AFFORDABLE

HOUSING

STRATEGIES

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Affordable Housing Strategies

A wide variety of programs are available for increasing the supply of affordable housing. In order to address affordable housing problems comprehensively and equitably it is necessary to think in terms of combinations of programs, to involve the beneficiaries of affordable housing in its production, create partnerships and to ensure that new development provides housing in proportion to the housing need it creates. Multiple tools, including both incentives and exactions, should be combined to create the best overall affordable housing strategy. Incentive-only programs may not fully address the community's affordable housing needs, particularly where there is a significant existing shortfall and there is strong demand for expensive second homes.

Included in the Appendices (Section VII) is a matrix of affordable housing programs. The matrix summarizes information on alternative housing strategies presented in this section. The programs included in this document is not exhaustive, but includes options that may be effective in the lower Roaring Fork area. It can be used to compare and evaluate key considerations for each type of housing program. The 23 affordable housing programs are divided into five (5) general program categories:

- **Incentives**
- **Exactions**
- **Production**
- **Planning and Zoning**
- **Financial**

The affordable housing problem in Lower Roaring Fork Valley has two major components:

1. There is a growing, *existing shortfall* in the supply of affordable housing that is the responsibility of the entire community; and,
2. There is a *need for affordable housing caused by new development* for which such new development may be held responsible.

It would be unreasonable to expect new development to solve the community's existing shortfall problems. In a comprehensive affordable housing program, specific housing programs should be selected to address both the existing housing supply shortfall, future shortfall, and to ensure that new development provides housing for some or all of the housing need it creates.

Who are the *beneficiaries* of affordable housing? The entire community benefits when affordable housing is available for its workers – for its residents. In deciding how to address the two components of the affordable housing problem, it will be important to keep in mind that the development community is not the only beneficiary, rather all segments of the community benefit to some degree from the availability of such housing.

Strong affordable housing programs depend upon the involvement and cooperation of the private sector, local and county governments, employers, non-profit agencies, local housing authorities and residents themselves. Affordable housing programs tend to be more successful when a mixture of community sectors and all of the primary beneficiaries of affordable housing are involved in producing such housing.

New development may rightly be required to provide housing to satisfy the need for affordable housing that it generates. However, the burden of proof is on government to demonstrate "nexus" between the development and the impact mitigation required. In other words, government must demonstrate that the <u>need for housing is generated by</u> new development and the housing impact mitigation required will <u>benefit the new development</u>.

The role of local government is to define the need for affordable housing, the populations to benefit from this housing and the production goals. It should then create incentives and exactions, and bring to bear available resources (land, tax-exempt financing and, if available, direct funding) to enhance the efforts of those developers responding to local housing needs. The public sector also needs to provide regulatory oversight to assure that the housing that is produced is being used by the intended resident. (This subject will be addressed in more detail in workshop #2 and later in the planning process.)

Finally, one of the keys to appropriate housing development is the management of *unintended consequences* (e.g. potential mass and scale issues, social engineering issues, driving of development decisions). Affordable housing problems are dynamic, constantly changing. Following initial implementation, the combination of programs and their application will require periodic adjustment. As unintended consequences are identified adjustments, should be made. The progressive affordable housing programs employed by the communities referenced herein are constantly being revisited and adjusted as program impacts are understood and unintended consequences are identified.

Deed restriction considerations

A key consideration for all affordable housing programs is the deed restriction used to ensure that housing, once produced, remains affordable to the target group over the long term. A deed restriction needs to define the target group and the pricing mechanism that will be used. A price control that is connected to an appropriate index is the most certain mechanism available, although the private sector may be reluctant to voluntarily participate in a price controlled program. Where a price control is utilized, there may be a need for density bonus or other direct subsidy to make projects economically viable.

Developer's reluctance to participate in housing programs with price controls is generally a reaction to a concern that the price controlled units may not be marketable or take a long time to market and also to gain the understanding and support of Realtors. One option for mitigating this concern is for local government or another entity to maintain lists of qualified buyers who understand the implications of purchasing a sales-price restricted unit. This would be in addition to the administration of zoning and deed restrictions. This is an approach used by the City of Boulder and is based on the experience of several communities in California that operate similar programs.

An alternative to a "price control", which has proven to be less objectionable to the private sector, is a deed restriction with a "market limitation". A market limitation involves limiting who can participate in a housing market – thus the price of housing is determined by how much a limited group of persons are willing (and able) to pay for the housing.

A "market limitation" deed restriction has been successfully implemented in San Miguel County where the shortfall (some 300 units) was at a manageable level in 1990, at the time of the idea's inception. San Miguel County's approach limited ownership and occupancy of restricted housing to "persons who earn most of their income in San Miguel County" – thus, demand for a limited supply of housing was restricted to local workers who "bid" against each other for the housing. Second homebuyers could not participate in the limited market. The Aspen/Pitkin County Housing Authority has had less success with a similar deed restriction, which is called "resident-occupied housing." Concern surrounding use of a similar restriction in Aspen/Pitkin has centered on doubts that supply and demand would ever reach the equilibrium necessary for the market limitations controls to work. In order for such a restrictions to work, there must be a reasonable expectation that a balance between supply and demand for housing can be expeditiously achieved.

