Reshaping Development Patterns
Entitlements & Zombie Subdivisions

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New Partners for Smart Growth
Charlotte, NC
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Reshaping Development Patterns

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
Addressing Development Entitlements & Zombie Subdivisions in the Intermountain West

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

Legal & Planning Frameworks
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
Status of Entitlements

Paper Plats and Partial Performance Plats

Don Elliott – Clarion & Associates
What to do about them?

- **Constraints on Efforts to Address Entitlements**
  - Lot Owner Rights & Vesting
  - Preserving Lot Access
  - “Equal Treatment”
  - Due Process & Takings

- **Major legal Powers Involved**
  - Subdivision powers
  - Zoning powers
  - PUD powers
  - Development agreements
  - Others (unique to each state)

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

Source: John Burns Real Estate Consulting, March 2010
Recovery Predictions

Kelsey & Norden 2010
Anna Trentadue, Valley Advocates for Responsible Development
TETON VALLEY MARKET STATISTICS

Residential Lot Sales (2001-2010*)

* Data for 2010 as of 02/26/10

* Data for 2010 as of 02/26/10
Pinal County Subdivisions

Development Status:

- Active

Legend:

- Green: State/Federal Land
- Gray: Indian Reservation
- Blue: State Trust Land

Source: Sonoran Institute
Pinal County Subdivisions

Development Status:

- Yellow: Tentative Plat
- Green: State/Federal Land
- Gray: Indian Reservation
- Light Blue: State Trust Land
Pinal County Subdivisions
Development Status:
- Blue: Active
- Pink: Entitled
- Yellow: Tentative Plat

Legend:
- Green: State/Federal Land
- Gray: Indian Reservation
- Light Blue: State Trust Land
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
We think development entitlements far in excess of demand are a key issue throughout the west ... and the current economy provides opportunity to address them.
Types of tools to reshape development

- Economic incentives
- Purchasing land or property rights
- Regulating the land
  - Replatting
  - Rezoning
- Growth management
  - Rationing permits
  - Service areas & infrastructure phasing

Adapted from Don Elliott – Clarion & Associates
No Magic Bullet
But Frameworks & Best Practices

We .... No set answers or agendas facilitate local process & we publish lessons learned
Choosing tools to reshape development

- 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
Reshaping Development Patterns
Our Next Steps

• Background Research
• Experts Convening
• RFP for Targeted Applications / Case Studies -- 2 more
• 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
• Funders & Partners ????
• Publish & Disseminate

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