



TOWN OF FAIRFAX

STAFF REPORT

August 16, 2018

TO: Planning Commission

FROM: Ben Berto, Director of Planning and Building Services

SUBJECT: Planning work program and priorities for Fiscal Year 2018-19

RECOMMENDATION

Review the Town Council's recommendations and provide direction on the work program

BACKGROUND-OVERVIEW

The Town Council provided direction to the Planning Commission and staff at the Council's August 1, 2018 meeting.

The Fairfax 2010-2030 General Plan, adopted by the Town Council in April 2012, listed 319 programs for which the Planning Commission (PC) and planning staff were assigned responsibility for implementing. The Planning Commission and staff systematically reviewed those programs and the Commission recommended their highest priorities.

Current planning - the processing of development applications by private property owners – occupies the majority of the Planning Commission and staff's time and focus. The recent departure of the part-time Assistant Planner means that her workload has to be redistributed to the two remaining staff planners. While hopefully only on an interim basis, this further expands predominance of current planning in the overall workload.

Four non-General Plan oriented work program will dominate the Commission and staff's available efforts: review of the Marinda Heights subdivision of the "Wall" Property, cannabis regulations, maximum house size regulatory overview, and Town regulatory responses to the State's ongoing production of new housing legislation,

The Council is aware of the challenges faced by staff and the Commission in making meaningful progress on major topical areas. To assist this, the Council supported certain Town Zoning Code amendments clarifying and simplifying procedures, which will be discussed below.

DISCUSSION

This report provides a work program outline consistent with Town Council direction.

Objective Development Standards for Housing

The top priority set forth by the Council is to develop objective development and design standards for housing in response to state legislation.

At the June 6th Town Council meeting, Heather Lee of the Town Attorney's office presented a comprehensive overview of the State's extensive housing legislation, particularly Streamlining Local Approval (SB 35) and the Housing Accountability Act (AB 678, AB 1515, SB 167), the latter which includes the express goal of "effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects".

The new statutes mandate that any local governmental development review decision to deny or reduce the density of any proposed housing development must be based on "objective development standards". While some of these standards might be straightforward and appropriate (for example, setbacks, height limits, floor area ratio, etc.), the new restrictions on local discretionary review severely limits the Town's ability to apply discretionary review guidelines and policies that heretofore effectively addressed site and other development constraints and reflected hard-won and long-established community norms.

The net effect of the new statutes is to increase the likelihood of housing development projects being approved, and at the developers' applied-for density so long as the projects are consistent with the underlying zoning, whatever 'objective development standards' are in place, and can pass CEQA muster where applicable.

Some of Fairfax's zoning districts contain few objective development and design standards, While applying 'objective development standards' will represent a major change, as noted above, the Town has little choice if it wishes to retain effective input on major housing development projects.

Recommendation: Evaluate Fairfax zoning districts that permit housing, determine what objective development and design standards exist, and develop and adopt additional objective development and design standards to augment or replace subjective criteria and policies, where feasible.

Site and Project Eligibility

In addition to the limitations placed by the State on the Town's review of housing development applications, State laws require that each local jurisdiction increasingly document that it is successfully progressing towards achieving its State housing production goals and meeting its share of the regional housing needs allocation (RHNA). For example, there are now enhanced requirements for an overall 'no net loss' of housing units when downzoning or approving lower density housing development on sites identified in the Town's Housing Element. The 'no net loss' requirements highlight the need to relate the Town's Housing Element housing site inventory to any development application on those sites, to ensure to the extent possible that development at those sites is consistent with the State housing number requirements.

Staff previously recommended that the Town conduct a comprehensive inventory of potential

housing development sites. However this task is another that, while a priority, falls below others and will likely require at a minimum filling the Assistant Planner position and getting the person hired up to speed.