INCENTIVES

Density Bonus

San Miguel Co., Rancho Mirage, CA, Aspen/Pitkin Co.

Density bonus refers to a housing production incentive program where projects are granted additional residential density over and above the maximum limit described by existing zoning, preferable in return for the housing (or a portion thereof) being deed restricted to occupancy by a target group. The density increase results in a decrease in the land cost per unit.

Depending upon the pricing mechanism selected, density bonuses can be a strong incentive for the private sector to produce affordable housing. The private sector is less likely to be interested in the program, however, where deed restrictions with "price controls" are imposed as a condition of density increases. Where price controls are required, development subsidies may need to be offered in order to motivate the private sector to produce housing.

Density bonuses can be implemented through a zone district designed for the purpose, for example, an Affordable Housing Zone District. Such a district typically permits increases in residential density and more flexible development standards for most or all of the bonus density. Alternatively, density bonuses can be offered in association with inclusionary zoning programs, as described on page four. For instance, a development that provides the required percentage of low income housing through an inclusionary requirement may be granted an automatic density bonus of market rate units.

What are some of the issues associated with the granting of density bonuses in a developed community? In residential neighborhoods, issues of compatibility with surrounding land uses often surface. Adjacent residents expect that the density of neighboring development will generally conform to zoning. They might complain of a lack of certainty if developments meeting certain affordability targets are permitted to exceed those densities. Proposals to increase zoned density often encounter the Not-In-My-Back-Yard type of objections and may conflict with other valid master planning goals such as preserving open space or growth rate concerns. Conflicts among master planning goals require that policy makers balance conflicting goals against each other.

Accessory Units

San Miguel Co., Snowmass, Aspen/Pitkin Co., Basalt

"Accessory units" refers to optional, smaller second units attached to or within single-family units, also known as "caretaker units" or "mother-in-law units." Such units often provide desirable housing for singles, couples, and entry level and seasonal employees. Absentee landowners tend to build the units as a security measure for houses that would otherwise remain vacant for much of the year. Resident owners find the units to be desirable sources of extra income or to provide housing for senior citizens or adult "boomerang" children who may use such housing while they are in the process of establishing their independence.

After dealing with enforcement problems over the illegal construction of such units for a decade or more, Aspen and Pitkin County finally recognized that the phenomena was, in part, a response by the local housing market to the shortage of affordable housing. San Miguel County embraced the program as a means of encouraging the private sector to create affordable housing and permit such units as a customary accessory use permitted by right on each single family lot within the urban growth area known as the Telluride Region. Large houses in the Telluride Region with more than 5,000 square feet are required to build accessory units on site, or pay the Housing Authority a $80,000 cash in lieu.

Public sector responsibilities relative to accessory dwelling units are generally limited to the administration of zoning and/or deed restrictions designed to ensure occupancy by targeted groups of people. It is critical that short-term rentals are prohibited and measures taken to ensure that such units are actually rented to employees or the program will not reach its potential as an affordable housing program.

Enforcement of zoning and deed restrictions on accessory dwelling units can prove difficult, particularly because they are included within single-family residences. Homeowners are especially sensitive to intrusions by zoning enforcement officials into the sanctity of the home. While enforcement efforts are generally more effective at the building permit phase (i.e., control what is built in order to minimize future enforcement actions with respect to use and occupancy), deed restrictions on accessory units are never-the-less necessary if local government is to be able to deal with violations.

Concerns over the impact of such units upon the overall community growth rate and quality of life are usually addressed with size limitations; off-site parking, siting, and locational requirements; and occupancy restrictions. Visual impacts of accessory dwelling units may best be mitigated by requiring the units to be attached to or included within a single-family dwelling or accessory structure like a garage. Thus, the property may continue to visually read as a single-family dwelling.

EXACTIONS

Inclusionary Zoning

San Miguel Co.–15%, Snowmass–60%, Basalt–20%, Garfield Co. – 10%, Aspen/Pitkin Co.–60%
"Inclusionary Zoning" is defined by the American Institute of Certified Planners[1] to mean:

> The mandatory inclusion of affordable or local housing units, or financial setaside, as a quid quo pro for development approval.

Jurisdictions utilizing this program often require that such units be of the same type or similar to other units being approved in the development. Thus, affordable housing in a wide variety of types and configurations may be produced with this program. For example, a development consisting of single-family lots might result in the setaside of a percentage of the single-family lots for affordable housing, although the lots need not be the same size or as well located as other lots in the development; and a multi-family development might setaside a percentage of the multi-family units being built, although the

[1] *Comprehensive Certified Planner Preparation Database*, 1992, Datachem Software

units need not be as large or as luxurious as other units in the development. In Colorado, inclusionary zoning may work most easily for ownership housing.[2]

A survey or thirteen inclusionary zoning systems from around the country, conducted in 1998 by the City of Boulder Planning Department[3], has suggested that there are six variables to be considered in an inclusionary system design:

- Threshold of Applicability -- the minimum project size which triggers an inclusionary zoning affordable housing obligation;
- Inclusionary Requirement -- the nature and extent of the required set-aside or alternative contribution to affordable housing;
- Definition of Very low, Low, or Moderate Income Household -- a determination of the level of affordability of various elements of the inclusionary obligation;
- The manner in which in-lieu contributions are handled within any such system;
- Duration of affordability requirement; and
- The manner in which incentives to developers are handled within the system.

