Reshaping Development Patterns
Addressing Development Entitlements & Zombie Subdivisions Throughout the Intermountain West

Western Lands and Communities
A Lincoln Institute of Land Policy & Sonoran Institute Joint Venture

Rocky Mountain Land Use Institute
“The Next West”
20th Anniversary Conference
Denver
March 4, 2011
Reshaping Development Patterns
Addressing Development Entitlements & Zombie Subdivisions Throughout the Intermountain West

Jim Holway – Moderator & Project Overview
What are Entitlements – Why are they an Issue

Don Elliott – Legal & Planning Frameworks
Types of Entitlements – Legal & Planning Tools to Address Them – Policy Issues

Anna Trentadue – Teton County Case Study
Local Situation – Efforts to Address Entitlements – State Enabling Authority

--------Discussion--------
Reshaping Development Patterns

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Project Sponsors

( so far …)

Lincoln Institute of Land Policy
Orton Family Foundation
George B. Storer Foundation
Sonoran Institute
1 % For The Tetons
Huntsman Springs
Reshaping Development Patterns

Partners
( so far …)

- Sonoran Institute
- Lincoln Institute of Land Policy
- Valley Advocates for Responsible Development
- University of Utah Metropolitan Policy Center
- Orton Family Foundation
- Teton County, Idaho
- Teton Regional Land Trust
- Friends of the Teton River
- Land Equity Partners
- Trout Unlimited
- Garfield County, Colorado
Reshaping Development Patterns

Jim Holway, Ph.D. AICP
Director, Western Lands and Communities
A Lincoln Institute of Land Policy & Sonoran Institute Joint Venture
Reshaping Development Patterns
Addressing Development Entitlements & Zombie Subdivisions in the Intermountain West

Development Entitlements .... What are they?
Are they a Problem .. an Issue in your Community?

Project Objectives & Future Directions
Premature vs. Obsolete .... vs. Zombie Subdivisions

- **Entitlement Issues**
  - Cumulative Impacts
  - Market Distortions – Reduce Property Values
  - Tie up Resources (assured water supply)
  - Reduce Ability to Plan & Adjust

- **Premature Subdivision Issues**
  - Land Use Commitments
  - Servicing Costs – Fiscal Impact
  - Blight
  - Changing Standards

- **Obsolete Subdivision Issues**
  - Public Safety
  - Community Quality
  - Environmental Damage

adapted from Don Elliott – Clarion & Associates
Is this a problem in your community???
Layoffs and Option ARM resets will keep foreclosure starts at or above 2 million through 2012.

**U.S. Annual Foreclosure Starts (NOD) Forecast**

- Economy-related Foreclosure Starts (JBREC)
- Foreclosure Starts from ARM Resets (JBREC)
- Baseline Foreclosure Starts (JBREC)

*Source: John Burns Real Estate Consulting using Mortgage Bankers Assoc and other data*
Recovery Predictions

Kelsey & Norden 2009

**SORTED BY GEOGRAPHY**
When do you think resort real estate sales in your market will begin to recover?

- **It already has!**
  - NE: 10%
  - NW: 8%
  - SW: 14%
  - All: 11%

- **First Half of 2010**
  - NE: 4%
  - SE: 6%
  - NW: 4%
  - SW: 3%

- **Second Half of 2010**
  - NE: 17%
  - SE: 24%
  - NW: 22%
  - SW: 16%
  - All: 37%

- **2011**
  - NE: 15%
  - SE: 18%
  - NW: 22%
  - SW: 19%
  - All: 47%

- **2012**
  - NE: 2%
  - SE: 6%
  - NW: 8%
  - All: 40%

- **2013**
  - NE: 0%
  - SE: 0%
  - NW: 8%
  - All: 5%

- **2014**
  - NE: 4%
  - SE: 0%
  - SW: 0%
  - All: 14%

**Legend:**
- Northeast U.S.
- Southeast U.S.
- Rocky Mountain U.S.
- Northwest U.S.
- Western Sunbelt / California U.S.
- All Participants
TETON VALLEY MARKET STATISTICS
Residential Lot Sales (2001-2010*)