Recommendation: Compare future development applications to the Housing Element inventory of identified local development sites for consistency with State housing production requirements. If the housing proposal contains less than the identified housing numbers, identify approaches for increasing the number of units or otherwise fulfilling the Town's housing requirements.

Expedited Project Application Review

State housing statutes require local jurisdictions to expedite review of housing project applications. For example, whereas previously the process for reaching a decision on a project's compliance with local regulations could take several months, now a jurisdiction must determine, within 30 days of a project application for 150 or fewer housing units being deemed complete, whether there are any project inconsistencies with the aforementioned "objective development standards". While CEQA and other project review requirements still apply, this truncated, expedited review puts tremendous pressure on staff to make this determination, particularly where few objective standards exist.

Recommendation: Following development of 'objective development standards, develop a compliance review process and checklist, including substantive and procedural requirements for an application submittal, to document application completeness and regulatory compliance. This would also include internal review procedures to ensure timeline compliance.

Housing reporting requirements

The State continues to increase requirements for data collection and reporting on local housing activities, imposing a significant burden on staff. More State-mandated reporting requirements are anticipated going forward. New legal authority for State Housing and Community Development (HCD) mid-cycle Housing Element review and enforcement now includes the potential revocation of Housing Element certification for identified violations, adding to staff pressure. The involvement of multiple governmental entities in reporting exacerbates the uncertainty and complexity of these processes. For example, transportation funding eligibility is now partially tied to maintaining HCD Housing Element certification and meeting RHNA housing numbers. Municipalities and counties are not the only ones affected: fire departments, water and other utility providers, and other entities also bear financial and regulatory burdens associated with the State's housing directives. It is not clear how associated costs will be borne, particularly in light of other applicable legal requirements that limit financial mitigation and exaction obligations to a payer's fair share of costs of services.

Recommendation: Seek to coordinate/combine to the extent possible with other local agencies (e.g., County of Marin) in order to comply with State requirements.

Other General Plan Programs

Between the (hopefully only short-term) loss of the Assistant Planner resource, ongoing staff demands imposed by continual new State housing regulations, other near term work priorities (listed below), and day-to-day work, the Planning Department is already oversubscribed for

work. The extent to which the General Plan programs shown below can be integrated into the above housing work programs will dictate what small chance there is of substantive progress in those areas in the current fiscal year. Staff has edited and condensed some of the General Plan program's text in order to focus on elements that staff estimates have the most potential to be applied in pending housing work program efforts.

Conservation Program CON-8.2.1.1 Establish an ordinance for protecting, maintaining, rehabilitating, and enhancing historical and cultural resources within the Fairfax Planning Area.

At their goal-setting workshop, the Town Council listed as one of its top goals for 2018 to "Consider establishment of density limits and objective development standards in commercial areas to address potential residential development on sites." An historic character analysis of the downtown would be very helpful in identifying character-defining features. Cassidy DeBaker, Fairfax resident historical expert, has volunteered to take the lead on inventorying and developing information on the historical character of the downtown.

Recommendation: Pursue policies and regulations for the preservation of the Town's historical structures and character to the extent that these can be folded into development of objective development standards.

Housing Program H-1.1.1.5 Preserve Existing Low Income Units... The Town Council expressed an interest in achieving 'no net loss' of housing, particularly affordable housing. The Town Council affirmed its interest in efforts to explore innovative approaches, such as Tiny Homes, to create more affordable housing opportunities.

Recommendation: Include as a lesser priority than developing objective development standards consideration of new policies and regulations to avoid any net loss of housing.

Housing Program H-4.1.2.1 Enact Density Bonus Zoning and Other Incentives. *Town staff will prepare amendments to the Zoning Ordinance, for review and approval by the Planning Commission and Town Council, to encourage an increase in the supply of well-designed housing for extremely low-, very low- and moderate-income households. The amendments will include adoption of a density bonus ordinance consistent with the State Density Bonus Law (GC Section 65915 et seq.)...*

If the Town adopted a Density Bonus ordinance setting forth tiers of density bonus concessions based on relative preference, this would inform housing developers at their project planning stage about which density bonus concessions are more or less desirable. The hope is it would increase the potential of State-mandated density bonus concessions proposed for housing projects being consistent with the Town's preferences.