The specific percentage of projects required as a setaside depends upon the political and economic tolerance of the local community, and the demonstration of "nexus" between the development activity and the inclusionary housing requirement (further explanation of nexus is contained under Commercial Linkage below). In all cases the level of required setaside must be “reasonable”. The specific percentage selected or mitigation level should not be so great as to constitute a "taking" -- the size of the setaside must leave the property owner with "a reasonable, economic return on his investment". Some factors that may mitigate some of the potential legal risks of inclusionary programs include:

- The program is an effort to meet the needs of low, moderate or middle income households in an otherwise "exclusionary" environment, and
- Whether the program is “coupled” with a density bonus or other “buy down” provision -- use of a density bonus provision or other “buy down” in conjunction with an inclusionary housing requirement can provide a measure of insurance relative to the defensibility of such a program.

However, it is important to keep in mind that such mitigating factors are actually political in nature – they do not eliminate the necessity to demonstrate nexus.

Advantages of this program include the dispersal of affordable housing throughout the community and the mandatory production of affordable housing by the private sector in conjunction with other development. Potential adverse impacts include possible negative effects upon the value of adjacent market units and conflicts between the interests of local residents and tourists. Local residents often do not want to live in buildings with tourist accommodations. In addition, inclusionary programs by themselves impact only the development community, thus creating the perception of unfairness. Finally,

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[2] In Colorado, inclusionary zoning may work most easily for ownership housing. This is because of Colorado law, § 38-12-301, C.R.S., which makes rent control illegal in this state. This is not to say that a carefully designed inclusionary zoning system cannot apply to affordable rental units. Nor is this concern limited to an inclusionary zoning approach in particular. A residential growth management based system could also be subjected to rent control analysis. This issue is currently before the Colorado Supreme Court for consideration in *Telluride v. Lot Thirty-Four Venture*, Case number 98SC547.

[3] Boulder Housing Report, City of Boulder Planning Department, 1998.

affordable housing units may cause adverse transportation impacts if they are located away from job centers.

Once produced, inclusionary housing units should be restricted by zoning and/or deed restrictions designed to guarantee that the units provide housing for the target income group over the long term. The administration of zoning and/or deed restrictions may be accomplished by planning department or housing authority staff and will have some budgetary implications on local government, although fees may be established to cover administrative costs.

Commercial/Industrial/Lodging Linkage

Basalt – 20%, San Miguel, Co.– 15%, Snowmass – 60%, Whistler, B.C. – 20-30%, Aspen/Pitkin Co. – 60%

"Commercial/ Industrial/ Lodging Linkage" refers to zoning provisions that require new development to provide funds or housing to mitigate some portion of identifiable housing needs created by the new development. The rationale for this program is that these uses are the direct source of most permanent and seasonal employees and should be required to "pay their own way." In these communities the housing that is produced is limited to multi-family housing suitable for low- and moderate- income households, including seasonal workers, singles, as well as young families.

Prior to utilizing a linkage program, a jurisdiction should demonstrate nexus by documenting the affordable housing demand resulting from employment generated by commercial and lodging uses. The next step is to select a mitigation rate that meets local political and economic tolerance, this rate is usually somewhat less that the maximum possible based on the demonstrated nexus.

It is generally best to rely upon local data to document employment generated by each category of use. However, because there is a potential for wide variation of employment generation within a category, the local sample size is often too small to be valid. For example, some lodging facilities may have one employee per 10 rooms and others may have one employee per room. Therefore, a merged data set will be used to augment available data with employment data derived from other comparable resort communities.

Aspen and Pitkin County each established a 60% mitigation rate implemented through a growth management plan designed to limit the overall rate of growth. San Miguel County adopted a minimal 15% mitigation rate in response to substantial opposition to higher mitigation rates from the development community. To supplement its linkage program, San Miguel County also adopted an aggressive, density incentive program.

Potential unintended consequences include mass and scale issues, site suitability issues, and the potential to drive development. Housing requirements have the potential to influence development decisions (i.e., what gets built) in ways that can produce undesirable results. Developments often find that they need to increase the mass and scale of development on a site to include additional space for affordable housing, and the resulting building may not be appropriate in a given situation. Local residents often do not want to live among short-term accommodations. For these reasons, it may be desirable to consider permitting affordable housing requirements to be met off-site, where the density can occur within site suitable density, mass and scale standards.

