Inclusionary Zoning:
A Viable Solution to the Affordable Housing Crisis?

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PRESENTER BIOGRAPHIES

Christopher Duerksen, Esq., is managing director of Clarion Associates of Colorado, LLC, a land use consulting firm with offices in Denver, Fort Collins, Chapel Hill, Chicago, Cincinnati, and Philadelphia. He has represented local governments, nonprofits, and the private sector in a variety of land-use and zoning matters and specializes in development code revisions, growth management planning, historic preservation, natural resource and scenic area protection strategies, airport-area development, and market development strategies. A co-founder of The Rocky Mountain Land Use Institute, Mr. Duerksen has written and spoken extensively on land use issues in Colorado and nationally. He has authored many books and articles on land use and conservation issues, including Takings Law in Plain English, Aesthetics, Community Character, and the Law, and True West: Authentic Development Patterns for Small Towns and Rural Areas and speaks extensively across the United States on those subjects. He is a former elected member of the city council in Fredericksburg, Virginia, and directed the Gateway/Stapleton Development Office for the City of Denver prior to joining Clarion.

Mark Bobrowski is a Professor of Law at the New England School of Law in Boston, Massachusetts. Professor Bobrowski teaches Administrative Law, Land Use, Local Government, and Property. He is the author of the Handbook of Massachusetts Land Use and Planning Law (1993, supplemented annually). He has written extensively on issues affecting municipal government. A member of the New England faculty since 1986, he has worked with communities across the region on community growth control, economic development, and resource protection. He is a member of a Massachusetts task force examining affordable housing law. Education: B.A. Ithaca College, M.A. University of Oregon, J.D. New England School of Law.

Jacky Morales-Ferrand, Director of Housing and Neighborhood Development Services - City of Denver, was appointed by Mayor Hickenlooper and started her position on September 8th 2003. As the Director, she is responsible for overseeing the allocation of over $100 million of public and private dollars to support affordable housing development and neighborhood redevelopment in Denver. Previously, Morales-Ferrand was employed by Forest City Stapleton, Inc. to implement the affordable housing plan negotiated between Forest City and the city of Denver. The plan requires that Forest City provide 10% of their for-sale housing, estimated at 800 units, and 20% of their rental product, estimated at 800 units, as affordable housing. Ms. Morales-Ferrand has over 15 years of nonprofit, public and for-profit sector experience focusing on affordable housing policy and development. Prior to joining Forest City Stapleton, Inc., Ms. Morales-Ferrand served as the Housing Program Manager for the city of Boulder and was responsible for implementing their inclusionary zoning program and managing the private activity bond program. She is also the former program coordinator for Boulder's Office of Human Rights and Mediation Services where she coordinated the mediation program and investigated human rights complaints. She currently serves on the city of Centennial Planning Board and is working on developing the first comprehensive plan. She graduated from the University of Colorado at Boulder with a degree in Women Studies and has a Masters of Public Administration from the University of Colorado at Denver.
Denver: Case Study

Implementing Inclusionary Housing
Denver, CO

- Prior to IHO – individually negotiated
  - No consistency
  - No standard covenants, formulas or program
- Taskforce convened
- IHO passed in August 2002
The Requirements

- For-sale set-aside of 10% for 30+
- Targets 80% of the AMI
- High cost – greater than 3 stories, has an elevator, 60% of parking structured 95% of the AMI
- Rental is voluntary:
  - Town of Telluride v. Lot Thirty-Four Venture: Supreme Court rules illegal
Incentives

- $5,000 per affordable unit up to 50% of the development
  - Funded by cash-in-lieu, general fund
- Parking reduced up to 20%
- Density Bonus up to 10%
- Expedited review – completed in 6 months
Options to the IHO

- Off-site allowed
- Cash-in-lieu
Additional Program Details

- Restricted for 15 years
- Developed a standard covenant
- Exterior design shall be indistinguishable
- Interiors must be functionally the same
Administration

- Housing & Neighborhood Development Services Oversees
- Conduct income verification
- Set maximum price & resale price
- Conduct annual monitoring
  - Complaint basis
  - Letter
- Community Education
Jacky’s Lessons

