

Minutes of the Town of Fairfax Planning Commission
and Affordable Housing Committee (AHC) Meeting
Fairfax Women's Club
Tuesday, November 25, 2014

Call to Order/Roll Call

Chair Bragman called the meeting to order at 5:15 p.m.

COMMISSIONERS PRESENT: Roxanne Ezzet
Esther Gonzalez-Parber
Philip Green
Shelly Hamilton
Brannon Ketcham (Chair)
Laura Kehrlein (Vice-Chair)
Shelby LaMotte

COMMISSIONERS ABSENT: Shelby LaMotte

COMMITTEE MEMBERS PRESENT: Larry Bragman
Barbara Coler
Tony Gardner
Scott Hochstrasser
David Smadbeck
Mallory Geitheim

STAFF PRESENT: Tony Garrett, Town Manager
Jim Moore, Planning Director
Larry Kennings, Consultant
Joanne O'Hehir, Minutes Secretary

APPROVAL OF AGENDA

M/s, Smadbeck/Coler, Motion to approve the agenda:

AYES: All

PUBLIC COMMENTS

Niccolo Caldararo inquired if Fairfax had a housing inventory and was informed that one did not exist. Mr. Caldararo asked the town to consider limiting the maximum house size to 2,000 sq ft., and he discussed publications on sustainability that he encouraged people to read about urban sprawl and water shortage. Mr. Caldarado discussed his concern that the units planned for affordable housing were larger than necessary, and that it was important to create smaller dwelling

units. He encouraged the formation of a housing development corporation to build affordable housing for people who worked in town.

Wendy Botwin discussed the importance of design standards and size limitations, which she said should be included in the Housing Element. She suggested, for example, that the size of units in the Central Commercial zone should be limited to 700 sq ft, in order to help shape development in a way that would fit the character of the town and be more affordable. Ms. Botwin suggested that the limitations should be site-specific.

4. PLANNING DIRECTOR'S REPORT

Planning Director Moore discussed the affordable housing project at the Lutheran Church site, which he said was moving forward. He said that Resources for Community Development, the non-profit organization that would be developing the site for low-income housing, had selected an architect for the project.

Mr. Moore also reported that he had met with Chuck Durett, author of "Creating Cohousing", who had expressed interest in the site at 10 Olema, which has been targeted for workforce housing. Mr. Moore noted that the site would also be suitable for senior housing, in which Mr. Durett has an interest.

5. FOLLOW-UP TO QUESTIONS AT THE SEPTEMBER 24, 2014 AHC MEETING

- Sausalito Parking Policies for Second Units

Consultant Kennings reported on second unit parking requirements for the Town of Sausalito, which had been requested at the previous meeting. He said that one off-street parking space was necessary for units of 700 sq. ft. or less, and that two off-street parking spaces were necessary for larger second units. Mr. Kennings noted that Sausalito had policies to allow the requirements to be waived. In response to Councilmember Coler, Mr. Moore said that Fairfax required one off-street parking space for second units.

- Bolinas Land trust Housing Project(s)

Mr. Kennings reported on the Bolinas Community Land Trust. He noted that the project included three buildings with 15 dwelling units for affordable housing, the Bolinas Garage building that included workforce house and a gas station, and Gibson House, which provided Section 8 and low income housing.

Chair Bragman noted that the units were built for people to live in rather than a project planned to comply with HCD regulations. He would like Fairfax to emulate the model.

6. REVIEW OF THE 5TH CYCLE RHNA – HOUSING ELEMENT UPDATE PROCESS

Mr. Moore discussed the purpose of tonight's discussions. He said that the Town Council had provided direction to move forward with the "fast track" approach to try to get an adopted Housing Element by May 31, 2015. He noted that former Mayor, Frank Egger, had commented at the last Council Meeting that it was his understanding that municipalities could roll over the previous sites into the next cycle. Mr. Moore said that, following research, it seemed that if a municipality had an adopted Housing Element that was State certified, any sites identified previously to accommodate the Regional Housing Needs Allocation (REHNA) could be rolled over.

Mr. Moore noted that Fairfax has an adopted housing policy, but it is out of compliance with the state because of the repeal of Ordinance 778 adopting the Zoning Map that was called for in the Housing and Land Use Elements. He said that the town has until January 31, 2015 to get into compliance, but it was unlikely to happen. Instead, Mr. Moore explained that state law compels the town to go back one REHNA cycle. He noted that the sites could be rolled over if the town were in compliance.

Councilmember Coler said it was her understanding that unconstructed sites could be rolled over into the next REHNA, since she thought the Housing Element had been approved.

In response, Mr. Moore noted that the town had an adopted Housing Element that was certified by the state but that it was out of compliance because the town had not adopted the Zoning Map changes or the Zoning Ordinance changes that were needed. He reiterated the need to undertake analysis for the prior RHNA, in addition to the next cycle.

Mr. Moore used slide material to demonstrate the strategies employed to meet the 3rd and 4th RHNA cycles. He explained why that the combined number of units that needed to be met for the 4th cycle and 5th cycle (2015 – 2023) were 169. Mr. Moore noted that optional sites could be substituted.

