Addressing Development Entitlements in the West: Distressed, Zombie, and Premature Subdivisions

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

2013 RMLUI Annual Conference
“Land Use for a Lifetime”
Denver, Colorado
March 8, 2013
Peter Pollock
Why is this a problem? How extensive is it?

Jillian Sutherland
What do planners, developers, and lenders think about the problem?
What are the specific challenges we’re trying to deal with?
How are communities responding?

Don Elliott
How can communities avoid these problems?
What are the legal & planning tools that can be used to deal with specific entitlement problems?

--------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
Premature vs. Obsolete .... vs. Zombie Subdivisions

- 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
Paper Plats and Partial Performance Plats

Development Agreement Only
(no plat filed)

Preliminary Plat Approved

Final Plat Approved

One or Few Owners

Some Improvements

No Improvements

(True “Paper Plats”)

Not very easy to address

Some Improvements

No Improvements

No or Few Homes Built

Many Homes Built

Many Owners

Not very easy to address

Much harder to address
Planner - Developer – Lender Survey
Preliminary & Partial Results

- Ongoing survey – Initiated Feb 13th – Close on March 15
  - 283 respondents as of March 1
  - 33% AZ, 20% CO, 26% other IMW
    - 66% Public Agency Staff
    - 13% Attorney/Consultant
    - 8% NGO
    - 9% Developer/Builder/Landowner
  - 53% City or Town .... 28% County
  - Population, a broad spread
  - Suburb 35% .. Rural 23% .. Central City 15% .. Exurb 10%
Planner - Developer – Lender Survey

– Relative importance in driving growth & construction (major or moderate importance)
  • Job growth in community - 69%
  • Job growth neighboring community - 59%
  • 2\textsuperscript{nd} home construction - 41%

– Was home construction primarily driven by current housing demand or speculative building?
  • Current housing demand - 27%
  • Speculative building - 26%
  • Both equally - 47%
Planner - Developer – Lender Survey

• Development cycles over last 10 years
  – 66% had boom & bust cycle … of these
    • 28% very severe
    • 41% severe
    • 2% very slight … and … 28% moderate
  – How long for housing development levels recover
    • 10% Already recovered
    • 9% Within the year
    • 60% 2 to 5 years
    • 21% Longer
Why is this a problem?

- Health and safety – e.g., wildfire.
- Blight
- Impact on individual homeowners
- Fiscal impacts
- Smart growth
- Tying up resources, e.g., water
- Impact on housing markets
What issues are a major problem in your jurisdiction
(from a list of 17 issues the top – (moderate or major problem))

- Number of vacant platted lots - 42%
- Large unfinished subdivisions - 40%
- Owners & lenders not adjusting for lost value - 39%
- Negative impacts on individual homeowners - 31%

Lowest level of concern

- Health & Safety concerns due to unfinished subs
  (48% not a problem, 21% moderate or major problem)
Entitlements Data
Target Counties
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<td>Ada County</td>
<td>30.40</td>
<td>392,365</td>
<td>5460</td>
<td>151319</td>
<td>127451</td>
<td>16%</td>
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<td>Teton County</td>
<td>69.50</td>
<td>10,170</td>
<td>403</td>
<td>10225</td>
<td>3300</td>
<td>68%</td>
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<td>Jefferson County</td>
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<td>Canyon County</td>
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<td>Lemhi County</td>
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<td>Kootenai County</td>
<td>27.40</td>
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Bozeman - Helena
Planner - Developer – Lender Survey

• Number of vacant parcels in your jurisdiction(s)
  – None 2%
  – Very few 25%
  – Moderate number 42%
  – Many 32%
Is this a problem in your community???
Addressing Development Entitlements in the West: Distressed, Zombie, and Premature Subdivisions

Jillian Sutherland, Sonoran Institute
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
Teton Valley, Idaho

7,030 vacant platted lots in the unincorporated county

77% vacancy

Incorporated areas another approx 1,674 lots

Source: Valley Advocates for Responsible Development
Vacant Lots vs. Building Permits

8,704 Vacant Lots

2009: 26
2010: 18
2011: 7

Source: Valley Advocates for Responsible Development
Plat Vacation

• Plats can be vacated if:
  – No lots have been sold
  – There are no outstanding property taxes

• To date, 197 lots have been vacated on 510 acres
Reshaping Targhee Hill Estates

- No meaningful open space
- High carrying costs
- High infrastructure costs
- High water consumption

Source: Valley Advocates for Responsible Development
- 75% Open space
- Protected creek corridor
- Lease water rights in stream
- Lower infrastructure and carrying costs

Source: Valley Advocates for Responsible Development
Challenges thus far……..