- Agreement on Policy Goal
  - Individual wealth or community wealth
  - Length of restrictions
  - www.burlingtonassociates.com/published.html

- Avoid adding too much detail

- Minimum project size
More lessons

- Initial Pricing
- Covenant/Deed Restriction
  - formula
  - Improvements
  - Inheritance
  - Compliance
  - FHA/Fannie Mae/Freddie Mac
  - [http://www.iceclt.org](http://www.iceclt.org) - designing formula
- Design Issues – interior functionality
- Encourage a variety and distribution
Lessons Learned

- Administration
  - Income Certification
  - Marketing & Sales – lottery?
  - Monitoring
  - Education: Fact Sheets, How to sell

- Not the only tool
Design Matters
Boulder, CO
Denver, CO
Additional Resources

- ULI: John McIlwain, jmcilwain@uli.org
- Inclusionary Housing Reader CA:
REFERENCES


ARTICLE ___. TO SEE IF THE TOWN WILL VOTE TO AMEND THE ZONING BY-LAW BY ADDING THE FOLLOWING NEW SECTION 2.12.60, ENTITLED DIMENSIONAL RELIEF FOR AFFORDABLE HOUSING:

2.12.60 Dimensional Relief for Affordable Housing

The Board of Appeals may grant a special permit for the construction of an affordable dwelling unit on a lot having not less than fifty percent (50%) of the otherwise applicable lot area and lot frontage requirements for the district, subject to the following conditions:

1. The unit shall be sold at a price affordable to persons in the Lowell area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning not more than 80% median income. If the unit is to be constructed and occupied by the original applicant for the special permit, such applicant shall meet the income guidelines applicable for the sale of such unit and the unit shall be deemed to have a value no greater than the limits established by the Department for resale purposes.

2. The unit shall be deed restricted for a period of not less than fifteen (15) years as affordable for persons or families in the Lowell area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning less than 80% of the median income.

3. Prior to the sale or any subsequent sale of the unit, deed restrictions complying with the terms set forth above shall be approved as to form by the Board’s legal counsel.

4. The lot shall be served by municipal water and sewer. Where the lot is not served by both water and sewer, the dwelling unit shall not contain more than one bedroom per 10,000 square feet of lot area.

5. The structure shall meet the setback, side and rear yard requirements for the district.

OR WHAT IT WILL DO IN RELATION THERETO.
ARTICLE ___. TO SEE IF THE TOWN WILL VOTE TO AMEND THE ZONING BY-LAW BY ADDING THE FOLLOWING NEW SECTION 4.17, ENTITLED FLEXIBLE DEVELOPMENT, TO SECTION 4:

4.17 FLEXIBLE DEVELOPMENT

4.17.1 Purpose. The purposes of this section, Flexible Development, are:

1. to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry, and recreational use;

2. to preserve historical and archeological resources; to protect the natural environment, including varied landscapes and water resources;

3. to protect the value of real property;

4. to promote more sensitive siting of buildings and better overall site planning;

5. to perpetuate the appearance of the Town's traditional New England landscape;

6. to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;

7. to offer an alternative to standard subdivision development;

8. to promote the development of housing affordable to low, moderate, and median income families; and

9. to promote the development of housing for persons over the age of fifty five.

4.17.2 Definitions. The following terms shall have the following definitions for the purposes of this section:

1. "Affordable to persons or families qualifying as low income" shall mean affordable to persons in the Lowell area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning less than 50% of the median income.

2. "Affordable to persons or families qualifying as moderate income" shall mean affordable to persons in the Lowell area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning more than 50% but less than 80% of the median income.

3. "Affordable to persons or families qualifying as median income" shall mean affordable
to persons in the Lowell area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning more than 80% but less than 120% of the median income.

4. "Affordable units" shall mean any combination of dwelling units affordable to persons or families qualifying as low, moderate, or median income.

5. "Contiguous open space" shall mean open space suitable, in the opinion of the Planning Board, for the purposes set forth herein. Such open space may be separated by the road(s) constructed within the Flexible Development. Contiguous open space shall not include required yards, if any.

4.17.3 Applicability. In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels held in common ownership and located entirely within the Town.

4.17.4 Procedures. Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development shall file with the Planning Board seven (7) copies of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.

