

THE INFLUENCE OF INTEREST AND UNDERSTANDING
OF HOUSING DEVELOPERS ON GATED COMMUNITIES DEVELOPMENT

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To my beloved family-

*My supportive husband, Muhd Ridzuan;
my son, Muhammad Adam; my daughter, Naurah Amani;
and to my parents, Zainudin and Norainon*

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In the name of Allah, the Most Gracious and the Most Merciful

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ABSTRACT

This research is aimed to examine the influence of housing developers' interests and understandings as a framework of gated community's typology in Malaysia. It is underlain by the question of which type of gated community the developers chose between 2007 and 2010. During those periods, two kinds of gated community exist namely gated community scheme (GACOS) and strata gated community scheme. Developers' decision thus would represent their interpretation of gated community which at the same time allows this research to work significantly different from previous researchers who have been interpreting gated community from consumers' perspective. Therefore, this research has been conducted in accordance to qualitative orientation and case study in design. In order to elicit housing developers' choice, agency models framework has been utilised. 12 housing developers in Southern Johor have been interviewed using semi-structured interview method with the support by observation on the final products, information gathered from planning and land authorities as well as documents used for management purposes. Collected data have been mainly analysed qualitatively to elicit the final products of housing developers' involved in terms of their physical and management characters and the reasons behind their decisions. As a result, it is found that all interviewed developers chose to develop GACOS. However, since gated community only refers to strata gated community scheme as stated in the Planning Guidelines 2010; GACOS conceptually can only stand as a 'temporary secure neighbourhood'. As such, the wall and guard components of the temporary secure neighbourhoods would not last due to their temporary status. This situation shows that housing developers actually have short term interest on the type of gated community they built as long as they can achieve their economic interest once the physical development is completed despite the economic burden that the residents have to bear for a long time to come.

ABSTRAK

Kajian ini mensasarkan untuk mengkaji pengaruh kepentingan dan pemahaman pemaju sebagai satu rangka kerja tipologi komuniti berpagar di Malaysia. Ia bertitik tolak daripada persoalan komuniti berpagar yang manakah yang dibina oleh pemaju antara tahun 2007 dan 2010. Dalam tempoh tersebut, terdapat dua jenis komuniti berpagar yang wujud di negara ini iaitu skim komuniti berpagar (GACOS) atau skim komuniti berpagar strata. Keputusan pemaju dengan ini akan mewakili pengertian sebenar mereka terhadap komuniti berpagar. Pada masa yang sama, ia membolehkan kajian ini dijalankan melalui kaedah yang berbeza dari pendekatan yang telah diambil oleh pengkaji-pengkaji terdahulu yang mana telah menginterpretasikan komuniti berpagar dari perspektif pembeli. Sehubungan itu, kajian ini telah dilaksanakan berdasarkan orientasi dan reka bentuk kualitatif dan kajian kes. Bagi mengetahui pilihan pemaju, rangka kerja agensi telah digunapakai. 12 pemaju di Selatan Johor telah ditemu bual menggunakan kaedah temu bual separa berstruktur dengan sokongan pemerhatian ke atas produk akhir, maklumat yang dikumpul dari pihak berkuasa perancangan dan tanah serta dokumen-dokumen yang digunakan untuk tujuan pengurusan. Data yang dikumpul telah dianalisis secara kualitatif bagi mengetahui produk akhir pemaju yang terlibat dari segi ciri-ciri fizikal dan pengurusan serta sebab-sebab di sebalik keputusan mereka. Hasilnya, kajian ini mendapati pemaju yang ditemu bual telah memilih GACOS. Namun demikian, disebabkan komuniti perbagar di negara ini hanya merujuk kepada skim komuniti berpagar strata sepertimana dinyatakan di dalam Garispanduan Perancangan 2010; maka GACOS secara konsepnya hanyalah sebuah 'kejiranan selamat sementara'. Dengan demikian, komponen pagar dan pengawalannya tidak akan kekal berikutan komponen-komponen ini hanya berstatus sementara. Keadaan ini menunjukkan bahawa pemaju sebenarnya mempunyai kepentingan jangka pendek terhadap jenis komuniti berpagar yang mereka bina selagi mereka dapat mencapai kepentingan ekonomi mereka sebaik saja kerja-kerja pembangunan fizikal selesai di sebalik beban ekonomi yang perlu ditanggung oleh pembeli dalam jangka masa panjang.

