

STAFF REPORT

TO: Hailey City Council
FROM: Mariel Platt, Planner 
RE: Planned Unit Development – River Street Senior Housing
HEARING: October 11, 2010

Applicant: ARCH Community Housing Trust
Location: Lot 2A, Block 1, Sutton Subdivision (731 River Street North)
Zoning: Business (B)

Note: Staff analysis is in lighter type

Notice

Notice for the September 13, 2010 public hearing was published in the Idaho Mountain Express and mailed to property owners within 300 feet on August 25, 2010; and notice was posted on the property on September 3, 2010. The application was continued to October 11, 2010 at the September 13, 2010 meeting.

Application

ARCH Community Housing Trust has submitted an application for a Planned Unit Development (PUD) of 24 new residential units, located on Lot 2A, Block 1, Sutton Subdivision (731 River St. N.) within the Business (B) zoning district. An application for Design Review was concurrently submitted and approved with conditions by the Planning and Zoning Commission on July 19, 2010.

The PUD is requested for waivers to:

1. Increase allowed density and
2. Decrease the number of required parking spaces.

The applicant has provided a waiver analysis (see attached analysis). Staff analysis is included in the Standards of Evaluation.

Procedural History

On July 19, 2010, the Commission recommended approval of the PUD application with the following conditions:

- a) All Fire Department and Building Department requirements shall be met.
- b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.
- c) A PUD agreement shall be drafted by the applicant and submitted prior to

review of the PUD by the Council. The PUD agreement between the City and ARCH Community Housing Trust shall be executed prior to final PUD application approval by the Council.

A draft PUD agreement has been submitted to the City for review.

d) A lease agreement between the City and ARCH Community Housing Trust shall be executed prior to the issuance of a building permit. The building permit plans may be submitted for review, prior to the execution of said lease.

e) Approval is contingent on the approval of the concurrently submitted Design Review application.

The Design Review application was approved by the Commission on July 19, 2010 and the findings were signed on August 3, 2010.

Department Comments:

Life/safety issues: No issues.

Water and Sewer issues: No issues.

Engineering issues: No issues.

Standards of Evaluation:

Section 10.3 sets forth General Requirements.

10.3.1 The minimum gross size for properties that may be developed as a PUD is one (1) acre, except in the Business and Limited Business zoning districts within the Central Business District, the minimum gross size shall be 18,000 square feet. All land within the development shall be contiguous except for intervening streets and waterways.

The lot size is 26,615 square feet or 0.587 acres. The property is zoned Business. All land proposed for development is contiguous.

10.3.2 A tract or parcel of land proposed for PUD development must be in one (1) ownership or the subject of an application filed jointly by the owners of all property included.

ARCH Community Housing Trust intends on having a real property interest in the property by signing a 99 year lease with the property owner – the City of Hailey. On February 8, 2010, ARCH and the City entered into a memorandum of understanding, which established some of the lease and development terms of 731 River Street North, thereby providing consent for ARCH to file an application for a Planned Unit Development.

10.3.2.1 When the owner of Contiguous Parcels is required to obtain PUD approval for any portion of the Contiguous Parcels; an Area Development Plan shall be submitted and approved. The Commission and Council shall evaluate the following basic site criteria and make appropriate findings of fact:

a) Streets, whether public or private, shall provide an interconnected system and be adequate to accommodate anticipated vehicular and pedestrian traffic.

- b) **Non-vehicular circulation routes shall provide safe pedestrian and bicycle ways and provide an interconnected system to streets, parks and green space, public lands, or other destinations.**
- c) **Water main lines and sewer main lines shall be designed in the most effective layout feasible.**
- d) **Other utilities including power, telephone, cable, and gas shall be designed in the most effective layout feasible.**
- e) **Park land shall be most appropriately located on the Contiguous Parcels.**
- f) **Grading and drainage shall be appropriate to the Contiguous Parcels.**
- g) **Development shall avoid easements and hazardous or sensitive natural resource areas.**

Upon any approval of the PUD application, the Owner shall be required as a condition of approval to record the Area Development Plan or a PUD agreement depicting and/or detailing the approved Area Development Plan. The Area Development Plan shall bind the Owner and Owner's successors.

This standard is not applicable. The owner does not have a real interest in property contiguous to Lot 2A.

10.3.3 Street and lot orientation, landscaping, and placement of structures shall provide for solar access to all south roofs and walls to the maximum extent feasible in order to promote energy efficiency.

The existing street and lot configuration are not conducive to maximizing solar access on the south side of the building. The south elevation of the building is a shorter elevation compared to the east and west elevations. This building configuration conforms to the orientation of the lot. All trees proposed adjacent to the south elevation are deciduous and will therefore maximize solar access during the winter months. The proposed roof design is a flat roof.

10.3.4 Access shall be provided in accordance with standards set forth in Section 4, Development Standards, of the Subdivision Ordinance. Buildings may not be so arranged that any structure is inaccessible to emergency vehicles.

Access exists and is provided in accordance with Section 4, Development Standards, of the Subdivision Ordinance. The building and 22 foot wide asphalt driveway, which leads to the underground parking area, is accessed off of River Street.

10.3.5 Underground utilities, including telephone and electrical systems, shall be required within the limits of all PUDs.

It is a recommended condition of approval that all utility lines from the property line to the building be installed underground.

10.3.6 In each case where a PUD project is located adjacent to public lands, a public easement to those lands shall be provided. All existing public accesses to public lands must be preserved.

The subject property is not adjacent to any public lands.

10.3.7 In each case where a PUD project encompasses a non-vehicular pathway as depicted on the Master Plan, a pathway constructed to City standards shall be provided.

No pathways are depicted on the Master Plan within or adjacent to the subject property.

10.3.8 Each PUD shall provide one (1) or more of the following amenities, commensurate with the size and density of the development, and commensurate with the modifications requested by the applicant, to ensure a public benefit:

The applicant proposes 3 of the 11 amenities listed, plus additional Community Housing.

- a. **Green Space.** All Green Space shall be granted in perpetuity and the PUD agreement shall contain restrictions against any encroachment into the Green Space. Where a subdivision is involved as part of the PUD approval process, Green Space shall be identified as such on the plat. A long-term maintenance plan shall be provided. Unless otherwise agreed to by the City, the PUD agreement shall contain provisions requiring that property owners within the PUD shall be responsible for maintaining the Green Space for the benefit of the residents or employees of the PUD and/or by the public.

Green space shall be set aside in accordance with the following formulas:

For residential PUDs, a minimum of .05 acres per residential unit.

For non-residential PUDs: a minimum of 15% of the gross area of the proposed PUD.

The applicant has not proposed to provide this amenity.

- b. **Active recreational facilities.** Active recreational facilities include amenities such as a swimming pool, tennis courts or playing fields, of a size appropriate to the needs of the development. The PUD agreement shall contain provisions requiring that such facilities be maintained in perpetuity, or replaced with another similar recreation facility.

The applicant has not proposed to provide this amenity.

- c. **Public transit facilities.** Public transit facilities include a weather-protected transit stop or transit station, and must be located on a designated transit route.

The applicant proposes to construct a weather protected transit stop in front of the development, along River Street. The transit stop would be located along Mountain Rides' designated Hailey circulator route.

- d. **Preservation of Vegetation.** Preservation of significant existing vegetation on the site must include the preservation of at least 75% of mature trees greater than 6-inch caliper on the site.

The applicant has not proposed to provide this amenity.

- e. **Wetlands.** Protection of significant wetlands area must constitute at least 10% of the gross area of the proposed PUD.

The applicant has not proposed to provide this amenity.

- f. **River Enhancement.** Enhancement of the Big Wood River and its tributaries, must include stream bank restoration and public access to or along the waterway.

The applicant has not proposed to provide this amenity.

- g. **Community Housing.** For residential PUDs, the provision of at least thirty percent (30%) of the approved number of dwelling units or lots as Community Housing Units affordable to households earning between 50% and 120% of the Area Median Income (the 30% would include the 20% community housing required for a subdivision established by Section 4.11 of the Subdivision Ordinance), or the provision of at least twenty percent (20%)

as Community Housing Units affordable to households earning less than 50% of the Area Median Income.

The applicant proposes to build 24 units. All 24 units would be affordable to households earning less than 60% of the area median income. Half of the units (12) would be affordable and restricted to households earning less than 60% of the area median income. The other half (12 units) would be affordable and restricted to households earning less than 50% of the area median income.

- h. Real Property. Dedication or conveyance of real property or an interest in real property to the City.**
- i. Sidewalks. Off-site sidewalk improvements shall be constructed according to City Standard Improvement Drawings and provided (in addition to sidewalk improvements that are required by ordinance adjacent to the subject property) in accordance with the following formulas:
For residential PUDs, a minimum of 100 linear feet per residential unit.
For non-residential or mixed-use PUDs: a minimum of 100 linear feet per 1000 square feet of gross floor area.**
- j. Underground Parking. Underground parking must be provided for at least 50% of the required number of parking spaces in the PUD.**

The parking requirement is 36 spaces (1.5 spaces for every unit in a multi-family dwelling). The applicant is requesting a parking waiver, to provide 26 spaces. Twenty-four (24) of these spaces would be covered and enclosed, located beneath the living areas of the building.

- k. Energy Consumption. All principal buildings within the PUD must comply with sustainable building practices, as follows:
For residential PUDs: buildings comply with local "Built Green" standards for certification, federal EPA "Energy Star" program, or Leadership in Energy and Environmental Design - Homes (LEED-H) standards for basic certification.
For non-residential or mixed-use PUDs: buildings comply with Leadership in Energy and Environmental Design (LEED) standards for basic certification.**

Although the applicant has stated there will be numerous energy saving and sustainable building practices incorporated into the building (please refer to Section 10.3.8 (k) of the analysis), the applicant does not propose to pursue all of the Built Green, Energy Star, or LEED-H standards which are required for basic certification.

- l. Other Amenities. Other project amenities and/or benefits to the community that are found, by recommendation of the Commission and approval of the Council, to promote the purpose of this Article and the goals and objectives of the Comprehensive Plan.**

In addition to the 30% Community Housing Units, provided to satisfy 10.3.8 (g), the applicant proposes to provide the remaining 70% of the units as Community Housing Units, affordable to persons with an area median income of 60% or less. No other amenities are mentioned by the applicant.

Section 10.4 sets forth Developer Benefits and relevant standards.

The Council may grant modifications or waivers of certain zoning and/or subdivision requirements to carry out the intent of this Article and Ordinance and the land use policies of the City.

10.4.1 Density Bonus. The following maximum increases in density may be granted only if one of the following conditions are met, and if no other density increase has been granted (e.g. for Community Housing Units under Section 4.11 of the Subdivision Ordinance):

- a. Ten percent (10%): Solar, wind, geothermal, or other alternative renewable energy source will provide at least fifty percent (50%) of the total energy needs of the PUD.**
- b. Ten percent (10%): At least twenty five percent (25%) of the property included in the PUD is located in the floodplain and no development occurs within the floodplain.**
- c. Ten percent (10%): The developer of the PUD provides or contributes to significant off-site infrastructure benefiting the City, (e.g. water tank, fire station).**
- d. Twenty percent (20%): The developer of the PUD provides or contributes to significant multi-modal infrastructure providing both vehicular and non-vehicular amenities benefiting the City and Wood River Valley.**
- e. Ten percent (10%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Silver certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.**
- f. Fifteen percent (15%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Gold certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.**
- g. Twenty percent (20%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Platinum certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.**

The applicant requests a density bonus increase in excess of those increases stated in (a) through (g) above. No additional amenities or benefits have been proposed that (a) through (g) above would be applied to, other than what has previously been described under Section 10.3.8.

Density bonuses for project amenities and benefits to the community other than those listed here may be granted by unanimous vote of the Council, following a recommendation by the Commission, in order to carry out the purpose and intent of this Article and the land use policies of the City.

The applicant has requested 24 units. The maximum allowed density without a waiver is 20 units per acre in the Business District. The lot size is 0.587, which allows for 11.74 units, without a waiver. This is approximately a 100 percent increase in the number of units allowed and the applicant proposes 100 percent of the units as Community Housing.

No other density increases have been requested or granted to meet Section 4.11 of the

Subdivision Ordinance. This project is not subject to Section 4.11 of the Subdivision Ordinance because the units will not be platted for individual ownership, but will be leased as apartment units.

The Commission recommended the proposed density bonus based on the following factors:

- the 99 year lease with the City, which the PUD approval is contingent on, will require that the property be used for affordable senior housing.
- the potential impacts created by density from senior housing are less than traditional housing developments at the same density and
- the applicant demonstrated a specific need for affordable, senior rental units, through a market analysis, which helped the Commission determine that the project is a benefit to the community.

10.4.4 Off-street Parking Modification. The number of off-street parking spaces required by this Ordinance may be increased or decreased in consideration of the following factors:

a. Proximity to Central Business District or other employment center.

