervious surface coverage (see Table 1: Open Space Controls on Individual Homesites).

Zoning District	Minimum Lot Area	Minimum Lot Width	Minimum Front/Rear/Side Setbacks <sup>1</sup>	Minimum Dwelling Size	Maximum Impervious Surface Coverage
General Agriculture (A1)	10 acres	160 feet	50/30/30 feet	1,000 square feet	35%
Prime Agriculture (A2)	20 acres	160 feet	50/30/30 feet	1,000 square feet	25%
Rural Residential (RR)	1 acre	160 feet	40/30/30 feet	1,000 square feet	20%
Low Density Single-family Residential (R1)	1 acre	160 feet	30/15/20 feet	1,000 square feet	35%

**Table 1: Open Space Controls on Individual Homesites**

Second, subdivision type regulations require open space set-asides. These subdivision regulations include minima for common area between all lots and roads outside the subdivision and common area between subdivision parent tract boundaries and adjacent properties. Some of the subdivision types specify a percentage open space minimum (see Table 2: Open Space Controls on Subdivisions).

Subdivision Type	Prerequisite Base Zoning	Common Area Required Between All Lots and Any Arterial or Collector Street	Common Area Required Between All Lots and All Other Parent Tract Boundaries	Minimum Open Space
Conventional Subdivision (CV)	RR, R1	50 feet	30 feet	None
Cluster Subdivision (CT)	R1	50 feet	30 feet	25%
Conservation Subdivision (CS)	R1	50 feet	30 feet	40%

**Table 2: Open Space Controls on Subdivisions**

Third, open space requirements are addressed directly in the UDO design standards. The UDO states, “All developments shall be required to provide open space. Open space shall be designed to preserve important site amenities and

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<sup>1</sup> Setbacks listed are for primary structures. Accessory structures, such as barns, sheds, pools, and detached garages are generally permitted to be closer only to the rear lot line.

environmentally sensitive areas" (Bradley E. Johnson, 2007, p. 7.33). The county wants environmental features preserved first and states in the UDO that "as a general principle, environmental features should be left in their natural state...Environmental features such as mature trees, wetlands, scenic watercourses, or aesthetic vistas shall be preserved" (Bradley E. Johnson, 2007, p. 7.33). "The land set aside for open space shall, as a first priority, be the areas with the most significant environmental features (*e.g.* dunes, floodplains, prairie, steep slopes, wetlands, wood lots, high quality forest resources, natural lakes, stream corridors, critical wildlife habitat areas, *etc.*)" (Bradley E. Johnson, 2007, p. 7.38). The UDO specifies how different types of environmental features should be preserved and in what quantities these features count toward satisfying the open space requirement (see Table 3: Open Space Standards for Residential Development).

	<b>Minimum Open Space Required if Detention Facilities Meet Qualifications of Open Space Parcels</b>	<b>Minimum Open Space Required if Detention Facilities Do Not Meet Qualifications of Open Space Parcels</b>	<b>Designated Priority Areas</b>
Sites without Existing Environmental Features or Unbuildable Land	≥ requirement for type in Subdivision Regulations or ≥15%	≥ requirement for type in Subdivision Regulations or ≥10%	None existing
Sites with Existing Environmental Features and/or Unbuildable Land	≥ requirement for type in Subdivision Regulations or ≥20%	≥ requirement for type in Subdivision Regulations or ≥20%	100%, up to 40% of the total site area

**Table 3: Open Space Standards for Residential Development**

Once priority areas have been preserved, as outlined above, other specifically qualifying parcels may be considered for open space requirement satisfaction. Parcels can count as being open space if they meet certain qualifications regarding natural features and size (see Table 4: Qualification of Open Space Parcels).

<b>Open Space Parcel Type</b>	<b>Description</b>	<b>Minimum Contiguous Area</b>	<b>Amount Counted Toward Open Space Requirement</b>
Quality Natural Features	Wetland, floodplain, $\geq 15\%$ slopes, riparian corridor, natural lake, native species forest	800 square feet	100%
Low Quality Natural Features	Non-indigenous forest area, 5% to 15% slopes	$\frac{1}{4}$ acre	100%
Man-Made Water Features	$\geq 1$ acre water surface with $\geq 25\% > 8$ feet deep, $\geq 5\% > 5$ feet deep; 75 foot wide buffer with $\geq 80\%$ prairie grasses and trees	None specified	50%
Detention Facilities (for storm water)	$\leq 4$ foot depth, $\leq 4:1$ slopes, 25 foot wide buffer with $\geq 80\%$ prairie grasses and trees	$\frac{1}{4}$ acre	50%
Stream Corridors	$\geq 75$ foot wide buffer (greater if necessary to prevent erosion)	None specified	100%
Erosion Stabilized Area	Area $\geq 30$ feet wide stabilized from erosion	1 acre	100%
Perimeter Landscaping	Soft barrier along entire frontage on interstate highway, arterial, or collector road	25 foot minimum depth	25% or 100% if Priority Areas have been preserved

**Table 4: Qualification of Open Space Parcels**

#### **4.3 The Unified Development Ordinance Does Not Fit Local Preferences**

The above UDO provisions legislate low-density development through restrictions on individual homesites, subdivisions, and open space itself. Given these provisions of the new UDO, interviewees argued that such low-density development standards did not fit local preference, specifically because large lots and large homes were unwanted, high cost properties were unwanted, high maintenance properties were unwanted, farmland development was unwanted, and sprawl was unwanted. Each of these specific perceived mismatches between local preferences and the UDO are detailed in the following sections.

#### 4.3.1 Large Lots and Large Homes Unwanted

A dominant theme that emerged from these interviews was that the UDO open space requirements did not fit local demand because people did not want large lots and large homes in general. Developer #7 felt that her customers wanted small houses on small lots in dense subdivisions, but unfortunately the UDO's open space requirements did not allow that type of development. She said,

"The market [for smaller homes on smaller lots] is there. We would be fine if we didn't have all of these \$350,000 homes and up spec[ulation] homes on the market that are way too big, frankly (laughs)! Nobody wants them! Of our few model homes, the one that we have a really difficult time selling is one of the most expensive houses we've built. It's bigger and it's more expensive than we normally build. I'm sure [my boss] wished he wouldn't have built it. Our biggest house is the hardest one to sell."

According to Developer #7, environmentalism and the aging of the Baby Boomer generation are driving the demand for smaller houses on smaller lots, regardless of the UDO's efforts to push developers to larger lots and larger houses. She said,

"Baby boomers can see the waste in owning a large house, that's what we hear from our buyers. The younger buyers might be a little bit more into not wasting as much as well. Is there demand for houses on small lots? We think so! We truly believe that the market will grow. There is the baby boomer market, which is a bigger market than any other segment. They want to downsize. They don't want to live in a huge house anymore and take care of a lawn. It's partly because they want to have it a little easier and they don't feel like they need that much space. We definitely feel it will be a big segment. I think that even families that are middle-class will probably go a little smaller than the big mansions that we have."

Developer #2 further explained transportation costs and the environmental movement as contributing to the demand for smaller lots. He said,

"Certainly there has been significant demand for [small-lot developments]. What we are certain of is gasoline will get more expensive again. As soon as there is demand for oil in the market again, guess what? We're going to be dealing with \$4 gas. As transportation becomes more expensive, as we deal with greater and greater environmental restrictions, then I think people are going to look at the dense housing that we're talking about, and say 'that makes more sense.' There is certainly a sensitivity to green issues that was not there 5 or 10 or 20 years ago. Energy conservation is going to continue to be a bigger and bigger issue. If you discover that your housing needs can be met very, very nicely in a well-insulated 1,800 ft.<sup>2</sup> house, as opposed to a 3,600 ft.<sup>2</sup> house out on a bunch of brush acres that's going to cost you an arm and a leg to live in, at some point you may say, 'Well, I think the 1,800 ft.<sup>2</sup> house looks pretty good. That makes more sense to me as a place to live and raise a family and to provide for their needs.'"

Another development interest, this time an attorney who represents developers in planning issues, said that no matter how much the county wants large lots and low density, his clients cannot move market demand to that home product. He, Developer #17, said,

"Open space and preserving open ground are my hot issues. Many of the plan commissioners want to encourage large lot development. The current minimum is one acre. There was a suggestion that they push it to two and some were even saying three acres for a minimum lot. I have not one client who is big enough, powerful enough, or has enough influence to create market demand; they simply meet what the market dictates. No one, no one but the marketplace itself creates the need for that. My clients, just because they build a house doesn't mean they can sell the house and make a profit; the market has got to dictate that they need that house. They can build as many houses or as few houses as the market will allow them to do but they've got to hit that market. My clients don't build homes in communities or design something that nobody will buy."

#### 4.3.1.1 High Cost Properties Unwanted

According to the interviewees, one major reason why buyers do not want large lots, and thus the UDO mismatches local preferences in this respect, is that such lots are too costly to purchase. Realtor #2, who specializes in new home construction and frequently works with developers to assist in gauging market demand and planning new subdivisions stated,

"Sometimes these restrictions that the [planners] impose to maintain some of these green areas are, in a dollars-and-cents bottom-line business environment, not feasible because they require so much land for green space. Especially in the last few years, raw land had been selling for a premium per acre in Porter County. If you have lower density obviously then the per-unit price is going to go up. The lower the density, the higher the per-unit price and the higher the density, the lower the per-unit price. Some of these restrictions imposed by some of these governments have made it very challenging to create a product that is affordable. For the most part, Northwest Indiana is primarily a blue-collar area and you have to build in that income-driven demand. By adding some of these restrictions you kind of price yourself out of the market and you can't crank out the type of sales numbers and units that make sense for our builders and developers."

Realtor #11 spoke of personal experience with her buyer clients. She said that low-density requirements raise costs and price too many people out. She put it this way,

"[The UDO] has done real damage from the realtor's standpoint, they want so much free land, especially for the subdivision. That drives up prices and keeps people out. Absolutely it keeps people out of the county. The county puts a big restriction on developers because [the UDO] wants so much free space. When you're building a subdivision that is a problem because you have to pass along those costs."

Residents echoed this same concern that low-density requirements have

made lot and home prices too high for exurban Porter County. Resident #17 spoke of how many of the new high-priced low-density homes and lots have not sold well.

She said,

"The one thing that I see in Porter County that's really stressful is you see a lot of the bigger homes going up. I see they have a lot more subdivisions with big lots, but they're empty, they don't sell. What does that really say about Porter County? Are we growing as a community or we just building to look good, to look like we're all rich or something?"

Resident #42 had believed that the county enacted large lot minima in order to stop development precisely by driving parcel prices up. He stated,

"If people have to build something like a minimum of 3 or 5 or 10 acre plots, well, most people can't afford 10 acres. What Porter County is trying to do is to stop the developers from developing by driving the prices up. It'll work because nobody can afford all that ground. If I was a farmer and I had 300 acres and I'm getting up there in age and my kid don't [sic] want to do this, I'm going to sell it. Porter County is trying to keep them from developing stuff, but what you going to do? Raise the price so nobody can afford to buy lots."

The developers agreed that when they have to reduce densities, they must increase the per-unit price on the lots they sell. This prices some buyers out, and goes against their perception of local preferences. Said Developer #16,

"[The county] went from zero open space to a pretty drastic jump up. People are only going to pay what they afford so you can't just raise the price of development and think everybody's going to come and pay. [The open space requirement has] only made land more expensive. When somebody donates property [for open space], like I donated 27 acres, well that's a true, hard cost. That pushes the cost of developing way up because I had to buy those 27 acres and forfeit them. Basically everyone thinks 'oh, it's just a dollar here and another \$20,000 here and another \$10,000 here' and it doesn't matter. It *does* matter because now you're building developments that are open and you have lots that people can't afford. The market will tell you what to build for people to buy. Let the market determine what you should

build! But here in Porter County, forget the buyers, the *planners* will tell you what to build!"

Developer #18 agreed, saying that open space is driving up the cost of housing too high for locals to afford. The higher costs imposed by the UDO are not what his potential customers want. He said,

"I think the open space [requirement] is causing a problem with home sales. If I buy 100 acres, I've got to give away 20 acres for green space? Is this cost-effective? You used to be able to buy a house for \$125,000 or \$130,000, but you can't do that anymore. The open space is driving the price of a house up. Eventually it's going to get to a stage where people can't afford it. If we can't keep things affordable I think we're in trouble. People here can't afford \$175,000 and up, that's what's sad. The developer has to give up the green space. All of a sudden I have to charge more for the other lots. There gets to be a time where the homeowner can only afford so much, so ordinances like that really hurt. It's easy [for the planners] to say put in open space when they don't have to pay for it. That's my problem with a lot of county officials, they throw some of the stuff into effect and think the developer is going to pay for it, but in the long-term the developers don't pay for it, the consumer does."

Developer #14 agreed that the open space requirement is hurting demand by pricing people out of the market. The locals do not want higher-priced lots with open space because they simply cannot afford the increased cost. He said,

"The open space requirement is driving up the cost of a house. Now 20% of your property has to go open space. If you buy a 100-acre parcel, 20 acres of that is not going to be developed. The cost of open space affects the end-user. The cost of developing is going up so you're taking more people out of the box. If a house a couple of years ago was \$150,000, now it's \$160,000. That takes people out of that arena. The [UDO] is more restrictive and it's just going to put Porter County at a higher price. We're not going to be a county that is going to be price-conscious. It's driving the cost of developing and living in Porter County up higher. We have a lot of blue-collar jobs here. Not everybody works in the Silicon Valley and makes \$100,000 a year. You still have to look at what the average person in the county makes and then apply that to what they can afford in a house."

Low-density regulations are just too costly for local preference, according to these interviewees. Planner #4, summed up this theme by saying,

"We went for a ride in some of the new large-lot subdivisions, including Pepper Creek, which has 3 acre lots. There is a house in there that has to be 8,000 square feet. There seems to be what looks to be a guesthouse that is probably 1,500 square foot. They're gorgeous, high-end homes, but it becomes an issue when you ask, 'Are there enough wealthy folks to fill up these houses?' I have concerns about that."

#### 4.3.1.2 High Maintenance Properties Unwanted

In addition to their high cost, another major reason homebuyers do not want low-density development, according to the interviewees, is that such homesites require too much maintenance. Resident #42 said, "We have just about an acre, and we are mowing grass constantly, because it's a lot of grass. Most people don't want 10 acres. They say, 'I don't want to cut all that grass'" and Resident 15 stated, "I'd like to move because it's a lot work here for me. I mow the whole two acres. Hopefully the next place won't be this big." Regardless of if a buyer has the means to purchase an expensive lot and home, the buyer does not want the extensive maintenance obligations. Developer #17 said,

"I don't think [there is a great demand for 2 or 3 acre lots]. I think homebuyers, even on 1 acre, find that that's too much lot to care for. I don't care to cut the grass; I like to play golf instead of cutting the grass so if I had a full acre, that's not what I'm looking for. Typically, I think that there's a far greater demand for smaller lots whether it's a \$300,000, \$200,000 house, or a \$500,000 house. People want generally smaller lots. They don't want to have to maintain it. One of the largest growing segments around here are the maintenance-free homes where the streets and sidewalks and driveways are plowed by

the property owners' association and the bushes and the shrubs and the hedges and the lawns are cut and maintained by the property owners' association. I see those as being attractive to a larger number of folks as well."

Developer #7 agreed that Porter County exurbanites are not looking for high maintenance properties. She said, "Many of the baby boomers simply don't want to clean and take care of a big house and big yard any more." Developer #11 shared that opinion, saying,

"My view is that an acre parcel is a lot of land. My house is on 1.5 acres in my subdivision, but I wish it was 3/4 acre when I have to cut it. The majority of people think an acre or 3/4 of an acre is plenty, they're satisfied with that. I just don't see a lot of large-acreage residential development in demand in the county. I think there is less of the demand for a three-acre parcel than one-acre or one acre and a half. People say 'I have to cut the darn grass and maintain it' and I just think there will be less of a demand."

Clients who initially ask for large lot properties usually change their minds after considering maintenance responsibilities, according to Realtor #43. In the end, her clients typically purchase far smaller properties. She said,

"I have clients who tell me, 'I want two acres, no, I want three acres.' I say, 'Do you know what it's like to cut three acres? Do you have a clue that you're going to be out there eight hours every Saturday cutting three acres? You just need a little space between you and the neighbor. That's all you need. Just settle down.' Once they start looking at the land and what it takes to maintain all the land, they tend to scale way back."

Realtor #2 agreed with this sentiment, that most buyers do not want large acreages because they require too much upkeep. He believed that buyers want something more manageable, and that means a smaller lot. He said,

"We have seen, for the most part, people want something that's a little bit more manageable as far as the lot size, instead of a large spread. The most successful developments are where the actual size of the lot that the house sits on is smaller, and maybe the lot is maintained for them with landscaping and snow removal and things of that nature, as compared to the few people that prefer a big spread and they want two acres or whatever."

In fact, Developer #3 said that his current project's "drawing card is the lots are just an adequate size. They're big enough to where you can have a little activity or pool in the backyard and yet they're small enough where you're not mowing all day." This general attitude was that the UDO open space requirements pushed lot sizes to be bigger than local preference.