* Data for 2010 as of 02/26/10

Land Equity Partners
Pinal County - Total Units and acres (2009):

- Active: 140,828 (39,848 acres)
- Under Construction: 8,195 (2,380 acres)
- Entitled: 623,010 (184,763 acres)
- Tentative Plat: 28,667 (8,396 acres)

Existing Housing & Population (2007):

- Total Dwelling Units: 142,677
- Occupied Dwelling Units: 105,316
- Population: 326,398

CAAG 2007, 2009
Existing Housing & Population

• Total Dwelling Units = 142,677

• Occupied Dwelling Units = 105,316

• Population = 326,398

CAAG 2007
Legal Issues

Types of Entitlements

- Very hard to categorize, because each state allows different steps in platting, infrastructure, selling lots
- Example – some states require recording of final plat before site construction or lot sales; others require infrastructure installation before recording final plat.
Paper Plats and Partial Performance Plats

Development Agreement Only
(no plat filed)

Preliminary Plat Approved

Final Plat Approved

One or Few Owners

Many Owners

No Improvements
(True “Paper Plats”)

Some Improvements

No Improvements

Some Improvements

No or Few Homes Built

Many Homes Built

Not very easy to address

Much harder to address

No or Few Homes Built

Many Homes Built

Not very easy to address

Much harder to address
What to do about them

- Major concerns of elected officials
  - Lot Owner Rights
  - Lot Access
  - “Equal Treatment”

- Major legal powers Involved
  - Subdivision powers
  - Zoning powers
  - PUD powers
  - Development agreements
  - Others (unique to each state)
Unresolved Legal Issues

- Interpreting statutory silence on how these powers work together
  - Police power principles for zoning and subdivision
  - Contract principles for PUDs and agreements
  - Principles of “reliance”, “estoppel, and “vesting”

- The contract question
  - It is not exactly clear when a local government can alter a negotiated contract to which it is a party
  - Elected officials have less authority to bind successors
  - PUDs cannot be forever, but when can they be changed
Four Potential Legal Claims

That may arise from attempts to “Reshape Development”

- Lack of Authority
  - Statutes *assume* but do not *say* that plats are forever

- Vested Rights in the Plat
  - Common law and statutory vesting

- “Taking” Property Rights
  - Physical vs. regulatory takings

- Violations of Procedural Due Process
  - Legislative vs. quasi-judicial actions
Tools to Reshape Development

- Four Types of Tools
  - Economic Incentives
  - Purchasing Land or Property Rights
  - Regulating the Land
  - Growth Management
## Four Types of Tools

1. **Economic Incentives**

<table>
<thead>
<tr>
<th>Replatting Fee Waivers</th>
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</thead>
<tbody>
<tr>
<td>Streamlined Voluntary Replatting Process</td>
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<tr>
<td>Voluntary Development Delay Agreements</td>
</tr>
<tr>
<td>Targeted Infrastructure Funding</td>
</tr>
<tr>
<td>Development Impact Fees</td>
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<tr>
<td>Transfer of Development Rights (TDR) Programs</td>
</tr>
<tr>
<td>Facilitation of Redesign or Consolidation</td>
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</tbody>
</table>
## Four Types of Tools

### 2. Purchasing Land or Property Rights

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<table>
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<tbody>
<tr>
<td>Voluntary Sales</td>
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<tr>
<td>Conservation Easements and Deed Restrictions</td>
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<tr>
<td>Land Swaps</td>
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<tr>
<td>Eminent Domain</td>
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</tbody>
</table>
# Four Types of Tools

## 3. Regulating the Land

| Plan Consistency Requirements |
| Plat Lapsing                  |
| Plat Vacation                 |
| Replatting                   |
| Changing Subdivision Standards|
| Changing Zoning Standards     |
| Changing the Zoning Map(s)    |

![Diagram](image-url)
Four Types of Tools

<table>
<thead>
<tr>
<th>4. Growth Management</th>
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</thead>
<tbody>
<tr>
<td>Urban Service Areas</td>
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<tr>
<td>Adequate Public Facility Ordinances</td>
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Choosing the Right Tools

