

BARGAINING FOR DEVELOPMENT

10/28/2020



Why Bargain for Development

- To Increase Certainty
- To Incentivize “Good” Development
- To Restrict or Reorient Bad Development
- To Provide a Process for Addressing the Unknowns
- To Improve Bringing Product to Market



Legislative Actions

- Zoning Ordinances
- Text Amendments
- Most Performance Zoning Projects
- Note: Public Hearings Required



Administrative Actions

- Conditional Use Permits
- Subdivision Plats
- Site Plans
- Site Disturbance Permits, etc.
 - Public Hearings often held but are not always required.
 - Most large cities have Planning Commission or staff decide these matters.

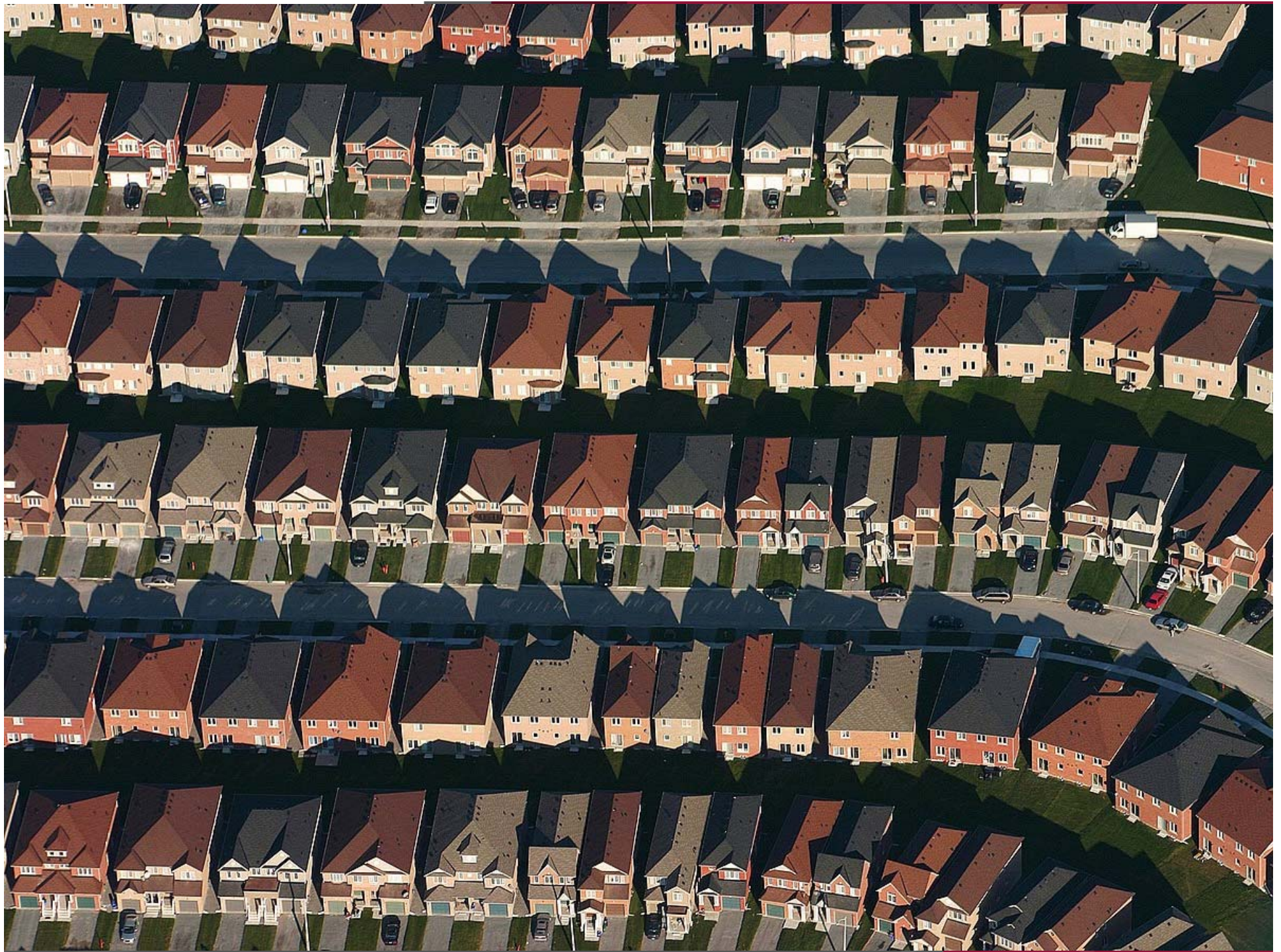
Performance Zoning

- Mix of Administrative and Legislative Matters.
 - MPDs
 - PDDs
- Project specific zoning



Benefits and Risks

- Benefits of Performance Zoning
 - Tailored zoning
 - Variations from traditional standards
 - Larger projects, greater amenities and higher values.
- Risks of Performance Zoning
 - Referenda
 - Cost Reimbursement Claims from Developers
 - Delay





- A. City Park | 30 ac
- B. Potential School | 12 ac
- C. Community Club Facility | 14,500 sf