PRODUCTION PROGRAMS

Fee-based Programs

Whistler, B.C.; San Diego, CA; Aspen/Pitkin Cty., Basalt

Fee-based programs involve the use of multiple, dedicated funding sources to raise funds that can accrue to a local housing trust fund or be held by the governmental entity collecting the fees. These funds are usually used to "buy-down" the cost of acquiring, developing or rehabilitating housing that is to be made affordable to households that meet defined income guidelines. These funds may be used by the private sector, local housing authority, non-profit or a combination of entities as long as they result in the production/acquisition of affordable housing.

Examples of funding sources include business license fees, linkage fees or real estate transfer fees. Fee based approaches usually require demonstration of a nexus, or strong rationale linking the collection of the fee to mitigating some impact created as the result of some action. In addition, consideration must be given to how Amendment One effects the collection of these fees by local government. The Town of Basalt has recently adopted an ordinance that requires a mitigation fee of $0.50/square foot for commercial uses. This fee is collected at the time of recordation of the final development approval.

Fee-based programs may involve zoning provisions that tie new development to requirements for providing funds or mitigation to meet some portion of the identifiable impacts of new development. Developers may elect to pay the fee rather than develop the housing within a specific site. At times, this creates concerns about distribution of affordable housing throughout the community. On the other hand, this allows the local government the ability to more clearly target the types of housing it wishes to see produced and then issue requests for proposals to facilitate the development or acquisition and rehabilitation of this housing. All sectors of the development community can respond and make proposals about how to use these resources to buy-down some of the costs.

Tax-based Programs

Boulder, San Diego, CA, Aspen/Pitkin Co.

Tax-based programs involve the use of dedicated tax sources to raise funds to be used to develop, acquire and/or maintain affordable housing. In some instances, taxes may be imposed on more than one source. For example, Boulder imposes a housing excise tax on all new residential and non-residential development to alleviate housing demand generated by new development and a .10 mill property tax to generate funds to address the established affordable housing shortfall. Tax-based programs can be highly flexible and made available for use by the private sector, non-profits or local housing authorities. The allocation and use of the funds is based upon community goals. Once funds are available, those funds may be redirected as necessary to respond to changing housing needs in the community.

Funding sources may include excise taxes on new development, employee head tax, sales tax, real estate transfer taxes[4], and/or property taxes. Dedicated funding sources may be used to back the sale of mortgage revenue bonds and thus to leverage fees into more housing benefits. With tax-based programs, local government usually assumes more direct responsibilities for administering the funds and assuring program compliance.

Boulder's program successfully leverages funds from other sources on a 7:1 basis and is used in combination with other development programs (such as sweat equity). The private sector, non-profits

[4] The enabling legislation for real estate transfer taxes has been repealed.

and the local housing authority have used these funds to develop over 300 units of for-sale and rental housing that includes apartments, town homes and small single family units that are affordable to households earning less than 60% of the Area Median Income.

The excise tax portion is levied at the rate of $.18 per square foot for residential and $.39 per square foot for non-residential development. The Housing Excise Tax generates approximately $230,000 annually, with approximately $700,000 generated from the property tax. This program reflects an approach to have new development pay the costs associated with growth, while the community at large contributes toward the catching up to the assisted housing goal. Boulder adopted these programs prior to the Tabor Amendment. Consideration must be given to how Amendment One affects the creations of these tax-based programs.

The Aspen/Pitkin Housing Authority uses dedicated real estate transfer taxes for a variety of development programs. One example is a program in which local workers and homeowners are offered a cash incentive to accept the imposition of deed restrictions on their homes. The funds may be used to pay the cash difference between the appraised value of a residential unit with a deed restriction vs. the value of the same unit without the affordable housing deed restriction.

Community Land Trust

A community land trust (CLT) is a non-profit housing organization that owns the land in perpetuity. Land trusts can be active in the acquisition and development of affordable housing. The land trust has a covenant that runs with the land that requires that the improvements are sold and/or leased to households that meet defined income requirements. Usually, the cost of the land is taken out of the cost of the housing as a way to make it affordable. Most CLT's have a Board of Directors, which includes residents, non-residents and representation from the community.

There are few public administrative responsibilities with a land trust. Typically, a non-profit is established that oversees the administration of the land trust. If a jurisdiction were to donate the land, they could control its use through the terms of the land lease that is administered by the land trust board of directors.

The number of units produced depends upon the underlying zoning. It seems to work best in medium to high-density zones. In Boulder, there have been approximately 46 units produced using the land trust concept. These were for-sale, single-family and townhouse style units.

The primary group served under this model tends to be households earning between 60% to 80% of the AMI. It can be targeted to anyone; however, lower income households are usually more willing to accept the restrictions of the covenant.

The primary legal issues involve the land lease. These are usually 99 -year leases that carry affordability requirements and require a small fee or land lease payment to be made to the CLT. These payments can range in price from $15 per month to over $200 per month. The land lease payment is made to the CLT. Initially, lenders may be skittish about the language of the land lease. It takes a significant amount of time to educate lenders about the use of land leases with residential properties, although they are commonly used in non-residential development.