In response to Committee Member Gardner, Mr. Moore confirmed that the town was out of compliance with the state because the zoning amendments could not be adopted by the end of the 4th cycle planning period, January 31, 2015. He referred to a document sent by the State regarding a list of applicability, which indicated that the town had failed to identify sites to accommodate a portion of the housing needs.

Chair Bragman explained why he believed the provision of available sites for affordable housing that had been provided should be sufficient to comply with the regulations, so that the town should not be out of compliance. He believed that the Town Attorney should review the document.

Committee Member Geitheim joined the meeting at 5:35 p.m.

Mr. Moore explained that the town had an additional year in which to become compliant for the 5th cycle, i.e. January 31, 2016.

Amy Sinsheimer, consultant, joined the meeting via Skype.

In response to Chair Bragman, Ms. Sinsheimer explained that the sites designated for affordable housing would have needed to be available early enough in the planning period for development in the 4th cycle. She noted that it was now not possible because less than two months of the cycle remained. The town cannot meet the obligation for this cycle.

Chair Bragman asked if the town could appeal to the Department of Housing and Community Development (HCD) because the town could not take action. Mr. Moore said that they were aware of the situation, and that the town has been given a further year to become compliant while the requirements for the 3rd cycle of the RHNA have been dropped.

Councilmember Coler explained why she believed the Housing Element should be in compliance, which related to the fact that the 61 units that were designated for affordable housing in the 4th cycle were not constructed and could, therefore, be rolled over into the new RHNA. Councilmember Coler said that it did not appear from the statute that they were required to be zoned, necessarily, just identified.

Ms. Sinsheimer said that the town did not have sufficient sites that were appropriately zoned at the time the Housing Element was adopted.

In response, Chair Bragman said that, since the sites have been identified, the Town Attorney should ascertain if the town has met the conditions of the statute. He said it would help the town if it could avoid identifying sites for an additional 61 units.

Mr. Moore used a slide presentation to demonstrate the preliminary strategy for meeting the number of housing units necessary for the 4th and 5th cycles of 169 units. He said that, with the identified sites, the addition of second units, and the removal of the 3rd cycle requirements, the town should be able to cover the RHNA for both cycles. Furthermore, he suggested that Deer Park Villa could be used as an optional site for 15 units.

Commissioner Ezzet confirmed that it was not sufficient for the town to have identified the sites because the zoning would need to have been completed in order for the sites to have become developable in the fourth cycle.

Chair Bragman said he believed that it was sufficient that the sites had been identified for adequate numbers of affordable units. He said that the town was not asked for the sites to be correctly zoned and that it would be wrong to try to identify more sites if it was not necessary.

Mr. Moore said that he had spoken to the Department of Housing and Urban Development (HCD), who had confirmed that the town was out of compliance for the reasons stated by Commissioner Ezzet. He said that written confirmation was awaited.

Commissioner Green referred to a statute and said that he concurred with Chair Bragman and Councilmember Coler that it was sufficient for the town to have identified the sites to meet the number of necessary affordable units to be in compliance. He believed that the statute gave the town an additional year in which to have the appropriate zoning in place. Commissioner Green agreed that the Town Attorney should review the regulations.

In response to Committee Member Smadbeck, Councilmember Coler said that it would not be possible for the Town Council to review and rezone the relevant sites before the end of January 2015. Chair Bragman noted that the town might be legally precluded from doing so because of the referendum petition.

In response to Commissioner Hamilton, Ms. Sinsheimer confirmed that the town had sufficient numbers of affordable housing units for the 4th cycle to be compliant, other than it was contingent upon the sites being rezoned in the same cycle, which had not occurred.

Commissioner Ezzet discussed inclusionary housing policies. She confirmed that, from her past experience of working for the State, towns needed to provide the zoning to allow affordable units to be developed but that developers could not be forced to develop affordable housing.

Mr. Moore noted that the goal was to meet the May 31, 2015 deadline for the Housing Element to be in compliance. Ms. Sinsheimer explained that the law stipulated if the deadline is met for having a Housing Element that was in compliance by January 31st, then the planning period for the Housing Element would be 8 years for the 6th cycle. If the deadline is not met, then a town will receive a 4-year planning period for both the 6th and 7th cycles. However, Ms. Sinsheimer added that there is a 120-day grace period if the deadline could not be met, ending May 31, 2015. Furthermore, it appeared that if the town adopted their Housing Element before the May 31st HCD deadline, but had not completed the State's requirements to become certified, then it would be possible to continue working with the state and meet the 8-year planning period. She noted that the Housing Element would need to be re-adopted.

In response to Councilmember Coler, Ms. Sinsheimer confirmed that if the town made every effort to come into compliance by May 31, 2015, then it should be granted an 8-year planning period. She also explained the streamline review process, by which the town would have been eligible for a reduced time period for review of the Draft Housing Element from 60 days to 30 – 45 days had the requirements from the previous Housing Elements been implemented. Since the town has not implemented all the requirements, it is not eligible for the reduced review time period at this point.