- 3. Wilshire | 20.1 u/a
- 6. Sunset | 12.1 u/a
- 11. Mulholland | 15.0 u/a

- 12. Newbury | 11.0 u/a
- 18. Mulholland | 7.3 u/a
- 19. Venice | 13.7 u/a

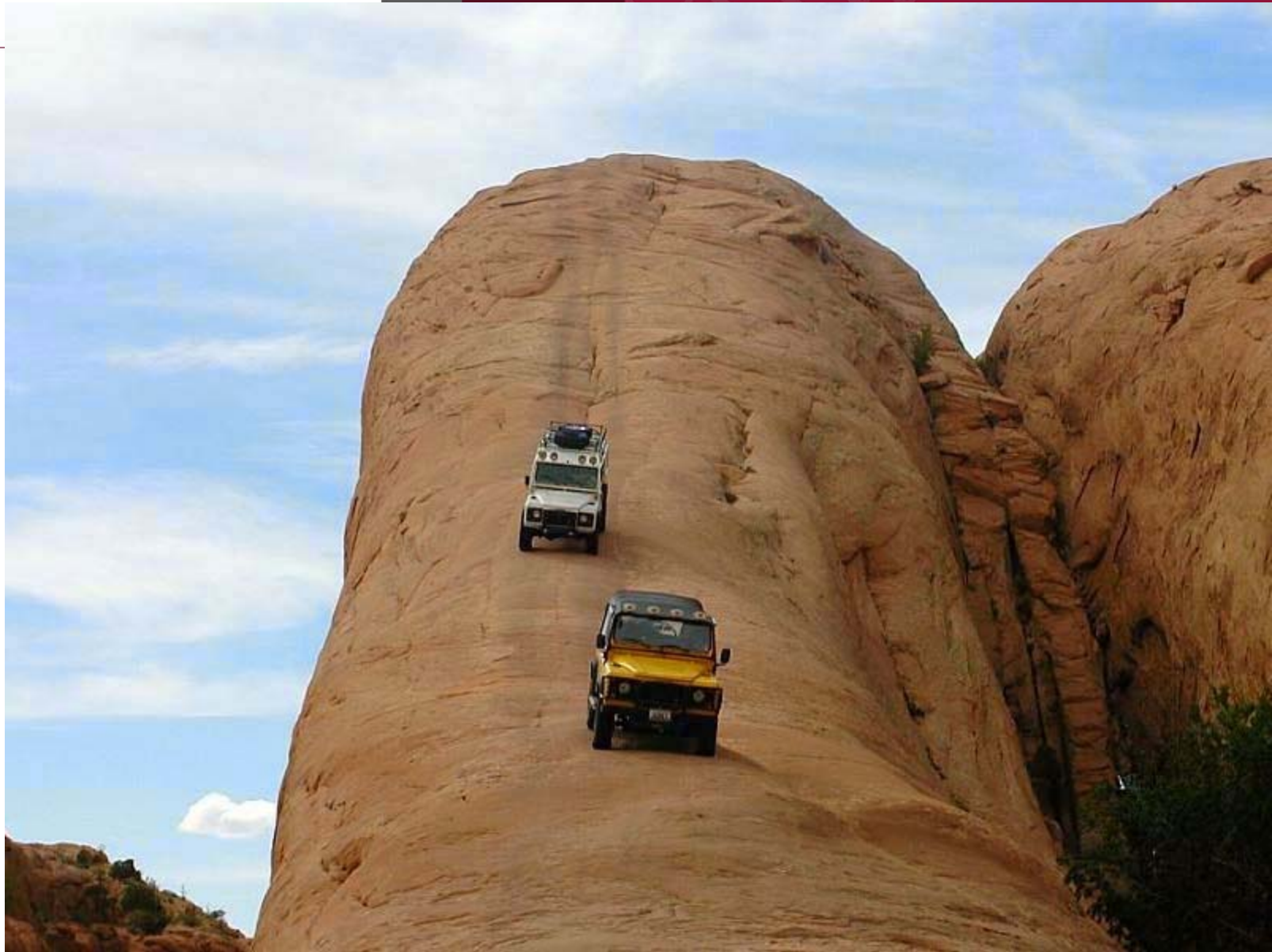




How to Confirm the Bargain?

- Development Agreements
- Agreements to Develop Land
- Reimbursement Agreements
- Consent Decrees
- Settlement Agreements
- Pre-Annexation Agreement
- Hybrids including all of the above concepts







Wallingford

- Pre-Annexation Agreement
- 2009 Approvals
 - Hotel with nine-buildings, fifty units
 - Related hospitality uses
 - 188 single family lots
- Project stalls (litigation, downturn)





Project Resumes

- Still fifty units (with lockouts)
- One hotel building, instead of 9 buildings
- Larger parking lot
- Issue became how to approve the changes?



Result:

- Zoning Status Agreement
 - Deemed changes minor under the code
 - Approved action at a public meeting (not public hearing)
 - Approved at a council meeting (no public hearing)
 - Litigation ensued from an interest group



Court of Appeals Decision

- Concludes “Contract Zoning”
- Holding is that if a public hearing is required, you can’t contract around it
- Could have relied on *Springville Citizens* or LUDMA
- Instead, came up with the argument that the city had engaged in “Contract Zoning”
- Case rife with unhelpful dicta



Requires Legislative Fix

- Confirm the process for adoption of agreements
 - Development agreements that result from legislative action
 - Development agreements that result from an administrative decision
 - Approval of settlement agreements
- Confirm that an action is not legal if it does not follow the required process.



Other Main Reason for a Fix

- Increase certainty
- Court process too slow
- It is a drain on cities, development and the community to have these decisions tied up in court