The project is within the north end of Central Business District and is within a half mile of Downtown.

b. The actual parking needs of any non-residential uses as clearly shown by the applicant.

Not applicable. The parking needs are for residential uses.

c. The varying time periods of use, whenever joint use of shared parking is proposed; provided shared parking is approved in accordance with Section 9.4.8 of this Ordinance.

Not applicable. Shared parking is not proposed.

d. Available public transit.

There is a transit stop adjacent to the proposed project along River Street that serves the Mountain Rides Hailey Circulator. In addition, the applicant proposes to construct a transit shelter.

Section 10.5.4.c sets forth Standards of Evaluation required by the Commission to consider and make findings on in the Commission's recommendation to the City Council.

1. The proposed development can be completed within one (1) year of the date of approval or phased according to a development schedule as submitted in accordance with Section 10.4.5 of this Ordinance and approved by the City;

A phasing schedule has not been proposed by the applicant.

2. The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic;

It is anticipated that River Street is suitable to support traffic associated with the River Street Senior Housing project.

3. The PUD will not create excessive additional requirements at public cost for public facilities and services;

It is not anticipated that the PUD will create additional public costs.

4. The PUD is in general conformance with the Comprehensive Plan;

The applicant has submitted a Comprehensive Plan analysis, which was reviewed by the Commission. Additional Comprehensive Plan goals, policies, and implementation items have been identified by staff and are listed below.

Section 5.4, Land Use Districts

Policy 1. "Encourage integration of compatible land uses in order to retain a compact City comprised of a central downtown with surrounding diverse neighborhoods, thereby reducing sprawl and traffic, increasing efficiency, and creating neighborhood community character."

Section 5.7, Density, Policy 1.

Implementation (a). "Consider density bonuses for the provision of recreation space, public areas, and amenities, deed restricted affordable housing, or other identified goals."

Implementation (d). "Allow residential densities greater than twenty units per acre within the Central Business District or generally along and between River Street and First Avenue. Community amenities should accompany developments with increased density."

Section 7.2, Population Diversity

Goal 1. "Maintain and improve the quality of Hailey's social fabric."

Policy 1. "Encourage diversity within Hailey's population."

Implementation (d). "Encourage proposals that help meet the needs of those who risk suffering effects of discrimination or are economically less advantaged."

5. The existing and proposed utility services are adequate for the population densities and non-residential uses proposed;

The Wastewater Superintendent and Public Works Director have reviewed the application and have no issues pertaining to the inability to provide adequate services to the proposed population density.

6. The development plan incorporates the site's significant natural features;

The land was previously developed with a single family dwelling; however, it has since been demolished and the lot is vacant. There are no significant natural features on the site except for existing trees that are proposed to be removed. There are six (6) existing and mature trees located on-site: three (3) chokecherries, one (1) elm, one (1) maple, and one (1) spruce. At this time, the health of the trees is not known. All trees, excluding the maple are located in either the proposed driveway or building footprint. The removal and relocation of trees and the determination of their health are addressed in the approved Design Review application. The applicant does propose to retain and utilize two large and mature elms, located in the right-of-way adjacent to the front of the property, by creating a walkway through the elms that provides pedestrian access from the building, across the sidewalk, to River Street. The building is positioned in a manner that places the elm trees directly adjacent to the front and center of the building's entrance, adding interest and character to the development.

7. Each phase of such development shall contain all the necessary elements and improvements to exist independently from proposed future phases in a stable manner;
A phasing schedule has not been proposed by the applicant.

8 One or more amenities as set forth in Section 10.3.8 of this Ordinance shall be provided to ensure a public benefit;

The applicant proposes the following three benefits:

1. Community housing
2. Public transit facility
3. Underground parking.

The Planning and Zoning Commission considered each amenity and determined that each does provide a public benefit.

9. All exterior lighting shall comply with the standards set forth in Article VIII B of this Ordinance;

This requirement is addressed in the design review application concurrently submitted and reviewed by the Planning and Zoning Commission with the PUD application.

10. The proposed PUD Agreement is acceptable to the applicant and the City.

The draft PUD Agreement has been submitted to the City Attorney for review. It is attached and should be concurrently reviewed by the Council.

The developer is responsible for the payment of the fee of 2% of the unit's sales price to the Blaine County Housing Authority when one of the provided amenities is community housing. While this project is a rental project, the agreement should provide for this requirement should the units be subdivided and sold at some future date. It is a recommended condition of approval that language to address this shall be included in the PUD agreement.

Summary

After conducting a public hearing and reviewing of the application, all supporting documentation and plans, and the recommendation of the Commission, the Council shall either approve or disapprove the plan, or approve with supplementary conditions that relate directly to the Standards of Evaluation set forth in Section 10.5.4.c of this Article. These findings are required in order to approve the modification or waiver of any standard zoning regulation. If approved or conditionally approved, the Council shall find that the facts presented to them establish that these standards are met.

Suggested Conditions

The following conditions are suggested to be placed on any approval of this application:

- a) All Fire Department and Building Department requirements shall be met.

- b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.

- c) The PUD agreement between the City and ARCH Community Housing Trust shall be executed prior to final PUD application approval by the Council. The agreement shall include, language stating that the developer is responsible for the payment of the fee of 2% of the unit's sales price to the Blaine County Housing Authority should the units be subdivided and sold at some future date.

- d) A lease agreement between the City and ARCH Community Housing Trust shall be executed prior to the issuance of a building permit. The building permit plans may be submitted for review, prior to the execution of said lease.

Motion Language:

Approval:

Motion to approve the PUD application for River Street Senior Housing located on Lot 2A, Block 1, Sutton Subdivision (731 River Street North), finding that the project is in conformance with Section 10.5.4.c., (1) through (10) of the Hailey Zoning Ordinance; with conditions () through ().

Denial:

Motion to deny the PUD application for River Street Senior Housing located at Lot 2A, Block 1, Sutton Subdivision (731 River Street North), finding that _____ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon the PUD application for River Street Senior Housing to _____ [the Council should specify a date].

PLANNED UNIT DEVELOPMENT AGREEMENT

RIVER STREET SENIOR HOUSING (AFFORDABLE SENIOR HOUSING)

This **PLANNED UNIT DEVELOPMENT AGREEMENT** ("Agreement") is entered into this ____ day of _____, 2010, by and between the **CITY OF HAILEY** ("City") and **RIVER STREET APARTMENTS LIMITED PARTNERSHIP** ("River Street") in contemplation of the following:

I. RECITALS

1. River Street is a limited partnership organized under the laws of the State of Idaho in the business of providing affordable housing to low and moderate individuals and households. River Street is desirous of implementing a Planned Unit Development (PUD) on property described below for the creation of a 24-unit senior housing community;
2. The property (the "Property") subject to this Agreement is described in Exhibit "A" and is also described in the PUD Application and is, presently zoned Business and is subject to City's Land Use Ordinances and Zoning Regulations;
3. The City's Planning and Zoning Commission and City Council have held the required public hearings, accompanied with proper notice, with respect to the PUD Application;
4. City approved River Street's PUD Application on _____, 2010, and adopted Findings of Fact and Conclusions of Law on _____, 2010;
5. In order to ensure that the housing community is constructed consistent with City's applicable ordinances and regulations, the City and River Street deem it in their mutual interest to enter into an agreement with regard to the manner and timing of construction, construction and landscaping of the Property and other factors affecting the general health, safety and welfare of the citizens of City and users of the Property;
6. The Property shall be developed substantially in accordance with City's Comprehensive Plan, Zoning Ordinances, City's Standards and other applicable City ordinances and the terms and conditions of this Agreement;
7. City and River Street desire that construction of the Improvements proceed as approved by City's City Council as set forth in the Findings of Fact and Conclusions of Law adopted by the City Council;
8. The River Street PUD Application is consistent with the housing and other sections of City's Comprehensive Plan
9. .

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

II. AGREEMENT

- A. **Description and Location of Property.** The total Property encompassed within the PUD Application is approximately 0.587 acres, zoned Business ("B") and has been approved by the City for the purposes of this Agreement as a Planned Unit Development, subject to certain conditions, in accordance with the Hailey Zoning Ordinance, Article 10.
- B. **Construction of Improvements.** River Street agrees to construct the Improvements in accordance with this Agreement, City's approval of River Street's PUD Application and the drawings and site plans submitted with River Street's PUD Application. The Improvements, shall include a 24-unit three story apartment building, with at grade interior parking
- C. **Zoning Ordinance Modifications.** The city agrees to provide the following waivers to the City of Hailey Zoning Ordinance:
1. Total allowed density for this project is increased to 24 residential units.
 2. Total on-site parking required for this property is reduced to 26 spaces.

These modifications are approved in consideration of the provision of the following community benefits within the PUD:

- a. 100% of units will be community housing units affordable to senior (55 years of age and older) individuals and households earning less than 60% of the area median income.
 - b. A weather-protected transit stop on River Street.
 - c. Covered/enclosed parking for 24 of 26 parking spaces.
- D. **PUD Approval.** The PUD approval is granted subject to the following conditions:
1. All Zoning Ordinance, City's Standards and other City ordinances not specifically modified by this Agreement shall remain in full force and effect.;
 2. All Fire Department and Building Department requirements are to be met;
 3. All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans of all infrastructure to be installed or improve at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required;

4. The City and River Street shall execute a formal written lease agreement for the Property acceptable to both parties;
5. River Street shall obtain City of Hailey Design Review approval on all improvements as required under City Ordinance

III. GENERAL REQUIREMENTS

- A. **Property Maintenance.** River Street shall be responsible, at its sole expense, so long as the Property continues to be used by the River Street for housing purposes, for all maintenance of the Property common area, including maintaining all landscaping, irrigation systems, parking and drainage systems.
- B. **Police Powers.** Except as otherwise provided, nothing contained herein is intended to limit the police powers of City. Except as provided herein, this Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulations, including, without limitation, applicable building codes, fire codes, City's Zoning Ordinance, City's Subdivision Ordinance, and Planned Unit Development requirements for the Property.
- C. **Specific Performance.** In addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.
- D. **Dispute Resolution.**
 1. **Mediation.** Any controversy or claim arising out of or relating to this Agreement or breach thereof, shall first be submitted to mediation in accordance with the American Arbitration Association Commercial Mediation Rules. Mediation shall be held in Blaine County. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of Idaho. Each party shall bear its own costs and the parties shall split equally the cost and expenses of the mediator.
 2. **Arbitration.** In the event mediation proves unsuccessful, all controversies or claims arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration. Such arbitration shall be final and binding, and conducted by one (1) neutral arbitrator, and shall proceed in accordance with the American Arbitration Association Construction Arbitration Rules unless the parties mutually agree otherwise. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of Idaho. Arbitration shall take place in Blaine County, Idaho. The parties shall split equally the American Arbitration Association costs and the arbitrator's costs and expenses. The arbitrator shall have no authority to consider in its decision, or to actually award, attorney fees or costs.

- E. **Relationship of Parties.** It is understood that the contractual relationship between City and River Street is such that neither party is the agent, partner, or joint venture of the other party.
- F. **Successor and Assigns; Covenant Running With the Land.** This Agreement shall inure to the benefit of City and River Street and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.
- G. **No Waiver.** In the event that City or River Street, or its successors or assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by River Street, or its successors in interest, or City, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.
- H. **Partial Invalidity.** In the event any portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.
- I. **Entire Agreement.** This Agreement constitutes the full and complete agreement and understanding between the parties hereto. No representations or covenants made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.
- J. **No Third Party Beneficiaries.** This Agreement is not intended, nor shall it be deemed or construed, to create or confer any rights upon third parties.
- K. **Authority.** Each of the persons executing this Agreement represents that they have lawful authority and authorization to execute this Agreement, as well as any other documents required hereunder, for and on behalf of the entity executing this Agreement.
- L. **Default.** In the event either City or River Street, its successors and assigns, fail to faithfully comply with all the terms and conditions included in this Agreement it shall be in breach of this Agreement.
- M. **Notices.** Any and all notices, demands, requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, or

upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

To City:

The City of Hailey
c/o Director, Planning Department
115 Main Street South, Suite H
Hailey, Idaho 83333
208/788-4221 (telephone)
208/788-2924 (facsimile)

To River Street:

River Street Apartments Limited Partnership
c/o ARCH Community Housing Trust, Inc.
Executive Director
P. O. Box 1272
Ketchum, Idaho 83340
208/726-4411 (telephone)
208/_____ (facsimile)

or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

N. **Time is of the Essence.** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

Dated this ____ day of _____, 2010.