2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation.

3. Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.

4. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

4.17.5 Design Process. Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, houselots, and contiguous open space.

1. Understanding the Site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.

2. Evaluating Site Context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. **Designating the Contiguous Open Space.** The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.

4. **Location of Development Areas.** The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.

5. **Lot Lines.** The final step is simply to draw in the lot lines (if applicable).

4.17.6 **Modification of Lot Requirements.** The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

4.17.7 **Basic Maximum Number of Dwelling Units.** The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

1. The required affordable units for developments with more than ten units shall not count toward the Basic Maximum Number.

4.17.8 **Density Bonus.** The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the Flexible Development shall not, in the aggregate, exceed fifty (50%) percent of the Basic Maximum Number. All dwelling units awarded as a density bonus shall be two bedroom units. Computation shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

1. For each additional ten percent (10%) of the site (over and above the required twenty-five percent) set aside as contiguous open space, a bonus of five (5%) percent of the Basic Maximum Number may be awarded; provided, however, that this density bonus shall not exceed 30% of the Basic Maximum Number.

2. For every two (2) dwelling units restricted to occupancy by persons over the age of
fifty-five, one (1) dwelling unit may be added as a density bonus; provided, however, that
this density bonus shall not exceed 20% of the Basic Maximum Number.

4.17.9 Affordable Component. As a condition of the grant of any special permit for a Flexible
Development for any development creating more than ten dwelling units, a minimum of fifteen
(15%) of the total number of dwelling units shall be restricted for a period not less than thirty
(30) years in the following manner:

1. 5% of the units shall be affordable to persons or families qualifying as low income;
   and

2. 5% of the units shall be affordable to persons or families qualifying as moderate
   income; and

3. 5% of the units shall be affordable to persons or families qualifying as median income.

Numbers shall be rounded down in the computation of this requirement. The thirty year
restriction shall be approved as to form by legal counsel to the Planning Board, and a right of
first refusal upon the transfer of such restricted units shall be granted to the Town or its designee
for a period not less than 120 days after notice thereof.

4.17.10 Types of Buildings. The Flexible Development may consist of any combination of
single-family, two-family and multifamily residential structures. A multifamily structure shall
not contain more than five (5) dwelling units. The architecture of all multifamily buildings shall
be residential in character, particularly providing gabled roofs, predominantly wood siding, an
articulated footprint and varied facades. Residential structures shall be oriented toward the street
serving the premises and not the required parking area.

4.17.11 Roads. The principal roadway(s) serving the site shall be designed to conform with the
standards of the Town where the roadway is or may be ultimately intended for dedication and
acceptance by the Town. Private ways shall be adequate for the intended use and vehicular
traffic and shall be maintained by an association of unit owners or by the Applicant.

4.17.12 Parking. Each dwelling unit shall be served by two (2) off-street parking spaces.
Parking spaces in front of garages may count in this computation.

4.17.13 Contiguous Open Space. A minimum of twenty five percent (25%) of the parcel
shown on the development plan shall be contiguous open space. Any proposed contiguous open
space, unless conveyed to the Town or its Conservation Commission, shall be subject to a
recorded restriction enforceable by the Town, providing that such land shall be perpetually kept
in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational
or recreational purposes, and that it shall be maintained in a manner which will ensure its
suitability for its intended purposes.

1. The percentage of the contiguous open space which is wetlands shall not normally
exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.

2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to twenty (20%) percent of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bikepaths.

4. Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

4.17.14 Ownership of the Contiguous Open Space. The contiguous open space shall, at the Planning Board's election, be conveyed to

1. the Town or its Conservation Commission;

2. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

3. a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

4.17.15 Buffer Areas. A buffer area of fifty feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be
disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty feet in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

4.17.16 Drainage. Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

4.17.17 Decision. The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of this Flexible Development By-Law than would a conventional subdivision development of the same locus.

4.17.18 Relation to Other Requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law.

OR WHAT IT WILL DO IN RELATION THERETO.
SECTION 4.40 AFFORDABLE HOUSING SPECIAL PERMIT

(a) Purpose.

