



John Owens &lt;johnowensservices@gmail.com&gt;

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**177 Frustuck Avenue Second Unit Application.**

3 713543084

**John Owens** <johnowensservices@gmail.com>

Wed, Aug 7, 2013 at 7:31 AM

To: Jim Moore &lt;jmoore@townoffairfax.org&gt;

Hello Jim,

Seeing you briefly at Town Hall yesterday jogged my memory to contact you and follow up on the conversation we had a couple of Month's ago when I called to see if you would continue to support our Second Unit.

During the conversation you told me you had not supported the unit, and you had taken the stance that we had to choose between the garage and the second units.

Yesterday I reviewed the Staff Reports for the Planning Commission and the Appeal to the Council, the minutes of both meetings, the audio tapes for both meetings, the letter of denial, and the motion to deny the unit.

You were mistaken. The Planning Department made findings to recommend the second unit at both meetings. It was David Weinsoff at the 11th hour of the last Council Meeting asked you a question as to if the approved Garage had already been built. You said it had not. Weinsoff made the suggestion that we choose between the garage and the second unit. Planning Staff supported the unit at both meetings.

I would expect this to be factually correct in the Staff Report for the upcoming Planning Commission. The reason Staff supported the project was the need and requirement to provide affordable housing. That situation has not changed or improved in this Town in nearly four years.

John Owens

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**Jim Moore** <jmoore@townoffairfax.org>

Wed, Aug 7, 2013 at 9:05 AM

To: John Owens &lt;johnowensservices@gmail.com&gt;

Cc: Linda Neal &lt;lneal@townoffairfax.org&gt;

Hi John,

You are correct, my mistake about staffs previous support.

This history will be accurately reflected in our forthcoming staff report, along with any other information and/or opinions we may now have.

Best,

Jim

James M. Moore  
Director of Planning & Building Services  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930  
Phone: (415) 453-1584  
Fax: (415) 453-1618

"The Life of the Land is Perpetuated in Righteousness"  
(Ua mau ke ea o ka aina i ka pono has been the motto of Hawaii for over 160 years)

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John Owens &lt;johnowensservices@gmail.com&gt;

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**Document Request**

2 messages

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**John Owens** <johnowensservices@gmail.com>  
To: Jim Moore <jmoore@townoffairfax.org>

Thu, Aug 8, 2013 at 8:16 AM

Hi Jim,

It is my understanding that the 2010 housing element was not accepted by the Housing & Community Development (HCD). I would appreciate receiving a copy of that letter. Could you email or fax me a copy, or do I need to request it at the counter?

I would appreciate receiving it by the end of today. Thanks.

Best regards,

John

John Owens Services, Inc.  
P.O. Box 1089  
Fairfax CA 94978  
(415) 456-2906  
Fax: (415) 456-9017  
johnowensservices.com

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**Jim Moore** <jmoore@townoffairfax.org>  
To: John Owens <johnowensservices@gmail.com>

Thu, Aug 8, 2013 at 9:39 AM

Hi John,

Sure, here is the letter attached.

FYI: We have been working for several months with consultants & HCD staff to address all eleven pages of their comments. As of last Friday, we have completed the draft amendments (that have informal blessings from HCD staff) to the 2010 Housing Element that we will be taking to a joint meeting of the Planning Commission/General Plan Implementation Committee/Affordable Housing Committee in the near future for their review.

Best Regards,

Jim

James M. Moore

Director of Planning & Building Services

Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930

Phone: (415) 453-1584

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**From:** John Owens [mailto:johnowensservices@gmail.com]

**Sent:** Thursday, August 08, 2013 8:17 AM

**To:** Jim Moore

**Subject:** Document Request

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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Sacramento, CA 94252-2053  
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December 13, 2012

James M. Moore  
Director of Planning and Building Services  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930

Dear Mr. Moore:

**RE: Review of the Town of Fairfax's Adopted Housing Element**

Thank you for submitting Fairfax's adopted housing element received for review on September 14, 2012 and adopted on April 4, 2012. The adopted housing element was submitted for the 4<sup>th</sup> planning cycle and covers the 2009-2014 planning period. The Department is required to review adopted housing elements and report the findings to the locality pursuant to Government Code Section 65585(h). A meeting and subsequent conversations with you facilitated the review.

According to Department records, the Town did not submit a draft element for review as required by State housing element law. Government Code Section 65585(b) states "at least 60 days prior to the adoption of an amendment to this element the planning agency shall submit a draft of the element or amendment to the Department" (of Housing and Community Development). Furthermore, Section 65585(e) states, "prior to the adoption of its draft or draft amendment, the legislative body shall consider the findings made by the Department." Since the element was not submitted to this Department prior to adoption, the Town must consider these findings pursuant to Section 65585(e) and (f).