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: _____
Heather Dawson, City Clerk

By: _____
Rick Davis, Mayor

RIVER STREET APARTMENTS LIMITED PARTNERSHIP

an Idaho Limited Partnership

By: River Street Senior Housing, LLC, General Partner

By: _____
Michelle Griffith, Manager

By: _____
Gregory A. Urrutia, Manager

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of _____, 2010, before me, _____, a Notary Public in and for said State, personally appeared Michelle Griffith, the Manager of River Street Senior Housing, LLC, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of the General Partner.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of _____, 2010, before me, _____, a Notary Public in and for said State, personally appeared Gregory A. Urrutia, the Manager of River Street Senior Housing, LLC, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same on behalf of the General Partner.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____



Blaine County Housing Authority
PO Box 550
Hailey, ID 83333

5 Galena Street East
208.788.6102 ~ 208.788.6136 Fax

September 8, 2010

Mayor Davis and City Council
City of Hailey
415 South Main Street
Hailey, ID 83333

RE: ARCH application for River Street Senior Project

Dear Mayor Davis and City Council:

On behalf of the Blaine County Housing Authority (BCHA), I have reviewed the PUD application by ARCH Community Housing Trust for a senior housing project at 731 North River Street. The project would provide affordable housing for 24 senior individuals or households in a central location in Hailey. The BCHA Board has been kept apprised of and supports this proposal.

Seniors have been an overlooked segment of the population in terms of the provision of new affordable homes. With seniors being the fastest growing sector of the population, the need is and will continue to be very strong. The fact that the proposed housing is an approved Low Income Housing Tax Credit project means several things, including:

1. The entire project will serve seniors earning less than 60% of Area Median Income (less than \$32,760 for a single person).
2. The units are guaranteed to remain affordable to seniors of lower incomes.
3. The need for these units has been verified by the funders through the market study.
4. The units will be professionally managed and maintained by a State-approved property management company.

The Housing Authority supports this project at the proposed density, finding that it qualifies as legitimate community housing for the retired and senior population of Blaine County and forwards BCHA's mission.

Sincerely,

Kathy Grotto
Executive Administrator

cc: Michelle Griffith, ARCH

The Blaine County Housing Authority's mission is to advocate, promote, plan and preserve the long-term supply of desirable and affordable housing choices in all areas of Blaine County in order to maintain an economically diverse and vibrant community.

STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director 
RE: Subdivision Ordinance Amendment – Inclusionary Housing Repeal
HEARING: October 11, 2010

Note: Staff analysis is in lighter type.

Notice

Notice for the public hearing on October 11, 2010 was published in the Idaho Mountain Express and mailed to public agencies and area media on September 22, 2010.

Proposal

The following amendments to the Subdivision Ordinance are proposed:

- Section 1 to delete the definitions related to community housing
- Section 3.1.1.1 to delete the requirement of an inclusionary community housing plan as part of a preliminary plat application
- Repeal Section 4.11, Inclusionary Community Housing.

The actual amendments are attached as a draft Ordinance. There are also amendments to the Zoning Ordinance associated with these amendments to the Subdivision Ordinance; the Zoning Ordinance amendments are addressed in a separate staff report.

Procedural History

There have been several Idaho district court decisions ruling that inclusionary housing requirements of a subdivision ordinance are unconstitutional or illegal. The City Attorney has recommended that the city amend the Hailey Subdivision Ordinance to be consistent with the Idaho district court decisions. These amendments were intended to be brought forward for consideration this fall with presentations and discussion of alternatives to support the creation of Community Housing; however it has been requested that the repeal be expedited.

The Planning and Zoning Commission held a public hearing on September 7, 2010 and recommended approval of the amendments.

Department Comments

No comments from other city department were submitted.

ARCH Community Housing Trust and Blaine County Housing Authority (BCHA) were asked to give comments on other means the city could consider to support its Community Housing goals in light of the city attorney's recommendation to repeal the inclusionary housing section of the Hailey Subdivision Ordinance. Their comments are as follows:

ARCH Community Housing Trust

1. Incentives seem to be working when there is development and a need for concessions. BCHA and ARCH together can produce better / more needed housing than a developer (because of access to other funding and because our objective is to build what is most needed not what is going to sell for the highest price); the incentives could really encourage donation of land, funds or specific houses as designated by BCHA rather than having the developer build the CH.
2. The ability to defer fees (which the City has) helps, but lowering these fees for CH would be very supportive.
3. Developing a "Fast Track" for permits, hearings etc. when CH is being built either by a developer or a housing organization would be helpful.

Blaine County Housing Authority (BCHA)

1. Redefine community housing to include appropriate rental housing.
2. Broaden the scope of community housing that may qualify for PUDs (rentals, community land trust models, etc.).
3. Participate in and support county-wide housing plans and strategies so that what gets built is not left up to individual developers and the discretion of current P&Z and Council (similar to ARCH's first point).
4. Strengthen commitment to income restricted community housing required in all annexations. Even if land annexed is zoned for non-residential.
5. Jettison any allowance of Workforce Market Deed Restrictions ("alternative" deed restrictions that do not include provisions that ensure units will remain affordable).
6. Lower city fees or other true financial incentives to organizations developing affordable housing, e.g. ARCH and Habitat for Humanity, would be appropriate ways to actually support CH.

Discussion

Included with this staff report is an excerpt from the book A Better Way to Zone by Donald Elliot, an article by the same author, "The Housing Affordability Problem Has Not Gone Away" and articles from the Spring 2010 issue of the *Planning Commissioners Journal* related to housing. The take away from this information is that housing affordability is still a problem even in the current economic conditions.

The Planned Unit Development section of the Zoning Code is one tool currently in place that could continue to be used to encourage the provision of Community Housing. As suggested by ARCH, BCHA and the *Planning Commissioners Journal*, the City could also consider exempting Community Housing from certain requirements or fees to help keep the cost of Community Housing Units down. Another best practices tool discussed in A Better Way to Zone and the *Planning Commissioners Journal* is allowing accessory dwelling units throughout the city; on February 17, 2009 the Commission recommended allowing AUD in the LR Zoning Districts, but the Council has yet to decide on that recommendation.

Standards of Evaluation

Section 13.4.2 of the Subdivision Ordinance sets forth the standard of evaluation after receiving a recommendation by the Commission.

1. Will generally conform to the Comprehensive Plan.

The Council should consider how the proposed amendments relate to the various policies and implementation items of the Comprehensive Plan. The Comprehensive Plan has several goals and policies related to Community Housing; however this repeal is being recommended to be consistent with the Idaho district court decisions.

2. Will not create excessive additional requirements at public cost for public facilities and services.

The proposed amendments are not anticipated to create excessive additional requirements at public cost.

3. Will be in accordance with the welfare of the general public.

The proposed amendments are expected to be in accordance with the welfare of the general public.

Summary

The Council is required to hold a public hearing and determine whether the amendments meet the standards of evaluation.

If the proposed amendment is approved, the Council shall pass an ordinance making the amendment part of Hailey Subdivision Ordinance #821. The draft ordinance is attached.

Motion Language

Approval:

Motion to approve the proposed amendments to Section 1, 3 and 4 and repeal the Inclusionary Housing Section of the Subdivision Ordinance, finding that the amendments will generally conform to the Comprehensive Plan, will not create excessive additional requirements at public cost for public facilities and services and will be in accordance with the welfare of the general public and adopt Ordinance ____ and authorize the mayor to conduct the first reading by title only.

Denial:

Motion to deny the proposed amendments to Section 1, 3 and 4 and repeal the Inclusionary Housing Section of the Subdivision Ordinance, finding that _____ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon the proposed amendments to Subdivision Ordinance Section 1, 3 and 4 to _____ [the Council should specify a date].

HAILEY ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S SUBDIVISION ORDINANCE, ORDINANCE NO. 821, BY AMENDING SECTION 1 TO DELETE THE DEFINITIONS RELATED TO COMMUNITY HOUSING; AMENDING SECTION 3.1.1.1 TO DELETE THE REQUIREMENT OF AN INCLUSIONARY COMMUNITY HOUSING PLAN AS PART OF A PRELIMINARY PLAT APPLICATION, BY REPEALING SECTION 4.11; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, there have been several Idaho district court decisions ruling that inclusionary housing requirements of a subdivision ordinance are unconstitutional or illegal;

WHEREAS, the Hailey City Council intends to amend the Hailey Subdivision Ordinance to be consistent with the Idaho district court decisions;

WHEREAS, the amendments will generally conform with the Hailey Comprehensive Plan;

WHEREAS, the amendments will not create excessive additional requirements at public cost for public facilities and services; and

WHEREAS, the amendment will be in accordance with the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 1, Definitions, of the Hailey Subdivision Ordinance No. 821, is hereby amended by deletion of the stricken language, as follows:

~~“Area Median Income (“AMI”).” The combined gross income for all persons living in a Dwelling Unit as calculated by the United States Department of Housing and Urban Development annually for Blaine County.~~

~~“Community Housing Fund.” An interest bearing account held in trust by the City for the creation of community housing for the benefit of the City.~~

~~“Community Housing Plan.” The plan that specifically describes the Market Rate Units and the Community Housing Units to be constructed in any development, or alternatives to Community Housing Units, and that is approved by the City in accordance with the standards set forth in Section 4.11.4 of this ordinance.~~

~~“Community Housing Unit.” Through a Deed Restriction, a Dwelling Unit that is restricted by size, type and/or cost, and that is for sale exclusively to individual(s) meeting income, occupancy~~

~~and/or other affordable community housing criteria established in a Community Housing Plan approved by the City of Hailey.~~

~~“Deed Restriction.” A method by which occupancy and resale of real property is controlled in a deed to create Community Housing Units.~~

~~“Income Category.” A grouping of household incomes based on a percentage of AMI.~~

- ~~Category 2: 51-60% of AMI~~
- ~~Category 3: 61-80% of AMI~~
- ~~Category 4: 81-100% of AMI~~
- ~~Category 5: 101-120% of AMI~~
- ~~Category 6: 121-140% of AMI~~

~~“Local Housing Authority.” An independent public body corporate and politic created under the Housing Authorities and Cooperation Law, Idaho Code Section 50-1901, et. seq., including the Blaine Ketchum Housing Authority or other entity created by the City of Hailey, providing oversight, review and general assistance in the provision of Community Housing Units to the City.~~

~~“Market Rate Unit.” A Dwelling Unit in a residential or mixed use development that is not a Community Housing Unit.~~

Section 2. Section 3.1.1.1 of the Hailey Subdivision Ordinance No. 821, is hereby amended by the deletion of the stricken language, as follows:

2.1.1.1 The following items must also be submitted along with the preliminary plat before such application will be certified as complete:

- The names and mailing addresses of all property owners, along with the legal descriptions of all properties, within 300 feet of the outer boundaries of the parcel proposed for subdivision. The names and mailing addresses of all easement holders within the subject property. This information shall be provided in a format acceptable to the Administrator.
- A phasing plan if the developer intends to develop the project in phases. The Plan must include the numbers of lots in each phase, the infrastructure planned for completion with each phase, the amenities to be constructed with each phase, the deadline for completion of each phase, and all other information pertinent to the completion of the development.
- A draft of any private restrictions proposed to be recorded for the purpose of providing regulations governing the use, building lines, open spaces or any aspect of their development, use and maintenance.
- An Area Development Plan if applicable pursuant to Section 4.6.4.
- ~~A Community Housing Plan, if applicable, pursuant to Section 4.11.~~

- Such other information as may be required by the Commission, Hearing Examiner, or Administrator.
- An application fee as established by City ordinance.

Section 3. Section 4, Development Standards, of the Hailey Subdivision Ordinance No. 821, is hereby amended by the repeal of Section 4.11 in its entirety.

Section 4. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 5. Any and all portions of Hailey Ordinance No. 821 and any other ordinances, or parts thereof, conflicting with the revised regulations established herein are hereby repealed.

Section 6. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.

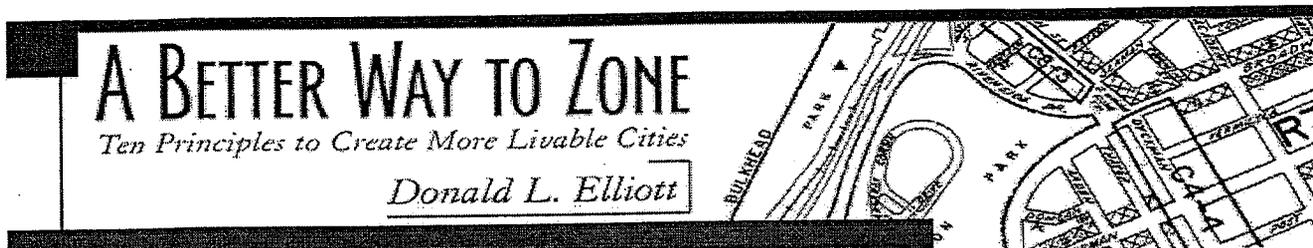
PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2010.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

- [front page](#)
- [blog](#)
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The Housing Affordability Problem Has Not Gone Away

July 30th, 2008 · [2 Comments](#) · [Uncategorized](#)

Over the past two years, news from the housing industry has not been good. Housing starts are down – way down. New home sales are way down. Resales are down (I don't know how many friends have told me they cannot buy a new house until their old house sells). And of course prices are down. Builders tell me they have to suspend construction because the few buyers in the market can buy last year's houses out of foreclosure for less than the cost of building this year's house. And of course there is "jingle mail" – where homeowners simply mail the house keys back to the bank in hopes of minimizing the time and expense of foreclosure.