Some of the unintended consequences include having persons who purchase homes selling them to others outside the covenant. This may occur when a person wants to sell to a family member or friend, although it has not been an issue in other CLT's. The concept of a land trust is difficult for some to understand conceptually, as the west typically sells the property with the improvement. These programs have been operating successfully in other parts of the country for the last 10 years. This can be an issue both for the homeowner and the lender.

Land Banking

This is a tool that has been used successfully by many communities. Land is purchased or donated and held for future affordable housing development. A local housing authority or non-profit entity may hold title to the land and earmark it for future development. It may also be purchased by the city. The cost of the land becomes relatively more affordable over time (in high cost areas). Also, it becomes understood in the community that this is a site for future affordable housing development. This is a very effective tool in areas with limited land and high land costs. For example, one site in Boulder was held in a land bank for ten years and resulted in the development of 123 units of mixed income rental housing using a public/private
partnership. Another was held for 13 years and resulted in the development of 19 units of fully handicapped accessible housing that was developed in partnership with two non-profit agencies.

It may be possible to acquire land for affordable housing development when acquiring property for other public purposes such as a park and open space. Politically there can be a NIMBY reaction to this approach. Once a proposal is floated to develop a land banked site, the community may react unfavorably as the site was perceived as open space.

The administrative body has zoning oversight and can be responsible for overseeing any covenant/restrictions that it imposed as a condition of the land purchase if public dollars are used for its acquisition.

The number and types of units produced depends upon the size and zoning of the parcel, however, medium to high-density zones work the best. The higher the density the less per unit in land cost, which helps the overall affordability of the home.

Community Development Corporation (CDC) or Other Entity As Developer

Aspen/Pitkin Co., Carbondale, Boulder, Telluride and Many Other Examples

"Community Development Corporation or Other Entity As Developer " refers to a program where a housing authority or non-profit assumes an active role as developer of affordable housing and becomes a community resource. These entities may elect to develop and/or acquire housing which meets the needs of the local community including for-sale or rental housing. If new development is selected, the CDC has the same responsibilities as a private sector developer for developing a site. This includes site design, gaining development approvals through the local government, construction monitoring, financing, and property management. Some agencies have the private sector develop the site and "turn-key" it back to the entity when the project has been built. Local government is responsible for assuring its development standards are met, administering zoning and imposing deed restrictions.

Typically, local housing authorities and non-profits have missions to serve low -income households. This does not preclude them from developing market rate housing. With declining federal resources to develop exclusively low income housing, in conjunction with the desire to distribute assisted housing throughout the community, has led many of these entities to develop mixed income projects. Large amounts of housing for low- and moderate-income households may be produced serving entry level employees, seniors, singles, couples, and young families. Low income renters, in particular, benefit from this approach as this group's housing needs are least likely to be provided by the private sector. This approach is limited only by financial capability, staff capacity and political will. It may be used to develop all types of housing. One downside is that there is a common perception that local housing authorities and non-profits are not good developers. This may lead to challenges in obtaining community support for projects sponsored by these entities.

A good example of such a program is that of Thistle Community Housing, a non-profit developer located in Boulder County. Thistle has been inventive in its approach to developing housing that is affordable to low income households. They are currently constructing 32 town homes within the City of Boulder where all but four of the homes will be sold to households earning less than 80% of the Area Median Income. They are using the community land trust model in this program. In addition, Thistle developed 30 units of multifamily rental housing using Low Income Housing Tax Credits. Use of Community Development Corporations and/or housing authorities can be an important resource in creating housing opportunities for low to moderate income households within the community.

A deed restriction should be used to guarantee the long-term availability of housing produced by a community develop corporation or other similar entity to a target group of residents meeting community priorities.

PLANNING AND ZONING PROGRAMS

Size Restrictions

This tool suggests exploring incentives such as graduating development fees to encourage the production of smaller size units and disincentives to building larger units. The underlying theory is that smaller units will be more affordable over time than larger units. While size-restricting units can expand the supply of relatively moderately priced housing, their cost increases usually keep up with the market and outstrip the income increases of residents. There is also the concern that a small well appointed unit could be developed and sold at prices that are out of the range of moderate-income buyers. In Boulder, size restrictions were used as part of its growth management system. It also involved establishing an initial sales price for the unit. It was found that between the time the unit was approved and a price agreed upon between the developer and the city and when the unit was actually built there was an increase in the market price of the home. When this occurs, the first buyer can sell the unit and receive the “windfall”.

The administrative body has to establish size categories and then enforce the size restriction. It must also consider mechanisms for retaining affordability over time or at least between the time of approval and sales.

This program tends to produce town homes and small single-family homes for moderate-income households.