The adopted element addresses many statutory requirements; however, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). In particular, the element must demonstrate adequate sites to accommodate the City's regional housing need allocation (RHNA) for lower-income households. The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

We are committed to assist Fairfax in addressing all statutory requirements of housing element law. If you have any questions or need additional technical assistance, please contact Melinda Coy, of our staff, at (916) 445-5307.

Sincerely,

Glen A. Campora  
Assistant Deputy Director

Enclosure

## APPENDIX TOWN OF FAIRFAX

The following changes would bring Fairfax's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on the Department's website at [www.hcd.ca.gov/hpd](http://www.hcd.ca.gov/hpd). Refer to the Division of Housing Policy Development and the section pertaining to State Housing Planning. Among other resources, the Housing Element section contains the Department's latest technical assistance tool *Building Blocks for Effective Housing Elements (Building Blocks)* available at [www.hcd.ca.gov/hpd/housing\\_element2/index.php](http://www.hcd.ca.gov/hpd/housing_element2/index.php), the Government Code addressing State housing element law and other resources.

### A. Review and Revision

*Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element (Section 65588 (a) and (b)).*

A thorough program-by-program review is necessary to evaluate Town's performance in addressing housing goals. As part of this analysis, the element should describe the actual results of the prior element's programs, compare those results to the objectives projected or planned, and based on an evaluation of any differences between what was planned versus achieved, provide a description of how the objectives and programs of the updated element incorporate changes resulting from the evaluation. This information and analysis provides the basis for developing a more effective housing program.

### B. Housing Needs, Resources, and Constraints

1. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households (Section 65583(a)(1)).*

While the element quantifies the number of existing ELI households (Page HB-6), it must also include an estimate of the projected number of extremely low-income households and analyze the existing housing needs. The element may either use available Census Data to calculate the number of extremely low-income households, or presume 50 percent of the very low-income households qualify as extremely low-income households. To assist the analysis, see the *Building Blocks*' website at: [http://www.hcd.ca.gov/hpd/housing\\_element2/EHN\\_extremelylowincome.php](http://www.hcd.ca.gov/hpd/housing_element2/EHN_extremelylowincome.php).

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition (Section 65583(a)(2)).*

While the element includes overpayment information for lower-income households, the element must also identify and analyze overpayment by tenure (renters and owners) for all households. Further, the element must include overcrowding information by tenure. A thorough analysis will assist the Town in

developing appropriate housing policies and prioritizing housing resources. For additional information, refer to the *Building Blocks*' technical assistance tool at [http://www.hcd.ca.gov/hpd/housing\\_element2/EHN\\_Overpayment.php](http://www.hcd.ca.gov/hpd/housing_element2/EHN_Overpayment.php).

3. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

Fairfax has a regional housing need allocation (RHNA) of 108 housing units, of which 35 are for lower-income households. To address this need, the element relies on second units, vacant and non-vacant sites, and non-residential sites. To demonstrate the adequacy of these sites and strategies to accommodate the Town's RHNA, the element must include complete analyses:

Addressing Unaccommodated Need from the Previous Planning Period (AB 1233):

The element did not address this requirement. Pursuant to Chapter 614, Statutes of 2005 (AB 1233), if the Town of Fairfax failed to make adequate sites available to accommodate the regional housing need in the prior planning period, including failure to implement rezoning, the Town must zone or rezone sites to accommodate any unaccommodated need within the first year of the 2008-2014 planning period. As you know, the Town of Fairfax's housing element was found out of compliance in the previous planning period due to inadequate sites, and therefore the element must include an analysis or programs to demonstrate compliance with these statutory requirements. Further information can be found at [http://www.hcd.ca.gov/hpd/hrc/plan/he/ab\\_1233\\_final\\_dt.pdf](http://www.hcd.ca.gov/hpd/hrc/plan/he/ab_1233_final_dt.pdf).

Please also note, Government Code Sections 65584.09 and 65583(c)(1) (AB 1233) requires the Town to zone sufficient sites to accommodate the unaccommodated need from the previous planning period within the first year of the 2009-2014 planning period. As this timeframe has lapsed, the Department cannot find the element in compliance until the required rezoning is complete and it is amended to reflect that rezoning.

Sites Inventory: While the element lists sites by parcel number, parcel size, existing use and zoning, it must also include the general plan designation and estimated capacity for each parcel.