So with prices falling, the housing affordability crisis must now be behind us – right? Wrong. In *A Better Way to Zone* I describe the housing affordability crisis as a structural problem of the U.S. economy and that is still true. Business cycles come and go, and this recession will in time bottom out and the housing economy will rebound. The long term effects may be a slight lowering of average housing prices – but not much, and not over the long haul. The key problem remains – the U.S. economy is simply not creating jobs that pay (on average) what it costs to build new housing (on average) and that gap continues to widen.

In fact, that difficult fact is what fed the desire to create sub-prime mortgages – since we could not increase average wages and we could not lower the costs of building a house, the home finance industry found a way to bridge that gap by letting less money buy more house (temporarily). The recession may narrow that the gap by deflating home sale prices and bringing them a little closer to the buying power of some households, but it doesn't change the basic mismatch between wages and housing construction costs. And the problem will get worse, because global economic pressures will continue to push wages down and the burgeoning demand (especially from the exploding middle classes in China, India, and elsewhere) will keep driving the price of housing inputs up.

I see the results of this pressure in my consulting practice, where cities are asking for broader and more powerful tools to address housing affordability. What can local government do? It cannot solve the macro-economic problem, but it can remove barriers that drive housing prices even higher than they need to be. Minimum lot size and minimum house size requirements are two of the main culprits. Artificially low multi-family densities are another, and narrow definitions of allowable housing types are a third. The simple fact is that economic pressures are going to force many American households into smaller single-family units and sometimes into multi-family housing even if they would prefer to buy something larger. Responsible cities will find ways and places where that can happen and will revise their zoning to allow it to happen in ways that strengthen the community. Local governments can also remove barriers to modern modular homes, co-housing, live-work products, cottage housing, and a variety of innovative smaller home options emerging to serve our aging population. Other innovative products are described in more detail in *A Better Way to Zone*. These are not just "quick fixes" — they can result in long-term changes in the American housing stock that responds to changing economic realities.

The long-term housing affordability crisis is not going away, and responsible local government will use this “breather” from development pressure to rethink their approach to the issue and to re-evaluate the housing barriers embedded in their zoning and subdivision controls.

Tags:

2 responses so far ↓

- **1 [The Housing Affordability Problem Has Not Gone Away](#) // Aug 11, 2008 at 7:18 pm**

[...] Original The Mistresses Blog - themanchesterdungeon.com [...]

- **2 » [The Sunday Diigo Links Post \(weekly\) Yule Heibel's Post Studio © 2003-2008](#) // Nov 16, 2008 at 5:32 pm**

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Attainable Housing

Housing affordability is one of the five new land use drivers identified in chapter 3.

Although good zoning can be part of the solution to this problem, zoning can also make the problem worse. A 1998 study of regulatory barriers to affordable housing in

Colorado identified five separate types of barriers, and that list included zoning and subdivision controls.⁴ The other four areas were development processing and permitting (which overlaps zoning), infrastructure financing mechanisms, building codes, and environmental and cultural resource protection tools. All regulatory barriers are by-products of trying to promote some social good, and few would support simply waiving the building code or repealing environmental laws for the sake of attainable housing. But the findings of the report do point toward areas where city governments should make sure they get the trade-offs right, because getting it wrong creates an inefficient burden on housing prices.

Within zoning and subdivision controls, the Colorado study identified four specific types of barriers:

- minimum house size, lot size, or yard size requirements;
- prohibitions on accessory dwelling units;
- restrictions on land zoned and available for multifamily housing and manufactured housing; and
- excessive subdivision improvement standards.

The third and fourth items on this list are outside the scope of this book, the third because it involves district mapping decisions rather than zoning text, and the fourth because it involves subdivision rather than zoning. The first two, however, are clearly relevant to our search for a better way to zone.

Across the United States, the legal obligations of local governments related to affordable housing vary significantly. Some states, including New Jersey, California, and Oregon, require cities to draft housing plans based on both the existing and the anticipated population of the city. Other states have no such requirement. But whether or not it is required by law, comprehensive plans are supposed to be based on

population projections. Unfortunately, few cities go to the added effort to identify the likely income ranges of the existing and anticipated residents. In addition, the resulting plan often gets disconnected from the projections themselves. By the time the plan is adopted, it is often clear that the preferred types and densities of development cannot accommodate the number of people who are likely to move to the city and will likely not be affordable given their anticipated income levels.

Even if the plan does a good job accommodating projected growth with housing types appropriate to expected income levels, there is often no requirement that the zoning ordinance be modified to reflect the plan. In this area, the approach sometimes seems to be: "Don't build it and they won't come." It is interesting to see how far practice has diverged from theory in this fundamental area of planning. If we do not take seriously the need to accommodate housing for our people—people who earn what our citizens really earn), what do we take seriously?

Of course, the predictable need for attainable housing over the long run does not mean that zoning must allow *new* housing to be built at prices affordable to median wage earners. For all larger cities, the new housing built in any decade represents only a small fraction of the total housing stock. The relevant question is whether a median wage earner can afford a *median* rental or ownership unit, not a new one. In many U.S. cities, it is difficult to live and work without owning at least one car, and lots of people would like to buy a new car, but we don't try to regulate car prices so that they are affordable to median wage earners. Those who cannot afford new cars buy used cars, and the same is true for housing. But the sales price of new housing is still relevant because it can pull that median price figure up or down. In large, mature cities, if the median house price is above the affordable level for a median family, the zoning ordinance should clearly contain some tools to promote more attainable housing.

Ideally, of course, our cities' plans would accurately reflect anticipated housing needs for different income groups and then zoning would be changed to allow those types of housing to occur. But even if zoning does not actively encourage construction of attainable housing, planners need to ensure that zoning ordinances do not place unnecessary barriers in front of reasonably priced housing. Affordable housing professionals know that meeting the housing needs of poorer citizens often requires direct or indirect subsidies to operate fairly complex affordable housing programs. The need for those programs is beyond the scope of this book, but removal of regulatory barriers is not.

The most obvious regulatory barriers to the affordability of single-family housing are minimum lot sizes, minimum dwelling unit sizes, and maximum densities of development. Unfortunately, discussion of these zoning parameters often degenerates into a "numbers game." I have worked in cities where the magic number was 5,000 square feet—as in "We will not approve any single family lots smaller than 5,000 square feet"—and in other cities where the magic number was as high as 1 acre. But most members of the public cannot visually identify lots that are bigger or smaller than these numbers. Designers regularly fool participants in public meetings by showing attractive housing that compares favorably with the audience's homes and then telling them the density shown on the drawings is actually 50 percent higher than their neighborhood.

When apartments and condominiums are discussed, the situation is even worse. Few members of the public can visualize the difference between 14 and 28 units per acre or the types of housing that can be built within those limits. The debate about the right number has become separated from discussion of what will fit into the community and promote greater affordability. And of course, the numbers game feeds the NIMBY machine. Focusing on numbers allows neighborhoods to draw a line in the sand and rally support or opposition around that line, regardless of whether anyone understands the line or how it will affect community quality.

To produce housing that working people can afford, a better way to zone will need to include two types of changes. First, it will have to get away from the density/intensity numbers game—or at least move the battle to numbers that make more sense. Higher densities are often opposed on the basis of additional traffic or schoolchildren that will need to be accommodated. Those are valid concerns, and it would be much more helpful to debate the available capacity of roadways and school systems and the costs of expanding them. A debate over the fiscal impacts of the proposed development would also be an improvement, even though the vast majority of housing will still be built in ways that generate net costs to the community. This is a key fact: you probably cannot house the United States on a "break-even" basis. Residential growth is usually not able to pay its own way. So deal with it, and move toward intelligent trade-offs between housing attainability and service costs.

As the Denver area has grown rapidly in the past twenty years, the flat, serviceable lands on the east side of the metro area (farther from the Rocky Mountains) have become a magnet for single-family housing. Much of that land is in the suburb of Aurora, which at times has felt that it was drowning in a sea of applica-

tions for ever smaller residential lots. One application called for almost eight hundred 3,500-square-foot lots rolling across the land in a grid pattern with no thought to the terrain or any sense of community. Anyone who wants to do that is building a future slum, not because the lots are too small but because too much of any good thing is a bad thing.

After holding the line on a 6,000-square-foot minimum lot size for several years, in the late 1990s Aurora commissioned a study to see how smaller lots could be permitted without compromising community image or fiscal health. The result was a set of regulations that allowed some lots in a development to be as small as 4,700, 4,200, or even 3,700 square feet depending on the location of the garage and access to it. Each design built in features to ensure privacy from neighbors. The secret for Aurora was to allow smaller lots as a part of a mix that allowed more varieties of housing: no more than 35 percent of the lots in the development could be small lots. While they were at it, Aurora adopted regulations requiring all builders to begin by looking at the natural features of the land (not the hoped-for yield of dwelling units) as the starting point in subdivision design, and to organize all large subdivisions into distinct neighborhoods. Not only does that better address the housing affordability issue, but it closed the door on "grind-'em-out" eight-hundred-lot subdivisions. It opened the door to innovation and better design, and in the years since then Aurora has continued to refine and improve the regulations to permit even more creativity.

The City of Santa Cruz, California, took another approach. It hired a team of architects and developed ready-made plans for attainable housing that would meet city regulations. The result was not only affordable but attractive. No one is required to use the designs, but those builders who do use them receive expedited processing because there is no time lost confirming compliance with city standards.⁵ Austin, Texas, tried a third approach. Its S.M.A.R.T. ("Safe, Mixed-income, Accessible, Reasonably-priced, Transit-oriented") Housing program gives builders eight options for producing more innovative housing products. Those options include single-family cottage lots, single-family urban lots, a small-lot amnesty, secondary apartments, residential infill, mixed-use buildings, a neighborhood corner store, and a neighborhood urban center. Builders who use the options also benefit from expedited approval processing and waivers of some fees.

Small lots and prepackaged designs are not the only example of innovation, of course. Over the past decades, the building community has brought us "Z-lots,"

"1-lots," cluster subdivisions, live-work units, loop lanes, auto courts, shared driveway subdivisions, assisted living facilities, and mixed-use mixed-income developments. In addition to allowing smaller lots, our better way to zone will also allow housing developers to be more creative in the housing products they supply. Fortunately, the American housing industry is intensely competitive, and there is every reason to believe it can develop products to meet needs if allowed to do so. The painful news for neighborhoods is that promoting attainability may mean allowing smaller lots and higher densities in built-up areas, and particularly near transit lines. The good news is that there are lots of creative ways to do that.

The United States is generating new households faster than it is gaining population. The old, the young, and singles of all types are choosing to live in smaller, separate households rather than living with either their parents or their children. Not only has this produced demand for smaller single-family/apartment/condo units, but it has also created demand for small units attached to or built into single-family homes. Originally called "granny flats" or "mother-in-law" units, these accessory dwelling units (or ADUs) often have separate entrances, kitchens, and bathrooms so that someone can live close to the family. In recent years, the children-returning-home-after-college phenomenon has been feeding this demand. Just because the children have left does not mean they will not be back someday, and those who return will not want to live in their old bedrooms.

ADUs are only one example of new products. What about manufactured homes, whose growing popularity shows that they are often considered good value for the money? Even before World War II, innovators began envisioning a house that could be built on an assembly line like a car. In the early postwar years, Swedish-born Carl Strandlund convinced the U.S. government to put up \$40 million to capitalize an effort to mass produce the Lustron House. But the effort fell into bankruptcy after only a few years, having produced fewer than 2,500 prefabricated houses. Lustron failed because the capital costs of developing the factories themselves were very high. Either those costs had to be passed on to buyers in a more-expensive-than-hoped-for housing unit, or builders had to accept a very long payback period for the up-front investments, or both.⁶

Fortunately, it turned out that we were not dependent on government-sponsored development programs to reap the savings of manufactured and modular homes. Despite the failure of the Lustron experiment (and others), the American economy kept on doing what it does best—it allowed the private sector to

Manufactured Housing Terms

This is an area where confusion is often sown because "hot button" words are bandied about loosely and are often poorly understood. To avoid that problem, we need to clarify how many current zoning ordinances define certain key terms.

"Mobile home" generally means a home that is originally designed to be moved from place to place on wheels but that is not a recreational vehicle and does not meet the requirements of the Manufactured Housing Act of 1974 (generally meaning a home built before 1976).

"Manufactured home" generally means the same thing except that it meets the requirements of the Manufactured Housing Act.

"Modular home" means a home that is not designed to be moved on wheels and that is built with the same general materials used to build stick-built homes but with some or all key components built off-site and then transported to the site for assembly into a home.