#### 4.3.2 Farmland Development Unwanted

The interviewees who perceived a mismatch between the UDO and local preferences also argued that regulations push development to barren farmland, which is deeply unpopular in the community. As noted above, the UDO gives priority to preservation of "environmental features." "For the purpose of identifying open space priority areas," the UDO defines an environmental feature as "dune, floodplain, forest area, natural lake, stream corridor, prairie, watercourse, and wetland." Lots having, or near to, "environmental features" are in far greater demand by homebuyers, according to the developers. The interviewees argued that they are stuck with a mismatch between where their buyers want houses built and where in fact houses can be built. Developer #8 said,

"What the 'environmental features' [provision] means is if you have a really gorgeous piece of property that you think is worth a lot of money, it's not. [Lot] buyers want to build in all those beautiful trees and woods, but they're a liability because you can't put lots on those. You have to protect them. If you're going to build a home in Porter County, are you going to do it on a flat farm field or are you going to do it in a gorgeous park-like setting? Well, people like to do it in the woods, but the UDO won't allow it."

Even though their customers want houses amongst trees, developers cannot build in such places because of the UDO. Commonly, these interviewees believed that houses built in wooded areas allowed the forest to continue to exist, while houses built on farm fields completely eradicated the former farming activities. The UDO attempts to keep houses out of wooded areas, something that frustrated interviewees such as Developer #13, who said,

"[The plan commission] loves the woods, the problem is so do my buyers. With the open space requirements, developers don't want to buy a wooded lot or a wooded farm anymore. As a developer I am buying basically farm property, which does not make the highest-demand lots."

Developer #14 concurred. He said,

"[The county] has come up with this bizarre regulation. If you happen to have a totally wooded parcel, you're only able to develop about half of it, the rest of it would have to be set aside as open space because of the trees. That just doesn't make sense, what you're doing is condemning very desirable potential homesites on half of your property. In fact, we had a person comes to us who owned 1,000 acres that they wanted to develop and most of it was wooded. They would have had to set aside like 400 acres for nothing. They said, 'We're just going to hang onto it and wait until later and see if the rules change.'"

Many of the residents interviewed agreed with developer assessments. These residents spoke of how much they enjoyed living near woodlots and rolling hills. When choosing his retirement house, Resident #20 said,

"I told my wife, 'The only place I will retire is northern Porter County.' It's hilly and wooded. I didn't want the flatlands, the flat and empty land down south. It's all farm fields in the south county. This is just beautiful and picturesque up here, it was everything we were looking for."

When planning a move from a suburban Lake County to exurban Porter County, Resident #36 wanted to get away from the small trees and stark developments of the newly landscaped tract homes and out to an area of Porter County with mature trees. He said,

"That's the one thing I don't like about some of the Lake County communities, no trees. I noticed this in [the Lake County suburb] Munster. Over there, off Fran Lin Parkway, when I was a kid they put all those new houses in. When they built that, there were no trees. The developer put all these houses in and then people planted trees. When we came into this area [where I currently live], the trees were already there and they literally knocked down a tree to put a house in. When we got here, the tree in our yard was 20 or 25 years old. It was woodsy. Just the beauty of it appealed to me."

Now that the UDO calls for the preservation of wooded areas as "environmental features," exurban Porter County residents are being pushed to purchase former farm fields and must plant trees themselves. Resident #22 told of her experience,

"One thing that we didn't like about our piece of property was we had neighbors on all sides of us and no trees. There was nothing, no plantings at all on the property. It was just bare ground. That was one of the things that we've been doing since we moved is planting trees."

Realtors also claimed that their clients preferred wooded land. Having trees provides privacy, which is something exurban buyers strongly desire. Realtor #10 explained,

"I do believe people really have a preference for wooded land. My clients don't care if there are neighbors on either side but they don't want to be crowded with neighbors behind. That is extremely important and I do get a lot of that preference when I am showing homes to prospective buyers because they want a little bit more privacy. They say, 'If we could get something that's got a little bit of wooded land, that's preferable.' There is less desire for the homes that have been built in cornfields because they're stark. It just looks like stripped land and there are no trees except for the new trees that have been planted. Areas that are built in more wooded-type areas give that sense that they are established because they have mature trees. They have a little more privacy. When you look out, what you see? You see trees and you see the changes of the season. In the spring you get the flowers budding and the trees start to leaf. In the fall you get the color change and in the winter you see the snow in the trees and stuff. Otherwise, you see your neighbor's deck and their backdoor. Aesthetically you know it's more pleasing. It's all about the view and the privacy.

Realtor #13 concurred with this assessment. He said that former farm fields are not in high demand, as evidenced by their lower selling prices. He said,

"To say that someone is looking for an agricultural area, like wide-open spaces, we don't have too many people who want those. People prefer trees and things like that. I would say that wooded lots are worth maybe 5 or 10% more. People do tend to enjoy the lots with the rolling hills and the trees."

Interviewees claimed that the UDO restricts building in highly desirable wooded areas and pushes development to sprawl onto farm and pasture lands. These homesites are not what buyers want, as Developer #2 said,

"Rough land that's got topography and trees may be what my buyers want, but it's impossible to develop under the UDO because of all the wetland restrictions and all the set-aside restrictions for open space

and tree protection and slope protection. It mandates sprawl and requires that we use our best flat farmland for housing purposes (laughs)."

#### 4.3.3 Sprawl Mandate Unwanted

The issue of sprawl came up in many of the interviews. Interviewees claimed the UDO did not fit local preferences because the regulations mandated unpopular sprawl. These interviewees argued that because the UDO requires large lots and open space set-asides, land would be consumed by development quickly. Developer #14 put it this way,

"What [the county] is saying about open space is counterintuitive. People don't want sprawl, but when you have less density you may not have urban sprawl, but you then have rural sprawl. It takes more acreage to do it. It baffles me sometimes when people say 'we are preserving more space.' In fact we are using more space when you have one acre or two acre lots rather than less. Whether you like dense development or not, it uses less property. It's more homes to the acre. We are having not as many lots but we are eating up more property to create the same amount of homes. We are trading urban sprawl for rural sprawl."

Similarly, Developer #2 said that the community does not want mandated sprawl that consumes farmland, but that is precisely the result of the UDO's open space requirements. This developer, who specializes in dense, new urbanist subdivisions, is frustrated that the UDO mandates low densities. He said,

"Years ago I was on the annual Agricultural Day panel with the Farm Bureau that they have at the [Porter County] Expo Center. One of the discussion questions was, 'How do you foster farmland preservation?' The Purdue agricultural economics professor was advocating that the best way to go about doing that is to mandate larger overall lot sizes.

If the minimum lot size was 5 acres or 10 acres, he said, than that would do a better job of preserving farmland. If you have demand for 500 new single-family home lots in [unincorporated] Porter County each year, then *my* position was that the most logical way to preserve farmland was to *reduce* lot sizes. If your minimum lot size in rural Porter County was a half-acre then you could meet that demand for those 500 homes on 250 acres and save the rest for farmland. If your minimum lot size was 5 acres in size then you would use up 2,500 acres to meet that demand. If your minimum size was 10 acres it would take 5,000 acres to meet that demand. The large lot rural developments are just bad land-use policy and the people don't want that mandated sprawl. Basically the way the UDO is structured today is that it mandates sprawl (laughs)."

The assessment of Developer #17 was similar to the opinions voiced here.

He claimed that the county government was mistaken in believing that the UDO would reduce sprawl. Instead, he argued that the UDO would unpopularly accelerate the development of farmland. He put it thus,

"The people want to preserve farmland and the county wants to preserve farmland. To suggest that larger lots is the way to go, and then in the same breath say, 'We want to preserve farm ground,' is ludicrous because you're simply pushing those developments further and further out. The larger the lots that are required, there's clearly a correlation with the more and faster the farm ground is eaten up. If the market says we need 100 homes for Porter County, somebody's going to build 100 homes where the ordinance will allow it. If the ordinance says that the minimum lot size to build a home is 2 acres, do the math, for 100 homes it's going to require 200 acres. If it's 1 acre, do the math, it's only 100 acres. If you push out and increase the minimum lot size you are dramatically affecting the amount of ground that's going to be required to meet the housing demand for our community. If you've got two-acre lots you're going to sprawl faster than if you have one-acre lots, nearly twice as fast. You've got this open space (mockingly) in two-acre bites. [The county wants] to have this 40% open space and they also want to increase the lot size, so you've got 100 acres, potentially 40 of it as open space and the remaining 60 acres you can only put 30 homes with the detention, slopes, roads, and easements. Look what your lot count is for 100 acres: it's only 30 homes. To suggest that you want larger homes and larger lots encourages exactly the word that they say they are trying to avoid: *sprawl*. In my mind, that's *exactly* the definition of sprawl."

There's this idea that we need to avoid sprawl but then they go ahead and say in the next breath, 'We want 2-acre lots because this is a rural community.' They're missing the point."

Developer #16 also considered the UDO to be a sprawl mandate because the regulations require his subdivisions to consume more land than he would prefer. He explained,

"I think the county is mandating urban sprawl. The UDO *absolutely* causes sprawl. Let's put it this way, the problem is that you're spreading development out and using up your land faster. I've got almost 30% open space [in my current development]. Imagine if everybody did that, then we're losing 30% of our property to urban sprawl. The county likes to say that people want them to be 'green' and that they are helping the environment like people want, but that's not true."

Developer #19 also stated that the UDO creates unpopular sprawl and wastes land, which is unpopular. He said,

"The open-space ordinance is definitely a waste of land. Basically what [the county government is] doing is they're creating urban sprawl. Let's say your family owns 100 acres. At a minimum you've got to give up 20 of it, turn it into green space. If it has an established forest on it, you're going to give up 40% of that. That's what they're doing. People are all about parks, and I'm all about aesthetics and making it look right, but this creates sprawl (laughs), which is what people don't want."

In sum, the interviewees who felt that the UDO did not fit local preferences cited three main sources of misalignment. First, they argued that the UDO's low-density requirements made for large lots and large houses that are too expensive and maintenance-intensive for Porter County exurbanites. Second, they argued that as the UDO requires "environmental features" to be preserved, people are prevented from living amongst the trees they desire. Instead, the UDO drives development to

barren former farm fields. Third, these interviewees stated that by requiring low-density development, the UDO drives unwanted sprawl. Generally speaking, these interviewees felt the UDO was too strict and constrained local preference. Resident #25 put it this way,

"A lot of people feel that we have way more ordinances than most of the places around here. It's overregulated. I think that the plan commission is trying to impose too much of their influence on everybody's lives, generally speaking. That's the excuse they use, 'We want to protect the people,' but I don't think it's to enhance the lives of the people in the county (laughs). I could protect myself. I don't need you walking through every little thing that I do to protect me from myself. I don't need that."

Planner #2 agreed that there is a perception that the county government tightly controls development. He told of many encounters with exurbanites that are very concerned about the restrictions that the new UDO imposes on what owners can do with their properties. He said,

"I get people who saw the UDO and were screaming, 'I have property rights! I should be able to develop anywhere I want!' Honest to God, I was living outside of Kouts and some farmer came up to me and said, 'By God, you're not going to tell me what I can and can't do with my land!' I had a number of people make comments to me like that. I had some lady that was e-mailing me back and forth saying, 'You shouldn't be able to do any kind of regulations. You shouldn't be able to tell anybody what they can do and what they can't do with their property out here! No way are you going to tell me what I can do on my property. I should be able to do what I want.' In one of the public hearings, I had somebody stand up, walk up to me, and pull out Karl Marx's *Communist Manifesto* and wave it in my face and say, 'You're a communist and this is what your plan is!'"

Given these themes illustrating the perceived mismatch between what the UDO allows and what the locals want, I now turn to those interviewees who did feel

the UDO matched local preference. The themes resulting from their interviews are presented next.

#### **4.4 The Unified Development Ordinance Does Fit Local Preferences**

In meetings with interviewees who claimed that the UDO did fit local preferences, two themes emerged. First, interviewees spoke of how locals do not want development, and efforts to limit building were wanted. Second, the interviewees spoke of desires to drive development to municipal-adjacent, annexable land rather than have construction in the more remote exurban areas. I will elaborate on each of these two themes in the following sections.

##### **4.4.1 Slowing, Stopping Development Wanted**

Planner #1, who worked to enact the UDO, explained that he did not like the rapid subdivision growth occurring in the county and worked to pass the UDO in order to limit building. He claimed broad community support for his efforts to limit density by saying,

“I sat on the plan commission for about half a year and here’s what I saw: every house in a row. Developers push to get as many houses on as small of plots as they could. Very little attention was paid to having walking paths or bicycling or anything like that. I saw these things and I thought, ‘There’s got to be a better way. We’ve got to save some space.’ That was the idea behind it. The developers fought the heck out of it. Was there push back when we passed it? It was like it was a crime to pass it; there was so much pushback. Absolutely, however there was huge community support for it, and that’s why it got passed.”

The community support noted above came from both long-time residents and newer movers to the county. Resident #38, herself a 17-year exurban Porter County resident, explained that long-time residents resisted the development new arrivals to exurban Porter County were driving. She said,

"The old-timers are upset about the subdivisions. You have a lot of transplants, a lot of people from Illinois moving here. There are a lot of people here that don't like to see change. In our particular township [Union], when you drive around, there's nothing. They don't want growth right in this area of any kind. There was a subdivision that was supposed to go in near U.S. 30 over there, but it got shot down. The people just fought it because they didn't want it. There's no growth, but there are a lot of cemeteries (laughs)."

An exurban Porter County resident of 23 years, Resident #27 did not like the growth that was occurring around him. He blamed the growth for causing numerous problems in his area by saying,

"[The] Valpo [area] has become too big for us. I liked when this area was farmland and no people. You could go down Route 30 for 10 miles and not see too many houses. Now you see houses, businesses, and cars. There was no traffic. It's changed dramatically. With that came people and with people come problems: crime, pollution. You have economic problems, governmental problems. The changes haven't been good. I wish they would stop building houses."

Other residents wistfully recalled prior times before subdivisions near their homes were built. They told of how they enjoyed the agricultural land and woodlots. Said Resident #37,

"It was nice when it was open because we would snowmobile and my husband would just walk across the road and deer hunt. Now [the property owner] has sold her 80 acres to the developer. It used to be the roads were quieter and we could ride our bikes easier on the backcountry roads. We see a lot more development, more car traffic back here, so that's not good. We wanted to move out this way [20 years ago] mainly because to get out of Lake County congestion. With

less people, you get a little cleaner environment. Now it's growing you have more congestion and pollution and that's not good.

This resident stated that a reason why she moved to exurban Porter County was to get out of congestion in Lake County. This was a common undercurrent among interviewees who did want to limit development. Many residents stated that they moved to exurban Porter County to escape congestion. For example, Resident #36 explained why he and his neighbors moved from suburban Lake County:

"Everybody in [exurban Porter County] has probably moved from a place with more people. They probably moved from Munster or Hammond to here for a slower pace. A lot of people came from Lake County or Illinois. My eight neighbors or so, I would have to say they all came from Hammond, Griffith, or the Lansing area. People leave because of the traffic, absolutely! Oh the traffic, it's incredible at 45<sup>th</sup> and Calumet Avenue in Munster! It's unbelievable! You go to Lake County and it's like, 'Oh my God, I couldn't do this every day! Holy moly!' The reason why we all moved from Lake County to Porter County is for less traffic. Now if too many people move out, we'll have to think about traffic out here like the stuff we left."

Resident #19 moved from suburban Lake County in 2001 because the area near his boyhood home had been completely developed with subdivisions. He wanted a place where there was open space in the form of farm fields. He said,

"I grew up with a cornfield in my backyard up until I started college; they then developed it. It's now all subdivisions, but growing up I had a cornfield, which was kind of nice. Here, we have a cornfield in our backyard again. The entire back area is farmland. We became good friends with the farmer, and he's never going to sell. That's for selfish reasons. We like the view, we like low traffic, we like the wildlife. As long as we have the cornfield behind us we will be happy (laughs), that's our biggest thing because we moved out here liking it as it was. If it's possible to keep it the same, that's what we would like.

Another interviewee, Resident #35, moved from urban Chicago to exurban Porter County because of the congestion. He specifically applauded the county's efforts to limit development through the UDO. He said,

"Open space is a big concern to me. We have the politicians standing up to make sure that the right thing is done for everybody. I've been hearing stuff about what we can do to unite against the ongoing development. I think the county's new plan puts us in good hands. It's going to slow down development because developers were rushing in and licking their chops over all this land. We like the openness out here, that's why I was attracted to coming out here. We lived in Uptown for a while and it was very congested in Chicago. That drove us crazy and whenever we go up there it makes us remember why we moved away from there. The congestion is definitely one of the reasons why we moved down here."

Realtor #4 had a similar assessment of how new exurban Porter County residents feel about new development. He said the new residents do not want additional population following them into the exurban areas. He put it this way,

"People here say they don't want Porter County turning into Lake County. It's kind of funny; people that make that statement are people who have moved here liking the lack of density. Well, they moved here and created more density (laughs)! So if they can put themselves in other people's shoes, which they can't typically, then they can see why people are interested in moving to this area."

Planner #2 also agreed that many exurban Porter County residents want to limit growth. In his position, he has encountered numerous residents protesting proposed development adjacent to their properties. He said,

"Yeah, the people living there like that cornfield back there. Sure enough, it happens all the time. The people are screaming that they don't want the development back behind there. They like the corn and they like seeing deer come through the cornfields. At one point this area all in here was all country, but this was developed partially right here. You hear this all the time; the people living in this area remonstrated heavily against this saying, 'I moved to the country to be

in the country, I don't want this development next to me.' People come out screaming and saying, 'We're in the country and we don't want more development here,' and that kind of stuff."