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LIST OF ABBREVIATIONS

BC	-	Before century
CC&R	-	Conditions, conversions and restrictions
CCC	-	Certificate of Completion and Compliance
CCTV	-	Closed circuit television
CFO	-	Certificate of Fitness for Occupation
CIDs	-	Common interest developments
CPTED	-	Crime prevention through environmental design
DLP	-	Developers' liability period
DMC	-	Deed of Mutual Covenant
FHA	-	Federal Housing Administration
ft.	-	feet
GACOS	-	Gated community schemes
GIS	-	Geographical Information System
ha	-	hectare
HOA	-	Homeowner Associations
JPBD	-	Jabatan Perancangan Bandar dan Desa
JPBDJ	-	Jabatan Perancangan Bandar dan Desa Johor
KPTG	-	Ketua Pengarah Tanah dan Galian
MAPEX	-	Malaysia Property Expo
max	-	maximum
MBJB	-	Majlis Bandaraya Johor Bahru
MC	-	Management corporation
min	-	minimum
MPJBT	-	Majlis Perbandaran Johor Bahru Tengah
MPKu	-	Majlis Perbandaran Kulaijaya
NAPIC	-	National Property Information Centre
NEP	-	New Economic Policy

NLC 1965	-	National Land Code 1965
NSW	-	New South Wales
PBPTDJB	-	Pihak Berkuasa Perancang Tempatan Daerah Johor Bahru
PBTPG	-	Pihak Berkuasa Tempatan Pasir Gudang
PEJUTA	-	Association of Licensed Land Surveyor
PTG	-	Pejabat Tanah dan Galian
PTGJ	-	Pejabat Tanah dan Galian Johor
RA	-	Residents' association
REHDA	-	Real Estate and Housing Developers Association
RM	-	Malaysian Ringgit
SHPB	-	Selangor Housing and Properties Berhad
SIA	-	Social Impact Assessment
SPA	-	Sale and purchase agreement
TOL	-	Temporary Occupation Licence
US	-	United States

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CHAPTER 1

INTRODUCTION

1.1 Background

Increasing number of gated community around the globe undoubtedly verifies that this particular housing form has become a global living trend. In the United States alone, it is reported that the number of gated community development in the country has been rapidly increased from only a few hundred housing units in the early of 1960s up to nearly 21 million housing units by 2004 (McKenzie, 2006b). The same scenario occurs elsewhere including in Asian region such as Japan (Abe-Kudo, 2007), Indonesia, Thailand, Singapore and Malaysia (Leisch, 2002; Pow, 2007; 2009).

The establishment of gated community has attracted widespread research interest on this living trend from various perspectives. Questions like why are gated communities are being built and what are the implications of gated community development have been brought up into discourse (Luymes, 1997). Those issues have been discussed in accordance to the development of gated community within a local setting. Examples include the research done by Leisch (2002) who investigated the factors that led to gated communities developments in Indonesia; Mittelsteadt (2003) who examined gated communities in rural setting in Nova Scotia, Canada; Wu and Webber (2004) who explored the rise of foreign gated communities in Beijing; Goldberg (2006) with his case study of Glen Oaks Residential in the United States as to evaluate the sense of community in gated communities and its impact on urban sustainability; and, Borsdorf and Hidalgo (2007) who studied on social exclusion

issues in Latin America due to the transition of gated communities to gated cities in Santiago de Chile.

Along with these research works, the characters of gated community can be learned further. The book “Fortress America: Gated Communities in the United States” written by Blakely and Snyder (1997) is a seminal work in the development of gated community typology. However, through their investigation on the establishment of gated community in the country, they have put more weight on the residents as the factor that influences the character of each type of gated community they identified and leaves the understanding on the roles of housing developers in shaping the final outcome of a gated community less discovered. This research attempts to fill this gap by exploring the roles of housing developers in shaping the character of gated community in Malaysia.