"Single-family detached home" means just what it says, but the term is being used more and more to include both modular and manufactured homes provided that they meet all zoning requirements that would be applicable to a stick-built home. Often, the term explicitly excludes "mobile homes" (pre-1976 units) because they were not subject to generally accepted safety standards and are therefore fundamentally different from dwellings that were subject to approved safety standards.

have at it, rewarded winners, and allowed the losers to start over—so that today we have an unprecedented variety of manufactured, modular, component, and kit housing products available that meet either the building standards of local building codes or the federal Manufactured Housing Act.

The language of the Manufactured Housing Act clearly focuses on building standards and not zoning. But since it was passed in 1974, debate has continued over whether language requiring that manufactured housing be treated as the equivalent of stick-built housing for building purposes also means such housing must be treated the same for zoning purposes. The manufactured housing industry has sometimes insisted that the act should be read that way, but the courts have been largely unpersuaded.⁷ This has allowed cities to maintain some "manufactured home-free" residential areas, which is clearly in line with the wishes of many voters. Incidentally, several states have weighed in on the side of the industry to enact state laws limiting local ability to keep manufactured homes out of residential zones.

In the past, opposition to manufactured housing was often supported by complaints about appearance, building quality, and impacts on surrounding property values. But there are now both manufactured and modular products that are almost

impossible to tell from stick-built homes. To address the appearance issue, some cities adopted regulations stating that all housing had to be at least 25 feet wide (i.e., wider than a double-wide mobile home constructed from two 12-foot-wide sections); in response, the modular industry delivered 16-foot-wide sections that could be assembled into a 32-foot-wide home. Other cities said the roof pitch had to be more than 3:12, which would make the roof too tall to fit under interstate highway bridges. The industry responded with hinged roofs, which could be tilted downward in transit and back upward when they arrived at the site. Some cities required a “real stone” foundation or a “real brick” facade, so the manufactured and modular builders developed products that delivered those appearance items. And they still undersold some of their stick-built competition.⁸

In fact, it is going to become more and more difficult to defend the lines that currently divide modular, manufactured, and conventional stick-built housing from one another. Because of the efficiency of modular construction, many “conventional” builders are now incorporating modular parts. The use of prebuilt modular trusses is now common, and the use of prebuilt kitchen and bathroom components is on the way. At what point does a stick-built home become a modular home, and how much effort should we spend debating that question?

Some of the changes in the auto industry have followed a similar trajectory. In the 1960s, Japanese cars were “cheap,” but by the 1980s we had decided they were as good as or better than others. Then it was the Korean cars that were “cheap,” but that gap has rapidly narrowed, if not disappeared. It also became increasingly difficult to tell just what was a Japanese or Korean car. First, components of foreign cars were built in the United States, and then entire cars with foreign names—lots of them—were U.S. built. Pundits quipped that if you wanted an American car, you would have to decide between a Ford built in Canada and a Honda built in Ohio. Although the manufactured and modular building industries cannot substitute capital and technology for labor as readily as the auto industry does, they can do so to some extent, and they will provide increasingly stiff competition for conventional builders.

In the face of continuing pressure for housing affordability and steadily improving manufactured home quality and variety, these barriers will erode. The economic advantages of manufactured and modular homes are often real. Over the next twenty years, we will see a steady stream of communities looking for ways to encourage affordable housing that fits in with existing neighborhood character and concluding that it is not wise to keep manufactured or modular housing out of as

many zoning districts as they do now. The number of residential zone districts that keep these products out will decline, but they will not go away completely.

Although changes in future zoning ordinances to allow smaller lot sizes and higher multifamily densities will be visible, changes to allow more modular and manufactured housing will be less so. Instead of adding something to the zoning ordinance, these changes involve deleting things—namely, the barriers that keep modular and manufactured housing out of some zones. Or there could be a mix of barrier removal and new requirements. Following the Aurora, Colorado, approach to small lots, some cities may remove the barriers to allow for a wider range of housing products and then require a mix of those products in order to allay fears about having too much of any one type of housing. Yes, the greatest efficiencies of production and the largest potential reductions in housing price may come when builders build large amounts of the same thing, but most cities learned long ago that this did not produce good neighborhoods.

This is an area where the pure economics of housing runs into the other goals of great cities. Maintaining the status quo will mean losing ground on housing affordability, and allowing dramatically smaller lots or denser developments would significantly change the character of some residential areas, so I believe most cities will take a measured approach. But twenty years from now, they will allow a wider

What Does This Fix?

Revising zoning ordinances to better promote the goal of attainable housing will address the critiques listed in chapters 2 through 4 in five ways:

- It would correct an oversimplification in the basic structure of zoning by acknowledging that the affordability of housing (not just the supply) is a zoning topic.
- It would tend to offset the inflation in housing standards (especially large minimum lot sizes and minimum dwelling unit sizes) that has occurred since 1916—and especially since 1945—as greenfield standards became the norm.
- It would allow the market to produce smaller, more efficient, and more innovative types of housing.
- By reducing the need for rezoning or obtaining special approvals or variances, it would also help reduce opportunities for NIMBYism.
- Because the economic health of most mature cities depends in part on having a good stock of attainable housing, and because the existing stock must be replaced and renovated over time, promoting attainable housing would make zoning more effective.

variety of housing types than they allow today. Smart Growth advocates, New Urbanists, and some form-based zoners have been pushing for this for a decade, and they are correct. I think the housing attainability crunch will provide an additional push toward this result. Even communities that do not embrace New Urbanism will move in this direction.

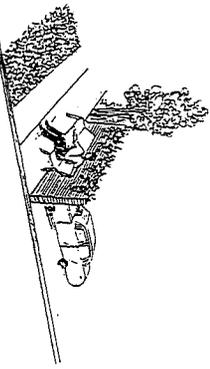
Is It Legal?

Changing use definitions and development standards to promote attainable housing fits within the legal framework discussed in chapter 5. Compliance with procedural and substantive due process and avoidance of vagueness in the drafting and adoption of those changes are no more difficult than for current housing provisions. Since these changes expand the types of uses and/or the densities of development available to property owners, it is unlikely that they would give rise to takings or vested rights claims. Objections to smaller and more affordable housing generally come from neighboring property owners, but there is no constitutional right to *not* have attainable housing near one's property.

Because adequate housing is a legitimate governmental concern, as well as very big business, many states have statutes related to residential zoning, and amendments to promote attainable housing will need to be consistent with those laws. As noted earlier, the federal Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990 both have provisions that address housing and housing sites, so zoning should be drafted consistent with those requirements, or the requirements themselves should at least be cross-referenced. While the Fair Housing Amendments Act does not require zoning for attainable housing, allowing a wider variety of housing products in more locations might help keep cities in compliance with the requirements of the act addressing "handicapped persons."

Mature Areas Standards

Early zoning focused primarily on uses and only secondarily on development standards. In creating the first zoning maps, early zoners clearly took their clues from existing uses in various areas of the city. Areas with mostly residential uses were



zoned residential, commercial areas were zoned commercial, and it was on the boundaries of these areas where planners earned their pay by thinking through how the land should be zoned and why. Things were easier when they drew maps for undeveloped land, because there were fewer constraints, less existing context, and more freedom to imagine what the future *should* look like.

Most development standards came later—things like requirements for off-street parking and landscaping and controls on signs and fences and lighting. When development standards were drafted carefully, they were based on careful review of what had already been built in the city. In undeveloped areas, of course, this was easier—planners could think about what the standards should be without worrying about whether existing development met the standard. But in some cases, development standards were not based on careful analysis of what had already been built, and in many cases a single new standard was adopted for both developed and undeveloped lands.

Because most planners view their role as improving the future, not just protecting the present, it is not surprising that the "should" standards were often adopted for the entire city. In some cases, owners of undeveloped lands argued that applying a higher standard for their (future) development would give a competitive advantage to older areas of the city where there was a lower standard (or no standard at all). Using a single standard avoided this complaint, created a level playing field, and allowed planners to tell the city council that "someday all of the city will look as good as our newest developments." Although the zoners acknowledged that existing properties did not meet the new standards, they assumed that this situation would correct itself as nonconformities disappeared over time. As we have seen, though, it turns out that some nonconformities do not go away very fast (see chapter 2).

Future zoning will admit that the one-size-fits-all approach to development standards was and is a mistake. Despite the rhetoric about a level playing field, the simple fact is that the playing field has never been level. Not all land was created equal, and past development patterns have a lot to do with what may be appropriate in the future. Both planners and landowners already acknowledge this in a variety of ways. Land near highways often has more intense zoning, land in wetlands or on steep slopes is zoned to restrict development, and certain uses are restricted around schools simply because there are lots of children in the area. The building patterns in developed areas should and will influence the future of the area in important ways. When large areas in mature neighborhoods are redeveloped as part of

Future Housing Demand:

PROBLEM OR OPPORTUNITY

by Beth Humstone

DEMOGRAPHIC TRENDS

Two national trends are clear: (1) decreasing household size, and (2) an aging population. Once planners focused their housing plans on providing for couples with children. Now these households are a minority.

As Arthur C. Nelson, Director of the Metropolitan Research Center at the University of Utah, recently noted: "Between 1950 and 2000, average household size decreased from 3.38 to 2.59 [and] will continue to fall to about 2.46 persons by 2030 ... Single-person households will rival households with children and will be the fastest-growing market segment."¹ Moreover, as Nelson explains, "Baby boomers will turn 65 between 2011 and 2029."

"IT IS ESSENTIAL THAT PLANNERS UNDERSTAND THE MARKET FOR HOUSING IN THEIR COMMUNITY."

Large homes in outlying locations may no longer be affordable or practical for retired people. According to a report published by the Urban Land Institute, "Some baby boomers will choose to downsize to an apartment or condominium after their children leave the 'nest'... Multifamily housing allows seniors to remain in their neighborhoods through the different stages of their lives without the hassle of maintaining single-family housing."²

ECONOMIC CONDITIONS

In recent years the downturn in the economy has had the most far-reaching

impact on the demand for housing. After a major expansion in the supply and demand for owner-occupied housing, bankruptcies and mortgage foreclosures have left lot after lot of empty houses in suburban tracts. In some parts of the country, empty new residential towers can be found downtown and in the suburbs. In hard hit cities with high unemployment, whole neighborhoods have been abandoned, leaving existing housing stock falling into disrepair. Moreover, new rental projects have stalled as access to financing has tightened up.

Today's economic conditions hold several implications for future housing demand. For one, in many places new construction will be put on hold while demand absorbs the existing supply.

Much of the oversupply of housing lies in large lots in fringe locations. According to the American Institute of Architects, "These were the locations where large enough parcels of land could be assembled to generate the volume of construction required during the housing boom earlier this decade. However, when the housing market weakened, large inventories of unsold homes remained on the market in these locations."³ These sites may be the last to fill up as builders and developers look elsewhere to meet demand.

In addition, with home ownership out of reach for a growing number of people, the demand for rental apartments should increase – especially once employment improves enough so that people can move out of housing where they have doubled up with parents or friends during tough times.

1 Arthur C. Nelson, "Demographic Outlook," *Urban Land* (Sept. 2009).

2 Richard M. Haughey, *The Case for Multifamily Housing, Second Edition* (Urban Land Institute, 2003).

3 AIA Home Design Trends Survey (December 4, 2009).

How many times has your commission heard, "But there's no market for that development," "People want a big home on one acre," or "It's more affordable to buy a house out in the country?" In the past it was commonly accepted that suburban or fringe housing on large lots was where most of the housing market was focused. But the recent housing foreclosure crisis, coupled with high unemployment and rising energy costs, has challenged old assumptions and dramatically altered the picture.

Now planners in communities across the country are increasingly hearing demands for: more housing close to transit; walkable neighborhoods; and affordable, low-maintenance, energy-efficient homes. In this chaotic time, how do citizen and professional planners determine what people really want or need, and what to plan for?

It is essential that planners understand the market for housing in their community: what types (and price ranges) are needed, and in what locations. Planners must also consider economic trends and other factors that could impact future demand.

Today's demographic and economic conditions, along with consumer preferences, are converging to create a major shift in housing demand.

Economic forecasts suggest that there will not be much action on homebuilding for about two years. Many communities currently have excess housing stock that very likely will be filled before much new construction begins. So there is time to examine residential markets and how they are changing to avoid housing shortages, meet community needs, and revitalize neighborhoods adversely affected by current economic conditions.

CONSUMER PREFERENCES

Along with demographic shifts and economic conditions, consumer preferences for housing are changing. According to John Caulfield, writing in *Builder* magazine: "The downturn has given builders time to ponder whether the homes they build match the demographic and financial profiles of current and future customers. Some have adjusted their house plans and construction practices to produce smaller, greener, and less-expensive houses. Builders everywhere are rolling out smaller models to meet customers' demands for efficiency and affordability."⁵

The American Institute of Architects' (AIA) national survey of residential architects found that consumers want lower maintenance, durability, and sustainability. As AIA's Chief Economist Kermit Baker notes in summarizing the survey results: "Rising home energy costs ... have helped to generate interest in smaller, more energy efficient homes in locations that were accessible to transportation, commercial activities, and jobs. Infill development, with smaller parcels in more developed areas, has become very attractive."⁶

A poll by the National Association of Realtors and Smart Growth America taken in 2007 found: "Eight in 10 respondents prefer redeveloping older urban and suburban areas rather than build new housing and commercial development on the edge of existing suburbs. More than half of those surveyed believe that businesses and homes should be built closer together to shorten commutes, limit traffic congestion and allow residents to walk to stores and shops instead of using their cars."⁷

The demand for energy efficient housing is expected to increase not only due to federal tax incentives, but also to improve affordability and to do the "right thing" on climate change.