Several of the interviewees spoke of their efforts to personally fight development in their areas. Resident #31 fought a proposed subdivision down the road from his house because it was too dense, but he did not mind another development that was less dense. He said,

"Oh yes, there's been a lot of building, a lot of subdivisions. A year and a half ago, we went to a meeting at the courthouse. Down at the corner, that was sold and they wanted to build I don't know how many houses in there! It was ridiculous the number of people that they were going to jam into that subdivision. We were all informed about it and we all went to the meeting. We said look, 'Meridian [Road] is so busy. Do you realize how congested that is going to be? It's going to be awful! It will be dangerous. We have enough traffic.' Many of us were saying we came out here to breathe, to have openness! We chose to move out to an [exurban] area. The more subdivisions you put in, the more congested it gets. We demonstrated against the subdivision and it did not go through. This subdivision over here did go through. It's not so big. They're nice, big homes and they are at least an acre or an acre and a half. The bigger the lots, the more it would limit the number of children and people going in and out. You can't stop progress and I'm sure that eventually someday something will be built there, but we can limit it.

Resident #22's neighbors fought a proposed adjacent subdivision because they liked the open space around their own properties. She said,

"I remember when they were discussing doing [the adjacent subdivision] Emerald Ridge that there was opposition. The neighbors in our subdivision were concerned about it, went to the plan commission meetings, and registered their concerns about having a development there. I think people opposed it because we have our properties with nothing behind us, that's why we bought those homes because of the trees and the property, and then suddenly we've got homes backing right up to your backyards. They were just concerned about the aesthetic appearance of the backs of their homes. What was once open land wouldn't be open land anymore."

Developers were also quite familiar with opposition to new subdivision construction. These developers had dealt with remonstrators who enjoyed living next to a farm, prairie, or forest and protested strongly when subdivision plans were proposed. Developer #11 explained,

"Some people have a house on a lot and they have a farm behind them that they don't own. The farm is for sale and they don't buy it. We buy the farm. They're used to the beans being in the backyard and not houses. They had every opportunity to buy it. They did not buy it. We did buy it, so they protest against it. It's just a shame because a lot of people are anti-development but they had every opportunity to buy the parcel."

Similarly, Developer #19 told of remonstration against his subdivision, this time from a member of the plan commission itself. The commissioner lived near the proposed subdivision and was opposed to more development in his immediate area. The developer said,

"Before [my current subdivision] was approved of course you have the neighbor remonstrators that come around speaking against this and that. [A plan commission member] lives  $\frac{1}{4}$  mile up the road from us. He stands up in a plan commission meeting and says, 'I drive by there every day and I think to myself, that landowner has the right to do what he wants to do with his own land, but then I think, the people that bought their land across the street, they never planned on that ever being developed, and that's just not fair.' This is what he says! 'That's just not fair. They thought that that would always be a cornfield.' Well my gosh, when there was for sale sign in the field, buy the land then! Okay?"

Among the exurban resident anti-development sentiment, some homeowners recognized that their fondness for low-density development was bound to prevent persons of more modest income from moving to exurban Porter County. They acknowledged the point made above that the market for expensive,

low-density housing is small. These residents said that the county government may be trying to keep poor residents out, and while this was mildly troubling, efforts to limit density were fine. Resident #10 said,

"I don't like massive building in the area. I don't like a lot of the building and I understand why the county government passed [the low-density rules in the UDO]: it's to keep the building down in Porter County; they're trying to slow down the building. The county probably doesn't want new subdivisions and they want to keep the county more affluent. I don't like mass development and I do feel that there need to be some type of restrictions for that because you would have every square inch concrete. There do have to be some restrictions. You can't just do what you want."

Planner #4, who is an exurban resident as well, said that the locals want to control growth and restrict newcomers by income. He put it thus,

"The growth has been an issue. We've got growth coming along and they want to control and maintain the character. The old guard Porter County wants to control it. This area is very insular and at the same time these communities act as bedroom communities for Chicago. People have realized that in a lot of cases you can come on [U.S.] 20 or 12, Interstate 90, Interstate 80, and Interstate 94, and you can get into Chicago so you have Chicago sprawl running around the edge of the lake. I'm sure a lot of these people in Porter County would be more than happy to say, 'Look, if you're going to build a house of 2,200 square feet, you've got to have a three acre parcel.' If the three-acre parcel is 60 grand, that restricts who's coming in. That's the hidden agenda, to restrict who comes in."

Resident #13 agreed that the density ceilings slow growth and also exclude lower income people. She personally wanted open space, but was troubled by the economic discrimination. She said,

"In general I do think it's a good idea to up the minimum lot size to slow down growth. Also it can be a way to exclude people who don't have the money. Sometimes I worry about that. What is it based on: good environmental use or are we trying to keep a certain type of

person out of Porter County? It's very costly. Selfishly we all want to be surrounded by big acreage (laughs)."

Resident #23 sums up the feelings of those who support the UDO and its efforts to limit density. Such people move to the county fleeing congestion and don't want it to follow. They want open space next to their properties and subdivisions and do not mind excluding lower-income persons as a result of the ordinances. She put it this way,

"I like the idea of bigger lots. I think that's going to exclude a lot of people, which is unfortunate because the more property you have, the more expensive the housing development is. Here I am out there, having my acre and being very happy about it, but we moved out there because we liked being away from the hustle and bustle and the concrete. We like the grass and the trees and all that. If you have trees and grass and a nice piece of property you'll have fewer homes, it's not going to be as dense, you're not going to have the traffic, which is going to be better."

#### 4.4.2 Pushing Development to Municipal-Adjacent Land Wanted

What little development that does occur, according to the anti-growth advocates, should be forced to lands adjacent to the cities and towns of Porter County. In this opinion, the cities and towns can annex the land and handle the development issues that arise, rather than having the county deal with subdivision construction. The UDO pushes development to municipal-adjacent land, as explained by Planner #2,

"When developers are looking for land adjacent to or in the cities, the comprehensive planning is being enforced. We are forcing development next to the cities and towns. Those are places where

there are good roads and they aren't so anti-growth. We don't want subdivisions out in townships where there are gravel roads. Any time somebody comes in I encourage them to go talk to that city or town. Is it easier to get the development through a city or town in Porter County than through the county? Oh yeah, it is without a doubt. That's what I tell everybody who tries to develop next to a city. I say, 'Go talk to the city. If they say no, then come back and talk to me.' It's easier to get a project through Valpo or Portage than the county."

The UDO pushes dense development towards the cities and towns and Planner #1 likes it this way. He feels that he has the support of the local population. He said,

"The denser development I think should be encouraged around the cities. The less dense development and agricultural should be out away from the cities. You have developers right now that would love to go right out in the middle of the country and start a shopping center and a housing complex, all kinds of things, in the middle of the country, not right next to any town. I don't encourage that. The community doesn't encourage that. We should plan around our [built-up] areas and only put the low-density residential and rural in the outlying areas."

Residents generally disliked development out in the exurban county, and specifically referenced dense developments that they wish would not have been built. Resident #13 did not like the subdivision near his home and unsuccessfully tried to stop its construction. He said,

"No, I wouldn't like to see more homes going in away from town. We don't think it's appropriate. Visually, aesthetically I wouldn't like to see that, to me that belongs in town. We had a bunch of homeowners nearby who threw some money in to get the legal representation to try and stop dense development, but we lost (laughs)."

Realtor #14 pointed to one dense development in particular, Aberdeen, as being emblematic of problems with dense subdivisions in the county. She said that this subdivision's low occupancies point to a lack of demand for such developments.

Going forward, she said, the county is right to discourage developments away from the cities and towns. She explained,

"I would have to agree with the county that density is more appropriate for municipal development and it's inappropriate out in the county. I would probably have to say [the UDO] is a good thing because of what's gone on with Aberdeen and the difficulty it has experienced. I just tried to sell a home in Aberdeen in the fall and not enough of the units were selling so the guy who built them lost them all to the bank. I wasn't able to complete the sale because there were issues with the homeowners' association and they weren't up to snuff at the time I sold that home. I think they have a hard time keeping their properties filled. I think that's because they're so far out. Yes, I don't think that should be allowed. It's just been so much of a flop in some respects. There's not enough demand for that so far from town."

Developers said that the UDO has indeed made it harder to develop in the county and thus has driven them to proposing subdivisions in the cities and towns of Porter County instead. Developer #8 said, "The hassle of dealing with the county makes you want to get something close and try to get annexed," and Developer #2 put it this way,

"Everything we've done for the last few years we've taken the path of least resistance and developed in the cities, not the county. I think the intent [of the UDO] on the part of the county was basically, 'We don't want to have to deal with development, that's largely bad for the county at this point. We want to see development forced to the municipalities and we'll let Chesterton and Valpo and Portage and Hebron and Kouts and the Pines deal with those things so we don't have to.' I'm not saying whether this is right or wrong, but I'm saying it's fair to say that the county perspective today is that they would prefer that development be in and around the various municipalities of Porter County and not in the unincorporated areas. I think you can probably read between the lines (laughs) of that ordinance and you'll say, 'Holy smokes, maybe I'd better go talk to the city of Valpo and look at property that I can get annexed. Then I'll deal with the city rather than dealing with the county.'"

The development regulations in towns and cities are looser than the county, so developers are trying to find municipal land, or annexable land, rather than working with the county. Developer #14 explained,

“I think it’s fair to say the county is pushing development to the municipalities. What I think they’re doing is forcing a lot of developers to develop on the fringe and get annexed into some of these towns because the towns are less strict with a lot of their development codes. Towns do not have the strict ordinances and open space rules that the [county] UDO has. If you have the option of developing a single-family subdivision that stays in the county or gets annexed into a town, most people would want to get annexed into a town because of the restrictions that the county has, as far as open space, lot sizes, and things like that.”

#### **4.5 Conclusion**

In conclusion, the interviewees had varying opinions regarding the extent to which the UDO’s density restrictions fit local preferences. On one hand, the UDO, according to interviewees, did not fit local preferences because it forces establishment of large lots on which large homes must be built. Buyers do not want these properties because they are too costly and require too much maintenance, they argued. The UDO also pushes development to former farmland because the regulations have more strict protection rules for woodlots and other environmental features. The UDO does not fit demand in this respect, interviewees claimed, because homebuyers desire wooded properties with varied topography. These interviewees said that the UDO mandates sprawl and this acceleration of land consumption was deeply unpopular.

Meanwhile, other interviewees argued that the UDO did fit local preferences because there is support for limiting development. These interviewees supported efforts to slow down and stop development. They felt that an effective way to achieve this was to decrease densities, and thus increase prices. These interviewees favored the UDO's strictness because it encourages developers to take projects to more lenient cities and towns in the county, or at least to annexable land.

The Porter County government's formal UDO is but one way in which land is controlled. In the next chapter, I turn to informal land use controls, which exist in the form of subdivision C&Rs. I will present the interviewees' perceptions of how well covenants fit local preference.

## **Chapter 5: Covenants and Restrictions Results**

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### **5.1 Introduction**

Having covered the formal mechanism for land use control, the UDO, in the previous chapter, I now turn to informal subdivision C&Rs. I start by giving background information on common C&Rs. Next, I present themes from the interviewees who perceived C&Rs to not fit local preferences. First, these interviewees stated that the C&Rs were too strict, more so than what was wanted. Second, they argued that residents largely disregarded C&RS, in part because enforcement was weak and residents were poorly informed of the rules. Third, these interviewees said that the C&Rs were only for the construction phase, and once a subdivision was built out, the C&Rs largely fell by the wayside. Next, I present themes from interviewees who perceived the C&Rs to indeed fit local preferences. Those who did perceive a fit between the C&Rs and local preferences said first that general “tidiness” was desired in the neighborhood, and C&Rs encouraged this. Second, they argued that the C&Rs worked to secure property values, something that they favored. Third, they stated that developers built on previous successes, and adjusted past C&Rs for use in new subdivisions.

### **5.2 Covenants and Restrictions Background**

Before I present the responses to illustrate the emergent interview themes, I must briefly explain the prevalence and content of C&Rs in Porter County.

Covenants are “private and legal restrictions of various kinds on the usage of lots, typically within a subdivision and applied by the subdivider” (Bradley E. Johnson, 2007, p. 12.13) that are recorded with the plat and deed. The C&Rs operate in addition to the UDO, as explained by Developer #2. He said,

“Our various planning authorities have development standards and that sort of thing but then you may want to give your homeowners’ association some authority to regulate a nuisance above and beyond the requirements of whatever your government authority is.”

A resident explained that houses in a development with covenants are bound by two sets of restrictions, the UDO of the county and the C&Rs of the subdivision. Resident #9 said,

“We have a whole book on covenants and restrictions. I’ll put it this way: if we want to build a house it has to go through basically double approval. It has to go through the homeowners’ association to make sure it lives up to the bylaws of the association as far as the restrictions, and then the contractor still has to take it to the county for approval to meet their rules. That makes it a double permit.”

The county’s new UDO requires that all residential subdivisions “with common areas, amenities, or other facilities that are to be privately maintained by an owners association shall have a legally binding Declaration of Covenants that is applicable to each owner of property” (Bradley E. Johnson, 2007, p. 7.9). The county requires that all C&Rs explain when assessment begins, what common property will be maintained by the assessments, and when and how the HOA Board of Directors will be constituted (Bradley E. Johnson, 2007). Because the UDO requires most new subdivisions to have common areas, most subdivisions therefore must have C&Rs. While the UDO technically allows new subdivisions without C&Rs, the plan

commission is reluctant to approve such developments. Developer #18 put it this way,

“Porter County just requires covenants and restrictions now. Before you would have these smaller subdivisions that [the plan commission] didn’t make you have covenants for. Now [the plan commission] requires a homeowners’ association pretty much every time.”

The county government does not strictly govern what the C&Rs must contain, other than the items referenced above regarding assessment, common property, and HOA leadership. While C&Rs do vary in content somewhat from subdivision to subdivision, great similarity does exist. Commonly, C&Rs include provisions for buildings, construction, and design; parking and storage; landscaping and fences; and pets and recreation (see Table 5: Common Covenants and Restrictions). Said Realtor #7,

“Most covenants have been uniform in their thinking. What we’re seeing is that a lot of covenants are requiring the same things. I’m seeing it being universal in language in most of the covenants.”

### **Buildings, Construction and Design**

- No new construction, additions, or renovations without HOA approval
- No modular homes
- No house square footage less than a specified minimum
- No exterior brick coverage less than a specified minimum
- No aluminum or vinyl siding
- No garages smaller than two cars
- No unpaved driveways
- No outbuildings or no outbuildings larger than a specified maximum
- No outbuildings that do not architecturally match house
- No houses without coach lights
- No non-matching mailboxes
- No extended placement of dumpster on property or street

<b>Parking and Storage</b>
<ul style="list-style-type: none"> <li>• No overnight parking on the street</li> <li>• No overnight parking on the driveway</li> <li>• No parking on the grass at any time</li> <li>• No parking a work vehicle outdoors</li> <li>• No parking a boat outdoors for longer than 2 days</li> <li>• No parking a recreational vehicle outdoors for longer than 2 days</li> <li>• No trailer storage outdoors</li> <li>• No auto repair/maintenance outdoors</li> <li>• No inoperable automobile storage outdoors</li> <li>• No outdoor storage</li> <li>• No leaving garbage cans outdoors for longer than 48 hours</li> </ul>
<b>Landscaping and Fences</b>
<ul style="list-style-type: none"> <li>• No spending less than 15% of lot cost on initial landscaping</li> <li>• No maintaining less than 2 trees on parkway</li> <li>• No removing trees of greater than 4-inch trunk diameter</li> <li>• No artificial plants outdoors</li> <li>• Sod must be installed within 1 year of lot purchase</li> <li>• No mowing lawn less than once every 7 days</li> <li>• No fences and/or no chain link fences</li> <li>• No front yard fences</li> <li>• No fences without HOA approval</li> </ul>
<b>Pets and Recreation</b>
<ul style="list-style-type: none"> <li>• No livestock</li> <li>• No unleashed pets</li> <li>• No nuisance or dangerous animals</li> <li>• No dog ownership without an invisible fence</li> <li>• No above-ground pools</li> <li>• No clotheslines</li> <li>• No trampolines or swings sets in the front yard</li> </ul>
<b>Miscellany</b>
<ul style="list-style-type: none"> <li>• No garage sales</li> <li>• No eyesores, as defined by HOA board</li> <li>• No "For Sale" signs</li> <li>• Neighbors have right of first refusal on home sale</li> </ul>

**Table 5: Common Covenants and Restrictions**

In sum, C&Rs in Porter County are widespread and comprehensive. Said Realtor #14, “There are all kinds of geeky weird little rules out here. Here, you can’t breathe without getting permission.”

## **5.3 Covenants and Restrictions Do Not Fit Local Preferences**

This section is devoted to explaining the interviewees' perceptions that C&Rs do not fit local preference. Interviewees gave three explanations for this mismatch: first that the C&Rs are too strict, second that residents do not obey C&Rs, and third that C&Rs are only for the subdivision's construction phase. These three themes are elaborated upon below.

### **5.3.1 Covenants and Restrictions Are Too Strict**

Numerous interviewees considered existing C&Rs to be too strict. Specific complaints of this nature varied widely, as interviewees cited covenants on housing, landscaping, parking, and pets. Resident #29 told of a neighbor's overall dissatisfaction with strict covenants in telling this story,

"We have one neighbor who got ticked off at some of the people on the [HOA] board here. He took his lawnmower out and cut a swastika on his grass. Somebody came by and said, 'What's that on the grass?' He said, 'It's a swastika, what do you think it is?' [The neighbor] said, 'Why do you have that? You've got to mow that down!' He said, 'It's my land, so come and make me do it! You run the place like a group of Nazis!'"