Councilmember Coler asked if there were a benefit to the town in meeting the January 31st deadline, and whether there was a downside to adopting the Housing Element by May 31st. In response, Mr. Moore said staff were concerned that HCD might not accept the inclusion of second units or might require further investigation. If the town met the January 31st deadline, it should have more time to either undertake the investigation or discuss Deer Park Villa as an optional site if the second unit sites were not accepted. Ms. Sinsheimer noted that the General Plan amendments would need to be adopted twice, rather than once, if the town did not meet the January 31st deadline.

In response to Committee Member Geitheim, Mr. Moore said that, if the January 31st deadline could be met for the streamline review period, then the town would have more time to work out any differences with HCD than if it met the May 31st deadline.

Mr. Moore requested direction as to whether the town wanted to continue to count 16 second units towards the affordable housing quota. In response, Commissioner Ezzet said they were crucial because they served senior needs.

Committee Member Gardner and Mr. Moore discussed junior second units. Mr. Moore noted that the space within the dwelling unit was already entitled with the possibility of someone already using the space and that they could not, at the present time, be included in the affordable housing quota.

Commissioner Hamilton discussed the possibility of identifying alternate opportunity sites in the current update that could be approved by HCD, so that if the Housing Element needed to be amended after approval by HCD, the sites could be swapped out.

In response, Mr. Moore said that it would be possible and that, if they were folded into the quota, the town would have to identify the zoning requirements that would need to be implemented to allow the sites to be used. However, he explained why staff suggested that the town mentioned alternate opportunity sites were available, but not to include them for CEQA analysis. Mr. Moore said staff believed that sufficient sites have been identified and analyzed for the 3rd and 4th cycles, which should be used instead with the alternate sites remaining in reserve should their use become necessary.

Councilmember Coler agreed that it should be mentioned that the town has alternate sites, but not perform a CEQA analysis or recommend zoning changes at this point. Chair Bragman agreed with Councilmember Coler and he also agreed that second units should be included in the affordable housing quota.

In response to Committee Member Gardner, Mr. Moore discussed the reasons why he believed they had sufficient numbers of second unit to count towards the total quota.

Councilmember Coler discussed her concern that the State verbally confirmed it would not require the town to meet the 3rd cycle RHNA. She asked staff to ensure the town received written confirmation, to which Chair Bragman was in agreement.

7. NEXT STEPS

Mr. Moore discussed the next steps, which included background analysis to draft a Housing Element document before reconvening, which Ms. Sinsheimer estimated would be in February or March, 2015.

Commissioner Hamilton asked if any of the provisions on the opportunity sites could be changed to limit the unit size and whether it might affect approval from the State. In response, Ms. Sinsheimer said that the Church site and 10 Olema might be scrutinized more by HCD but that she thought the Sate would not require further analysis if the unit size of other sites were changed. Mr. Moore suggested they moved in this direction, to which there was general consensus.

Committee Member Gardner discussed a project in the County to provide small units for very low-income people.

8. COMMISSION/COMMITTEE MEMBERS COMMENTS, QUESTIONS AND REQUESTS

Committee Member Smadbeck agreed with Chair Bragman and Councilmember Coler that legal opinion should be sought over the necessity of approving the zoning and parcel map changes in order to comply with state regulations and not jeopardize the program. Mr. Moore noted that the town should be able to comply with the new quota if they succeed in rolling the units for the 3rd and 4th cycles in to the 4th and 5th cycles, which he discussed. Mr. Moore confirmed that they will seek the Town Attorney's opinion.

Committee Member Smadbeck led a general discussion on the merits of rezoning land in segments rather than tackling the changes in the Housing Element and rezoning issues all at once. Mr. Smadbeck thought it might be a more effective way of explaining the issues to the general public. Mr. Moore discussed the public forums, and noted that a future public workshop was being discussed.

Chair Bragman opened the public comment period. Kiki LaPorta discussed junior second units. She asked if they could be counted towards the town's quota for affordable housing, whether the town would allow them and the relaxation of regulations. In response, Mr. Moore said that they have direction to move forward with constructing a policy on junior second units, with particular regard to relaxing fire regulations for second units in non-WUI (Wildland Urban Interface) areas and also parking regulations, since such units would be more centrally located. He noted that an application could be made for a junior second unit. Mr. Moore said he could not confirm when an Ordinance will come into effect and Commissioner Coler noted that they could not count, at this point, towards RHNA quotas.

Ms. Botkin inquired about the consequences of being out of compliance and whether it would be any different if the Zoning Ordinance were adopted by January 31, 2015. Ms. Sinsheimer noted that, although the town could not meet the January 31st deadline, it could still address the 4th cycle numbers and put in place a program in the 5th cycle that will require re-zoning parcels for 124 units. She noted that the program must be included by January 31, 2016. Ms. Sinsheimer confirmed that the Housing Element will remain uncertified until that time and that there would be more likelihood the State would put the town on a 4-year cycle if the rezoning did not take place by January 31, 2016.

Chair Bragman closed the public comment period.

9. ADJOURNMENT

A motion was made, seconded and unanimously passed to adjourn the meeting at 6:55 p.m.