5 John Caulfield, "Jump Start: Ten ways to get ahead of the market's recovery and put yourself in the competitive lead," *Builder* (December 2009).

6 AIA Home Design Trends Survey.

7 Available at: www.smartgrowthamerica.org/nars/gareport2007.html.

WHAT DOES THIS MEAN FOR PLANNERS?

Given these trends, planners should consider the following steps:

1. *Focus on infill development.* Infill development can address trends for smaller lots and homes in already built up areas, access to services and public transportation, and walkability.

2. *Enable retrofitting.* Retrofitting of existing buildings, including conversion of empty single-family homes or vacant commercial buildings to apartments, can help to meet the demand for rental housing that is likely to dramatically increase as a result of the mortgage crisis. This may require reexamining your building code to make sure it doesn't pose major impediments.

3. *Plan for transit-oriented development.* To meet the demands of households for access to public transportation, shorter commutes, proximity to services, and rental housing, transit-oriented development with higher densities and mixed uses should be planned at major transit hubs.

4. *Review opportunities for urbanization of suburb.* Many suburban areas already have access to transit and offer jobs and services. However, housing is often not mixed in with these amenities. To meet the shift in demand for smaller units, access to services, walkability, and greater affordability, planners should consider how to create more urban living in suburban environments.

5. *Raise densities.* To improve affordability and offer more housing types, communities should review their existing densities and look for opportunities to raising them where appropriate. See Beth Humstone, "Getting the Density You Want," *PCJ* #74 (Spring 2009).

6. *Allow diverse housing types.* Aging baby boomers, twenty-somethings moving out of their parents' houses, and former homeowners will all contribute to the demand to diversify the type of housing offered in a community. Multifamily housing can take the form of duplexes, accessory units, townhouses, and apartment structures offering both rental and ownership opportunities.

7. *Promote affordability.* Lower-priced housing can be created through inclusionary zoning provisions and increased densities. Support for developments with nonprofit housing developers, local housing authorities, and community land trusts will help build in long-term affordability to housing projects.

8. *Reconsider older, abandoned neighborhoods.* One of the most difficult issues facing a planning commissioner is what to do about neighborhoods experiencing abandonment and decay. Some are examining demolition in order to "shrink" the size of neighborhoods. Others are looking at the potential to rehabilitate housing for home ownership or rentals where neighborhoods are fully served by infrastructure and are near to jobs, transit, and services. Still others are land banking – buying and holding land with or without homes on it until such time as the market improves or new programs for revitalization can be put in place.

9. *Rethink plans for fringe areas.* As fringe housing locations become less desirable, planners must address how they will plan for these areas. There will always be some demand for low-density single-family housing in most communities. However, that demand will weaken. Planners should focus more on the natural resource values, recreation potential, and open space priorities in fringe areas.

SUMMING UP

During this economic downturn, planners should take the time to rethink the housing plans for their communities. They need to challenge old assumptions about the market and develop strategies that address changing conditions in their communities and regions. ♦

Over the past 35 years, Beth Humstone has worked as a planning consultant on a wide range of projects in rural communities and small towns. She is the author, with Julie Campoli and Alex MacLean, of *Above and Beyond, Visualizing Change in Small Towns and Rural Areas* (Planners Press, 2002).



Planning for Housing

by Wendy Grey, AICP

Historically, the purchase of a house has been the single largest investment most families make.

People select a new house based on criteria such as affordability, whether it is in a good school district, and whether they feel comfortable with the neighbors and neighborhood. In recent years another factor was also added to the mix: the

1 William Frey, et al., *Getting Current: Recent Demographic Trends in Metropolitan Areas* (The Brookings Institution Metropolitan Policy Program, 2009), p.6

2 See, e.g., V. Gail Easley, FAICP, and David A. Therique, "Practice Nonconformities," *Zoning Practice* No. 11 (November 2009), and Dwight H. Merriam, FAICP, "Practice Redevelopment," *Zoning Practice* No. 12 (December 2009).

assumption that, almost regardless of the choice they made, the house purchased would increase in value. With the end of the housing bubble, this is no longer the case.

It is important to remember that there are also broad demographic patterns that influence the demand for housing, the most significant being migration, immigration, and age.

Migration. We have historically been a mobile society. We move to pursue better opportunities. The huge migration to the Sunbelt over the past 25 years is a recent example of this pattern.

Immigration. Much of our population growth is coming from immigration. Between 2000 and 2007, the immigrant population grew by 22 percent, to 38 million.¹ While in the past the majority of immigrants lived

in central cities, many immigrants now reside in suburbs and rural areas.

Age. The most significant age group in terms of numbers is the Baby Boomer generation – born between 1946 and 1964. Having been the driving force behind the expansion of suburban living, Boomers were expected to sell their homes and relocate to popular retirement areas.

Gen Xers, born between 1965 and 1980, are now the prime market for family oriented homes. However, Gen Xers have had to deal with a higher cost of living over the past decade, and have often found themselves priced out of the housing market as they've tried to move up the property ladder – especially as more Boomers have stayed put.

The crash in the housing

GEN XERS, BORN BETWEEN 1965 AND 1980, ARE NOW THE PRIME MARKET FOR FAMILY ORIENTED HOMES.

market and the recession have affected the anticipated trends in migration and immigration and people's housing options in the short term. With unemployment and foreclosures up and mortgage lending restricted, people are not relocating, and the buying and selling of houses is down. Immigration has also slowed.

One key role for planners and planning commissioners is to consider strategies that will help recreate viable neighborhoods for current and future

PERSPECTIVES ON HOUSING

Housing: "One-Size-Fits-All" No Longer Works

by Edward T. McMahon

Back in July, *Builder Magazine* published an article titled "Brave New World: After the Bust, Builders Might Be Surprised at What Future Shoppers Will Want," by John Caulfield, Jenny Sullivan, and Nigel Maynard.

To gather data for this piece, the magazine commissioned American Lives, a California-based market research firm run by pollster Brooke Warrick, to conduct a nationwide study of prospective homebuyers' attitudes toward the economy, home styles, product preferences, energy efficiency, and green features. It also examined changing attitudes in regard to

the role of the home and the impact of demographic changes on buyer preferences.

The results are surprising and they suggest that the types of new homes that were most prevalent before the recession will not satisfy the needs of tomorrow's buyers. One reason for shifting buyer preferences is the fact that there are so many different buyer profiles. Tomorrow's market is made for the foreseeable future.

So what do buyers want? Given that housing prices are down 30 percent from their peak – and even more in some markets – big, flashy houses are no longer priorities. Buyers are less likely to think of housing primarily as an investment and more likely to think about how the house will fit their lifestyle.

What is more, for many buyers the character of the neigh-

borhood is more important than the size of the house. In fact, more than 50 percent of respondents in the survey said they were willing to accept a smaller house "in the neighborhood I want."

This does not mean product is irrelevant, but it does mean that for many buyers the location of the home – the place – is now more important than the house itself – the product. ...

According to *Builder*, one subset of buyers that homebuilders should learn more about is women. Women have always played a big role in homebuying decisions, but demographic data show that by 2010 households headed by a woman will number well over 30 million. Shyman Kannan, vice president and director of research at Robert Charles Lesser & Co. (RCLCO), says that

FOR MANY BUYERS THE CHARACTER OF THE NEIGHBORHOOD IS MORE IMPORTANT THAN THE SIZE OF THE HOUSE.

their surveys have found that "female respondents have a strong preference for the city and are much more likely to choose what we call 'safe urbanism.'" According to Kannan, RCLCO surveys have found that while "safety is very important" to female buyers, they also "want to be able to walk to shopping and dining."

Besides safety, another feature of interest to most buyer segments including women buyers, baby boomers, and young

residents. This will involve reconsidering land use patterns, particularly in suburban areas, where the recovery in the housing market is expected to lag. Having looked at the most distressed areas in your community, consider what changes in land use may encourage revitalization.

1. *Find areas that can be rezoned to a higher density.* This can help reduce construction and energy costs for future development. If your code requires a minimum house size, perhaps that requirement can be eliminated or modified to provide more flexibility. Higher density can also help promote the use of transit.

2. *Allow granny flats or accessory units.* These units can support extended families or create a rentable space for homeowners.

3. *Make sure home occupations are allowed and appropriately regulated.* While it is important to protect neighborhoods from the potentially intrusive impacts of businesses operated from a home, there are ways to adequately protect neighbors while allowing for home based businesses.

4. *See that community plans encourage the provision of services to support the neighborhood.* If it is desirable to encourage older residents to retire and stay in place, evaluate whether your codes allow uses that will support that population. Are there plans to provide the necessary services and infrastructure (e.g., is there adequate street lighting and signage)? Do you allow for nursing homes and assisted living facilities? Does your transportation plan address the mobility needs of seniors?

Conversely, if younger families are likely to repopulate the area, are facilities available to meet their needs? Are there sufficient recreational areas and locations for day care centers?

5. *Identify land that can be acquired or traded that will create greenways and usable open space.* In many subdivisions, the only open spaces are "left over" pieces of land. The strategic acquisition of some lots can create connected open space that forms a greenway or neighborhood park to enhance the neighborhood's quality of life.

6. *Eliminate barriers to redevelopment.* Consider adopting tools that will allow for reinvestment in existing properties. This might include more relaxed approaches to non-conforming uses or techniques to allow the redevelopment of properties that are constrained by current

zoning standards.²

While we don't know exactly how and when the current economic crisis will end, we do know that those communities that have planned for the future will be in the best position to recover and provide their residents with the choices they want. ♦



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2002, Grey spent 20 years in the public sector dealing with development and growth issues in Florida, including 10 years as Planning Director for Tallahassee and Leon County.

couples is energy efficiency. According to the *Builder/American Lives* study, any where from 80 to 95 percent of respondents now see energy-saving HVAC systems, windows, lighting, and water fixtures as "very important" or "essential" to their homes.

This makes one thing certain: the market for green energy-efficient homes is going to grow. What is more, a majority of those polled said they would be willing to pay between \$2,000 and \$5,000 more to include an energy-saving feature in their home, so long as they could recoup their investment in a few years.

The current recession is a time to rethink growth and to redesign housing to meet the diverse needs of America's growing population. In the future, there is likely to be a greater

variety of housing types designed for different buyer segments. Smaller, greener options are likely to grow in popularity as are infill housing options.

Even in the suburbs, walkability and a greater variety of housing products will likely become the norm. One thing all the surveys make clear: the old one-size-fits-all model no longer works. ♦



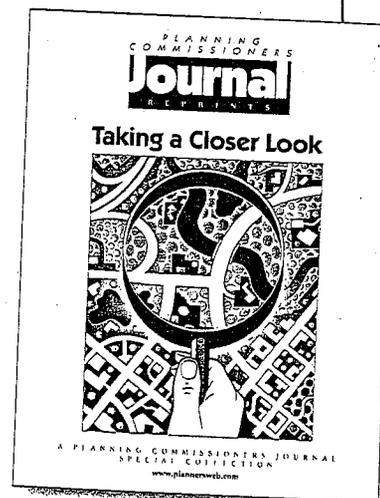
Edward T. McMahon is a Senior Resident Fellow at the Urban Land Institute. He has also authored more than 20 articles for the *Planning Commissioners Journal*. The above is excerpted from McMahon's "How Will Housing Evolve," in the Nov./Dec. 2009 issue of *Urban Land*.

Taking a Closer Look Reprint Sets

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No Certification, No Money:

THE REVIVAL OF CIVIL RIGHTS OBLIGATIONS IN HUD FUNDING PROGRAMS

Editor's Note: This short article provides an "early warning" alert on an important housing issue that may well affect your community. I hope you'll plow through the acronyms and some of the legal background, as it's a topic worth becoming familiar with.

by Michael Allen, Esq.

RECIPIENTS OF FEDERAL HOUSING FUNDS WILL BE REQUIRED TO TAKE A HARD LOOK AT IMPEDIMENTS TO FAIR HOUSING CHOICE

Since the late 1960s, states and municipalities receiving federal housing and community development funds – under the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), and similar programs – have been required to certify that they will comply with federal civil right laws. Many have done so without understanding what is required by these certifications, assuming that the U.S. Department of Housing and Urban Development (HUD) would not challenge their validity.