• Lack of replatting ordinances and policies
• Scarcity of financing
• Getting bank approval for plat changes → Banks are reluctant to understand the benefits of change
• Determining rights of the 6 individuals/entities who own 18 lots as platted in Phase 1

MARKETABILITY?
## Pinal County - Total Units and Acres (2009):

<table>
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<th>Category</th>
<th>Total Units</th>
<th>Acres</th>
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<tr>
<td>Active</td>
<td>140,828</td>
<td>(39,848)</td>
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<tr>
<td>Under Construction</td>
<td>8,195</td>
<td>(2,380)</td>
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<tr>
<td>Entitled</td>
<td>623,010</td>
<td>(184,763)</td>
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<tr>
<td>Tentative Plat</td>
<td>28,667</td>
<td>(8,396)</td>
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Nearly **FIVE TIMES** the Amount of the Current Stock
Existing Housing & Population

• Total Dwelling Units = 159,222
• Occupied Dwelling Units = 125,590
• Vacant Dwelling Units = 33,632

Source: US Census 2010
Building a New City: Maricopa, AZ

• Problems:
  – Market demands/rural land use controls
  – Lack of options
  – Private non-profits/faith based
  – Public amenities

• Opportunities (downturn):
  – Available land and infrastructure
  – Desire to sell/open to suggestion
Current Problems

- Inactive development
  - Aesthetics
  - Blight
- Bankruptcy (Finances)
  - Changing ownership
  - Capacity
- Mass grading (disturbed land)
Current Problems (Cont’d)

• Degrading infrastructure
• Lack of traffic
• Lack of maintenance
  – Flood control
  – Roadways
  – Wet utilities
  – Air quality/water quality
• Maintenance costs (city/utilities)
Current Problems (Cont’d)

• Trespass/vandalism/theft
• Expiration of financial assurances
• Difficulty drawing and implementing assurances
• Difficulty acquiring assurances
  – Less providers
  – Qualification
  – Expense
Glennwilde Parcel 17

Case Study-1
Catholic Church
Glennwilde Parcel 17
Replat & Deannexation
Smart Growth/ Form-Based Design
Mesa County, Colorado

400 subdivisions containing 4,000 lots were left with outstanding development improvement agreements.

20% of County Subdivisions = Negative effect on bond rating
The Solution – Prevention!

- Development Improvements Agreement
  - Minimum of 6 lots platted in each filing
  - Maximum number of lots tied to infrastructure
  - Construction must start within 12 months of final plat to avoid re-plat into “parent lot”
The Solution – Prevention!

- Subdivision Disbursement Agreement
- Financial guarantees
- Agreement between the financial institution and the County
- Lender ‘sets aside’ portion of construction loan to guarantee the itemized cost of the improvements in the Development Improvements Agreement
The Results

- Lowest subdivision vacancy rate out of all Colorado counties investigated
- Better immunity to the implications of boom and bust cycles
- Ability to follow true market demand
Addressing Development Entitlements in the West: Distressed, Zombie, and Premature Subdivisions

Don Elliott, FAICP
Senior Consultant
Clarion Associates
Planner - Developer – Lender Survey

What Led to Excessive Entitlements

• 76% Market demand & speculative building
• 57% Easy & low cost mortgage financing
• 49% Local regulatory atmosphere for development approvals
• 38% Planning & zoning practices
• 33% Local lending practices
• 33% National housing finance policies & procedures
• 11% State & local tax structure
Preventing the Problem in the First Place

1. Comprehensive Plan language addressing the need to avoid entitling development very far in advance of market demand

2. A good Development Agreement template
   - Timeframes for development / lapsing of approvals
   - Phased sale provisions tied to percentage sale of earlier phases and infrastructure installation
   - Mechanisms for not finalizing, or for vacating, phases of plats that remain undeveloped for X years beyond timeframe
   - Requiring improved Development Assurances
Preventing the Problem in the First Place

3. Require market feasibility study based on documented historical building (not lot sales) rates and patterns, and considering existing inventory of lots

4. Add criteria for subdivision approval related to:
   - Existing inventory of lots within X miles
   - Distance between subdivision and existing roads and utilities
Addressing Existing Problems

1. Evaluate your Community Capacity

2. Evaluate each subdivision (or phase or a subdivision) separately to identify
   • The specific **problems** that it creates
   • The **tools** that might be available to address that problem
   • Your community’s **capacity** to use the available tools in that location
Addressing Existing Problems

1. Evaluating your Community Capacity
   • Perceived seriousness of the problem
   • Staff capacity to prepare and administer revised regulations and volume of anticipated new work
   • Political will to:
     • Revisit – or sunset – past approvals?
     • Rezone property?
     • Vacate portions of a plat?
     • Add a new approval step between subdivision approval and building permits
Addressing Existing Problems