Mixed-Use - Commercial and Industrial

Mixed-use is the planned combination of residential uses with either commercial or industrial uses. Ideally, the various uses are carefully integrated and the project has a pedestrian orientation. Mixed-use developments are generally located in areas that are convenient to shopping, employment, transit and other services. They tend to be multifamily dwellings, which are less expensive than single family homes making it easier to create affordable housing. Efficiencies can be gained in the development of the site plan through shared parking and the fact that the additional infrastructure costs associated with the housing are do not increase significantly over the cost associated with the commercial development. The residential portion of infrastructure costs when located in mixed-use settings compared to the costs associated with the cost of infrastructure improvements for residential developments alone is significantly less. In addition, most of the cost of land can be absorbed the commercial development. In essence, the housing is developed using the air rights.

Because the units produced as a result of this approach are smaller apartments or town homes, it is best suited for one to two person households who enjoy living in a down town environment. One notable example of mixed-use development is Denver's LoDo. This is known primary for its loft development, but it is one example of mixed use. There are several examples of mixed use developments in Boulder that include affordable and market rate housing that have been very successful. They tend to be smaller projects, with up to 20 units of housing. It is important to note that this approach does not always result in affordable housing, particularly in areas where there is high demand for housing. It may be possible to use this approach as an incentive for a non-residential developer.

While many examples can be cited regarding successful small scale mixed use developments, large-scale projects can also work well. In Vail, 71 units of affordable housing were created above 70,000 square feet of commercial space in a commercial zone district. To achieve the most efficient use of the land, the commercial development was buried into the hillside, a majority of the parking was located within a below grade structure, and housing and day care were located above the commercial. The urban design challenges associated with mixed use require sensitivity to the distinct needs of the different users. In this example, the designers capitalized on the topography of the site to create buffers between uses. It is important to understand the implications that mixed-use development has on financing options for homebuyers. As buyers often need the most attractive loan terms, mixed use projects should be designed so that mortgage brokers are not precluded from providing the most affordable loan products.

Mobile Home Park Zoning

Boulder, numerous others

Mobile home parks are a primary source of single family, owner occupied units in most communities. These are a good source of single family homes for low to moderate-income households, especially for families with children. They are also popular with the elderly. While the cost of the mobile home is usually affordable, the increasing lot rents can make it difficult for families to remain in these homes. The challenge is managing the underlying lot rent to retain affordability. Another part of this puzzle is that many mobile home parks have medium-density as its underlying zoning, which will allow for re-development to occur at a future date. If redevelopment does occur, a good source of affordable housing is lost. Mobile home zoning alleviates this concern. In addition, subdividing the land so those mobile home owners can own the property fee simple takes out the risk of increasing lot rents. Other options include establishing a community land trust or cooperative structure for the ownership of the land that includes rent restrictions on the property.

The administering body has to establish the zoning and work with the entity to have it be subdivided. Most mobile home parks have approximately 10 –12 dwelling units per acre.

Mobile home parks are often not desired in communities. Landowners tend to want to use them as a holding use until they can be redeveloped into a higher and better use.

Flexible Development Standards

San Miguel Co., Montgomery Co., MD, Aspen/Pitkin Co.

"Flexible Development Standards," including the modification of zoning (use and density), site and design requirements and applied independently or in conjunction with other programs, are used in communities across America to help produce single-family homes priced at affordable levels. The single-family home is still the housing form preferred by most homebuyers. Communities have found that these techniques can be used to reduce the costs of such housing without unreasonable sacrifice of quality, comfort or livability. Smaller lot sizes, innovative site design, modified construction techniques and use of different materials can contribute to lower housing costs. The program can be used to promote affordable housing by revising land use standards or by modifying existing Planned Unit Development (PUD) ordinances.

Smaller lot area requirements and reduced frontage combined with a corresponding increase in overall density can reduce the cost of land per unit. Communities that have reduced minimum lot sizes have most often established new minimums of 3,600 to 5,000 square feet and established minimum frontage requirements ranging from 30 to 42 feet. In some communities, no such minimums are established and instead the appropriate minimum lot size and frontage requirements are determined through site plan review.

Flexible setback requirements may permit the siting of a home on one, or even two lot lines, to allow a greater expanse of contiguous yard space, while maintaining at least a 10 foot setback on opposite sides of the yard. Setbacks should remain flexible to permit maximum privacy, to allow houses to be sited in relation to local climate conditions (houses to the north and outdoor areas situated to the south) and to avoid the look of row houses. Rear lot line setbacks are often maintained in a range of 5 to 12 feet. The least setback flexibility is generally permitted for the front yard in the interest of maintaining a more traditional streetscape and to accommodate parking. Front yard setbacks may be reduced to as little as 20 to 25 feet and still provide a front parking area.

As lot sizes become smaller, it becomes more difficult to accommodate parking and garages without having them dominate the streetscape. Mandatory alleys and off-alley parking are an alternative to parking and garages accessing the house from the front. Angular lot lines may be used to reduce the visual dominance of garages when viewed from one direction along a street.

Reduced size lots may necessitate other site design requirements or considerations in the interest of improving streetscapes, maintaining perceptions of quality and livability and ensuring compatibility with surrounding land uses. Variation in exterior design and siting, setbacks, unit height and rooflines for buildings built on reduced size lots can provide a more interesting appearance. Perimeter setbacks of at least 50 feet will promote more compatible relationships between sites developed under flexible development standards and surrounding, more traditional developments.