The purpose of this Section is to promote the public welfare by:

(1) increasing the supply of housing that is available and affordable to low, moderate and upper-moderate income households, with an emphasis on family housing; and

(2) preventing the displacement of Brookline residents; and

(3) authorizing an increase in density or intensity of use pursuant to G.L. c. 40A, s. 9, para. 2, by the grant of a special permit where affordable housing is provided by the applicant.

(b) Definitions.

The following definitions shall apply in this section 4.40. Where a term is undefined herein, the definition set forth in the Guidelines adopted pursuant to this Section 4.40, if any, shall control:

(1) Median income means the median income, adjusted for household size, for the Boston Standard Metropolitan Statistical Area published by or calculated from regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, or any successor federal or state program.

(2) Low and moderate income means a combined household income which is less or equal to 80 percent of the median income adjusted by household size.

(3) Upper moderate income means a combined household income which is less or equal to 100 percent of the median income adjusted by household size.

(4) Eligible household means a household comprised of a single individual or a family related by blood, marriage, registration under the Town’s Domestic Partners By-law or operation of law, and headed by an individual eligible for housing under regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, or any successor federal or state program.

(5) Affordable unit means a dwelling unit which meet the following conditions.

(A) In a residential development in which the dwelling units will be rented, a unit shall be considered an affordable unit if (A) it is rented to an eligible household whose initial income is less than or equal to 80% of median income; and (B) it is made available at a rent that is calculated such that a hypothetical household with 1.5 persons per bedroom and with an income of 65% of median income would be paying 30% of gross income on rent and tenant-paid utilities.

(B) In a residential development in which the dwelling units will be sold, a unit shall be considered an affordable unit if (A) it is sold to an eligible household whose initial income is less than or equal to 100% of median income; and (B) it is made available at a sales price that is calculated such that a hypothetical household with 1.5 persons per bedroom and with an income of 80% of area median income would be paying 30% on towards a mortgage, mortgage insurance,
condominium fee and property taxes for a standard thirty-year mortgage at 95% of sales price.

(c) Applicability.

In all zoning districts, the provisions of this Section 4.40 shall apply to the following uses:

(1) residential developments of six or more dwelling units, whether new construction or adaptive reuse; and

(2) division or subdivision of land for development of six or more dwelling units; and

(3) assisted living units and accompanying services in a life care facility.

(d) Special Permit Required.

The development of any residential project set forth in Section 4.40 (c), above, shall require the grant of a special permit from the Board of Appeals.

(e) Required Affordable Units.

As a condition for the grant of any special permit hereunder, applicants shall contribute to the Town's stock of affordable units in accordance with the following requirements:

(1) For residential developments of six or more units, the developers shall be required to set aside 15% of the units as affordable units.

(2) For residential developments of six to fifteen units, the developer may choose to make a cash payment based on the Guidelines to be adopted pursuant to Section 4.40 hereunder, subject to approval of the Board of Appeals.

(f) Standards.

Residential developments containing affordable units shall meet the following standards:

(1) Developments shall not be segmented to avoid compliance with these provisions.

(2) In determining the total number of affordable units required, a fractional unit of .5 or more shall be regarded as a whole unit.

(3) The required affordable units shall contain fifteen (15%) percent of the bedrooms in the residential development as a whole.

(4) Affordable units shall be dispersed throughout the building(s) and shall be indistinguishable from market rate units in external appearance. The units shall have the same mechanical systems as market units, except that units with up to two bedrooms may have only one bathroom, units with three bedrooms shall have at least 1.5 bathrooms, and units with four bedrooms must have at least two bathrooms. Affordable units shall have the same finishes and appliances as the market rate units; provided, however, that finishes and appliances which differ from luxury market rate units may be approved with the recommendation of the Director of Planning and Community Development.

(5) The affordable units shall contain square footage which is (i) the average size of market rate units containing the same number of bedrooms, or (ii) the following, whichever is the smaller:

| 0 bedrooms: | 500 square feet |
1 bedroom: 700 square feet
2 bedrooms: 900 square feet
3 bedrooms: 1100 square feet
4 bedrooms: 1300 square feet

(6) Floor plans for affordable units which differ from those of market rate units shall be not be approved without the recommendation of the Director of Planning and Community Development.