By analogy to the RMLUI Sustainable Development Framework – Capacity tic-tac-toe

<table>
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<th>Bronze</th>
<th>Silver</th>
<th>Gold</th>
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<tbody>
<tr>
<td>Remove Barriers</td>
<td>X ?</td>
<td></td>
<td></td>
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<tr>
<td>Create Incentives</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adopt Regulations</td>
<td>X ?</td>
<td></td>
<td>X ?</td>
</tr>
</tbody>
</table>

Rank your community Low – Med – or High
1. Each Subdivision (or Phase) Separately

- Development Agreement Only (no plat filed)
  - Preliminary Plat Approved
    - Final Plat Approved
      - One or Few Owners
        - No Improvements (True “Paper Plats”)
          - Not very easy to address
      - Many Owners
        - Some Improvements
          - Much harder to address
        - No Improvements
          - No or Few Homes Built
            - Many Homes Built
          - Some Improvements
Addressing Existing Problems

2.a Subdivision Phase Evaluation

“What problems does it cause?”

- Health and Safety?
- Blight (no maintenance)
- Homeowner Impacts
- Fiscal (service costs)
- Un-Smart Growth (scattered/sprawl)
- Resources (ties up water rights)
- Market (saturates sales market)
Addressing Existing Problems

2.a Subdivision Phase Evaluation

“Does Solving those Problems Require you to Focus on:

- **Numbers** -- Reducing the number of lots?
- **Location** -- Reconfiguring the lots to safer/better/more efficient locations without reducing their number?
- **Quality** -- Imposing additional standards to ensure better minimum quality/service requirements are met?
Addressing Existing Problems

2.b Subdivision Phase Evaluation

“What Tools Might Make that Happen?”

• Four categories
  • Economic Incentives
  • Purchasing Land or Rights
  • Revising Land Use Regulations
  • Adopting Growth Management

• Original (2009) List of 20 Tools:
  • Grew to 48, then
  • Shrank to 5 most likely to be effective at addressing common problems
Addressing Existing Problems

Priority Tools

1. Facilitating Redesign and Lot Consolidation / Streamlined Voluntary Replatting

   • Waive the platting fees
   
   • Use staff (or county contractors) to identify most inefficient, unsafe, unsustainable portions of the subdivision and vacate those portions while granting the owner additional rights/density in portions of the development with better location and infrastructure
Addressing Existing Problems

Priority Tools

2. Plat Lapsing Regulations

- Adopt regulations providing that if infrastructure is not installed per the development timetable (or within X years of the ordinance), unbuilt and unserviced lots are subject to vacation by the BOCC (though access to sold lots will be maintained) and include a plat note to that effect.
Addressing Existing Problems

Priority Tools

3. Revise Zoning or Subdivision Regulations

- Adopt additional health and safety regulations if necessary to keep houses off unsafe lands and areas
- Adopt larger lot sizes if necessary
- Adopt requirements for adequate servicing of roads/infrastructure as precondition for building permit
Addressing Existing Problems

Priority Tools

4. Improved Development Assurances

- Require additional assurances of road/infrastructure development and maintenance prior to additional lot sales
  - Performance bond or
  - Lot sales agreements or
  - Revised development agreement

- Or impose these only on the most problematic lots
Addressing Existing Problems

Priority Tools

5. Transfer of Development Rights

• Require that new subdivisions – or new/better located portions of an existing subdivision -- “retire” some of the most problematic old lots as a condition of final plat approval, or prior to lot sale
Addressing Existing Problems

But Watch Out

• All but the first of these tools (voluntary/assisted replatting) are likely to be very unpopular with the current owner of the undeveloped portions of the subdivision – and probably also with the current residents.

AND

• You always have to include a relief valve for owners of individual lots who will have no reasonable economic use of their land remaining if they are not allowed to build a house on it.
From the list of 48 potential tools, we asked if they were used and if so how effective were they in addressing development entitlement issues

Tools cited most often as effective or very effective

- 68% General Plan
- 64% Requiring consistency with General Plan
- 57% Development agreement templates
- 53% Development assurances – development holds
- 51% Development assurances – bond and letter of credit
- 51% Development agreement – deadline/extension criteria
- 51% Record keeping / GIS system
Planner - Developer – Lender Survey

Tools that have rarely been used
*but considered effective by those who use them*

– Streamlined voluntary replatting
– Replatting fee waivers
– Public / private partnerships to facilitate resolving issues
– Targeted infrastructure investments
– Adoption of a strategy to address distressed subdivisions
– Fiscal impact evaluation and planning systems
– Required public reports & subdivision condition disclosure
Concluding Points & Discussion
Addressing Excess Development Entitlements: Lessons from the West on Distressed, Zombie, & Premature Subdivisions

www.ReshapingDevelopment.org

- Take the survey
- Access more information
- Look for final Policy Focus Report