Be clear about WHY you are doing this

- Preserving land values & economy?
- Land & habitat conservation?
- Improving quality of layout/lots?
- Reducing lots?
- Rationalizing growth patterns?
  - Avoiding early commitment of resources
  - Equity among property owners

Knowing WHY you are doing this will help determine WHICH TOOLS you should use

adapted from Don Elliott – Clarion & Associates
Proper Tools Depend on Your Purpose

<table>
<thead>
<tr>
<th>POTENTIAL TOOLS</th>
<th>Goal</th>
<th>Phase Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Well Suited –</td>
<td>Improve Quality</td>
<td>Paper Plat</td>
</tr>
<tr>
<td>☐ May be Usable</td>
<td>Reduce Lots</td>
<td>Partial Performance</td>
</tr>
<tr>
<td>○ Probably Not Usable</td>
<td>Rationalize Growth Patterns</td>
<td></td>
</tr>
<tr>
<td>Economic Incentives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Replatting Fee Waivers</td>
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<td>Voluntary Development Delays</td>
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<td>●</td>
</tr>
<tr>
<td>Targeted Infrastructure Investments</td>
<td>●</td>
<td>●</td>
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</tbody>
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- Different phases may need different tools
- Partially developed subdivisions need different tools than paper plats
Keys to Reduce Liability

- **Research** the history and facts – particularly lot ownership patterns and agreements
- **Cite** as many sources of land use authority as possible.
- **Avoid** actions that are prohibited by statutory or common law vested rights.
- **Leave** each property owner with a reasonable economic use of his or her property taken as a whole.
- **Scrupulously follow and document** each step required by state law and your own regulations.
But Don’t Be Too Shy

- See silence on complex, intertwined legal issues as an opportunity.
- No court may have said “yes” – but the issues are so complex that no court may have said “no” yet.
- Courts have generally been fairly willing to interpret local governmental powers broadly when it is clear that the government is addressing a significant problem in a way that is both procedurally and substantively fair.
The Next Layer of Research

1. Effect of Development Agreements on powers to Reshape Development

2. Effect of Restrictive Covenants on powers to Reshape Development

3. Fair Tax Treatment of Parcels Where Lots are Made Less Developable
Reshaping Development Patterns

Anna Trentadue
Staff Attorney & Program Associate
Valley Advocates for Responsible Development
Nevada: REVERSION TO ACREAGE

An abbreviated re-platting process whereby an owner, or a governing body can revert any recorded subdivision map into “large” agricultural parcels.

“large” is not defined within that statute, BUT

“large” is defined elsewhere in the code as 40-acres

(unless local governments choose to define it as 10 acres)

BONUS: Reversion to Acreage can also be used to combine parcels.

Parcels > 640 acres are totally exempt from these requirements
Goal: Vacate or Abandon Plat

Arizona: State mandates cities and counties to adopt a process, but no specific direction or criteria.
  → Process can vary greatly

Colorado: No specific vacation procedures except in the context of PUDs
  → Process can vary greatly

Idaho: Detailed notice, process, and appeals procedures which apply to both cities and counties.
  → Provides clarity, but can be onerous

Nevada: 2 different procedures specific to cities

1. The process for vacating an entire city plat must be initiated by the city as an action in the District Court of Nevada with the city listed as a plaintiff.

2. If only a portion of the city’s plat is to be vacated, any owner of platted land in an incorporated city may make application in writing to the city council to conduct a public hearing on the vacation.
Concluding Points & Discussion
We think development entitlements far in excess of demand are a key issue throughout the west … and the current economy provides an opportunity to address them
No Magic Bullet
But Frameworks & Best Practices

Lincoln & Sonoran
no set answers or agendas
facilitating local processes & research
disseminating the lessons learned
Reshaping Development Patterns

Next Steps

• Background Research
• Experts Convening
• Case Studies
• New Working Papers
  State Enabling Authority, Westwide Survey of Entitlements, Future Markets & Economic Base Studies, Fiscal Impacts, Best Practices, Case Study Lessons, etc.
• Synthesis – Lessons Learned & Policy Options
• Seeking additional Funders & Partners ????
• Publish & Disseminate

Google “Western Lands and Communities” … click on Reshaping Development Patterns