Interviewees identified specific C&Rs that they believed to be too tightly controlling. Resident #28 did not feel that the house design covenants fit in her subdivision. In reference to exterior paint color approval, she said,

"The [HOA] people, once they get the power, they go around your house and say (mockingly), 'You know what? The front of your house has got to be blue.' Or they say, 'It says here you can't have more than 2 feet of blue.' I think some covenants can get ridiculous."

Another resident disagreed with C&Rs requiring HOA board approval for a homeowner's paint color selection and outright prohibition on fences. In reference to a particular subdivision named Shorewood Forest, Resident #34 said,

"Shorewood rules are horrible. You've got to be careful what color you paint your house. It's got to be okayed. You can't have fences (laughs). There are all kinds of stuff you can't have. This is way too strict."

Dissatisfied interviewees also commonly attacked landscaping covenants. Resident #15 did not like rules on yard plantings, which commonly specify the type, number, and size of plants permitted. She explained,

"I don't want to feel like I have to decorate my yard just so it fits the rules. I want to plant things where I want to plant them. I don't want somebody to tell me that I have to have six bushes in my front yard and two trees. I don't want to feel so restricted. I just want to do what I want to do."

Resident #16 complained about landscaping rules as well. She told of a fussy neighbor who was constantly hounding her regarding her landscaping. She said,

"I used to live next to a man named Nick. We would constantly come home and he would come over and say I should weed, or I should call the gas meter guy and tell him that he needs to paint my gas meter. It drove me insane because it was little stuff. If the aerator came to the house the little dirt clods would get on his lawn. He would say, 'Please tell them not to let the dirt clods get on my grass.' That was insane."

Interviewees also complained about tree rules. Resident #39 cited a specific situation in which perhaps well-meaning C&Rs hamstrung a property owner who was trying to maintain his landscaping. It seemed that whatever the owner did to remedy a dying tree situation, he was violating a covenant. Resident #39 said,

"We got a letter in the mail that somebody is complaining about the trees in the neighbor's front yard. That was funny as hell. The neighbor complained that this guy's trees were dying. The [HOA] called in a tree specialist and he took samples and pictures. The specialist had to determine if the trees were dead yet, because you can't cut down a live tree in this subdivision. They sent a flyer out to everybody explaining this. The trees are sick but not dead yet. You're supposed to plant a new tree to replace the dead tree, but you can't cut the dying trees down because it's not dead yet. You'll get fined! The letter was dead serious!"

Resident #43 also disagreed with covenants requiring tree-cutting approval.

He also voiced his disagreement with the prohibition on commercial vehicle parking in his subdivision. He said,

"[Our covenants] are a smidge extreme. There's a tree thing. If you want to cut down a tree on your land, you own that land, you should be able to cut down that tree. I think that's a little extreme that we have to ask [the HOA] if we can cut down a tree. If you want to park a vehicle that you drive every day to work with a logo on it, you should be able to park that in your driveway. They're a little extreme, they go overboard."

Finally, Resident #14 spoke of how as his subdivision has populated over the years, neighbors have been more particular in telling others to follow the covenants.

He found the current situation to be too restrictive. He said,

"I've been here 52 years and the changes are terrible. The thing is, when I was the third house on the road when I was younger, you did what you wanted to do, and nobody bothered you. You have a dog and it could just run wild because there's nobody else around. Now, my neighbor got a dog; he barked a couple times, but he doesn't bark continuously. If he sees something, he'll bark. The other neighbors get pissed off. I say, 'That dog only barked twice and you want to come out here to tell her to keep her damn dog penned up. It's a good dog.' Getting [sic] more like communist country all the time. I reckon the people from Chicago come out here and they want to tell you what to do. I tell them to go to hell (laughs). They can lock my ass up; I don't care. It would be all right if the [new residents] minded their

own damn business, but you can't do nothing right, you're wrong all the time. It's supposed to be a free country, damn it. Free, my ass."

### 5.3.2 Residents Do Not Obey Covenants and Restrictions

Interviewees above reported C&Rs to be too strict for their liking. In part due to the mismatch with local preference, C&Rs are regularly violated throughout Porter County. Traveling from interview to interview, I witnessed widespread noncompliance. Interviewees too reported numerous instances of covenant violations in their subdivisions. Because residents violate covenants so often, they reasoned, the C&Rs must be off the mark. Resident #42 admitted to personally violating her covenants regarding construction rules, as another neighbor also did. She said,

"When we moved here we put that extra garage back there, which wasn't technically allowed. In certain areas they would catch you on the rules and all that, but you can fudge a little more on some things here because [our subdivision] is not as strict. Some subdivisions would make sure you don't put another three-car garage back there on your property. Another thing you aren't allowed to do is bring in modular homes. They all had to be stick built. One house came in here, they snuck in, and they brought a modular in, nobody stopped him."

Resident #22 reported widespread violation of the parking rules in her subdivision. Cars are not to be parked on the street, but apparently many are anyway. She said,

"You're not supposed to park a car in the street or in the driveway; they're supposed to be in the garage. People don't follow that because now there are a lot of teenagers out there with extra cars so that one isn't really followed anymore."

Landscaping rules were also commonly violated. Despite rules requiring frequent, regular lawn mowing and yard upkeep, interviewees reported widespread noncompliance. Resident #15 told of this situation,

"The general maintenance of some of the yards needs attention. I see some people's yards where the grass is 2 feet tall and siding is falling off their house. I guess all that matters is my house looks okay. A couple of people let their grass go until it's really, really long and then they'll cut it once. Then they'll let it go for a month and a half (laughs). This neighborhood does not have the best of reputations."

Resident #3 concurred, reporting neighbors who neglect their grass and lawn ornamentation, in spite of C&Rs. She said,

"Some people are really bad about following the covenants. A couple of blocks over from us, the grass is literally always as tall as you. They have a pink fence that's all broken down on all sides. The people who live across the street from us take forever to cut their grass too. Their son sometimes goes out there to mow the lawn and he can't because it's so tall (laughs)."

Interviewees also complained about pet covenant violations. An interviewee, who was on his subdivision's HOA board, told of the frequent complaints he received regarding dogs. It seemed to Resident #36 that people were constantly violating the pet rules. He said,

"We always have complaints about barking dogs. Part of the reason you moved out into an [exurban] community is for more peace and quiet. You always get people who move out to these areas so the dogs have more room to run and things like that. Well then you get some barking dogs so we always have that complaint. Even though our rules specifically say you're allowed three dogs, people have more. It says that, but there's a lot more dogs out there at the trashy neighbors' houses."

Violations of miscellaneous eyesore prohibitions were common as well.

Resident #36, another board member on his subdivision's HOA, told of a neighbor who had unintended property damage, in violation of the C&Rs. He said,

"We actually approached a homeowner. You can see inside his house, the wind had blown something off or the rain had blown away part of where his roof meets his wall at the eave. You could literally see into his house. We told him that's an eyesore and it has to be fixed. We even told him, 'We will pay for it if you let us repair it.' There is a hole, you can literally see into his attic. Birds obviously have probably gone in there and squirrels or whatever. The guy refused. 'Don't come on my property. I'll fix it.' It was like that for a long time, like a year or a year and a half. He ended up fixing it eventually himself. He's breaking the covenants and he wouldn't let us on his property for no other reason than he's just a jerk."

Resident #33 had a similar experience with her neighbor's eyesore. This neighbor was a hoarder, collecting what the interviewee considered junk, in violation of the C&Rs. She said,

"Our stupid neighbors have so much crap in front of their house (laughs). They have a boat trailer filled with stuff. They had a boat for eight or nine years that was very precariously perched on their property line. It was all rotting out. We were always afraid our kids were going to be playing by it and they would knock the boat over on top of them. He's got a whole bunch of junk and that isn't allowed."

Subdivisions are full of covenant violations, according to Resident #6. She herself violated her C&Rs from the first day she moved in, and this noncompliant attitude in her neighborhood has continued to this day. She explained,

"I have a DirecTV dish. Since you can see it from the street, it violates the restrictions. When I asked the previous owner of this house, she was on the homeowners' association board; she said it's no problem. I thought that was interesting. Down the street, there is a dumpster sitting in the parkway, it's been sitting there two weeks. That's not allowed either. My opinion of the people in this neighborhood is that a lot of them are \$200 millionaires. They think they have a really nice house and they're more important than most of the people in the

world. If they want to leave their trashcan out until they're damn good and ready to bring it in, that's what they're going to do."

When speaking about the C&Rs violations, some interviewees alluded to ineffective enforcement from the subdivision HOA. Resident #32 told of a neighbor improperly storing trash, but there was little he, as a HOA board member, could do to force the hoarder to clean up his property. Resident #32 put it this way,

"We got a lot of crap going on with people storing trash. We got one yard over there, they had an old Buick convertible, hasn't moved since God knows when. They moved it and put a broken-down Volkswagen in its place (laughs). He's got a camper sitting in the front yard, one of those pop-up jobs. He's got motorcycles and all kinds of toys. The garage is full. It's just a mess, even in the back of the house, same way. If you talk to him about it, he'll say, 'Get the hell out.' They'll tell you to get the hell out, it's their property. What the hell do you do? You send them letter after letter. That's life in the big city I guess."

Similarly, Resident #29, complained about a neighbor violating the construction covenants, but her complaints to the HOA went nowhere. She said that the HOA did not enforce the rules. In her words,

"We had an issue when a neighbor was building his home, he was trying to do it inexpensively. First he was going to be his own general contractor and that didn't work because he kept firing the laborers that he hired (laughs). That slowed the project down quite a bit (laughs). It took him about a year to figure out that he was not capable of being his own general contractor. There is a covenant about how long it's supposed to take to build a home: 1 year. He just kind of sat on a half-finished house for a long time. Of course they just had stuff all over the place so you're always looking at the junk that was part of the process. I did go to the [HOA] and said, 'Hey isn't there something you can do to light a fire under him and get him to get going? This is really getting ridiculous.' I think in the end it was probably 2½ years before it was ready to be moved in. He didn't have a bin to put his debris in for probably a year. Lumber was over here, over here, and scattered all over. It was just...it was ridiculous. I moved out here so I can have some order in my life and some beauty in my life. To see a man move in next door throwing boards all over

the damn place and not even getting a garbage dumpster to put stuff in- come on, give me a break! I think the HOA should have been a little more clear and forceful to make the guy get his act together. The [HOA] just wanted to get along, I think. They wanted to be nice guys."

### 5.3.2.1 Covenants and Restrictions Are Not Enforced

Given the widespread noncompliance, it is not surprising that enforcement problems were a major theme of the meetings with interviewees who felt that C&Rs did not match local preference. Enforcement of C&Rs is the responsibility of the subdivision HOA, not any government entity. The UDO states "unless specifically agreed to, covenants are not enforceable by the Plan Commission or its designees. However, they are enforceable in civil court by interested or affected parties" (Bradley E. Johnson, 2007, p. 12.13). In other words, covenant violations, no matter their severity, are not the concern of the county, developer, or realtor. Violations are the HOA's problem. That's not to say the residents do not ask developers or realtors for help with enforcement. Developers and realtors, however, do not offer assistance. Realtor #5 said that once she has sold the majority of a subdivision's lots, she will not enforce covenants. She said,

"I'd enforce covenants as long as I still listed 50% of the lots, but not after I don't own that. There are a few people who have called me and said, 'Hey somebody has got a motor home parked in their yard with their in-laws that came into town for a two week vacation.' I'm like, 'I can't do anything about it, I don't own 50% of the land anymore. You guys as a neighborhood are going to have to enforce your own covenants and restrictions.' A lot of neighborhoods now I know are fighting against people in their subdivision, they just pool their money together, their resources, and hire an attorney to fight whatever

issues they need to fight amongst themselves. The residents just have to get together on their own."

Developer #11 has, rather reluctantly, sent letters to C&Rs violators at the request of his homebuyers, but will do no more to enforce covenants. He said the residents must work problems out themselves,

"After the HOA is turned over to the residents, it has to be person-to-person [enforcement] at that point. We'll send them a letter, but not any more than that. We are not out there all the time, and after a subdivision is done we're not out there at all. If the neighbors complain, we would send a letter and say, 'Hey, don't do that.' Let's say the guy says, 'Screw you. I don't care, I'm going to leave my boat on the grass.' We are out of the subdivision, but the guy next-door really hates it. It's going to be up to him to force that guy and take him to court. Sometimes people have to take each other to court unfortunately to get that enforced. We would more than likely not enforce it. We would probably leave it up to the neighbors."

An interviewee told of a current disagreement with an unauthorized pool. Residents of a subdivision where Realtor #11 sold houses wanted her to enforce the covenants. The realtor refused. She said,

"There's a disagreement with an above ground pool, it's just happening right now. The homeowners' association sent them a letter and they said, 'We're not taking down the pool.' So they have to get an attorney. Then the neighbors screamed, 'We don't want to pay for an attorney!' One of the residents called us, and I said, 'You need to enforce the covenants. You're not enforcing it.' I told them 'You'll have to get an attorney to enforce it.' 'We shouldn't have to,' they said. They're frustrated, but it's up to them to enforce their own rules."

When residents do attempt to enforce their covenants they must commit a great deal of time and energy to forcing compliance, according to the interviewees. Resident #40 is president of her subdivision's HOA. She told of the effort she had to put forth regarding a problem neighbor. She said,

"There is a family who had their sewer shut off. In the bottom of these houses is a crawl space. There is a main drain and you have a pipe that leads out of the house, that's in case you have a heavy rain or whatever. What they did is they went in their crawlspace and hooked that pipe to their toilet. Their shit was literally coming out of that pipe out into the culvert. They would come out with Lysol and spray down to the drain that goes right into the creek. I'm thinking, 'She can't really be doing that.' That's obviously against the covenants, but what were we going to do? We couldn't make her pay the \$600 she owed to have the sewer turned back on. It took us very diligently working about three months to have the health department come out and physically see it and test the water and make them have their sewer. It took us three months to go through the red tape with the health department and DCFS and the EPA. [Our HOA] couldn't get the job done, so I called the county and said, 'You don't know what's happening down there! Somebody get out here!' The government people said, 'That's not our problem, that's not our issue.' Gosh! Finally the health department comes out and they got it turned back on, I don't know how, but I really don't care. It was the strangest thing."

When asked what they can do to enforce their C&Rs, many interviews said nothing could be done either to prevent violations from occurring or remedying the situation after a covenant has been broken. Resident #21 said,

"As you come into the subdivision there are a couple of ranches that are too small, they're junky and torn up. Everybody wondered how they built them, but I don't think anybody did anything about it. The homeowners' association didn't enforce the covenants. You just drove by and said, 'I don't think that's right' (laughs). Right across here those people only cut the grass once a year and it'll be that high. It's just terrible. It's been that way for about the last 10 or 11 years. They only cut it once a year, it's literally like a hayfield. There is no way to enforce covenants so it makes no difference if you have them or not.

In Resident #23's subdivision, a neighbor exceeded the mandated time he was allowed to build his house. There was nothing the HOA could do, she claimed in saying,

"You get one year to build. Once you start, you have to finish. The guy down the street didn't have his house done in 3, 4, or 5 years. I don't think we could do anything about him breaking the covenants. What are you going to do?"

Resident #16 did not know what could be done to a C&Rs violator either.

One of her neighbors is breaking a number of covenants, but there do not seem to be any consequences. She said,

"I don't know what happens when someone breaks a rule. I don't know what the consequences are. I know my neighbor in the back has a ton of junk in their yard and it's an eyesore but it's been there the whole time that we've lived here. There's a whole bunch of wood piled up: old fencing, wheelbarrows, scrap metal, and 2x4s. I don't want to see that when I'm looking out my back door. I haven't heard of anybody getting in trouble over anything. I was talking to our other neighbor and she said, 'People are doing it because they know they can get away with it.' Even though it's a rule written in there, people still do it anyway."

To encourage compliance, some interviewees stated that HOAs send notes to C&Rs violators. These notes were ineffective, according to Resident #16, a member of her HOA board. She said,

"We have a lady that has these stuffed animals and stuff out in front of her house. We've sent her a couple of letters. We actually went and helped her clean up her yard. Our association board did this. Now she's got more garbage out there (laughs). We are trying to talk to her and say, 'Hey look, you can't have this,' but she doesn't listen."

Resident #39 explained how her HOA would leave notes, but these notices do not seem to be effective. The subdivision does not follow up with fines either. She said,

"If you violate the covenants, they will leave you a note. Our neighbors, right across here, when they built that house, they were told that they had to put in at least two trees. They got a note. I don't

think they ever fine anybody, not that I know of. You can read the note, or I guess you can throw it away if you want to. They are having issues about people not paying their dues and they are wondering about sending them to a lawyer. They decided not to."

Another interviewee, this time the outgoing president of his HOA, lamented the fact that notes have been ineffective and the association has considered levying fines. The neighborhood was reluctant to fine violators, however. He explained,

"We've been going through disputes for the last couple of years and we don't have anything necessarily in writing as far as enforcement. We just send a letter. We have issues with enforcement. This is what the board has been wrestling with in the last couple years: trying to put some teeth into those rules. We want to have some fines put in there after being notified. We ran those fines by the members a year and a half ago or so and they didn't like the tone that we came up with, so we kind of backed off. Generally, the neighbors want more strict enforcement of the rules, but the residents said the tone of our non-compliance letters was just a little Gestapo-ish; more or less the wording people didn't like. It's difficult for the members of the board, you don't like to be in the middle of something between neighbors and neighbors. It's kind of uncomfortable. The covenants need more teeth, like fines. If you start fining people 50 bucks or 100 bucks every time they do something, then people might get a little more serious about it."