Multiple Parcels: Sites 1, 3, 5, and 6 are comprised of multiple parcels. While the inventory may aggregate parcels, it should also list sites individually by size, General Plan designation, zoning, and capacity. *For parcels anticipated to be developed individually*, the element should include an analysis demonstrating the potential of these sites to accommodate new residential development, given necessary economies of scale particularly for new multifamily rental development affordable to lower-income households. While it may be possible to build housing on a very small parcel, the nature and conditions necessary to construct the units often render the

provision of affordable housing infeasible. For example, assisted housing developments utilizing State or federal financial resources typically include 50-80 units. *For parcels anticipated to be consolidated*, the element could describe the potential for lot consolidation, including conditions rendering parcels suitable and ready for redevelopment, trends or information on the number of owners and indicating where sites have been assembled.

Realistic Capacity: The element did not address this requirement. The element must describe the methodology for determining the residential capacity of sites. The estimate of potential unit capacity must consider land-use controls and site improvement requirements and could reflect recently built densities. For mixed-use or commercial sites allowing residential uses, the capacity analysis should also account for potential development of non-residential uses and could consider any performance standards mandating a specified portion of a mixed-use site as non-residential (e.g., first floor, front space as commercial). See the *Building Blocks'* website and sample analysis at [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_zoning.php#capacity](http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#capacity).

Suitability of Underutilized Sites: The element did not address this requirement. The element appears to rely on potential reuse or intensification of sites with existing residential development to accommodate a portion of the remaining regional housing need. While the element provides a very general description of the existing uses, it must also demonstrate the potential for redevelopment and evaluate the extent to which existing uses may impede additional residential development. For example, one site is listed including a mix of old homes, apartments and offices, while another lists the use as a variety of commercial businesses, but provides no information about the appropriateness of these sites or the potential for the uses to be discontinued. The evaluation should consider development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. For sites with residential uses, the inventory could generally describe structural conditions or other circumstances and trends demonstrating the redevelopment potential to more intense residential uses. For non-residential sites, the inventory could generally describe whether the use is operating, marginal or discontinued, and the condition of the structure or could describe any expressed interest in redevelopment. Refer to the sample analysis on the *Building Blocks'* website at: [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_zoning.php#nonvacant](http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#nonvacant)

Second-Units: As the Town plans to utilize second units to accommodate a portion of the regional housing need for lower-income households, the element must include an analysis supporting the realistic capacity of second units in the planning period based on the number of units approved in the previous planning period, whether or not the units are permitted by-right, the need for the units in the community, the resources or incentives available for their development, anticipated affordability, and any other relevant factors. In addition, the capacity analysis should also account for the timeframe for development and adoption of the new amnesty program. This

analysis is critical given only two units were approved under the previous amnesty program (page H-11). The analysis could consider trends and the length of time to bring illegal structures to current building code requirements for residential use.

Sites with Zoning for a Variety of Housing Types: The element did not address this requirement. The housing element must demonstrate the availability of sites, with appropriate zoning, that will facilitate a variety of housing types including multifamily rental housing, factory built housing, mobilehomes, housing for agricultural employees, emergency shelters and transitional housing. An adequate analysis should, at a minimum, identify whether and how zoning districts explicitly allow the uses, analyze whether zoning, development standards and permit procedures encourage and facilitate these housing types. If the analysis does not demonstrate adequate zoning for these housing types, the element must include implementation actions to provide appropriate zoning. Additional information on this requirement, including a sample analysis, is available in the Building Blocks' website [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_variety.php](http://www.hcd.ca.gov/hpd/housing_element2/SIA_variety.php)

Emergency Shelters: Program H-2.1.5.1, (page H-38) proposes to amend the zoning code to allow emergency shelters without as a "permanent, non-conditional use" in the CC zone and public and Quasi- Public districts. Pursuant to Chapter 633, Statutes of 2007 (SB 2), the element must include an analysis of the suitability and appropriateness of this zone and demonstrate sufficient capacity to accommodate at least one year-round emergency shelter. In addition, the rezone must occur within one year of adoption of the element. Refer to the sample analysis on the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/SHN\\_shelters.php#Requisite Analysis](http://www.hcd.ca.gov/hpd/housing_element2/SHN_shelters.php#Requisite_Analysis).