(7) Sales prices, resale prices, initial rents, and rent increases for the affordable units shall be established in accordance with this Section, as further clarified in the Guidelines and shall be permanently restricted, to the extent legally permissible, to ensure long-term affordability.

(8) The Town may establish a system of priorities for selecting buyers or renters, in accordance with Guidelines.

(9) The Town may require that lessees of affordable units meet income recertification requirements upon renewal of lease terms, in accordance with Guidelines.

(10) The Town may require, for itself or its designee, an option to purchase or lease affordable units for amounts consistent with this Section. The option shall apply to the initial and any subsequent sale or lease of affordable units.

(11) Affordability restrictions shall be embodied in applicable deed covenants, contractual agreements, land trust arrangements, and/or other mechanisms to ensure compliance, which shall be approved as to form in all instances by the legal counsel to the Board of Appeals.

(12) All deed covenants, contractual agreements, and other documents necessary to ensure compliance with this Section shall be executed and, if applicable, recorded prior to and as a condition of the issuance of any building permit or certificate of occupancy, as the Board of Appeals shall deem appropriate.

(13) The Board of Appeals may limit the issuance of a certificate of occupancy for any market rate unit(s) in a development until:

(A) all of the affordable units have obtained a certificate of occupancy; or

(B) bonding or other arrangements to secure performance have been made to ensure the provision of such affordable units; or

(C) any land and/or buildings required to be donated to the Town or its designee has been conveyed.

(14) Nothing in this Section shall preclude a developer from setting aside more than the required number of affordable units or bedrooms to serve the defined income group or to serve lower or higher income groups.

(g) Alternative Requirements for Affordable Units.

The requirements of this Section may be satisfied through one or more of the methods below or through a combination of these methods and the provision of on-site affordable units, provided that the alternative proposed is found by the Board of Appeals, in its discretion, to be advantageous to the Town in creating or preserving affordable housing, and not result in the undue concentration of affordable units. The Town's order of preference for meeting the requirement of Section 4.40 is (1) on-site housing, (2) off-site housing, (3) conveyance of land and/or buildings, and (4) cash payment [except for six to fifteen units as per Section 4.40(e)(2)]. Except as set forth below, affordable units provided through the alternative methods below shall comply in all respects other than on-site location with the requirements of this Section.
(1) Off-site location. Affordable units may be located on an alternative site or sites in Brookline suitable for housing use, preferably in the same neighborhood as the on-site development. While affordable off-site units may be located in an existing structure, developers are discouraged from pursuing alternatives which will result in the displacement of existing tenants. Developers will be expected to provide a greater benefit to the Town in terms of number of units and/or number of bedrooms than would have been provided on-site.

(2) Conveyance of land and/or buildings. Developers may donate to the Town of Brookline or its designee land and/or buildings suitable for housing use, preferably in the same neighborhood as the on-site development. Such land and/or buildings shall have a current appraised fair market value comparable to the net cost to the applicant of providing the required affordable units on-site.

(3) Cash payment. Developers may make a cash payment to the Town or its designee with a value comparable to the net cost to the applicant of providing the required affordable units on-site.

(4) Cash contributions and donations of land and/or buildings shall be made to the Town’s Housing Trust or its designee and shall be used only for purposes of providing affordable housing for low and moderate income households as defined by this Section.

(h) Procedures.

An application for a special permit pursuant to this Section shall comply with the following procedures:

(1) The application shall be made on the form provided by the Board of Appeals. Such application shall be referred within seven days to the Building Commissioner, the Housing Advisory Board, and the Planning Board for written advisory reports to the Board of Appeals.

(2) The Housing Advisory Board shall convene a meeting within ten days of its receipt of the application to review the application and plans for compliance. The applicant shall be invited to attend such meeting.

(3) The Housing Advisory Board shall prepare a report which shall be provided to the Board of Appeals and the Planning Board. This report shall evaluate the application and plans for compliance, and shall include the Housing Advisory Board’s recommendations, if any, for specific conditions and/or further requirements.

(4) The Planning Board convene a meeting within ten days of its receipt of the application to review the application and plans for compliance. The applicant shall be invited to attend such meeting.

(5) The Planning Board Board shall prepare a report which shall be provided to the Board of Appeals. This report shall evaluate the application and plans for compliance, and shall include the Planning Board’s recommendations, if any, for specific conditions and/or further requirements.