The decision to focus on housing developers’ perspective was not straight forward indeed. It was made after considering the housing developers’ position as the key driver of gated community establishment in Malaysia through the review made on the existence of this housing form in the country. From the review too, the roles played by housing developers in shaping the characters of gated community in the country is underpinned by the conflict that occurs between housing developers’ practice and local housing development policy, thus makes Malaysia a fascinating case to be explored in understanding how gated community is established within a local setting. Therefore, in this Chapter, a brief review of the literature on the existence of the gated community in Malaysia will be presented. This literature may provide general understanding about the characters of gated community that exist and the process that underpins the roles of housing developers in determining the final outcome of a gated community in the country. From the review, research aim, objectives, scope and research significance will then be clearly outlined.

1.2 A Brief Background of Gated Community in Malaysia

1.2.1 Characters and Issues

It has been literally defined that gated community is actually a fenced off and guarded housing area. These basic physical features have been proven by previous research works conducted for example in Malaysia (Wong, 2005; Mastura, 2006; Noredayu, 2006; Azizul, 2007; Arif Khazaki, 2007; Che Huzanna, 2008; Mohammad Tahir *et al.*, 2009; Jivasangeeta, 2010; Wong, 2010), South Africa (Landman, 2002; Hook and Vrdoljak, 2002; Landman and Schonteich, 2002; Landman and Jurgens, 2006), Australia (Burke, 2001), Indonesia (Leisch, 2002), Latin America (Borsdorf and Hidalgo, 2007), Israel (Rosen and Grant, 2010), Ghana (Asiedu and Arku, 2009), Singapore (Pow, 2007; 2009) as well as in Saudi Arabia (Glasze and Alkhayyal, 2002). And, along with the growing discourse in understanding gated community phenomenon, it has been concluded that gated community also has another prominent character that is the existence of internal governance in such housing created for their operational or managerial purposes (Atkinson and Blandy, 2006). Thereby, gated community has been more precisely interpreted as “...walled or fenced housing developments, to which public access is restricted, characterised by legal agreements which tie the residents to a common code of conduct and (usually) collective responsibility for management” by Atkinson and Blandy (2006: viii).

In Malaysia, gated and guarded high-rise residential schemes have long been rooted in the country as an effort to overcome the shortage of land in the main cities with high land cost (Marbeck, 1994; Kok, 1998; Khadijah and Faridah, 2003). However, during that period, the term ‘gated community’ was not yet familiar thus has not been worn for gated and guarded high-rise housings. Instead, until today they are better known by the practitioners as ‘strata schemes’ because these housings are regulated by the strata law. The term ‘gated community’ is used in the country only when the same living package previously offered only by strata schemes has been extended to landed residential properties development like bungalows and terrace

houses. In specific, this new form of housing innovation has been called 'gated community schemes' or GACOS by the practitioners in Malaysia.

Conceptually, GACOS are also a fenced off and guarded housing area like many other gated communities around the world as described in the literature. In fact, from previous empirical evidences, GACOS also have some kinds of legal agreements to create the internal governance. Meanwhile, gated and guarded high-rise housings have their own internal governance too thus makes GACOS not to have so much different than gated and guarded high-rise housings, physically and operationally. However, gated and guarded high-rise housings have long been governed by the strata laws, thus the operation of these housings once the physical development is completed in regards with the management and enjoyment on property as well as the restrictions on behaviour are well guided by the legislation. The need for GACOS on the other hand is nowhere in the government's housing policy thus making these housings totally a private initiated housing product.

However, the existence of GACOS in Malaysia has been regarded as an innovation and trend that move beyond the purview of existing land laws and regulations (Salleh, 2006). This is primarily because there was no specific legislation that can be used by the practitioners in building up gated community with landed residential properties during the early emergence of such concept in this country. As an alternative, GACOS have been built by housing developers following the current development procedures as used for other non-gated or ordinary landed residential properties development as provisioned by the National Land Code 1965 and other related laws. In consequence, the residential properties inside GACOS will all be held under individual land ownership. Meanwhile, the operation of GACOS in regards with the enjoyment on properties, restrictions on behaviour and collective management has been arranged by housing developers through their own legal consultants without any standard form.