Until recently, this assumption was largely correct, as HUD rarely questioned recipients on these issues and virtually never terminated or threatened to terminate funding. HUD simply did not press recipients to comply with their civil rights fair housing certifications. Consequently, from 1995 through 2009, hundreds of recipients bowed to NIMBY pressures,¹ ignored their certifications, and spent billions of dollars in federal funds to segregate affordable housing by placing most of it in already disadvantaged neighborhoods or communities.

In just the past year, however, this situation has begun to rapidly change – the result of a ground-breaking lawsuit against Westchester County, New York² – and the Obama Administration's interest

in reviving civil rights enforcement. Under emerging HUD guidelines and a stepped-up agency enforcement policy, recipients of federal housing funds will be required to take a hard look at impediments to fair housing choice in their jurisdictions and propose robust actions to overcome them.

This new environment will have a dramatic impact on communities across the country, whether they are one of the 1200+ "entitlement jurisdictions" receiving federal funds directly from HUD, or small cities or rural counties whose federal funds are channeled through a state community development agency.³

Civil Rights

To be eligible for CDBG and related funds, state and local governments must certify that they will comply with a range of federal civil rights laws⁴ and "affirmatively further fair housing." Since at least 1995, this last obligation, sometimes referred to as "AFFH," has required recipients to conduct an Analysis of Impediments (AI), in which they identify and analyze impediments to fair housing

choice within their jurisdictions, and outline appropriate actions to overcome those impediments. HUD also requires recipients to maintain records supporting the analysis and the actions taken to overcome impediments.

HUD requires state and local governments to use their AIs to list impediments experienced by members of all seven protected classes,⁵ whether caused by intentional discrimination or by policies and practices that have a harsher effect on members of a protected class than on those not in a protected class.

Recipients, in their AI, must make an honest assessment of their own zoning, land use, building, and other ordinances that may decrease housing choice, and must design approaches that will counteract those negative effects. An AI is also required to look at impediments caused by private sector actors, including steering in the sales and rental markets, discriminatory lending practices, insurance redlining, and similar practices.

While recipients are encouraged to provide affordable housing, HUD makes clear that doing so does not fully satisfy the obligation to affirmatively further fair housing, where the focus is on eliminating discrimination on the basis of protected class and expanding housing opportunity regardless of income.

Westchester County Goes Astray

Westchester County ignored HUD regulations and guidance. County officials had Census and other data showing that cities, towns, and villages in Westchester were dramatically segregated,⁶ and

1 See, e.g., Michael Allen, "Why Not in Our Back Yard?" PCJ #45 (Winter 2002).

2 *United States ex rel. Anti-Discrimination Center v. Westchester County, New York*, Case No. 06-cv-2860, U.S. District Court for the Southern District of New York (settled in August 2009). Pleadings, legal memoranda, court decisions, and other materials on the case are available at: www.antibiaslaw.com/wfc

3 Because a significant portion of funds made available to communities through the American Recovery and Reinvestment Act of 2009 (ARRA) are programmed through the CDBG program, even "non-entitlement" jurisdictions and those that have never applied for funds from state CDBG or HOME pools will likely have to sign civil rights certifications prior to receiving ARRA funds.

4 These include, but are not limited to, Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Fair Housing Act; and Section 109 of the Housing and Community Development Act of 1974.

5 The Fair Housing Act prohibits discrimination on the basis of race, color, religion, national origin, sex, familial status, and disability. People protected by

knew that nearly three-quarters of county-funded affordable housing was being built in racially-segregated, African-American neighborhoods.

Despite this the county's AIs in 1996, 2000, and 2004 made absolutely no mention of that segregation or of race-based impediments to fair housing choice. Moreover, even though the County's own appointed Housing Opportunities Commission had identified intense opposition to affordable housing in the whitest communities and the failure of 20 municipalities to build a single unit of affordable housing pursuant to the County's affordable housing "allocation plan," the AIs failed to mention these impediments.

The Anti-Discrimination Center of New York began an investigation of Westchester County's civil rights performance in 2005, requesting records to establish whether the County had truthfully made certifications of AFFH compliance. Document discovery in a subsequent lawsuit brought under the False Claims Act revealed the nearly complete absence of supporting records. As the then-County Executive testified at his deposition, he never read the AFFH certifications requiring his signature, and "signed whatever [he had] to sign to get the money from HUD."

On February 24, 2009, a federal judge concluded that more than 1,000 of the County's AFFH certifications – those in the annual applications and those implicitly made each time the County requested payment from the federal government based on annual written certifications – were false. Finding that HUD's 1995 *Fair Housing Planning Guide*⁷ was persuasive authority, the court instructed the County (and other recipients) that the AFFH certifications were "not mere boilerplate," but were material and substantive requirements that are required for receipt of federal funds.

these provisions are often colloquially referred to as the "protected classes."

6 The County's own data showed that 24 of these municipalities had African-American populations of 3 percent or less, and that others had block groups that were almost entirely African-American.

7 Available at: www.nls.gov/offices/fheo/images/fhpg.pdf

Within a few weeks of the court's ruling, HUD Secretary Shaun Donovan and Deputy Secretary Ron Sims were personally engaged in settlement negotiations with the county. Those efforts, combined with a temporary cutoff of funds to the county, culminated in a \$62.5 million settlement on August 10, 2009, requiring the county to develop 750 units of affordable housing in the whitest towns and villages in Westchester, and to affirmatively market them to people of color. In addition, the settlement requires the county to conduct a new AI and to consider all fair housing impediments.

Speaking not just to Westchester County, but also to the state and municipal recipients of HUD funds across the country, Sims noted that the agency would begin to "hold people's feet to the fire" on civil rights certifications.⁸

Scattering the Seeds of Westchester

While HUD has announced it will publish a proposed regulation toughening AFFH substantive and procedural requirements later this year, the agency has already become active in reviewing recipients' certifications and performance. The most notable instances involve St. Bernard Parish, Louisiana; the State of Texas; and the City of Joliet, Illinois. All three involve litigation or administrative complaints by grassroots advocates, alleging discrimination on the basis of race or national origin, and the failure to identify and analyze impediments experienced by people in those protected classes.

- In Louisiana, HUD threatened to withhold hurricane recovery funds to rebuild a hospital because St. Bernard had adopted a series of racially discriminatory ordinances with respect to multi-family housing.

- In Texas, HUD rejected the state's plan to spend \$1.7 billion in disaster

8 As reported by Peter Abelbome in *The New York Times*, "Integration Faces a New Test in the Suburbs," (August 22, 2009).

9 Available at: www.planningcommunications.com/ai/naperville_ai_2007.pdf or www.naperville.il.us/emplibrary/Boards_and_Commissions/fhacanalysisofimpediments.pdf

10 See footnote 7 for download location.

recovery money, in part because its seven-year old AI did not comply with federal requirements.

- In Illinois, HUD has taken enforcement action against the City of Joliet because the city allegedly used its eminent domain power in a discriminatory fashion to shut down affordable housing inhabited almost exclusively by low-income, African-American single mothers.

What It All Means for Municipal Planning

Planning professionals and planning commissioners across the country will increasingly be called upon to inform and guide their communities through the HUD-required planning processes. Communities whose planning departments and commissions are already immersed in conversations about addressing local housing issues will have a head start in developing robust AIs. Those with little experience in assessing the civil rights impacts of zoning, land use, building, and funding functions may have to bring in outside consultants to help develop compliant AIs.

One AI worth taking a look at – especially for those in small or mid-sized municipalities – is that of the City of Naperville, Illinois (a Chicago suburb), winner of an Illinois APA 2009 Best Practices Award.⁹

Planners would also do well – even before HUD's new regulations are in place – to dust off their copy of the HUD *Fair Housing Planning Guide* and review its roadmap on how to conduct an AI.¹⁰ The *Guide* includes valuable suggestions on data sources and community involvement strategies. ♦

Michael Allen, Esq. is a partner in the civil rights law firm, Relman & Dane, PLLC, which engages in litigation and consulting throughout the country, principally in the areas of fair housing and fair lending. Allen was the firm's lead attorney in *United States ex rel. Anti-Discrimination Center v. Westchester County* and has a similar role in the *State of Texas* matter noted in this article.



Coping with Economic Meltdown

by Gwendolyn Hallsmith

You are sitting in a public hearing about the zoning changes you have been preparing for the past year, fighting a sense of despair and futility. More projects have been abandoned than have been started. Money is tight – at least one of the cancelled projects lost its financing at the last minute. More than ever, it feels as if the title “Planning Commissioner” doesn’t reflect your role – shouldn’t planners be able to offer a path forward, even through dark times?

The local economic development authority has been working as hard as they can to attract new businesses. They spend money, even in the downturn, on trips to distant places to try and find the next big new enterprise to bring to town. They often return empty-handed. The economy elsewhere suffers the same sluggishness as here at home they say. Maybe when things pick up they’ll have better luck.

Is this search for external investment the best strategy for strengthening the local economy? Consider this:

1. The vast majority of new jobs are created by small and medium sized firms, not large employers.¹

2. New markets, jobs, capital, technology, and economic expansion are generated when cities start to produce goods and services that were previously provided by distant exporters.

3. Start-up, innovative, entrepreneurial enterprises are on the increase in the 21st Century, while the large manufacturers that dominated the economies of the 19th and 20th Centuries are declining.

4. Local long-term wealth creation and economic security are dependent on local ownership of productive capacity; simply receiving wages for employment while the profits are exported to distant corporate centers robs the local economy

**COMPANIES THAT ARE
LOCALLY OWNED ARE
MUCH MORE SENSITIVE
TO COMMUNITY NEEDS**

of the capital it needs to succeed.

5. An over-reliance on export-led development can undermine the long-term economic health of a community. More attention needs to be paid to local needs and markets. Similarly, communities that develop local exchange systems and reduce reliance on the national currency will also enhance long-term local wealth creation.

6. Companies that are locally owned are much more sensitive to community needs and environmental conditions, and can lessen a city or town’s vulnerability to job losses when economic downturns occur.

If the solution to your economic problems can be solved through local action, then perhaps there is more of a role for planning commissioners than you have been taking. If the traditional strategy of attracting direct investment from outside the community leads to a dead end, mobilizing local resources for local economic renewal will test the ability of local leaders to create conditions where new local enterprises can take root and succeed. It requires tenacity, flexibility, open-mindedness, and a willingness to take risks and try new things. It also requires understanding some basic points about economics.

How do you build real wealth? How does the local economic system work? Are there policies and practices you can introduce as a leader that will either foster wealth creation or block it? The term “economic system” is used so frequently that we often lose sight of its meaning.

Systems have certain characteristics, and by understanding more about how they work we gain valuable insights into how to improve our local economy.

All local economies run on four main sources of energy – money, water, food, and energy itself – oil, gas, solar, wind, etc. If you consider the health of your local economy, you need to regularly take the vital signs of these critical flows.

- Do you take steps to prevent money from flowing out of your local economy?
- Do you have enough water for all your needs, or do you need to import it from other regions?
- Do you produce enough food and energy for people and the economy, or does most of what you consume come from distant places?

One way to start to build real local wealth is to understand all the outflows, and to try and start producing locally whatever you are buying from other places. Gathering the data, identifying the most promising strategies and alternatives, setting priorities, all of these activities are exactly what planning commissioners do best. ♦

Gwendolyn Hallsmith is Director of Planning & Community Development for the City of Montpelier, Vermont. In our Summer issue, Hallsmith will continue with a look at steps communities can take to put together a local economic development plan.



¹ The first study that documented this fact was David Birch’s *The Job Generation Process* (M.I.T. Program on Neighborhood and Regional Change, 1979). This was followed by “Tracking Job Growth in Private Industry,” by Richard Greene of the Bureau of Labor Statistics, published in the September 1982 *Monthly Labor Review* (available online at: www.bls.gov/opub/mlr/1982/09/art1exc.htm). For readers interested in learning more about the importance of local economies, please take a look at Jane Jacobs’ landmark book, *Cities and the Wealth of Nations*.



Blaine County Housing Authority
PO Box 550
Hailey, ID 83333

5 Galena Street East
208.788.6102 ~ 208.788.6136 Fax

August 31, 2010

Planning and Zoning Commission
City of Hailey
415 South Main Street
Hailey, ID 83333

RE: Repeal of Inclusionary Community Housing ordinances

Dear Planning and Zoning Commission:

Thank you for the opportunity to comment on behalf of the Blaine County Housing Authority regarding the proposed repeal of the Inclusionary Community Housing ordinances.

While it is unfortunate that the City of Hailey may lose this valuable mechanism for the provision of new affordable housing units, the Blaine County Housing Authority will continue to explore other alternatives and opportunities with the City of Hailey to create community housing through annexations, Planned Unit Developments, or other discretionary or incentive based programs.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Grotto", is written over a horizontal line.

Kathy Grotto
Executive Administrator

cc: BCHA Board of Commissioners

STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director 
RE: Zoning Ordinance Amendment – Community Housing
HEARING: October 11, 2010

Note: Staff analysis is in lighter type

Notice

Notice for the public hearing on October 11, 2010 was published in the Idaho Mountain Express and mailed to public agencies and area media on September 22, 2010.