Communities are more reluctant to reduce site improvement standards for streets and sidewalks, drainage, storm sewers and utilities, except where those standards are already excessive. In mountain communities, snow storage requirements must be considered in the establishment of street standards and often result in right-of-way widths that exceed conventional, "downstream" standards. When provision is made for the removal of snow, rights-of-way and the minimum street width can reasonably be reduced, provided 20' street widths are maintained. Short T cul-de-sacs prove to be both desirable and economical to construct.

Annexation Policies

Annexation policies can be established which requires that an annexation of land with significant development or redevelopment potential provide affordable housing. Municipalities have no obligation to annex property, and therefore have broad discretion regarding the terms they may require as part of an annexation. None-the-less, political support for the affordable housing requirements is best assured where such policies are included in the community's comprehensive plan. Some policy examples include: (1) ensure a mix of types and sizes of housing to meet the needs of all residents of the community, and (2) provide affordable housing in keeping with current community standards as part of all annexations. For such policies to be effective, the cooperation between the municipal and county government is critical.

The number of units produced would depend upon the parcel size and the percentage of affordable housing required at the time of annexation. This is a good tool for obtaining a variety of housing that is in keeping with the character of the community. Landowners are not fond of this option, as it is seen as reducing the value of the property.

Fee Waivers or Deferrals

Longmont, numerous others

The waiver or deferral of front-end costs can be extremely beneficial to affordable housing development and, in many cases, may make the difference between a project happening or not happening. The reduction of front-end costs ripple through an affordable housing proforma and benefiting a project even more than the actual amount of initial reduction. A direct subsidy of affordable projects through payment of fees out of the general fund may be preferable to the waiver of a fee, however.

Because impact fee waivers for affordable housing are so common by communities across the country, many people consider such fee waivers to be an appropriate, standard practice. This practice creates legal risks to the impact fee programs. Impact fee experts generally agree that fee waivers for affordable housing projects and sometimes for local residents is a common fatal flaw leading to potential *equal protection* challenges. The legal standards for fees and taxes are quite different.

The difference between a fee and a tax is that a tax is a charge or assessment against income, sale, person, activity, etc., in which there is no relationship between benefit and costs incurred. In contrast, a fee should be directly related to benefit or costs incurred. The validity of a fee is best protected by not exempting any use or activity from a fee requirement when a benefit or a cost is incurred.

Taxes may be used to fund services that provide either general or special benefit and may be assessed upon transactions or upon specific "class of use," provided they are applied evenly and fairly. Fees collected from a person or organization should be used to fund specific facilities or services. Therefore, taxes are the most flexible of all funding mechanisms in that they may be used to fund any public improvements, including affordable housing.

Impact fees should cover the capital cost of the facilities and services that needed to serve new development (e.g. water, sewer, fire protection, parks, police protection), no more and no less. They should not be viewed as free money and must be earmarked. A waiver may be found to be improper except when *no costs are incurred or no services are rendered*. Where impact fees have been properly established, any Fee Waiver should be made up from the general fund or from some other source. Otherwise, the collection of a fee may constitute *unequal taxation*. The fund's integrity should be protected. The fees are needed to cover real costs. If the fees are waived, the money for the real costs must come from another source.

Affordable housing is one of the major problems of our generation -- a problem that is common to communities all across the Country. A general fund expenditure for affordable housing purposes is a legitimate expenditure of public funds because such housing provides a general benefit to all citizens of the community.

Fast Track Approvals

No specific examples available

"Fast track approvals" generally refers to shortening of the public review process, limiting public comment and participation and prioritization of affordable housing reviews over the review of other land use application. Fast track approvals theoretically could be used to produce any types of housing needed by a target group of residents. However, staff reviews of affordable housing proposals should be at least as thorough as reviews of other applications. Where density increases are involved, site plan review should be even more thorough. Site plan and grading plan review of higher density developments and developments with flexible development standards should be reviewed in a highly detailed fashion to ensure high quality projects. No more units are produced in the long run with fast track approvals. Adjacent property owners often find them offensive. When adjacent owners oppose housing development proposals, that opposition may become more intense and vigorous as result of the shortened review process.

FINANCIAL PROGRAMS

Rehabilitation Loans

Home rehabilitation loans can be used by low to moderate income households for the purpose of making code and safety repairs. The main outcome of this program is to preserve the quality of existing affordable housing stock. Loans are typically repaid at the time a home is sold, with a modest (3-5%) interest rate. This revolving fund provides dollars for maintaining the program over time.

The public body may administer the program, conduct the inspections of the units to determine the amount of rehab needed and estimate of cost, obtain bids and oversee the work. This program maintains existing stock. Mostly low-income households are assisted with a rehab loan program. There are few political or legal issues with this program. The town or county can inspect the home, develop bid specifications and bid the work. This is all done in close consultation with the homeowner. The homeowner enters into a contract with the contractor and the city makes sure the work is done to the satisfaction of the owner.