Some interviewees do live in subdivisions that fine for violations, but the HOAs rarely are able to collect. The HOA cannot force C&Rs compliance, and they cannot force fine payment, either, the interviewees reported. For example, Resident #43 was a member of her HOA board in the subdivision from which she had recently moved. She spoke of her difficulties,

"Things were like, '(in a mocking hillbilly accent) Uncle Bob parked in the middle of the front yard over there.' We had cars breaking down and they just left them there for years in their front yards. When stuff like that going on they started to levy fines, but they didn't work. When I was on the board they had an attorney that was so ineffective it was a joke anyway. People could be behind three years worth of

dues and she still couldn't get any money out of them. It was ridiculous; it was a joke. You can get away with pretty much everything you want. The covenants aren't enforced and they are not very strict, so what's the point of having covenants over there at all?"

Resident #17, a current HOA board member in her subdivision, idealistically levies fines to force compliance, but admitted that the association has not been successful in collecting. She said,

"Say you have a junk car with a flat tire or whatever. Say people just throw mattresses or whatever in their driveway or next to the garage. If your neighbor calls me and tells me this is a nuisance I will send you a letter stating that you have 10 days to move that car. In 10 days you'll receive another letter. Now you have an additional 10 days, but after that you will be forwarded to our lawyers. At that time you get charged whatever the lawyer fee is for contacting you stating that you are now not in compliance with the bylaws. You'll get a fine. Any time that [our lawyer] has to sue somebody for maintenance of a house or a nuisance issue then we also have to pay that out of the dues. She will try to get the reimbursement from the homeowner [defendant] to go back to the dues but it's not always like that. We have people that owe us \$2,000 or \$3,000. We can put a lien on the house, but we don't always get them. Our lawyer does sue for back dues, but to be honest with you, it's hard to collect. There have been a couple of cases in the past that the association has lost because there is not enough evidence there. You have to make sure that you have all your evidence to back it up. Sometimes you know it really depends on the judge. It's too bad, but I can't force people to maintain the lawns, clear out junk, and keep up their sidewalks."

Not having the police power of the state to force residents to comply, the HOA must resort to taking C&Rs violators to civil court. As Realtor #4 put it, "Covenants and restrictions are only as good as somebody's willingness to sue. There is no real estate police out there (laughs)!" Many other interviewees told of problematic experiences with enforcement. Resident #27 said that legal fees often preclude getting the courts involved. She said,

"Our covenants are not upheld. When we moved in, we thought there would be better [covenant] enforcement. To uphold them you have to go to court and have a lawyer and spend money. You might lose in the end anyway. The covenants are nice, but it's very difficult to make sure they are followed. You just hold your hands up."

Suing over C&Rs takes time and money, more than the HOAs possess.

Although Developer #12 does write covenants for his subdivisions, he said they do not work for this reason. He explained,

"Let's say somebody does something against the covenants, how are you really going to enforce that? You're going to have to hire an attorney, the association is, you'll have to go through the legal procedure. By the time it's all said and done you just spent a lot of money and you don't get anything done. The homeowners' association board, they don't have very much power to do anything. The legal fees prevent them from really enforcing their own rules. In theory it works great, but in principle it's not working."

Even when the HOA is committed to taking a property owner to court, the judge may rule for the defendant, even if s/he is in clear violation of the covenants. This further discourages HOAs from suing. Resident #2 spoke of her experience,

"We had one person come in and put vinyl up without anybody knowing it, so we kind of had to grandfather that in. Since it was already built, we just left it. One of the neighbors pointed it out. She took it to court over the covenants. That caused trouble. She came to court with a file that (holds index finger and thumb approximately four inches apart) thick. She went around and took pictures of all the houses. She said, 'This, and this, and this in the covenants aren't being followed. You should make the property owner take everything off the house and restart from the very beginning.' The judge said, 'You know what? You should find something else to do.' The judge dismissed the case. That's why when we have a problem, we just contact them and let them know in a polite letter that we feel that it should be taking care of, and just hope they do."

In sum, covenants do not fit local preference, according to interviewees, because they are not followed. Covenants are unenforceable through notes or fines,

and the HOAs have little desire to take violators to court. Resident #6, treasurer of her HOA board, sums up of the issues highlighted above in this section in saying,

"The covenants here are worthless, seriously (snickers), you can't enforce anything. There are no fines. There is no ability to levy a fine and collect a fine. For example, I have a house being built up the street. He doesn't clean up the street, he doesn't put down gravel on the work site, and all of those are required by the covenants. His workers show up on Sundays and holidays, that's also restricted. We tried to go to the county to close him down but the county says, 'Those are your private covenants. It's not our business,' so they're useless. I'd burn them.

I think about resigning from the board because I'm so frustrated because we really do have issues. When I want to enforce the restrictions; they say I'm not being neighborly. [The other board members] are the four weakest men I've ever dealt with in my life. They don't want to stand up for anything. Even if you have stringent requirements, somebody has got to get the guts to address the issue, to get the attorney involved. To go to court it's so expensive and probably you're going to lose. Say we took this guy to court, we would have to prove that he upset so many people in the neighborhood, not that he went against the covenants but that the neighbors were upset; the neighbors were imposed by it. One of our board members is an attorney and he said covenants never hold up in a court of law. He said [the defendants] would go to the neighbors, they would just say the board was trying to be too powerful and that none of the neighbors cared. 'Where are your e-mails or letters from the neighbors saying they care about the dirt on the streets and the weekend work?' they would ask. We don't have any; we don't have any documentation because nobody really seems to care. The reason why we care, we feel like we need to enforce the rules because that's what our job—that's our unpaid job. The board is spooked because they tried to enforce things a few years ago, they went to court and they lost. It cost them about \$15,000 to lose.

Even the board members want to be good neighbors; they really don't want to go there. But you know what? This is my motto as a board member: 'If you're doing something wrong, if you're not complying with the covenants, you're the bad guy, not me!' My job is to tell you when you're violating the covenants. You did something wrong, us telling you doesn't make us the bad guy, we're just telling you that you are."

### 5.3.2.2 Residents Do Not Read their Covenants and Restrictions

C&R violations occur frequently in part, according to interviewees, because so few residents actually read their covenants. Resident #20 put it this way, "There are just too many things you can and can't do, and people don't really read the fine print before they move in. I hear that complaint a lot." No interviewees, even those currently serving on HOA boards, had an intimate and comprehensive knowledge of their own subdivision's C&Rs.

The level of C&R awareness varied from complete unawareness to general understanding. Resident #35, for example, lived in a subdivision with comprehensive covenants that the HOA was currently pushing to enforce more strictly than in the past. The interviewee, however, incorrectly claimed,

"We don't have covenants. There are no rules, you can do what you want with your yard. You can do what you want. There are no covenants."

Similarly, Resident #18 was uninformed that his subdivision did indeed have C&Rs. He said,

"Do we have covenants as far 'the grass has to be cut so high'? I don't know if our subdivision even has covenants. We don't even know what all the rules are. We haven't seen the book yet (laughs)."

Resident #28 did know that her subdivision had covenants, but was not aware of their content or how they were enforced. She said,

"Nobody enforces the covenants, these subdivisions they exist in name only really. I don't know if we have a homeowners association. We might, but if we do have one, they don't do anything."

This interviewee's vague knowledge of the existence of C&Rs in her subdivision was common. Many interviewees knew their subdivision had covenants, but they had not read the C&Rs, so they had no detailed knowledge. For example, Resident #21 said,

"We did have covenants and I have tried to find those for you coming over [sic]. There's one other place I can look because I probably still have my copy somewhere. I don't think we've ever done anything with it. I can't find it even though they're in this house somewhere."

Resident #19 also knew that his subdivision had C&Rs, but did not know what they were. He did not know the exact name of his subdivision, either. He said,

"When we bought the house they didn't give us a list of covenants. Is this place called Wildwood? This place is called Wildwood Subdivision or something. They have a set of covenants and standards, but I couldn't tell you what they are."

There was disagreement amongst interviewees regarding whether buyers must be provided a list of covenants when they purchase a home. In contrast to the preceding quote, Resident #6 claimed that buyers must be given the C&Rs, but even she, a HOA board member, still did not have a complete copy of the covenants. She said,

"Some of the residents I'm sure haven't even read the covenants. You only have to be provided a copy of the covenants at the closing, but you don't have to read it. There was a time recently when [the HOA board] wasn't sure if we had a complete set of the covenants, any of us."

Realtor #14 claimed that the responsibility to obtain and read C&Rs rests on

the homebuyer. She was also on her subdivision's HOA and like the previous interviewee, did not have a copy of the covenants herself. She explained,

"Technically [buyers] are supposed to go get their own copy of the covenants, but people don't usually ask for them. I haven't seen the covenants in a long time. No one has. You've got to go down to the government center and pay per page. People are not at all proactive. You move in and you get a bill. It's up to your discretion whether you want to find out what the covenants are."

Finally, developers had very little response from customers regarding interest in C&Rs. Developer #7 said,

"I only have one neighborhood where buyers ask to see the covenants. It's a retirement community, which is very different than anything else. The rest of my developments people normally don't ask for a copy. When we do the purchase agreement we have to give them a copy before, but they don't read it."

Developer #6 has similar experience with his customers, who were also uninterested in the C&Rs. His customers should carefully consider the subdivision covenants, but unfortunately they rarely do. He said,

"Almost none of my customers ask about the covenants. They do have to be careful because there may be covenants in the area where they're at, but oftentimes they don't read the covenants before they move in. Just because they own acreage doesn't allow them to do anything they want to do."

The reason why residents do not read their C&Rs, according to the interviewees, is because homebuyers do not choose their house based on covenants. The interviewees did not seek a particular set of C&Rs when choosing their homes. Instead, they were looking for dwelling characteristics such as house size and lot dimensions or they sought area amenities such as school district or amount of

adjacent development. Covenants are not a consideration, as explained by Realtor #10. She said, "We rarely find people who say, 'I want a house and I want it to be in a place that has covenants.'" Similarly, Realtor #12 said that homebuyers are picky about many different characteristics, but not covenants. She explained,

"Yes, every homeowner has a trampoline. Have you heard that expression before? I had a couple that every house they looked at they went into the backyard. 'What's so important about the backyard?' 'Well we have to have a spot for the trampoline.' Everybody's got their thing they have to have: three bedrooms, one bath, master bath, walk-in closet, whatever it is. Everybody's got what I call their 'trampoline.' It's what they have to have. For most people, the covenants are not the trampoline."

Residents explained that indeed the covenants were not their "trampoline" and that they did not consider C&Rs when they moved to their current homes. Resident #28 said, "We didn't move here because of the covenants. They just happened to be." Resident #15 stated,

"We really honestly didn't have a preference for a certain type of development. We were just looking for a house that fit our needs the most. This house did and it happened to be in a subdivision. I would never rule it out to live outside of a subdivision. I wasn't specifically looking for one, it just happened to work out that way. We didn't go into this saying, 'We've got to find a place that has covenants.' I couldn't have cared less about the neighborhood rules.

Resident #24 also did not care if her house was subject to C&Rs in a development or was free from covenants, being located outside a subdivision on a county road. She said,

"We didn't care if the house was in a development or on a county road. It wasn't a real big issue. It would not have been a big deal either way if we had covenants or not. That was not a motivation for us. I have heard of bizarre ones out there and I suppose I would've taken it as it came. I had no opinion on that."

Realtor #7 explained that people buy houses for reasons other than the subdivision C&Rs. Buyers take the covenants as they come, rather than seeking out specific C&Rs. She said,

"When people are looking at a house, and I tell them it has neighborhood covenants or not, they say, 'Oh, that's just how it is.' That's kind of the mentality. 'This neighborhood has covenants, okay.'"

Examples of buyers who purchased homes for reasons other than covenants include Resident #6, who said,

"No, the covenants were not why I moved here (laughs). This is the only place I could find to put my furniture between LaPorte and Porter counties. I have big, old furniture."

Resident #22 bought her house because it was on a semi-wooded lot and located next to a prairie field, not because of the covenants. She said,

"We weren't specifically looking for a place with covenants. The restrictions didn't factor into our decision at all. The backyard had trees, we really liked that, being able look out and see the trees in the field. We liked it because you'd sit on the porch and look across and there were trees. We made an offer because of the trees and it was a style of house that we liked, it was a two-story colonial and we've always wanted to have one of those."

Resident #29 chose his dwelling based on the home design. The house he selected coincidentally had C&Rs, but this was not a deciding factor. He said,

"Honestly the first criteria we had was a certain idea of home style. We wanted a home where the kitchen area is part of the living area and in a sense it's a wide-open concept. You don't get those with older homes. Another thing we were looking at were trees. Trees were a huge attraction. That kind of drove us to new construction, and many of those places just happen to have covenants."

Resident #26 stated that he moved for a bigger house, not for C&Rs.

"I moved for more space. I wanted a bigger house. I liked the subdivision where I was, but the houses are just small. I never thought about being outside or inside of a subdivision and the things you can do as far as covenants, rules, and such. If I had the opportunity to buy a subdivision lot, I probably would have, but I found this one for a good price first."

Other residents also dismissed covenants, but instead explained that their home purchase was driven by area characteristics rather than home traits. Resident #31 said,

"We chose this area because of the schools. That's basically why we moved out: for education, not because of any rules. We never thought of covenants."

Resident #21's reasoning was based on traffic, not C&Rs. She said,

"We chose a subdivision because it has less traffic. That would've been the only reason. We assumed this cul-de-sac would be always quiet and safe for the children and the dog. I never even thought about covenants when we decided to buy this lot. The developers said, 'I have to give you a copy of these now that you're buying a lot' and I said, 'Fine, whatever.'"

### 5.3.3 Covenants and Restrictions Are Only for Subdivision Construction

While the above responses detail how C&Rs are regularly violated and do not attract residents to particular subdivisions, another interview theme stated that covenants are useful only for the construction of a subdivision. After the development fills up, C&Rs are tossed aside. Resident #9 was not concerned with C&Rs in her subdivision because, "Everything is developed around us so we don't worry about the other houses nearby." In a relatively new subdivision, C&Rs are more essential, and as the development ages, the covenants diminish in importance,

according to Resident #2. She said,

"My husband is the president right now of the HOA. My husband really doesn't field a lot of calls, as much as we did in the beginning. People are getting settled now. We have the houses in. I think there are two lots that haven't been built on yet, but everybody's getting settled. Everybody's getting to where they know each other and there are not the problems that we had at the beginning. The covenants were probably important when people were building."

Resident #5 concurred, saying that, as president of his HOA, he hoped that the numerous complaints regarding C&R violations he is currently receiving will decrease as the subdivision fills up.

"It's a pretty thick book, the covenants, but the major thing in our covenants revolves around the type of home that can be built. There are restrictions on the size and the building materials and how the contractors are going to keep the site clean. They also need to build reasonably quickly. There are rules for landscaping and architectural plans. Those plans all have to be approved by the board before they can begin. If we don't like the plans, then we don't approve them so they have to come up with others. The residents are getting more stable here lately so maybe there will be fewer problems. We'll see what happens."

Other interviewees living in older subdivisions, which have been full for years, had little knowledge of C&Rs, attributing their lack of knowledge to the development's age. Resident #42 said,

"I think the developer came up with the rules. I was surprised when [my wife] reminded me that we had any kind of rules or whatever. They passed the covenants out to everybody who built a house. So many of the homes have turned over throughout the years that I think some people don't even know we do have restrictions. When we first moved in here there was a whole list of covenants and restrictions. This subdivision is 30 years old, I don't really know if they're enforcing them strictly. We really don't have too many issues because all the lots are gone anyway. It's now down to just a couple of stragglers."

Finally, Resident #27 believed that since homeowners had changed several times in his subdivision, covenant rules were not observed anymore. He said,

“When the subdivision was being built, the covenants said what could go around you. The covenants said you had to build at least a halfway decent house. But after 20 or 25 years, who really knows what the covenants are? The homeowners have changed two or three times.”

## **5.4 Covenants and Restrictions Do Fit Local Preferences**

The remainder of this chapter is devoted to those interviewees who did indeed feel that C&Rs fit local preferences. These responses fell into three themes: first that subdivision tidiness was wanted, and that C&Rs promoted such tidiness. Second, these interviewees appreciated the efforts of C&Rs to secure property values. Third, developers adjusted C&Rs from past developments for future use, and therefore subdivision rules fit because of this evolution.

### **5.4.1 Subdivisions “Tidiness” Wanted**

Interviews who felt their C&Rs fit local preferences praised efforts to keep subdivisions generally tidy. These interviewees valued the neat appearance that they apparently felt C&Rs fostered. According to Resident #7,

“The subdivision is kept up better because of covenants. Because you have some of those restrictions, you can’t park SUVs in your driveway and have a car up on blocks to change the oil, and things like that work to improve the neighborhood.”

Resident #39 liked how the covenants dictated that people should take care

of their lawns and felt the covenants codified a common-sense neatness. He said,

"The rules are good, not too strict, not too loose. If they were too strict, people wouldn't follow them. All they basically did was write down what you should do anyway. It sounds gay, but I kind of like it because nobody has a bad yard. Mow your lawn; people should do that anyway. They have to write down some bullshit. It's just basic things you would normally do to your house. Don't be a redneck."