Nevertheless, these practices have created more conflicts particularly in regards with the installation of the gates and walls as the main features that signify GACOS development concept. In Malaysia, housing developers who build up non-strata residential properties are under the obligation to surrender to the respective

local authority certain areas of the development land to be reserved for public use. These areas will be used as the roads, the green spaces and other amenities identified earlier when getting approval for planning permission. This is where the problem arises because GACOS have been built with perimeter fencing and guarded gates that would limit public access. By right, everyone including the non-residents has the freedom to use the access and amenities inside GACOS at anytime without hindrance because the access and the amenities have been provided for public use. In fact, it is considered as an offence under Section 46 of Street, Drainage & Building Act 1974 for installing physical barriers on public streets like what GACOS did. Furthermore, since these spaces are public amenities, thus they would be managed by the respective local authority. In the case of GACOS where this responsibility has been given to the residents by developers, thus it is claimed that GACOS has doubled the residents' financial burden (Stamford, 2006; Mohammad Tahir *et al.*, 2009).

1.2.2 Local Policy Transformation

The issues created by GACOS development have led to a series of local policy transformation. The policy transformation was first initiated at local and state government levels before 2007. Among them are Majlis Perbandaran Kuantan, Dewan Bandaraya Kuala Lumpur, Majlis Perbandaran Seberang Perai Tengah and Selangor state government through their Selangor Housing and Properties Berhad. These local and state governments have been guiding housing developers by outlining several requirements that housing developers need to comply with in order to get their GACOS development approved. The requirements are regarding the physical planning and managerial matters of GACOS.

However, these initiatives would not last as the permits for the installation of gates and fences are given by local authorities on temporary basis. Without the permit or failure in the renewal of the permit would make the gates and fences to remain as illegal physical features. Thereby, Strata Title Act 1985 has been amended in 2007 in order to enable gated community which is built with landed residential properties to be regulated under the same strata law. This way, gated community that

is similar to GACOS can be a private entity like the gated and guarded high-rise housings. The management of strata gated community schemes can be standardised in accordance to the strata law. In addition, the Housing Development (Control and Licensing) & Regulations 1966 has also been amended to prescribe the right standard form of sale and purchase agreement for strata gated community schemes. Following these amendments, Selangor state government has then instructed that only strata gated community schemes can be developed thus ended GACOS development in Selangor.

In September 2010, the federal government through its agency, Jabatan Perancangan Bandar dan Daerah (JPBD) has eventually enforced that all gated community development in Malaysia must be governed by strata law. Therefore, all gated community properties must be held under strata ownership. In conjunction with this enforcement, planning guidelines for gated community development has been provided by the agency. Besides that, another housing concept namely the 'guarded neighbourhood' has also been clearly defined by the agency to represent the guarded concept of existing residential areas held under individual land ownership.

1.3 Research Statement

Although gated community in Malaysia is considered as market innovated housing product, it is however being well supported by the government. It can be seen through how the government intervenes in the development process by improving and introducing policies for such development beginning 2007 as mentioned in Section 1.2.2. All the efforts were made in a way to allow such innovation to sustain in the market. As a result, the interpretation of gated community in Malaysia had experienced a series of transformation from the beginning of its emergence until year 2010. Previously, the gated community introduced by the housing developers has been referred as GACOS and the residential properties were held under individual land ownership. Then in 2007, strata gated community schemes have been introduced by the government through three development concepts including the development of strata gated community

schemes with landed residential properties. Finally, due to the enforcement made through gated community planning guidelines issued in 2010, gated community now only means 'the communities who live in high-rise and landed gated and guarded housing schemes held under strata ownership' (JPBD, 2010).

Between 2007 and 2010, it is only the state of Selangor in the country that can be identified in the literature that has revised their planning guidelines so that all gated community development in that state must be in the form of strata gated community schemes as provisioned by Strata Title Act 1985 (Amendment 2007). Whereas, the enforcement of strata gated community schemes in all other states in Peninsular Malaysia by the federal government was only made in September, 2010. These reviews show that except in Selangor, between 2007 and 2010, the application of strata law for gated community development in the country is not mandatory but more as an option provided to housing developers by the government. If this is the case, which type of gated community that has been chosen by housing developers then?