Down Payment Assistance and Gap Financing

These are programs that often provide down payment assistance to income qualified buyers. In Boulder, up to $45,000 can be awarded to a first time buyer. The buyer then agrees to accept a deed restricted the re-sale of the unit to someone who is income qualified in the future. In this way, the cost of the house is “bought down” one time and placed into the permanently affordable housing pool. One variation on this approach is to have a shared equity program. Under this program, the community provides an amount of down payment assistance and participates in the equity value of the home. At the time of re-sale, the city recaptures its investment, plus a share of the appreciation. These funds are then used to assist the next buyer. The advantage of shared appreciation is that is allows a buyer to purchase any home that is available on the market that is within their income range. This disadvantage is when home prices escalate faster than income, making it more difficult for buyers to find both suitable and affordable housing.

The administrative responsibilities include recordation of the covenant and follow-up to assure that the requirements of the covenant are met. Also, the program works the best the agency maintains a list of households who are income eligible. This involved on going homebuyer-training programs that culminate in buyers being pre-qualified to purchase homes. Homebuyer fairs are one way of making people aware of the program and also the housing that is available in the community. The fairs can involve local lenders, Realtors and others who want to make their products available to homebuyers.

Number of units produced varies depending upon the amount of funds available for the subsidy, the cost of housing and income levels of households targeted to benefit from the program. In Boulder, 14 households were assisted in 1998 and four have been assisted as of June 1999. Town homes and condos are usually acquired because of their cost. In Boulder, the program serves households earning less than 80% of the AMI since it is funded with HOME and CDBG dollars.

This tends to be a popular program, although there can be problems with lenders who do not want to see the covenant recorded against the property. They are concerned about being able to foreclose, if it becomes necessary and also being able to sell the notes on the secondary market. Localities want to be assured the covenant is recorded as it protects its investment in the property. Most localities include a right of first refusal provision in the covenant, which allows the locality the ability to purchase the property in the event of a default or foreclosure. Even with this language, it can be difficult to obtain Fannie Mae and FHA approval of the covenants.

Low Income Housing Tax Credit (LIHTC)

The Low Income Housing Tax Credit is a federal program that used by both private and non-profit developers to generate equity to produce affordable housing. The credit requires that at least 20% of the development be setaside as affordable to households earning 50% or less or the AMI or 40% of the project setaside as affordable to households earning 60% of the AMI for at least 15 years. Tax credits are very competitive and are awarded on a point system. As a result, most developers provide more than the 60% setaside and agree to either permanent or 30-year affordability requirements.

The public body assures that the development meets zoning and other requirements. The Colorado Housing and Finance Authority oversees the allocation of the tax credit and requires local support of the project. Many tax credit projects rely on funds from other sources, including CDBG and HOME dollars. This helps to bring down the development costs and enhance affordability. Since tax credits are used for rental property, apartment complexes are the most common housing types produced. The community can be influential in the bedroom configuration and amenities offered as part of the development. It is not necessary to have a project be 100% affordable to low-income households.

Community Development Block Grant and HOME Funds

The Community Development Block Grant (CDBG) and HOME Program are federally funding programs that are administered through the State Division of Housing for much of Colorado. CDBG is a federal program that provides funds for a broad range of uses, including affordable housing. The HOME Program is strictly for housing, but can be used for acquisition, new construction, and rehabilitation and first-time buyer programs. Housing produced using these funds must be affordable to households earning no more than 80% of the AMI. Competition for funds is keen and most developers set aside housing for households earning less that the 80% of AMI. Only non-profits or local housing authorities may use HOME or CDBG funds. There are various regulations that must be adhered to when accepting these dollars. Also, the State wants local participation in a proposed project. This may include investment of local dollars, fee waivers or development considerations. These are a good source of funds to be used in tandem with other program approaches.

Non-Profit Corp./ Private Developer Partnership (63-20)

Edwards – Lake Creek, Avon – Eagle Bend, Keystone – Winter-Green

"Non-profit Corp./Private Developer Partnership (63-20)" refers to tax exempt financing issued for non-profits, project specific corporations formed under the Internal Revenue Service Tax Code (63-20). Local government's responsibility in such a corporation is limited to sponsorship of the formation of such a corporation and the issuance of revenue bonds. Revenue bonds do not burden property taxes; instead they depend upon dedicated project revenues for retirement. Because of the costs involved with a bond issue, underwriting and placement, this program is generally not feasible for projects involving less than one hundred (100) units. Units developed with the 63-20 Corporation may include any type of rental housing, but they are most often used for multi-family projects. Project occupancy is normally limited to low to middle income households and controlled by a board of directors composed of representatives of the residents, local governmental and the developer. This program provides a good opportunity for employers to participate by providing subordinated debt. With this participation, employers are then able to master lease units for employees with the provision that not more than 50% of the total project is master leased.

The public subsidizes the resulting projects in that they are tax exempt, so there are implications on school districts and other taxing entities. However, when the bonds are paid off, local government owns the projects debt free.