Resident #37 similarly wanted to prevent her neighbors from maintaining unsightly property exteriors or building small houses. She said,

"Yes, I like the rules just because it keeps everybody in line as far as unsightliness. If you wanted to leave your camper parked in the driveway, you can't do those kinds of things. You have to build a certain size house. You can't put up a small thing or have a bunch of old cars in your driveway."

Resident #12 felt that his C&Rs were useful in encouraging neighbors to take care of lawns, basically providing guidelines on property maintenance for owners who needed coaching. He put it this way,

"I think the rules are appropriate because we've noticed that there are a lot of areas, to put it bluntly, where people are just not taking care of their property. Sometimes maybe they need a nudge. Maybe those people have always lived in condos and they don't know what it's like to take care of a yard. The rules keep the quality of the neighborhood up, I'd say."

In addition to the desire for general tidiness among residents, many developers also favored covenants for the same reason. Developer #11 enacts covenants in order to establish subdivisions in which he himself would like to live. He said,

"When we write covenants, we say to ourselves, 'If I lived in that subdivision, what would I want?' We are very, for lack of a better

word, ‘anal’ about what we like. We like cleanliness and neatness. We just don’t care for messiness.”

Developer #6 said that buyers accept his covenants because they make the subdivision look conventional and limit the possibility of unsightliness. He said,

“As far as the covenants, my buyers are fine with them. Most of them like covenants and they want to know they are going to be protected from certain things. They’re not unreasonably restrictive but they keep goofy things from going on and making the subdivision look weird. They want to know that somebody can’t put a camper in the driveway and set up a residence for a long time or anything.”

Speaking further on personal experience, residents liked their covenants because they keep the neighborhood free of trash and debris. Resident #43 said,

“I think that people like the fact that it is so controlled here. We take care of our home, we keep everything clean and neat, so what’s the problem? The covenants comfort [my husband] because he is a very ordered person. He likes things to be taking care of. He likes the comfort in knowing that the next-door guy is going to take care of his stuff. That guy is going to take care of his things and if he doesn’t, [the HOA landscapers] are going to come in and take care of it. He likes that because in [my old subdivision] Salt Creek you have four nice houses and then you’d have a junk pit from hell where there are 15 cars in the driveway and they hadn’t painted their house in 10 years. They had garbage all over. He did not like that.”

Alluding to an upper-crust mentality, residents liked that their C&Rs supposedly forced their neighbors to maintain their properties in a manner more symbolic of high-priced housing. Resident #2 put it thus,

“I think [the covenants] make our subdivision look nice. A lot of people think, ‘Wow that’s pretty strict,’ but we don’t have cars that are just laying on blocks or anything like that. I like the covenants because I don’t care for a bunch of trashy houses. We lived in a neighborhood in Portage where people had the pink flamingos and stuff like that. What can you do? I can’t do anything! I just wanted someplace that was a little more classier [sic]. There’s a time and

place for everything, if you're going to have a Florida party that's one thing, but permanent pink flamingos?"

Resident #9 also enjoyed how the C&Rs promoted the symbolism of high-priced property in her subdivision. She said,

"I like that our homeowners' association makes it somewhat more restrictive because of the privacy of the subdivision. They would deny something goofy like if you want to turn your house pink or something like that. They want to maintain a very nice upper-scale look of the whole subdivision. They want to maintain it and make it look like very nice. I think [the covenants] are great because it just looks nicer when you have stuff like that."

#### 5.4.2 Property Value Protection Efforts Wanted

The interviewees above alluded to the fact that they liked C&Rs because the rules promoted a high-priced property appearance. Numerous interviewees spoke openly about property prices and explicitly argued that C&Rs are preferred because they seem to protect property values. Interviewees favored C&Rs that attempted to prevent neighboring properties from diminishing the values of their own properties. Simply put, Realtor #3 said, "The residents like very, very strict C&Rs because it helps to retain value." Resident #43 elaborated,

"I think that people do want the security [of covenants]. I'm glad that guy over there has got to mow because it makes his house nice so my property value is intact. The covenants are there to protect the integrity of the subdivision to say that you can't have a modular home. You can't do different things that would jeopardize your neighbors' property. I think the rules are effective in maintaining property values. I think if they are strict and they cover all of these areas, they do."

Other residents also like that C&Rs worked to prevent neighbors from building in a manner that could diminish the values of nearby properties. She said,

"[The covenants are] good because let's say somebody wanted to put in an aboveground pool and a chain-link fence. Well, that would take away your value when you want to sell your house. If we want to sell, we're going to get our value because we know that they can't just go back on the rules."

Interviewees spoke of a distinction between the risk of building outside of a development, where there are no C&Rs, and building in subdivisions subject to restrictions. Realtor #4 explained why some clients favor C&Rs in saying,

"When you move out to just the country where there's [sic] no subdivisions, no covenant and restrictions, it's a roll of the dice because your next-door neighbor may have fallen down houses or barns. There's nothing to keep him from junking up his property and diminishing the value of your property."

Planners also commented on the desire for C&Rs to try to secure property values. Even though C&Rs are outside of the planner's jurisdiction, Planner #4 acknowledged why some residents want them. He said,

"If I put a 2,000 square foot house up in the country and this guy puts one up with vinyl or aluminum siding on it, it changes the character of the neighborhood. So you have these homes that at one time were fairly nice homes and then you have the one crap home that becomes a problem. That's where you get into those restrictive covenants in our subdivision. You don't want to buy a property and have two trailers put on the lot next to your \$400,000 home after you've moved in."

Realtor #2 perceived the same feeling among her clients. She said,

"The consumer feels more secure usually in an environment, in a community, where their property values will be protected through a series of covenants and restrictions. That way if somebody does invest x number of dollars in their home then somebody can't come in

next door and build a shack. There is a sense of security from the buyer's perspective when you're building that, 'Hey if I'm purchasing a home in this community, my values are going to be protected.' We can't always guarantee it with the market going up and down, but at least there is nothing that would be built next door that would decrease their value."

In order to support property values, interviewees reported that their C&Rs homogenized property values neighborhood-wide. Developer #1 explained,

"Why have covenants? Let's say you bought this lot right here and you put a \$500,000 house on it. Then somebody else bought this lot and they moved in a trailer. You wouldn't like that, because he would devalue your property. Put the covenants in to have like properties near like properties. The covenants are there to put some rules and regulations as to what they can do and can't do."

Resident #28 agreed, stating that C&Rs rightly attempt to keep an area filled with homes of similar values. He said,

"The covenants are trying for stability. I think more than anything they're trying to protect the price of their house. You buy a piece of property and you don't want somebody to build something that is under that, not appropriate for the area. To give you some assurance, that's all really covenants do."

Resident #8 also felt that eliminating diversity in property values was beneficial. He put it this way,

"We don't mind the rules because it keeps consistency in the neighborhood and I think it holds property values. You don't want to put up a half million-dollar home and then have a trailer next to you. That's common sense."

Developer #13 added that his covenants stabilize property values for current residents, protecting them from future residents who may build inexpensive houses nearby. He said,

"Our covenants basically protect the people who've bought in already. People want to make sure that the house next to them is going to be the same quality, as far as the size and the landscaping requirements, just to keep up the dollar value of their house."

While he could do little to homogenize property values, Planner #2 told of a situation in which residents asked him to prevent mid-market housing from being built near high-end dwellings. He recounted,

"These people (points to a location on the map) have \$400,000-\$500,000 homes with cedar siding and all that stuff. A developer came in and proposed \$275,000-\$325,000 homes that in some areas were going to have vinyl siding. [The existing residents] were just like, 'Oh, that's absolutely terrible! We can't have that! That will totally diminish the value of our homes to allow a person to build a home like that! Oh my gosh!' We hear that a lot. People want to stop development because they have a \$400,000 home and we are going to allow a \$150,000 or \$200,000 home next door. How unfortunate are they? People want us to deny the subdivisions. We try to tell them that we can't discriminate against housing. We can't, we're not supposed to, the federal government tells us that. They want the plat denied because they have a \$400,000 or \$500,000 home. The problem is: when people are upset with their county commissioners, the commissioners side with those people because all those people speak up and vote, but we're not supposed to discriminate (smirks). You'll always hear the fear that, 'This development is going to ruin my property values.'"

Some interviewees were less selfish than those quoted above regarding their concern for property values. These interviewees claimed that C&Rs worked to protect the property values of the entire subdivision, not only their own homes. Resident #17 explained,

"We've tried to get really tight on making sure the neighborhood is maintained so that our property values are protected. One way to do that is making sure that everybody is in accordance with the bylaws. We feel that for everybody to maintain what he or she has, it's for the interest of everybody. It's not just the interest of one neighbor, but it's for the interest of the whole community. This area at one time was

getting a bad rap. People were moving out here and not really maintaining their properties. I went to the association board and I told them that I wanted to join because I don't want my property value to decrease. It's going to take everybody taking an active role in this community. I want to make sure that we don't just maintain property value, but raise it."

Developer #8 concurred, stating that his C&Rs are designed to protect all of his customers. He said,

"When people are spending \$350,000-\$650,000 on a house they want to make sure that they don't have Podunk next door. It's all about stabilization. We're doing everything we can do to stabilize home prices in our neck of the woods. When somebody builds, someone else can't come in there and build something else to drive down their home price."

The concern for property values came from concern over resale values, according to Resident #9. She said,

"I think it's good to have restrictions because you want your house maintained, er, increasing in value. I like the rules. If I have to keep my yard neat, the next guy has to keep his yard neat, and it just keeps your value up. Twenty years down the road (laughs) I want it to be easy to sell and the value will be top dollar. You can get into a subdivision that only has the rules of the town and a lot of times the town doesn't have a rule about if the house is abandoned you have to cut the grass. That hurts the future values of the houses that are trying to sell next-door. This neighborhood has rules and restrictions to help preserve the value of your house from something like that. We're actually glad that we had these restrictions so all the neighbors would keep their houses up and do things to preserve property value."

Resident #29 was similarly concerned with the value of his home, because he considered the dwelling an investment. He explained,

"If you built this home out in the country and put a beautiful 40 acres around it, wouldn't it look beautiful? Can you imagine that? What if next door, because there are no requirements for anything, they had four rusting cars and all kinds of laundry hanging out on the line and

all of a sudden the investment that you have is now not worth nearly as much because your neighbors have not kept their property up? We didn't want to be looking across the street and seeing three rusted cars. You can sit around and say all day long 'that's not fair,' and that may be true because there are a lot of places in the country that they have pretty homes that the people are taking care of and doing a beautiful job, but there are also a lot of places in the country where people have built beautiful homes and across the street they have barns that are falling down and they have a lot of things that are not very acceptable. We absolutely wanted the protection.

When you're dealing with somebody's home you're dealing with a real sensitivity: that's where your wallet is. If I said to you, 'Give me your wallet,' what's your first reaction? 'What?' Nobody likes you to fool around with their [sic] wallet. Nobody wants to invest heavily in something that in 10, 20, or 30 years is going to be [worth] 50% of what you put into it. If I said, 'Would you like to give me \$500,000 and I'll guarantee to you that it will be worth \$250,000 in 10 years or 20 years?' would you say, 'Whoop-de-do! I like that'?"

As noted above, developers did favor C&Rs, as they believed the rules protected their buyers. The developers, in addition, also utilized C&Rs to protect themselves as owner of many remaining subdivision lots. Developer #14 clearly explained, "The developer wants to have control to a certain point because he owns all the unsold lots." Initially, the developer owns all lots in a subdivision, controlling the HOA and covenants until a particular sales threshold is reached. According to the UDO, "Control of the owners association shall be turned over [to residents] before two-thirds of the lots or units are sold" (Bradley E. Johnson, 2007, p. 7.9). Exactly when developers turn over the HOA, and thus covenant enforcement responsibilities, varies, but generally developers try to stay in control until they have sold most of their lots. Developer #8 said, "We enforce the covenants until we are about 50% occupied, because we have a lot of interest out there. At that time we will establish a homeowners' association."

In his current subdivision, Developer #3 still controls C&Rs because he is still trying to sell lots and does not want property values diminished. He said,

"We still control the homeowners' association [in our current development]; we're still doing it ourselves. We probably will for a while until we get a few more homes out here. I guess probably two-thirds of the lots will have to be sold before we actually turn it over because I still have a lot of interest out here. We don't want to turn it over to the homeowners until we got most of our money out of it. While we still have a lot of our money in it we still have to be pretty much in control of what's going on."

Developer #11 put it bluntly, and said,

"We enforce the covenants because if you're trying to sell a property in there and you see this guy who's got his two junk cars on the grass in the front yard, that's not going to work. That's going to hinder us in selling more property in that subdivision."

#### 5.4.3 Developers Adjust Past Covenants and Restrictions for Future Use

The last main theme that emerged regarding C&Rs and local preferences matching was that since the covenants are based on a long history of past local experience, they have evolved to include appropriate provisions. Developers write current C&Rs based on their successes and failures in past subdivisions and for this reason, current C&Rs were an excellent match with local preference. His past experience was beneficial, according to Developer #8, who said,

"I've been building for 16 years and we went back and talked to about 35 of my 80-some previous homeowners in seven or eight developments and I asked them, 'What do you love about your subdivision? What you hate about it? What would you change?' The people that I've built for over the course of the last 16 years helped

me determine what the covenants would be going forward. That has worked out very well.”

Developer #14 said that he and his colleagues use existing covenants as the base for their future subdivision C&Rs, rather than starting from scratch. He said,

“All people do this, I don’t want to use the word plagiarize, but they benchmark things that work. We’re trying to build a better mousetrap, that’s what we’re trying to do with these covenants. We just tweak what we’ve done before.”

Similarly, rather than reinvent the wheel, Developer #3 edited past C&Rs and enacted them in his current project. He said,

“We wrote [the covenants] up ourselves, me and my two other partners. We had some covenants and restrictions from similar developments and we just kind of took some of their stuff, chopped some other stuff out, and made them to our own liking. Then we had an attorney put that together for us.”

Realtor #5, who writes covenants for developers, bases her covenants on subdivisions of similar type and price range. She explained her amalgamation process,

“I just use other people’s ideas [to write my covenants]. I just gather covenants from other subdivisions that have comparable properties to see what they have on theirs and then I use their ideas. I add my own if I need to, and I take some things out.”

## 5.5 Conclusion

In conclusion, the results presented in this chapter focused on interviewee responses to questions regarding the fit of C&Rs to local preference. In the first half

of this chapter, I have presented interview results that argue C&Rs do not match local preference. Interviewees stated that C&Rs are too strict, that residents do not obey them, that HOAs have little power or money to enforce C&Rs, that residents are generally unaware of their C&Rs, and that C&Rs are only useful for the construction phase of a subdivision. In the second half of the chapter, I presented interview results that supported a perception of a good match between C&Rs and local preferences. Emergent themes here included C&Rs popularly promoted subdivision tidiness and C&Rs worked to support property values. C&Rs fit well because they have evolved from existing covenants, being edited by experienced and thoughtful developers, according to these interviewees. In the next and final chapter, I will conclude by giving a summary and analysis as well as suggestions for future research on the topic.

## **Chapter 6: Summary, Conclusions, and Future Research**

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### **6.1 Summary**

The results reported in the two previous chapters have presented a complex answer to the question of whether land use controls in exurban Porter County match local preferences. This final chapter will first dissect and interpret the detailed results regarding local preferences of both the UDO and C&Rs. Second, I will present concluding thoughts on this dissertation's contribution to urban development and planning literature. Third, I will finish with questions for future research that have emerged in the course of conducting this dissertation.

#### **6.1.1 UDO Misalignments with Local Preferences**

There emerged two divergent, yet unequal, perceptions regarding the UDO. Interviewees held strong opinions, mostly attesting to the regulatory misalignment with local preferences, with few praising the document for its suitability. (For an overview, see Table 6: Summary of UDO Mis/Alignments with Local Preferences below.) I will begin with those who felt that the UDO did not match local preferences, because interviewees of this persuasion were larger in number and stronger in opinion.

Nearly all developers and realtors, as well as a sizeable minority of residents argued that the UDO was inappropriate because it forces development densities to be too low, and as a result produces properties that are too costly and require too

much maintenance. They claimed that the UDO requires lots of a price and size that buyers cannot afford and/or do not want. By working to prevent development near much sought-after “environmental features” such as woodlots, slopes, and wetlands, these interviewees argued that the county government is preventing building where it is most desired. As a result, they stated that development is being pushed to farmland, an unpopular option for both the homebuyers and the county residents in general, who are concerned about agricultural preservation. According to these interviewees, the low-density requirements of the UDO drive sprawl, which is precisely what the community does not want.

Analysis of these arguments, along with consideration of these interviewees' backgrounds and interests, has revealed the reasons behind such claims. Developers and realtors feel that the UDO does not match local preferences because their clients originate not only from exurban Porter County, but also from the municipalities of the county, Lake County, Cook County, and outside the region. Because the constituency of the developers and realtors is diverse and includes persons having lived at a wide range of densities, developers and realtors attempt to appeal to an audience that is wider than what will fit into the UDO regulations. Movers to exurban Porter County often come from very dense areas, and desire only a small reduction in density. They consider the very low densities required by the UDO to be excessive. Residents expressed the sentiment that they would have liked less density than their former neighborhoods, but not as low of density as what they had to settle for in the county. Realtor #11 explained,

"The Illinois people are funny. They come out saying that they want acreage, they want a huge lot, and they don't want to be by anybody. You show them the acre lot and they say, 'This is too big.' You put them on 1/4 acre and they think they own a plantation. When you're working with somebody coming from a very populated area, a postage stamp lot to us is a pretty good size for them. The people coming from Chicago [and inner suburbs] still want your Mayberry-type subdivisions. They still want the sidewalks, the kids out in the yard playing, they gravitate more towards that. In general they are in the neighborhoods on 1/4 acre, but those really can't be built in the county."