The above question is important to be investigated further as the choice or the decision made by housing developers during the given period (between 2007 and 2010) would become their actual intention in establishing the concept of gated community in Malaysia. In other words, the question in concern would represent the interpretation in practice of the gated community in the country. Theoretically, as based on Agency Models, the housing developers as one of the actors in property development process would act in reflection with their own interests and understandings in producing the final outcome of their product (Maziah, 1996a). Accordingly, thus this research attempts to focus on housing developers' interests and understandings in establishing gated community in Malaysia in a way to develop the typological framework of gated community in Malaysia; to represent the interpretation in practice of the gated community. Based on this typological framework, thus it can be learned how this interpretation in practice differs from the gated community defined by the local policy and from those interpreted in the global literature.

1.4 Research Aim

The main purpose of this research is to examine the influence of housing developers' interests and understandings as a framework of gated community's typology.

1.5 Research Objectives

The main purpose of this research is reflected by the question of which type of gated community that the housing developers chose to develop between 2007 and 2010. It refers mainly to the characters of the gated community built by housing developers in Malaysia in a way to understand its interpretation in practice. In order to achieve this, therefore this research was conducted in accordance to the following objectives:

- i) To identify the characters of gated community built by housing developers;
- ii) To examine housing developers' interest and understandings behind their decision on the characters of gated community's project they shaped; and
- iii) To develop a typological framework of the gated community as to represent its interpretation in practice.

1.6 Research Scope

The housing developers under study are only those who have been involved in gated community developments. In consideration to policy improvements in regards with gated community development that occurs after 2007, housing developers with the experience of building up gated community projects before and after 2007 are given higher priority in this research. This is important in order to understand the influence of the policy improvements to housing developers' decision in shaping their products.

Given the similarity of the physical form of gated communities across the country and the standard application of housing development laws in every states particularly in respect with properties legal ownership, this thus research concentrates on housing developers and gated community developments in Southern Johor. By this way, it is hoped that this research can reveal the insights of the existence of gated community based on developers' perspective in detail.

Lastly, it is vital to note the policy improvements that have been undertaken by the government beginning 2007 in order to overcome the issues of illegal gated community developments in this country. The policy improvements are through both the legal provisions and planning guidelines which are to be followed by the industry players, including the housing developers. Since data collection has been done from the end of 2009 until the middle of 2010, thus the developers' point of views are confined to this period of time too. In addition, although the development of gated community involves a set of legal and planning framework that guide the development from an empty land to its final product, this research will not cover the whole development process involved. Whereas, it is limited to the aspects that have put gated community development in Malaysia in its conflicting state namely its physical and operational characters.

1.7 Definitions of Terminologies

- (i) **Gated community:** Throughout this thesis, gated community will be referred within the following two contexts –
 - (a) Gated community as a general terminology as defined by Atkinson and Blandy (2006: viii) : walled or fenced housing developments, to which public access is restricted, characterised by legal agreements which tie the residents to a common code of conduct and (usually) collective responsibility for management.

- (b) Gated community in Malaysia after 2010: The communities who live in high-rise and landed gated and guarded housing schemes that are held under strata ownership (JPBD, 2010). Therefore, after 2010, gated community is also the strata gated community schemes introduced by the federal government beginning 2007 through Strata Title Act 1985 (Amendment 2007).
- (ii) **Gated community schemes (GACOS):** a cluster of houses mainly bungalows surrounded by walls or perimeter fencing or any enclosure with entry or access to houses or buildings controlled by certain measures or restrictions such as guardhouses, ropes, strings, boom gates, chains or blocks which normally includes 24-hour security, guard patrols, central monitoring systems and closed circuit televisions (CCTV). In addition, a management corporation, management company or management agency has to be formed to manage the scheme. This interpretation was given by Azimuddin (2007:7) based on the gated communities that have emerged in Malaysia since before 2007.
- (iii) **Strata gated community schemes:** Refers to the three gated community concepts introduced under Section 6(1) Strata Title Act 1985 (Amendment 2007).