Recommendation: While a lower priority than objective development standards, developing a Density Bonus Ordinance setting forth tiers identifying degrees of preference for density bonus concessions is a laudable goal.

Other Housing-related potential work program tasks

Certain Town Council members also expressed an interest in exploring certain other housing-related topics. These include developing an inclusionary housing ordinance, facilitating one-for-one building replacement in a post-disaster context, and Tiny Houses.

Other Work Program Priorities

As mentioned above, there are three other major work program priorities for this fiscal year,

- **Marinda Heights Subdivision of the Wall Property**

The proposed Marinda Heights Subdivision of the Wall Property will involve a substantial amount of staff and Planning Commission work/time in the coming months. The application was resubmitted in preliminary form and staff responded that some materials were missing (for example, relocated Lot 1 architectural plans for the residence). The applicant will soon be bringing in a full set of plans and information in response to the March 23, 2018 project status (incompletion) letter.

After the incomplete items have been addressed, the project will enter into its Environmental Impact Report (EIR) phase.

- **Cannabis regulations**

The Town Council has been reviewing cannabis regulation options for several months. A special Town Council-Planning Commission meeting featuring a consultant specializing in governmental oversight of cannabis businesses was held on May 30, 2018. The Council also discussed cannabis regulations at their July 18 and August 1 meetings, and have convened a special meeting on August 15 (the night before this PC meeting) to continue that discussion. Staff anticipates that the Town Council will be providing direction to staff and the Planning Commission soon on developing cannabis regulations.

- **Maximum residential size**

The Planning Commission and staff have been reviewing different aspects and options in response to the Town Council's direction to consider reducing the maximum allowable size of residences in Fairfax. No consensus on changes has emerged from those discussions. Staff will report on the options and issues the Commission discussed to the Council (in September?). A brief overview of the latest efforts by staff and Planning Commissioner Rodriguez will be provided in the Director's report toward the end of this meeting.

Zoning Amendments

The Planning Commission has repeatedly questioned the need for their review of very modest applications, and other Zoning Ordinance requirements that add process without much result. The Town Council provided solid direction to the Planning Commission and staff on the various zoning amendments that were forwarded them. As the Commission recalls, zoning amendments recommended for Council consideration were:

1. Limit the time a development application can remain incomplete.
2. Revise regulations concerning a) Covered Parking b) Tandem Parking
3. Allow administrative review for parcels that are substandard in width and for certain encroachments

4. Allow the PC or staff to independently approve Tree Permits
5. Allow ministerial review of certain applications
6. Establish expiration dates for discretionary permit approvals

The Town Council was generally supportive of the proposed changes. Caution was expressed about allowing enough time prior to expiring a project to allow for normal exigencies (for example, seasonal delays). The Council also wanted consideration of encroachment permits to remain a public hearing item.

Staff will incorporate the Council's direction into the zoning amendments it brings before the Planning Commission for consideration.

CONCLUSION

Staff is currently of necessity largely focused on fulfilling statutory permit processing deadlines and continuing to provide quality day-to-day client service. The region is in a housing upcycle, resulting in lots of applications on an ongoing basis. It is anticipated that work progress on even major program priorities will proceed more incrementally due to these demands and the very recent reduction in staff resources.

The Statute-driven local regulatory context has changed dramatically. The number one housing work priority – developing 'objective development standards' - is very much new territory for every jurisdiction in the State and even for the State agencies charged with assisting communities in fulfilling their statutory requirements. It remains to be seen how these changes manifest themselves project-wise, although examples are emerging in other communities. Staff will do its best to assist the Planning Commission in developing new approaches.