#### 6.1.2 UDO Alignments with Local Preferences

The interviewees who instead felt that the UDO did match local preferences were smaller in number and weaker in conviction. This group, comprised of residents and planners, favored the UDO's efforts to slow development by requiring low density. If the resultant lots were expensive and maintenance-intensive and thus prevented development, then in their opinion, so be it. These residents also wanted to keep undeveloped land adjacent to and/or near their own properties from being developed so that they, as incumbent owners, could continue to enjoy the positive externalities open land provides. To prevent the loss of open land near their properties in exurbia, these interviewees favored the UDO's provisions that pushed subdivision to municipal-adjacent, annexable land.

There are several reasons why these interviewees favored what some called the "anti-growth" provisions of the UDO. First, many of the residents of this persuasion were long-time inhabitants accustomed to low densities in exurban Porter County. To them, all new development has come as an unwelcome shock.

Developer #14 explained that this minority group has fought bitterly against developments, often using pressure to defeat proposals that have, in fact, met UDO criteria. He said,

"You should be able to go to the Plan Commission and get in and out. Instead what happens, because this is America, you have the vocal minority. You can't do away with that, I don't care if you're in politics with your health care reform or anything like that. The vocal minority comes out in force. You get people who are just fighting everything. They don't want it and they're NIMBYs: Not In My Back Yard."

Second, a small group of residents who supported the UDO were former residents of denser places, but unlike those referenced above, did not want densities higher than what the UDO allowed. After securing their exurban property, these residents wanted to prevent others from moving in. Resident #24 spoke of being chased by development, having moved from Cook to Lake and then to Porter County as these areas respectively developed. She favored the UDO because it would keep development from following her to the current home. She said,

"Where we used to live, we had farmland behind our subdivision originally. They developed that with the seminary and condominiums. I grew up in Calumet City [Cook County] when it developed. We were two houses away from River Oaks Ford when that was built. It was a field when I was growing up. River Oaks Mall wasn't there. Wentworth Woods, the little shopping center, was built when I was living there. I've seen a lot of things that have gone up around us. We moved to Dyer [Lake County] and we said, 'We're not going to go further out into the country than this.' That developed around there a lot, so we moved farther out into the country. Development is chasing us. When it became really congested- that's part of the reason we moved out further."

Resident #20 concurred, saying that she moved to get away from dense populations and that her neighbors moved for the same reasons. She wanted the UDO to prevent people from following her into exurbia. She stated,

"I'm not sure exactly where the neighbors came from, but they all had the same situation: they just got really sick and tired of all the people and living close to each other and all the problems that are related to that. They just didn't want to deal with it."

According to Planner #2, new residents want to keep others out. He said,

"[Newcomers] say they want to see the place stay 'rural.' They think two-acre parcels are rural. It's essentially the comment: 'I moved to the country to be in the country. Close the door!'"

Developer #16 had the same assessment of this group,

"Here's the NIMBY: 'Hey, I got here and I got my house so I don't want you to have yours. I thought it was a nice place to live, but now that I'm here I don't want anybody else here. I moved here but I don't want anybody else to live here.'"

Third, a reason why some interviewees favored the UDO was that they felt any new developments should contain residents wealthier than the existing residents. Those few who could afford large lots and large homes would be affluent and thus raise the property values of the established residents. Resident #41 summed up this attitude by stating, "To me, the developments are not a problem, as long as they bring the property values up." Developer #15 interpreted the mood of these residents as,

"Let's just raise the price as high as we can so that I can benefit by the value of my house going up. Let's raise it as high as we possibly can.' That's what always kind of gets me. They want [exurban Porter County] to be the most beautiful place on the face of the earth (laughs)."

The planners, who largely favored the UDO, wrote the document as such because they serve the constituency consisting of the current voting residents only. The planners perceive that specific group as wanting low-density growth. Several of the planners were also exurban residents who personally desired low-density development, especially near their own properties. In terms of local preferences, the “locals” here included only current voting residents, according to those who favored the UDO. On the other hand, those opposed to the UDO felt that it did not match their broader “local” definition, which included potential exurbanites, in addition to current residents. This difference in defining the “local” constituency was an important factor in determining opposition to or support for the UDO.

	<b>UDO Misalignments with Local Preferences</b>	<b>UDO Alignments with Local Preferences</b>
<b>Interviewee Subgroup</b>	<ul style="list-style-type: none"> <li>• Nearly all developers</li> <li>• Nearly all realtors</li> <li>• Some residents</li> <li>• Overall, the majority of interviewees</li> </ul>	<ul style="list-style-type: none"> <li>• Most residents</li> <li>• All planners</li> <li>• Overall, the minority of interviewees</li> </ul>
<b>Reasons Given</b>	<ul style="list-style-type: none"> <li>• UDO requires costly, maintenance-intensive properties</li> <li>• UDO pushes development to farmland</li> <li>• UDO causes sprawl</li> </ul>	<ul style="list-style-type: none"> <li>• UDO slows, stops development</li> <li>• UDO pushes development to municipal-adjacent land</li> </ul>
<b>Analysis</b>	<ul style="list-style-type: none"> <li>• Developers and realtors consider preferences of all clients, even those originating from outside Porter County</li> <li>• Residents seek range of densities</li> </ul>	<ul style="list-style-type: none"> <li>• Residents (both long-term and new) exercising incumbent advantage</li> <li>• Interviewees welcome only wealthy immigrants</li> <li>• Planners consider probably voters only</li> </ul>

**Table 6: Summary of UDO Mis/Alignments with Local Preferences**

### 6.1.3 C&Rs Alignments with Local Preferences

The dominant opinion regarding the perceived appropriateness of the C&Rs differed from thinking on the UDO. Because the most numerous and committed

interviewees believed that their covenants did match local preferences, I will first interpret these findings. Following that, I will interpret the responses of those who did not perceive their C&Rs to match local preferences. (For an overview, see Table 7: Summary of C&Rs Mis/Alignments with Local Preferences below.)

Most residents, as well as all developers and nearly all realtors, argued that C&Rs fit local preferences because they keep subdivisions tidy through maintenance and design guidelines. These provisions attempted to protect property values, something quite popular, especially amongst residents. Developers favored covenants for the construction phase of the subdivision because the guidelines helped maximize the sale prices of the remaining lots still owned by the developer. The developers write covenants based on their past successes and failures, so they felt that their C&Rs had evolved to fit quite well.

Looking more closely, those residents who did perceive a good fit between C&Rs and local preferences tended to live in subdivisions where compliance was high. Their neighbors voluntarily followed the C&Rs, and there was no need for enforcement activity. Additionally, many residents who favored C&Rs had previously lived in neighborhoods where housing prices had dropped and felt more secure having covenants because of their past experiences. Resident #14 told of her former residence in saying,

“We lost a lot of money in Crete [Cook County] because the neighborhood just went downhill. This is what we like about people keeping their homes up. You know your home value is your biggest investment. As you get older you want to feel more secure in your environment.”

Resident #28 explained that urban decay near her old residence made it difficult to sell her property. She formerly lived in Lake County, first in Gary and then in its suburb Merrillville. She said,

"I wanted out of Lake County. Lake County was changing. I was still working at that time and my stores were getting robbed and those kinds of things. It just had such a terrible reputation all over the state, but it was the truth! Gary was the murder capital of the United States per capita for five years running. It's always been one of the most notorious cities in America for the murder rate. The corruption factor, the number of politicians who are in jail from Lake County government, it's amazing! The city councilmen are misspending the money by the millions, spending money like drunken sailors. That hurts your property, it's harder to sell because people want out."

Looking carefully at the backing for C&Rs, several reasons emerge for the support. First, covenants attempt to keep a neighborhood's properties looking in order, which is particularly important for anyone selling property. Home value is largely irrelevant until it comes time to sell, and realtors and developers are constantly selling. Second, the customers of developers and realtors rarely read their covenants. For this reason, the developers and realtors would not be aware of challenges to the content of the C&Rs. Third, developers and realtors rarely, if ever, hear complaints regarding C&Rs because compliance is the duty of the HOA. By the time problems arise, the developers and realtors have moved on to new sales. Fourth, residents who have previously lived in neighborhoods marred by urban decay favor any attempts to keep nearby properties tidy.

#### 6.1.4 C&Rs Misalignments with Local Preferences

The interviewees who did not feel the C&Rs matched local preferences were smaller in number, but voiced important concerns nevertheless. This group was comprised almost exclusively of residents. These residents said that C&Rs were too strict and widely violated. They stated that there is no covenant enforcement, as HOAs do not have the power, resources, time, or will. Residents are largely unaware of the content of their C&Rs; that is, if they even know the covenants exist at all.

There are three reasons behind these views. First, these are residents who have realized that C&Rs can only be enforced by civil legal action, which is rarely successful (Johnston, 1982). Few appreciate the effort needed to hire an attorney, the time it takes to gather evidence, and the funding required to pay legal expenses. Residents who consider C&Rs futile have served on HOA boards or have otherwise been frustrated by ineffective enforcement via reminders, notices, and fines. The second, and related reason why these certain residents do not feel C&Rs match is that they realize the covenants are only effective in curbing the most egregious offenses. Minor violations, from parking a teenager's car on the street overnight to installing a modular home where these activities are prohibited, slip by the HOA. Only when a neighbor's activities are severe does the HOA muster the effort to successfully act. For this reason, these residents suggested that covenants could be streamlined to include only rules that are truly enforceable. Third, covenants are only useful for the subdivision's construction phase. When under construction, the subdivision developer is often present and may be willing to enforce covenants.

	<b>C&amp;Rs Alignments with Local Preferences</b>	<b>C&amp;Rs Misalignments with Local Preferences</b>
<b>Interviewee Subgroup</b>	<ul style="list-style-type: none"> <li>• Most residents</li> <li>• All developers</li> <li>• Nearly all realtors</li> <li>• Overall, the majority of interviewees</li> </ul>	<ul style="list-style-type: none"> <li>• Some residents</li> <li>• Overall, the minority of interviewees</li> </ul>
<b>Reasons Given</b>	<ul style="list-style-type: none"> <li>• C&amp;Rs promote subdivision tidiness</li> <li>• C&amp;Rs promote high property values</li> </ul>	<ul style="list-style-type: none"> <li>• C&amp;Rs are too strict</li> <li>• Residents do not obey C&amp;Rs</li> <li>• Residents do not know C&amp;Rs content</li> </ul>
<b>Analysis</b>	<ul style="list-style-type: none"> <li>• Developers and realtors seek property value preservation for sales</li> <li>• Developers and realtors rarely receive C&amp;Rs complaints</li> <li>• Residents live where compliance was high and/or previously where property values had dropped</li> </ul>	<ul style="list-style-type: none"> <li>• C&amp;Rs are only enforced by rare civil legal action</li> <li>• C&amp;Rs are only for egregious offenses</li> <li>• C&amp;Rs are only for subdivision construction period</li> </ul>

**Table 7: Summary of C&Rs Mis/Alignments with Local Preferences**

Given the results of this dissertation, compared to C&Rs, the UDO is a superior system of land use control for reasons regarding the UDO's clarity, justness, enforceability, efficacy, and infrastructure stewardship. First, the UDO is clearer than C&Rs because those who use the UDO, the developers, are experts who intimately study and understand the document. On the other hand, C&Rs directly control residents, the uninformed and often uninterested laypeople who are rarely aware of the content of their C&Rs or even of the existence of subdivision rules. Second, the UDO is more just because it provides a transparent method of legal recourse, as dissatisfied parties can appeal to the local government. While the process is not perfect, it at least provides an established method for appeals, something that does not exist in most C&Rs contexts. Furthermore, the UDO is more just in a temporal sense, because it remains consistent and relevant for much longer than C&Rs, which tend to fade as the developer exits, houses turn over, and HOA boards weaken. Third, the UDO is more enforceable than C&Rs because the local government imposes the UDO, but leaves C&R enforcement up to often-ineffective

HOAs. Local governments have the power and resources to apply the UDO and make the commitment to do so. The only way to truly enforce C&Rs is to sue violators in civil court, an action too costly and time-consuming for nearly all HOA boards. Lawsuits that do make it to court still must prove a neighbor is creating a nuisance, not merely violating a covenant because said C&Rs are not the law.

Fourth, the UDO is more effective because its rules for subdivision are more durable than the design standards commonly found in C&Rs. The architectural standards found in many C&Rs are often a vain attempt to preserve home values and stop the inevitable filtering of housing (Hoyt, 1939). As houses age and become obsolete in function, form, and style (Hoyt, 1939), C&Rs are not able to halt the loss of value, in contrast to commonly held belief. Fifth, the local government and its UDO does a far superior job of building and maintaining infrastructure than the HOAs and their C&Rs. Through its power to levy taxes and its insistence on adherence to construction standards, the local government builds and services roads, sidewalks, and parks of a higher quality than most similar infrastructure provided privately. Because subdivision residents often pay dues late or not at all, HOAs struggle to pay for snow removal, garbage pickup, and landscaping. Many regular HOA dues do not cover the cost of infrequent high-cost projects such as road resurfacing, so HOA boards must push through unpopular special assessments. Commonly, a HOA will have to negotiate the transfer of subdivision infrastructure to the local government because of HOA maintenance inadequacies. Neither the UDO nor the C&Rs are strictly fair to homebuyers of all pecuniary standing because both systems of land use control attempt to exclude the poor and protect the incumbents' advantage. The

formal UDO however, is clearer, more just, more enforceable, and more effective, making it superior to informal C&Rs.

## **6.2 Conclusions**

To situate the results within previous research, I will conclude first by explaining the contributions this dissertation makes to the literature by describing how each interviewee subgroup perceived local preferences. I will then compare my findings to past research and detail how this dissertation contributes to the urban development and landscape literatures by explaining how contemporary interest groups work to control land use.

The planners in this study stated that exurban Porter County is developing at a pace that is too quick and favored the UDO because it slows development. Through density restrictions and open space provisions, the UDO limits building in general. What subdivision does occur is pushed by the UDO to municipal-adjacent land where, according to the planners, infrastructure is less expensive to install. The planners stated that these areas are also near populations who are less likely to protest development. While outside of their jurisdiction, planners favored C&Rs because such restrictions were believed to secure property values and kept similarly valued houses together. The planners did not speak directly of working to artificially restrict development to raise property values, as they are motivated to do (Johnston, 1982), but did employ the same restrictive tactics as reported in the literature (Pacione, 2009; Yeates, 1990).

Developers stated that people do not want the large lots and large homes required by the land use controls because such properties are too expensive. They said that there is little market for such houses because exurban Porter County is primarily a middle-to-low income blue-collar area. The developers complained that the low-density and open space requirements of the UDO raise costs and price people out, therefore lowering their sales. The developers also stated that people do not want UDO-mandated large properties because they require too much maintenance. The UDO requires preservation of environmental features, but developers stated that their customers want houses precisely among the woods and slopes, not in former farm fields. They feel large-lot farmland conversion subdivisions represent sprawl, which is, by their estimation, unpopular in the community. Regarding C&Rs, developers generally appreciated the tidiness such controls worked to foster, but did not participate in enforcement, instead leaving it up to residents. The developers did acknowledge that HOAs rarely successfully sue to enforce C&Rs. While developers stated that very few homebuyers inquire about covenants, those homebuyers who do enjoy the perceived security such restrictions seem to provide. Interestingly, the best use of C&Rs, according to the developers, is to support the prices of remaining open lots when they are still owned by the developer himself. The developers are motivated to oppose the UDO because such restrictions are slowing their production of housing, and this finding agrees with the literature (Pacione, 2009).

Realtors stated that the UDO's low density and open space requirements raise costs and price many potential buyers out. This lowers home sales, something

the realtors did not favor. The realtors felt that people did not want large properties as mandated by the UDO because of the maintenance required. They remarked that clients often requested large properties, but changed their minds after considering the mowing and snow removal obligations. The realtors recognized the utility of C&Rs in selling homes, as they are perceived to secure property values, but acknowledged that enforcement is quite difficult, and not the responsibility of the realtor. Residents will call realtors asking for help in dealing with a difficult neighbor, but the realtors stated that it is up to the residents to take their neighbor to court to force compliance. At purchase time, buyers are rarely interested in the C&Rs and instead purchase a home based on its characteristics or neighborhood amenities such as schools and quiet streets. As agents of information transfer between seller and homebuyer (Barresi, 1968; Bridge, 2001; Palm, 1985), realtors here could be more forceful in convincing buyers to carefully review C&Rs. This is unlikely because realtors would not risk scaring a client with excessive conversations regarding land use controls and thus lose a sale. The realtors here favored increased development because this would increase commissions, as reported in previous work (Bridge, 2001; Pacione, 2009). Rather than going along with the existing UDO, as predicted by the literature (Johnston, 1984; Palm, 1979; Richardson, 1971), the agents interviewed spoke out regarding the UDO's inappropriateness. Realtor dissatisfaction with the UDO stems, in part, from the realtors' familiarity (Barresi, 1968; Palm, 1985; Yeates, 1990) with historically selling properties that were cheaper, smaller, and closer together than what is now currently allowed.