(6) The Board of Appeals may grant a special permit for pursuant to this Section 4.40 where the applicant provides affordable housing consistent with the standards set forth above. The Board of Appeals shall consider the reports of the Planning Board and the Housing Advisory Board in making its decision, and shall explain any deviation from such report(s) in writing in its special permit decision. The Board of Appeals may require modifications, conditions, and safeguards, including documentation regarding affordability and funding commitments reasonably related hereto.

(i) Guidelines.

The Board of Appeals, in consultation with the Housing Advisory Board and the Planning Board, and after public notice and hearing, shall adopt Guidelines to aid in the interpretation and determination of the requirements of Section 4.40.
Rate of Development & Subdivision Phasing
December 6, 2003

With changes from the 11/26/03 version indicated

ARTICLE ____. TO SEE IF THE TOWN WILL VOTE TO AMEND THE ZONING BY-
LAWS BY DELETING EXISTING SECTION 218-28 AND BY SUBSTITUTING THE
FOLLOWING THEREFOR:

SECTION 218-28 RATE OF DEVELOPMENT

A. Purpose. The purpose of this section, "Rate of Development," is to promote orderly growth
in the Town, consistent with the average rate of residential growth over the period 1999-2003, to
phase growth so that it will not unduly strain the community's ability to provide basic public
facilities and services, to provide the Town, its boards and its agencies information, time, and
capacity to incorporate such growth into the Master Plan for the community, and to preserve and
enhance existing community character and the value of property.

B. Applicability; Subject Dwellings. This Rate of Development By-law shall apply to the
issuance of a building permit for any dwelling unit with three or more bedrooms (hereinafter, a
Subject Dwelling). Beginning on the date of adoption of this section, the Town shall issue only
fifty-six (56) building permits for the construction of Subject Dwellings in any calendar year
(hereinafter, the annual rate of development), prorated for the remainder of calendar year 2004.
Forty-two (42) of such permits shall be reserved for Subject Dwellings located within any Major
Residential Development granted a special permit after the effective date of this by-law. The
remaining fourteen (14) such permits shall be reserved for Subject Dwellings not located within
a Major Residential Development granted a special permit after the effective date of this by-law.

C. Interpretation. For the purposes of this section, where otherwise applicable a duplex shall
constitute two Subject Dwellings and a multifamily dwelling shall constitute the number of
Subject Dwellings contained therein; the conversion of a single-family to a two-family dwelling
shall be deemed the creation of one Subject Dwelling.

D. Exemptions. The issuance of a building permit for a dwelling unit in any of the following
circumstances, regardless of the number of bedrooms in the dwelling, is exempt from the annual
rate of development and the issuance of such building permit shall not be used in any
computation of the annual rate of development:

1. The alteration, enlargement, restoration, or reconstruction of a dwelling existing
   on a lot as of the date of adoption of this section.

2. The construction of one (1) new dwelling on a lot in existence as of the date of
   adoption of this section where such lot was held in separate ownership from any
   adjacent land. The burden of proof shall be upon the applicant for such permit to
demonstrate that the lot in question (a) was in existence as of such date, and (b) that no adjacent land was held in common ownership or control.

3. Any dwelling unit restricted by deed for persons or households over the age of fifty-five (55).

4. Any dwelling unit restricted by deed to persons or households of low or moderate income, as defined by the Commonwealth's Department of Housing and Community Development.

5. Any dwelling unit for sale or for rent containing one or two bedrooms only;

6. Any dwelling unit in a Flexible Development established pursuant to the provisions of Section 218-4, governing "Transfer Lots".

E. Special Permit Exemption. The Planning Board may, by the grant of a special permit, determine that the issuance of building permits for any tract of land divided or subdivided pursuant to any provision of G.L. c. 41, ss. 81K - 81GG, the Subdivision Control Law, is exempt from the annual rate of development and the issuance of such building permits shall not be used in the computation of the annual rate of development. Such special permit shall be granted only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on

1. schools and other public facilities;

2. traffic and pedestrian safety;

3. recreational facilities, open spaces, agricultural resources, and unique natural features; and

4. conformance with Master Plan or Growth Management Plans prepared by the Planning Board pursuant to G.L. c. 41, s. 81D.

