

# Rocky Mountain Land Use Institute

**“Let it Be”**

**-- Rethinking Non-Conformities**



**Rocky Mountain Land Use Institute  
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Jim Lindberg, National Trust  
David Theriaque, Theriaque & Spain**

## The Panel

### Don Elliott, FAICP

- Planner/Lawyer, Senior Consultant, Clarion Associates
- A Better Way to Zone

### James Lindberg

- Senior Field Officer, National Trust for Historic Preservation

### David Theriaque

- Founder and Partner, Theriaque & Spain, Tallahassee, FL
- The Board of Adjustment, Easley & Theriaque



# Outline

- **What are Non-Conformities?** Don
- **How do we Treat them Now?**
- **Why is that Wrong?** Jim and Don
  - Sustainability
  - Efficiency
  - Administration
  - Social Equity
- **Is There a Better Way?** Neil
  - Of course there is



# What are Non-Conformities

Aspects of development or land use that were legal when they were built, but have since become illegal because of changes in government regulation

- Example: A three story building that was legal before City Council adopted changes that lowered the maximum height to two stories.
- Example: A 5,000 square foot lot that was legal when it was platted before the County Commissioners raised the minimum lot size to 6,000 sq. ft.

Does NOT include construction, use, or platting that was illegal from the start



# What are Non-Conformities

## Five Flavors

### Land Use



### Signs



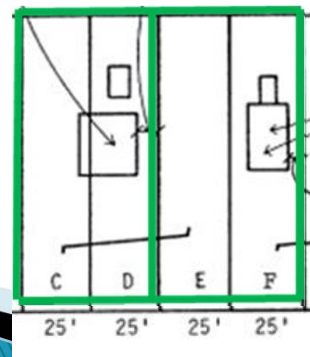
### Structures



### Site Features



### Lots



## How do we Treat them Now?

### The Basic Answer was developed for NC Uses and Structures

- “Zoning Parole” – you can continue doing the use or occupying the structure, and others can buy them or lease them from you and do the same, but:
  - You cannot expand them;
  - You cannot make the nonconformity worse;
  - If you stop doing the use or occupying the structure for more than X years, you cannot restart it later; and
  - If they burn or are destroyed beyond Y%, you cannot replace them – the replacement must meet the current code standards.





# How do we Treat them Now?

## Exceptions to the Basic Answer for NC Uses and Structures

- CA (and other states) affordable housing exception
  - . . . “provided, however, that affordable housing units damaged or destroyed may be replaced by an equal number of affordable housing units.”
- The “Not–nonconforming” fudge
  - “No new residential development will be permitted in this district. However, the existing residential development will not be considered non–conforming.”



# How do we Treat them Now?

## Two Other Answers for Special Cases

### “Let it be”

- NC Lots:
  - Consolidate if possible – if not then “Let it be”  
i.e. You can usually build a house on a platted lot

### “Fix it”

- NC Signs (and sometimes Site Features):
  - Fix it within X years
  - Or . . . if you’re investing in the property for any other reason, you need to fix this too.





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## Questions and Discussion