Residents reported that they do not want large lots and large homes because such properties are too expensive. New home sales seem to be down, according to the residents, because the UDO requires new development to be high-priced. The residents stated that the county government seems to be trying to keep middle and low-income households out using the new UDO, but some residents do support such efforts. Homebuyers do not want large properties that are maintenance intensive, according to the residents, many of whom complained about their own yard work time commitments. The residents also said that the UDO forced development to flat, treeless areas of the county, rather than allowing development where it is wanted: among trees and hills. The privacy provided by trees and topography was important for many. Those who were opposed to any new development included both long-time residents as well as newcomers. These interviewees complained of increases in traffic, crime, pollution, and noise. Regarding C&Rs, residents wanted rules to keep their subdivisions tidy and to secure property values. The restrictions themselves were deemed too strict by many, and generally obeyed in very few subdivisions. Violators included interviewees who themselves sat on HOA boards, the very same interviewees who complained of feeble enforcement. Reluctance to strongly enforce C&Rs came from a desire to be neighborly as well as lack of resources to successfully sue to force compliance. The residents, as noted in the literature, were trying to protect the exchange value of their properties by attempting to reduce the risk of urban decay and value depreciation (Bassett & Short, 1980; S. Duncan, 1976; McKenzie, 1994; Pacione, 2009), although the efficacy of HOAs to enforce C&Rs was suspect.

The displeasure many interviewees had with the UDO supports the findings of the scholars cited, such as Downs (1999) and Lansing (1970), that homebuyers do not make decisions in anything resembling a free, varied market. My findings contrast the writings of Bruegmann (2005) and Newman and Kenworthy (1992), as I found homebuyers tightly constrained by land use controls and thus not able to purchase ideal properties. Instead, movers to exurban Porter County have little choice and must settle for low densities, regardless of their individual preferences. Housing choice in exurban Porter County offers little choice to homebuyers and purchasers are frustrated, as compared to those buying in more diversified areas (Bourne, 1986; Yeates, 1990). In addition to examining resident preferences, as others have, this dissertation closely gauged planner, developer, and realtor preferences for specific land use controls, important groups that extant research has ignored. (For an overview, see Table 8: Land Use Controls Mis/Alignments by Interviewee Subgroup.)

Interviewee Subgroup	Opinion Regarding UDO	Opinion Regarding C&Rs
Planners	<ul style="list-style-type: none"> <li>• Constituents want development curbed</li> <li>• Constituents want development pushed to municipal-adjacent land</li> </ul>	<ul style="list-style-type: none"> <li>• Outside planner jurisdiction, but seem to secure property values</li> </ul>
Developers	<ul style="list-style-type: none"> <li>• UDO requires costly, maintenance-intensive properties</li> <li>• UDO pushes development to farmland</li> <li>• UDO causes sprawl</li> </ul>	<ul style="list-style-type: none"> <li>• Homebuyers like the added security of C&amp;Rs</li> <li>• C&amp;Rs protect value of remaining developer-owned lots</li> </ul>
Realtors	<ul style="list-style-type: none"> <li>• UDO requires costly, maintenance-intensive properties</li> <li>• UDO pushes development to farmland</li> </ul>	<ul style="list-style-type: none"> <li>• C&amp;Rs work to preserve property values</li> <li>• Buyers rarely read C&amp;Rs</li> </ul>
Residents	<ul style="list-style-type: none"> <li>• UDO requires costly, maintenance-intensive properties</li> <li>• UDO pushes development to farmland</li> <li>• UDO slows, stops growth</li> </ul>	<ul style="list-style-type: none"> <li>• C&amp;Rs work to preserve tidiness and property values</li> <li>• C&amp;Rs are too strict</li> <li>• Residents do not obey C&amp;Rs</li> <li>• Residents do not know C&amp;Rs content</li> </ul>

Table 8: Land Use Controls Mis/Alignments by Interviewee Subgroup

By studying all groups involved in residential development, not just the homebuyers, I have considered the makeup of local preferences in its entirety. My research furthers prior work that considered only homebuyer preferences in exurbia (Crump, 2003). In addition, my research goes beyond the truncated definition of the “local” employed by previous work. By broadening the geography here to consider the preferences of not only those established residents of exurban Porter County, but also newcomers, developers, and realtors, I have uncovered greater demand for higher density development and thus opposition to the UDO. The works of Ewing (1997), Fischel (1997), Wallace (1988), and Altshuler (1979) have not considered the world beyond the individual planning jurisdiction. However, developers and realtors certainly do look beyond their immediate neighborhoods, as they pointed out that many of their customers came from outside of exurban Porter County. My research has discovered that developers and realtors are concerned with different “local” preferences than the more narrowly focused planners.

Literature on local preferences in regards to subdivision C&Rs largely did not exist prior to this dissertation. Scholars such as Knox and McCarthy (2005), Toll (1969), and particularly McKenzie (1994) have noted the widespread application of covenants, but none have gauged how well C&Rs fit what residents actually want. My dissertation adds to covenant research by showing that C&Rs largely do match local preferences because residents believe that covenants work to preserve property values. Detractors, however, commonly argued that C&Rs are ineffective

because they are practically unenforceable due to the time and monetary expense of civil litigation.

The formation of the landscape in exurban Porter County an outcome of the community's social organization, which is composed of the interest groups illustrated in this dissertation. These groups all have self-interest, making it difficult for any individual interviewee or interviewee subgroup to objectively gauge local preferences. Unlike Olwig's work on generalized Medieval Northern European landscapes (Olwig, 1996), this study examines the specific players in Porter County development. Porter County is not a historical case, rather it is currently in flux and therefore illustrates landscape formation as it happens, rather than after the fact. In comparison to the decentralized control of Olwig's study, the Porter County UDO effectively controls landscape centrally. The decentralized C&Rs in Porter County are considerably less successful.

Gordon and Richardson (2001), Cervero (1989), and Tiebout (1956) all wrote that municipalities enact land use controls with little concern for the broader metropolitan area. Indeed, Porter County does have an award-winning (Indiana Chapter of the American Planning Association, 2001; Indiana Land Use Consortium, 2003) comprehensive plan (HNTB Corporation, 2001) that acknowledges the relationship between the unincorporated areas and the municipalities. However, there needs to be much greater planning coordination between various jurisdictions to provide an adequate supply of residential development at all densities. As a whole, the broader area must provide for high, middle, and low densities. Currently dense city and town areas seem to be unwilling to allow densities to rise high

enough to absorb incoming population while at the same time preserving open space, as desired by the county's UDO. In order to limit development in the county, the cities and towns must grow up but not out. The necessary planning coordination between jurisdictions does not seem likely in the region at this time, as evidenced by the Porter County government's recent withdrawal from the Northwest Indiana Regional Development Authority (Kasarda, 2010). Unfortunately for residential development, this move will further limit opportunities for coordinated and inclusive land use planning in an already-balkanized region of a country with a fragmented planning tradition (Moore, 1983).

### **6.3 Future Research Suggestions**

Many questions remain regarding land use controls and local preferences, some resulting from the process and outcome of this dissertation. I present three potential routes by which future research can follow. First, further study regarding C&Rs can dissect this issue by a number of different factors including property value, housing tenure, and resident demographics, to name a few. While this dissertation has touched on these variables in terms of their influence on C&R outcomes, a full accounting of the differences amongst subdivisions should be conducted. Research should also be conducted on the illusion of covenant enforcement. Since many believe C&Rs to have real power, it would be useful to delve deeper into the contradictions inherent in this myth. Additional questions

could also investigate the association, if any, between C&Rs and preservation of property values, particularly because many interviewees held this belief.

Second, the results of this qualitative research can inform future quantitative studies regarding land use controls. From this dissertation's interviews, appropriate survey questions have emerged, along with suitable response categories. Future work can utilize my findings here to create stratifications for random interviewee sampling. For example, surveys could ask questions of recent arrivals to exurbia, as well as potential movers to measure their perception of land use control appropriateness.

Third, research can measure the degree to which development pushes against the imposed density ceilings. Like in Porter County, most UDOs enact density ceilings that may not be exceeded. In a planning jurisdiction, if almost all new development is built to the maxima, it stands to reason that demand likely exists for denser development than what is allowed. Examining the current inventory of the built environment and vacancy rates in the context of the local density ceilings can help to show if land use controls are restricting local preferences.

The findings presented here advance knowledge of exurbia in urban studies, planning, and landscape contexts. The results add to theoretical knowledge on the urban development process, land use controls, and landscape by explaining the detailed views of the numerous groups involved in residential development. Practically, this research will also inform thoughtful decisions regarding the control of exurban land. Through a consideration of the exurban landscape as a physical

and built environment, a people, and their rules, this research advances broad understanding of exurbia as a whole.

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## Appendix A: Human Subjects Office Study Acceptance Letter

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INDIANA UNIVERSITY  
OFFICE OF RESEARCH ADMINISTRATION

**To:** Brian E. Johnson  
Geography

**From:** IUB Human Subjects Office  
Office of Research Administration – Indiana University

**Date:** December 9, 2008

**RE: EXEMPTION GRANTED**  
Protocol Title: Controlling the Exurban Landscape of Porter County, Indiana  
Protocol #: 08-13554  
Sponsor: None

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Your study named above has been accepted as meeting the criteria of exempt research as described in the Federal regulations at 45 CFR 46.101(b), paragraph 2 & 3. This approval does not replace any departmental or other approvals that may be required.

As the principal investigator (or faculty sponsor in the case of a student protocol) of this study, you assume the following responsibilities:

- Changes to Study: Any proposed changes to the research study must be reported to the IRB prior to implementation. This may be done via an e-mail or memo sent to the IRB office. Only after approval has been granted by the IRB can these changes be implemented.
- Completion: Although a continuing review is not required for an exempt study, you are required to notify the IRB when this project is completed. In some cases, you will receive a request for current project status from our office. If we are unsuccessful in our attempts to confirm the status of the project, we will consider the project closed. It is your responsibility to inform us of any changes to your contact information to ensure our records are kept current.

Per federal regulations, there is no requirement for the use of an informed consent document or study information sheet for exempt research, although one may be used if it is felt to be appropriate for the research being conducted. As such and effective immediately, the IUB IRB will no longer stamp study information sheets / informed consent documents for exempt research. Please note that if you still choose to use these documents, you may use unstamped versions. **Please note that your study has been accepted without the use of a study information sheet.**

You should retain a copy of this letter and any associated approved study documents in your records. Please refer to the project title and number in future correspondence with our office. Please contact our office at (812) 855-3067 or by e-mail at [iub\\_hsc@indiana.edu](mailto:iub_hsc@indiana.edu) if you have questions or need further assistance.

Thank you.

## Appendix B: Interview Questions

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### B.1 Planner Interview Questions

Full name of interviewee: \_\_\_\_\_ Date: \_\_\_\_\_

Official Position: \_\_\_\_\_ Address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

1. What do you think of **the county's land use regulations**, specifically the Unified Development Ordinance and the Land Use and Thoroughfare Plan?
  - a. Are these county regulations too strict, too loose, or just right?
  - b. Are these county regulations an improvement over past practices?
  - c. What governed land use before the UDO and LUTP?
  - d. Can you compare the county's land use regulations to those in the municipalities of Porter County?
2. Is it difficult to get **variances** to land use regulations?
  - a. Why are some variances granted and some denied?
  - b. Are there any very popular yet prohibited types of developments?
3. In general, **how has this area changed** over the past few decades?
  - a. What kinds of people have been moving to unincorporated Porter County?
  - b. Why do those people move to unincorporated Porter County?
  - c. How have changes in exurban populations changed county's land use controls?
4. Do you deal with **covenants and restrictions** at all?
  - a. How do you feel about developments with private roads and conservancy districts?
  - b. Are there any unwritten but commonly followed development practices in exurbia?
5. What would you like to see this area look like in **coming decades**?

May I email/phone you if I have follow up questions? \_\_\_\_\_

Can you recommend some other people I may interview? \_\_\_\_\_

## B.2 Developer Interview Questions

Full name of interviewee: \_\_\_\_\_ Date: \_\_\_\_\_

Business Name: \_\_\_\_\_ Address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

1. What do you think of **the county's land use regulations**, specifically the Unified Development Ordinance and the Land Use and Thoroughfare Plan?
  - a. Are these county regulations too strict, too loose, or just right?
  - b. Are these county regulations an improvement over past practices?
  - c. Can you compare the county's land use regulations to those in the municipalities of Porter County?
  - d. Are there any unwritten but commonly followed development practices in exurbia?
2. Tell me about the **covenants and restrictions in your developments**.
  - a. Why have covenants and restrictions?
  - b. Who writes your covenants and restrictions?
  - c. How are the covenants and restrictions enforced?
  - d. How do you hand over covenant and restriction responsibility to the homeowners?
3. Tell me **what you've been building** in exurbia lately.
  - a. Who buys these exurban properties?
  - b. Why do those people buy houses in exurbia?
  - c. Have your customers and developments evolved over the past decades?
  - d. Are there things people want built that you can't build because of regulations?
  - e. Is it difficult to get exemptions to land use regulations?
4. What would you like to see this area look like in coming decades?

May I email/phone you if I have follow up questions? \_\_\_\_\_

Can you recommend some other people I may interview? \_\_\_\_\_

### B.3 Realtor Interview Questions

Full name of interviewee: \_\_\_\_\_ Date: \_\_\_\_\_

Realty Office: \_\_\_\_\_ Address: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

#### **Realtor background**

1. Do you sell many properties in unincorporated areas?
2. Are these properties in subdivisions or are they stand-alone houses on county roads?

#### **Land Use Controls**

3. Do buyers ask about covenants and restrictions before they consider a property?
4. What types of covenants and restrictions are present in exurbia?
5. What kinds of freedoms/controls are exurban buyers looking for?
6. How do covenants in exurban subdivisions compare to those in the cities and towns?
7. How are the land use controls in exurbia different than several decades ago?

#### **Buyer Demographics**

8. Describe the demographics of exurban property buyers.
9. Why do those people buy houses in exurbia?
10. Do people move to exurbia because they don't get along with their neighbors?
11. Have buyer demographics changed over the past few years?

May I email/phone you if I have follow up questions? \_\_\_\_\_

Can you recommend some other people I may interview? \_\_\_\_\_

## B.4 Resident Interview Questions

Full name of interviewee: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Subdivision: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

1. Tell me about **your property**.
2. Tell me about **the zoning, covenants, and deed restrictions** here.
  - a. Why do these rules exist? Are you glad they do?
  - b. How are the rules enforced? A homeowners' association? Not at all?
  - c. Can you give me some examples of informal rules of the neighborhood?
3. Do you get along with **the neighbors**?
  - a. Do the neighbors do things on their properties you wish they wouldn't?
  - b. Do your neighbors wish you wouldn't do certain things on your property?
  - c. Are there any property uses that should be prohibited/allowed here? Why?
4. Do you get along with the people **inside/outside of the subdivision**?
  - a. Where do the neighbors come from? Why?
  - b. What are their families like?
  - c. What do they do for a living?
5. How has this **area changed** over the past few decades?
  - a. How do you feel about the changes?
  - b. Do the people here get along better/worse, compared to the past? Why?
  - c. Have the rules of the neighborhood changed? Do you like the changes?
6. How long have you **lived here**?
  - a. Do you know how this property was subdivided?
  - b. Where did you live before?
  - c. Why did you come here?
  - d. Why did you decide to live inside/outside of a subdivision?

Acreage and makeup: \_\_\_\_\_

Current residents: \_\_\_\_\_

Occupation(s) \_\_\_\_\_

May I email/phone you if I have follow up questions? \_\_\_\_\_

Can you recommend some other people I may interview? \_\_\_\_\_

# **Brian Edward Johnson**

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19 Tileston Street, Apartment 1  
Boston, Massachusetts 02113  
[bejohns@indiana.edu](mailto:bejohns@indiana.edu)  
[bemjohnson@gmail.com](mailto:bemjohnson@gmail.com)

## **Education**

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2010; Doctor of Philosophy (Geography), Indiana University; Dissertation: *The Mis/Alignments of Land Use Controls with Perceived Local Preferences in Porter County, Indiana*; Advisor: Daniel C. Knudsen

2006; Master of Arts (Geography), Indiana University; Thesis: *Nature, Isolation, and Affordability: An Examination of Exurban Migration Motivations in Indiana, Illinois, and Texas*; Advisor: Daniel C. Knudsen

2002; Bachelor of Science in Secondary Education with Distinction, Indiana University

## **Research**

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Johnson, B. E. and Shultz, B. (Under Revision). Family and Social Networks Considered in an Examination of Exurban Migration Motivations. *The Geographical Bulletin*.

Johnson, B. E. (Forthcoming). The Speed and Accuracy of Voice Recognition Software-Assisted Transcription Versus the Listen-and-Type Method-A Research Note. *Qualitative Research*.

Johnson, B. E. (2008). Nature, Affordability, and Privacy as Motivations for Exurban Living. *Urban Geography*, 29(7), 705-723.

## **Teaching**

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2004-Current; Senior Seminar: Theory and Research, Internship in Geography, Urban Geography, Population Geography, Geographic Information Systems, Geography of North America, Disaster Management, World Regional Geography, Introduction to Human Geography

## **Service**

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2005-2006; Graduate Student Representative, Indiana University Department of Geography Faculty Council