Particular consideration shall be given to special permit applications that demonstrate a reduction in allowable density of twenty-five percent (25%) or more. The Planning Board may engage a qualified economic analyst, at the expense of the applicant, to assist the Board in making its required finding.

F. Procedures. Building permits shall be issued in accordance with the following procedures:

1. The Building Inspector shall act on each permit application in order of submittal. Any permit application that is that is denied because the Town has reached the annual rate of development shall be denied in writing for that reason, with the date of such denial clearly marked thereupon.

2. The Planning Board shall maintain a list of such denied permit applications, in the
order of such denials. An applicant denied a building permit because the Town has reached the annual rate of development may request, in writing, that such denial be registered with the Planning Board.

3. On or before January 5th, the Planning Board shall transmit to the Building Inspector its list of permits denied because the Town reached the annual rate of development.

4. The Building Inspector shall first issue building permits to otherwise qualified applicants from the Planning Board’s list.

5. Any building permits not issued in any calendar year shall not be available for issuance in any subsequent year.

G. Time Limitation and Extension. This section shall expire on ______, 2____; provided, however, that this section may be extended without lapse of its provisions and limitations, by vote of the Town Meeting prior to such date.
SECTION 218-28.1. SUBDIVISION PHASING

A. Purpose. The purpose of this section, "Subdivision Phasing," is to ensure that the development of dwelling units with three or more bedrooms within a division or subdivision of land created after the effective date of this Section shall be phased so as not to unduly strain the town's ability to provide public facilities and services; to avoid disturbance of the social fabric of the community; to maintain the community's desired rate of growth; and to provide the town an opportunity to study growth and plan accordingly.

B. Applicability. Any tract of land divided or subdivided pursuant to any provision of G.L. c. 41, ss. 81K - 81GG, the Subdivision Control Law, after the effective date of this Section shall be subject to the provisions of this Section (hereinafter, a "Subject Property"). Any proposed division or subdivision of a single tract or a combination of adjacent tracts which were in the same ownership as of the date of the adoption of this section shall be deemed a Subject Property.

C. Phasing. The issuance of building permits in any calendar year for a dwelling containing three or more bedrooms on a Subject Property shall not exceed ten (10%) percent of the total number of building permits to be issued in that year as established in the annual rate of development set forth in Section 218.18.B (hereinafter, the "annual phasing quota").

D. Exemptions. Dwelling units set forth as exempt in Section 218-28.D shall also be exempt from the provisions of this Section.

F. Special Permit for Relief from Annual Phasing Quota. The Planning Board, by grant of a special permit, may authorize the issuance of building permits for dwelling units with three or more bedrooms within a division or subdivision of land created after the effective date of this Section on a Subject Property in excess of the annual phasing quota, or, in the alternative, exempt the Subject Property from the annual phasing quota. The Planning Board may grant such special permit only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on

a. schools and other public facilities;

b. traffic and pedestrian safety;

c. recreational facilities, open spaces, agricultural resources, and unique natural features;

d. conformance with Master Plan or Growth Management Plans prepared by the Planning Board pursuant to G.L. c. 41, s. 81D.

Particular consideration shall be given to special permit applications that demonstrate a reduction in allowable density of twenty-five percent (25%) or more. The Planning Board may engage a qualified economic analyst, at the expense of the applicant, to assist the Board in making its required finding.

F. Special Permit for Larger Land Divisions. Where the tract of land will be divided into more than the number of lots in the annual rate of development, the Planning Board may, by special
permit, authorize development at a rate not to exceed ten percent (10%) of the units per year.

G. Zoning Change Protection. The protection against subsequent zoning change granted by G.L. c. 40A, §6 to land in a subdivision shall, in the case of a development whose completion has been constrained by this section beyond eight (8) years, be extended to ten years.

H. Relation to Real Estate Assessment. Any land owner denied a building permit because of these provisions may appeal to the Board of Assessors, in conformity with G.L. c. 59, §59, for a determination as to the extent to which the temporary restriction on development use of such land shall affect the assessed valuation placed on such land for purposes of real estate taxation, and for abatement as determined to be appropriate.