Proposal

Amendments to Zoning Code are proposed by the City as follows:

- Article 2 to add definitions related to community housing
- Delete references to Subdivision Ordinance Section 4.11 throughout

The actual amendments are attached as a draft Ordinance. These amendments to the Zoning Ordinance are associated with the amendments to repeal the Inclusionary Housing section of the Subdivision Ordinance; the Subdivision Ordinance amendments are addressed in a separate staff report.

Procedural History

There have been several Idaho district court decisions ruling that inclusionary housing requirements of a subdivision ordinance are unconstitutional or illegal. The City Attorney has recommended that the city amend the Hailey Subdivision Ordinance to be consistent with the Idaho district court decisions. The changes to the Subdivision Ordinance trigger related amendments to the Zoning Ordinance.

The Planning and Zoning Commission held a public hearing on September 7, 2010 and recommended approval of the amendments.

Department Comments

No comments from other city department were submitted.

ARCH Community Housing Trust and Blaine County Housing Authority (BCHA) were asked to give comments on other means the city could consider to support its Community Housing goals in light of the city attorney's recommendation to repeal the inclusionary housing section of the Hailey Subdivision Ordinance. Their comments are as follows:

ARCH Community Housing Trust

1. Incentives seem to be working when there is development and a need for concessions. BCHA and ARCH together can produce better / more needed housing than a developer (because of access to other funding and because our objective is to build what is most needed, not what is going to sell for the highest price); the incentives could really encourage donation of land, funds or specific houses as designated by BCHA rather than having the developer build the CH.
2. The ability to defer fees (which the City has) helps, but lowering these fees for CH would be very supportive.
3. Developing a "Fast Track" for permits, hearings etc. when CH is being built either by a developer or a housing organization would be helpful.

Blaine County Housing Authority (BCHA)

1. Redefine community housing to include appropriate rental housing.
2. Broaden the scope of community housing that may qualify for PUDs (rentals, community land trust models, etc.).
3. Participate in and support county-wide housing plans and strategies so that what gets built is not left up to individual developers and the discretion of current P&Z and Council (similar to ARCH's first point).
4. Strengthen commitment to income restricted community housing required in all annexations. Even if land annexed is zoned for non-residential.
5. Jettison any allowance of Workforce Market Deed Restrictions ("alternative" deed restrictions that do not include provisions that ensure units will remain affordable).
6. Lower city fees or other true financial incentives to organizations developing affordable housing, e.g. ARCH and Habitat for Humanity, would be appropriate ways to actually support CH.

Discussion

Included with the associated Subdivision amendment staff report is an excerpt from the book A Better Way to Zone by Donald Elliot, an article by the same author, "The Housing Affordability Problem Has Not Gone Away" and articles from the Spring 2010 issue of the *Planning Commissioners Journal* related to housing. The take away from this information is that housing affordability is still a problem even in the current economic conditions.

The Planned Unit Development section of the Zoning Code is one tool currently in place that could continue to be used to encourage the provision of Community Housing. As suggested by ARCH, BCHA and the *Planning Commissioners Journal*, the City could also consider exempting Community Housing from certain requirements or fees to help keep the cost of Community Housing Units down. Another best practices tool discussed in A Better Way to Zone and the *Planning Commissioners Journal* is allowing accessory dwelling units throughout the city; on February 17, 2009 the Commission recommended allowing AUD in the LR Zoning Districts, but the Council has yet to decide on that recommendation.

The definitions added are those deleted from the Subdivision Ordinance related to Community Housing; this is relevant because the Planned Unit Development section of the Zoning Ordinance still provides Community Housing as a desired amenity.

Standards of Evaluation

14.6 When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:

a. The proposed amendment is in accordance with the Comprehensive Plan;
The Commission should consider how the proposed amendments relate to the various policies and implementation items of the Comprehensive Plan. The Comprehensive Plan has several goals and policies related to Community Housing; however, the repeal of the Inclusionary Housing section of the Subdivision Ordinance is being recommended to be consistent with the Idaho district court decisions. The definitions added to the Zoning Ordinance are those deleted from the Subdivision Ordinance related to Community Housing. This is relevant because the Planned Unit Development section of the Zoning Ordinance still provides Community Housing as a desired amenity. Permitting Accessory Dwelling Units in certain zoning districts is the other mechanism currently available in the Municipal Code to implement the Community Housing goals of the Comprehensive Plan.

b. Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

There is no anticipated impact to public facilities and services associated with the proposed amendments.

c. The proposed uses are compatible with the surrounding area; and
There is no change of use proposed by these amendments.

d. The proposed amendment will promote the public health, safety and general welfare.

The proposed amendments will add definitions of terms related to Community Housing referred to in the Planning Unit Development section.

Summary

The Council is required to hold a public hearing and determine whether the proposed amendments are in accordance with the applicable standards of evaluation and make a recommendation to the Council whether the proposed amendment be approved or denied, or that a modified amendment be approved.

Motion Language

Approval:

Motion to approve the proposed amendments to Articles 2 and 10 of the Hailey Zoning Ordinance, Ordinance 532, finding that the amendments are in accordance with the Comprehensive Plan, essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services, the proposed uses are compatible with the surrounding area, and the proposed amendment will promote the public health, safety and general welfare.

Denial:

Motion to deny the proposed amendments to Articles 2 and 10 of the Hailey Zoning Ordinance, Ordinance 532, finding that _____ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon the proposed amendment to Articles 2 and 10 of the Hailey Zoning Ordinance, Ordinance 532, to _____ [the Council should specify a date].

HAILEY ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING ARTICLE 2, DEFINITIONS, TO CHANGE AND ADD DEFINITIONS OF TERMS RELATED TO COMMUNITY HOUSING; BY AMENDING ARTICLE 10 TO DELETE ANY REFERENCE TO SUBDIVISION ORDINANCE SECTION 4.11; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Zoning Ordinance will generally conform to the Hailey Comprehensive Plan;

WHEREAS, the amendments will not create excessive additional requirements at public cost for public facilities and services;

WHEREAS, the proposed uses are compatible with the surrounding area; and

WHEREAS, the amendment will be in accordance with the safety and welfare of the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Article 2, Definitions, of the Hailey Zoning Ordinance No. 532, terms Community Housing Unit and Local Housing Authority are hereby amended by the deletion of the stricken language and the addition of the underlined language as follows:

Community Housing Unit. Through a Deed Restriction, a Dwelling Unit that is restricted by size, type and/or cost, and that is for sale or rent exclusively to individual(s) meeting income, occupancy and/or other affordable community housing criteria established in a Community Housing Plan approved by the City of Hailey.

Local Housing Authority. An independent public body corporate and politic created under the Housing Authorities and Cooperation Law, Idaho Code Section §§50-1901, *et. seq.*, including the ~~Blaine-Ketchum~~ County Housing Authority or other entity created by the City of Hailey, providing oversight, review and general assistance in the provision of Community Housing Units to the City.

Section 2. Article 2, Definitions, of the Hailey Zoning Ordinance No. 532, is hereby amended by the addition of the terms as follows:

Community Housing Fund. An interest bearing account held in trust by the City for the creation of community housing for the benefit of the City.

Community Housing Plan. The plan that specifically describes the Market Rate Units and the Community Housing Units to be constructed in any development, or alternatives to Community

Housing Units, and that is approved by the City in accordance with standards and criteria adopted by the Local Housing Authority or as otherwise allowed by the Council.

Deed Restriction. A method by which occupancy and resale of real property is controlled in a deed to create Community Housing Units.

Income Category. A grouping of household incomes based on a percentage of AMI.

Category 2: 51-60% of AMI

Category 3: 61-80% of AMI

Category 4: 81-100% of AMI

Category 5: 101-120% of AMI

Category 6: 121-140% of AMI

Market Rate Unit. A Dwelling Unit in a residential or mixed use development that is not a Community Housing Unit.

Section 3. Article 10, Planned Unit Development, Section 10.3.8 of the Hailey Zoning Ordinance No. 532, is hereby amended by the deletion of the stricken language:

10.3.8 Each PUD shall provide one (1) or more of the following amenities, commensurate with the size and density of the development, and commensurate with the modifications requested by the applicant, to ensure a public benefit:

a. Green Space. All Green Space shall be granted in perpetuity and the PUD agreement shall contain restrictions against any encroachment into the Green Space. Where a subdivision is involved as part of the PUD approval process, Green Space shall be identified as such on the plat. A long-term maintenance plan shall be provided. Unless otherwise agreed to by the City, the PUD agreement shall contain provisions requiring that property owners within the PUD shall be responsible for maintaining the Green Space for the benefit of the residents or employees of the PUD and/or by the public. Green space shall be set aside in accordance with the following formulas:

1. For residential PUD's: a minimum of .05 acres per residential unit.

2. For non-residential PUD's: a minimum of 15% of the gross area of the

proposed PUD.

b. Active recreational facilities. Active recreational facilities include amenities such as a swimming pool, tennis courts or playing fields, of a size appropriate to the needs of the development. The PUD agreement shall contain provisions requiring that such facilities be maintained in perpetuity, or replaced with another similar recreation facility.

c. Public transit facilities. Public transit facilities include a weather-protected transit stop or transit station, and must be located on a designated transit route.

d. Preservation of Vegetation. Preservation of significant existing vegetation on the site must include the preservation of at least 75% of mature trees greater than 6-inch caliper on the site.

e. Wetlands. Protection of significant wetlands area must constitute at least 10% of the gross area of the proposed PUD.

f. River enhancement. Enhancement of the Big Wood River and its tributaries, must include stream bank restoration and public access to or along the waterway.

g. Community Housing. For residential PUD's, the provision of at least thirty percent (30%) of the approved number of dwelling units or lots as Community Housing Units affordable to

households earning between 50% and 120% of the Area Median Income (~~the 30% would include the 20% community housing required for a subdivision established by Section 4.11 of the Subdivision Ordinance~~), or the provision of at least twenty percent (20%) as Community Housing Units affordable to households earning less than 50% of the Area Median Income.

h. Real Property. Dedication or conveyance of real property or an interest in real property to the City.

i. Sidewalks. Off-site sidewalk improvements shall be constructed according to City Standard Improvement Drawings and provided (in addition to sidewalk improvements that are required by ordinance adjacent to the subject property) in accordance with the following formulas:

1. For residential PUD's: a minimum of 100 linear feet per residential unit.
2. For non-residential or mixed-use PUD's: a minimum of 100 linear feet per 1000 square feet of gross floor area.

j. Underground Parking. Underground parking must be provided for at least 50% of the required number of parking spaces in the PUD.

k. Energy Conservation. All principal buildings within the PUD must comply with sustainable building practices, as follows:

1. For residential PUD's: buildings comply with local "Built Green" standards for certification, federal EPA "Energy Star" program, or Leadership in Energy and Environmental Design - Homes (LEED-H) standards for basic certification.
2. For non-residential or mixed-use PUD's: buildings comply with Leadership in Energy and Environmental Design (LEED) standards for basic certification.

l. Other Amenities. Other project amenities and/or benefits to the community that are found, by recommendation of the Commission and approval of the Council, to promote the purpose of this Article and the goals and objectives of the Comprehensive Plan.

Section 3. Article 10, Planned Unit Development, Section 10.4.1 of the Hailey Zoning Ordinance No. 532, is hereby amended by the deletion of the stricken language:

10.4.1 Density Bonus. The following maximum increases in density may be granted only if one of the following conditions are met, and if no other density increase has been granted (~~e.g., for Community Housing Units under Section 4.11 of the Subdivision Ordinance~~):

- a. Ten percent (10%): Solar, wind, geothermal, or other alternative renewable energy source will provide at least fifty percent (50%) of the total energy needs of the PUD.
- b. Ten percent (10%): At least twenty five percent (25%) of the property included in the PUD is located in the floodplain and no development occurs within the floodplain.
- c. Ten percent (10%): The developer of the PUD provides or contributes to significant off-site infrastructure benefiting the City, (e.g., water tank, fire station).
- d. Twenty percent (20%): The developer of the PUD provides or contributes to significant multi-modal infrastructure providing both vehicular and non-vehicular amenities benefiting the City and Wood River Valley.
- e. Ten percent (10%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Silver certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.
- f. Fifteen percent (15%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Gold certification. The bonus

unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.

g. Twenty percent (20%): The non-residential or mixed-use PUD complies with Leadership in Energy and Environmental Design (LEED) standards for Platinum certification. The bonus unit(s) shall not be constructed until a later phase, after actual certification for prior phase(s) is achieved.

h. Density bonuses for project amenities and benefits to the community other than those listed here may be granted by unanimous vote of the Council, following a recommendation by the Commission, in order to carry out the purpose and intent of this Article and the land use policies of the City.

Section 4. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 5. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 6. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE
MAYOR THIS ____ DAY OF _____, 2010.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

Publish: Idaho Mountain Express _____, 2010