4. *Analyze potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7) (Section 65583(a)(5)).*

Land-Use Controls: While the element generally concludes that the Town's land use standards do not constrain the development of housing, it should describe these standards and analyze their potential impacts on the cost and supply of housing or add implementation actions to address and remove or modify the standards as constraints on development. For more information, see the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_landuse.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_landuse.php)



Fees and Exaction: The element must include a complete listing of processing and impact fees for single and multifamily development and analyze their impact on the cost and supply of housing. For example, the element should describe total planning and impact fees for typical multi and single-family developments and analyze the total effect or proportion of these fees and exactions on development costs. For further information, refer to the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_fees.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_fees.php).

Local Processing and Permit Procedures: While the element includes some information regarding the typical timeframes for approval of a single and multifamily development, it must specifically describe and analyze the Town's permit processing and approval procedures by zone and housing type. To address this requirement, the element should discuss all processing and approval procedures, including type of permit, level of review, and any discretionary approval procedures or design review requirements.

In addition, the element states multifamily developments over 10 units must be approved through a CUP (page H-17). This process must be further analyzed as a constraint and should identify findings of approval for the CUP and their potential impact on approval certainty, timing, and cost. The Town may need to include a program to address this permitting requirement. Additional review and complex discretionary findings can add significant time and uncertainty to the approval process and consequently can impact the cost and supply of housing, particularly housing affordable to low- and moderate-income households. Consequently, the element must demonstrate this process is not a constraint or include a program to remove or mitigate this permitting requirement.

Design Review: The element indicates design review is required as part of the approval procedure for residential development (page H-13). The element should include a description and analysis of the design criteria review guidelines and process, including identifying requirements and approval procedures and analyzing the impact of the guidelines and process on housing costs and approval certainty.

On/Off-Site Improvements: While the element notes sidewalks, curbs and other improvements are required, the element should identify the actual standard (i.e., 40 foot minimum street width) and analyze potential impacts on the cost and supply of housing.

Constraints on Persons with Disabilities: While the element includes Program H-2.1.3.1 to adopt a reasonable accommodation procedure, it must include a complete analysis of potential constraints on the development, maintenance, and improvement of housing for persons with disabilities. The analysis should address zoning, development standards, any definition of family, building codes, and approval procedures for the development of housing for persons with disabilities. Additional information, including sample and model ordinances, is available in the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_disabilities.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_disabilities.php).

The Town should also review its density bonus ordinance for compliance with recent statutory amendments (Chapter 1928, Statutes of 2004) to State density bonus law (Government Code Section 65915). A copy of the current law is available on the Department's website at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65915-65918>

4. *The housing element shall contain programs which address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing (Section 65583(c)(3)).*

As noted in Finding B4, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance (Section 65583(c)(6)).*

The element must include specific and proactive actions to preserve housing units at-risk of converting to market-rate. For example, the program should ensure compliance with noticing requirements and include a tenant education component and consider pursuing funding on at least an annual basis. The program should also commit the Town to contacting non-profits immediately to develop a preservation strategy by a date certain to be ready to quickly act when notice of conversion is received.

#### **D. Quantified Objectives**

*Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame (Section 65583(b)(1 & 2)).*

Include quantified objectives estimating the number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period. This requirement could be addressed by utilizing a matrix like the one illustrated below:

Income	New Construction	Rehabilitation	Conservation/ Preservation
Extremely Low-			
Very Low-			
Low-			
Moderate-			
Above Moderate-			
<b>TOTAL</b>			

**E. Public Participation**

*Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort (Section 65583(c)(7)).*

While the element includes a general summary of the public participation process (page H-3), it does not demonstrate how the Town did or will make a diligent effort to achieve the involvement all economic segments of the community through the adoption process. The element should be revised to specifically describe the Town's efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the development of the element. For example, the element could describe the success of outreach efforts, summarize public comments and describe how the element incorporated public input.

**F. Consistency with General Plan**

*The housing element shall describe the means by which consistency will be achieved with other general plan elements and community goals (Section 65583(c)(7)).*

The element must include a complete discussion of how consistency will be achieved and maintained during the planning period. The element could include a program to conduct an internal consistency review as part of its annual general plan implementation report required under Government Code Section 65400. This annual report can also assist future updates of the housing element.

The Town should also note recent statutory changes to Government Code Section 65302 (Chapter 369, Statutes 2007 [AB 162]) which requires amendment of the safety and conservation elements of the general plan to include analysis and policies regarding flood hazard and management information upon the next revision of the housing element on, or after, January 1, 2009. Please refer to Department's website at [http://www.hcd.ca.gov/hpd/hrc/plan/he/ab\\_162\\_stat07.pdf](http://www.hcd.ca.gov/hpd/hrc/plan/he/ab_162_stat07.pdf) for additional information.