

8-26-04
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MEMORANDUM

TO: Mayor and Members of the Austin City Council

FROM: Paul Hilgers, Director
Department of Neighborhood Housing and Community Development

DATE: August 20, 2004

SUBJECT: NHCD Response to Community Development Commission's August 10
Resolution on the University Neighborhood Overlay (UNO) Proposal

On August 10, 2004 the Community Development Commission (CDC) passed a resolution regarding the proposed affordable housing component of the University Neighborhood Overlay (UNO). The CDC recommended that the City Council make the following changes to the UNO:

1. No 50% MFI Opt-Out Provisions of the proposed University Overlay District.
2. If there is an opt-out provision, the fee in lieu should be based upon the actual cost of the developer providing the required number of affordable housing units and loss of revenue/debt service.
3. Require an analysis of current area rents and impact of their proposal on their affordability.

Having reviewed these recommendations, NHCD supports some components of this resolution passed by the CDC but is opposed to other components. This memo provides the rationale for this determination.

Item #1. Staff opposes policies that restrict the flexibility and options to creating affordable housing. By providing an opt-out provision as part of an incentive package, some developers will be able to provide resources that can increase affordable housing in the area.

Item #2. The proposed Opt-out provision is one component of an incentive package that includes substantial private and public benefits. Most importantly, this particular neighborhood is extremely unique. The affordable housing issues in this neighborhood are unique to this particular area and require unique approaches because of the large number of students who reside in the area. The proposed opt-out provision provides a innovative approach to addressing the problem of providing student housing.

Item #3. Staff does not oppose a continuing analysis of the various impacts of this proposed development on rents in this area, as well as other areas of Austin.

If you have any questions, please contact me at 974-3108.

MEMORANDUM

TO: Mayor Will Wynn and City Council Members

FROM: Paul Hilgers, Director
Department of Neighborhood Housing and Community Development

DATE: August 20, 2004

SUBJECT: NHCD Response to Community Development Commission's August 10
Resolution on the University Neighborhood Overlay (UNO) Proposal

Background

On August 10, 2004 the Community Development Commission (CDC) passed a resolution regarding the proposed affordable housing component of the University Neighborhood Overlay (UNO). The CDC recommended that the City Council make the following changes to the UNO:

1. No 50% MFI Opt-Out Provision of the proposed University Neighborhood Overlay District.
2. If there is an opt-out provision, the fee in lieu should be based upon the actual cost of providing the required number of affordable housing units and loss of revenue/debt service.
3. Require an analysis of current area rents and impact on their affordability.

Having reviewed these recommendations, the Neighborhood Housing and Community Development Department does not support the resolution passed by the Community Development Commission. The purpose of this memo is to provide the rationale for this determination and to highlight some other issues that must be considered by the City Council before finalizing this proposed ordinance.

Limits on City of Austin Authority to Mandate Development Restrictions

The City of Austin is attempting to achieve increased affordable housing through density bonus incentives in the UNO district. General legal principles governing exactions imposed by a permitting entity require the exactions to be related to the nature of the development and roughly proportional to the impact caused by the development. For example, the Texas Supreme Court recently held that a developer was not required to make boundary street improvements as a condition for the receipt of subdivision approval by a city where the city did not demonstrate that the improvements required were the result of the impact caused by the subdivision development.

In other words, the test is two-fold: there must be a connection between the development and the required exaction, and there must be a connection between the amount of the

requirement and the impact of the development. Broad "one-size-fits-all" exactions bearing no relationship to the development being proposed may be suspect.

Impact on Reducing Barriers to Redevelopment of Property in the West Campus Area

Many properties in the proposed UNO district were zoned in the mid-1980's with zoning categories that do not allow redevelopment comparable to pre-existing densities and levels of impervious cover. The new zoning code rendered existing buildings nonconforming in site area requirements, floor-to-area ratios, open space requirements, heights, setbacks and parking. The UNO standards would permit redevelopment of these properties. In addition, the ordinance would provide the flexibility for administrative parking reductions, instead of requiring Board of Adjustment variances. These new development standards apply to both producers of affordable as well as market rate housing. These will result in reduced cost for the development of housing.

Impact of Increased Supply of Housing Stock and Market Rents

An increase in the supply of rental units will in turn place downward pressure on market rents, not only in the University Area but in other parts of the city where students have traditionally tended to locate. This will help to balance vacancy rates and create a competitive market for student rental housing.

Impact of Increased Supply of Housing Stock and the Reduction of Pressure on Housing Stock in Other Areas of the City of Austin

Because of the lack of student housing in the University area, students have been forced to look elsewhere in the City for affordable, rental housing. A large concentration of students reside in the East Riverside area, increasing traffic congestion on I-35 through the downtown area. In addition, the lack of housing near the University has also increased pressure on the available housing in many East Austin neighborhoods, such as the Blackland Neighborhood. Increasing the supply of housing in UNO should relieve the pressure on the housing stock in other areas of the City.

Potential for Partnership with Co-op Housing Developers

The Co-op Housing Developers view the trust fund as a source of bridge funding and an opportunity to add additional units to current development plans. The Trust Fund is not viewed as the sole source of creating non-profit housing development.

The fee-in-lieu is the way to emphasize affordable housing. The reality is that whenever a for-profit development provides mixed-income rental housing, the cost of the forgone rental income from the affordable units is not absorbed by the developers or the project owners, but rather is passed on by increasing the rents on the more expensive units. In this scenario, the burden of affordable housing is merely shifted from one student to another. This is why it is more critical for non-profits to have the ability to create new affordable units, as opposed to relying solely on the for-profit developer provide the units.

The Cooperatives have advised NHCD that most students qualify for the 80% MFI requirement, and that providing housing for persons at or below 80% MFI is not difficult except for the added record keeping. As non-profits, the Co-ops have additional funding

sources and tax benefits not available to for profit developers, that allow them to do an entire project for persons at or below 50% MFI which will truly add affordability to the area.

At the end of 15 years, at a minimum we hope to see 400 new units serving households at 80% MFI and 400 additional new units serving households at 50% MFI. All new units would meet enhanced safety standards, the City's Green Building standards, and a higher level of accessibility than required by Federal or State law. In addition, the City will further benefit from additional sidewalk, streetscape and building design improvements that create substantial public benefit while adding additional costs to the new development.

All of these requirements must also be balanced with the additional loss of revenue from reduced rents on a minimum of 10% of the units.

Conclusion

NHCD is recommending that the fee-in-lieu be \$.40 per square foot of conditioned space. The City will benefit not only by having more housing in West Campus, but also by the replacement of aging and undersized water lines. In addition, the newer apartments will be safer for students than the existing housing stock in West Campus because all new construction will be sprinklered. (Most of the West Campus was built before sprinkler systems were required).

NHCD Staff recognizes the Neighborhood Planning process in the West University Neighborhood Planning Area as a major step forward in the evolution of a more comprehensive housing policy for the City of Austin. This ordinance allows development in this neighborhood to occur in a manner that will enhance S.M.A.R.T. Housing with the proposed voluntary "density bonus" approach while creating a dedicated source of funding for supporting the creation of affordable housing in the area. The stakeholders in the neighborhood identified affordable housing as an issue that was important to the future sustainability of their neighborhood.

NHCD staff cannot support the Resolution passed by the Community Development Commission primarily because it would jeopardize the passage of the University Neighborhood Overlay and thwart the efforts of the West University Neighborhood to implement its affordable housing objectives.

Please contact me at 974-3108 if you need additional information.

Cc: Gina Copic, NHCD
Stuart Hersh, NHCD
Alice Glasco, NPZD
Ricardo Soliz, NPZD