1.8 Research Significance

The primary purpose of this study is to conceptualise gated community concept in Malaysia from housing developers' perspective. Therefore, it is expected that the findings of this study may be useful and significant in the following ways:

1.8.1 Body of Knowledge

Previous research works provide useful insights on gated community's issues around the world. The issues are discussed in a broad range of disciplines including social, economy, legal and urban planning perspectives. Therefore, the research outcomes have been presented through various theoretical frameworks according to each discipline encompassing the socio-economic, urban geography as well as governance theories.

In the context of this research, in specific, it is expected that the establishment of gated community may be presented through the model of housing development process, from the view of property development field of studies. This is important in order to typologise gated community as a result of housing developers' strategies during the development process. Given the character of gated community found in Malaysia, in which the common areas are not always collectively-private spaces, another unique case study of gated community can contribute into the contemporary knowledge of gated community's studies as an effort to differentiate gated community in Malaysia with other gated communities elsewhere. In addition, the holistic framework of the establishment and the concept of gated community in Malaysia provided by this research can be utilised in future studies not only to establish the robustness of the present result, but also as a foundation to theorise gated community's phenomenon further at local and global levels.

1.8.2 Policy Makers and Local Authorities

GACOS development has brought great impact to the legislation and administration of housing industry in Malaysia. To date, market forces apparently managed to urge policy makers and local authorities to be more tolerant to this kind of housing development. It has resulted in various forms of alternatives initiated by housing developers. This research attempts to clearly interpret the reasons behind these alternatives. This perspective is vital as it may become an important ground for policy makers and local authorities as part of considerations in establishing or

improving legislation and administration frameworks that suit the market interpretations and expectations.

1.8.3 Housing Developers and House Buyers

This research can be an important medium for housing developers to deliver their actual interpretations and expectations on gated community development in Malaysia. Most importantly, through the holistic framework of the establishment of gated community established by this research, housing developers as well as house buyers would understand better the actual concept of gated community in accordance to local jurisdiction and its implications that they both have to face. Thus, the misunderstanding on gated community concept and the legal issues that have long been plaguing the gated community development can eventually be put to rest.

1.9 Organisation of Chapters

This thesis is made up of seven chapters. The content of each chapter is generally as follows:

Table 1.1: Thesis Structure

CHAPTER	CONTENTS
ONE Introduction	This chapter provides the research background through the set out of research statement, research aim, research objectives and research scope. In addition, it also shows how this research is significant not only to the knowledge, but also in the context of policy and practice.

Continuation of Table 1.1

CHAPTER	CONTENTS
<p style="text-align: center;">TWO Gated Community Establishment: Process and Implications</p>	<p>This chapter reviews the existing literature that describes the framework of the establishment of gated community. Through this chapter too, the definition of gated community and its characters will be explored in order to comprehend the possible similarities and differences of gated community further from one country to another.</p>
<p style="text-align: center;">THREE The Establishment of Gated Community in Malaysia</p>	<p>This Chapter is purposely to review the establishment of gated community in Malaysia in accordance to the framework described in Chapter One. This review is also important as the foundation in setting out the focus of this research.</p>
<p style="text-align: center;">FOUR Research Design and Methodology</p>	<p>Chapter Four explains how this research is designed and the methods used to accomplish the research aim. In general, it involves four main stages namely literature review, preliminary study, data collection and data analysis.</p>
<p style="text-align: center;">FIVE The Analysis of the Physical and Management Characters of the Gated Community</p>	<p>This chapter analyses each form of gated community developed by each developers involved in this research as to achieve the first objective of this research.</p>
<p style="text-align: center;">SIX The Analysis of the Process of the Gated Communities' Establishment</p>	<p>In order to achieve the second objective of this research, this chapter analyses the actual understandings and interests held by housing developers in the process of establishing their gated communities.</p>
<p style="text-align: center;">SEVEN Conclusion and Recommendations</p>	<p>A holistic typological framework of the gated communities developed by the housing developers will be presented in this chapter as to conclude its interpretation in practice in a way to achieve the third objective set out in this research. This is followed by a number of recommendations for improvements particularly in terms of policy and practice.</p>

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