

Government Affairs Update

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LOCAL

Larimer County

Loveland

Staff Provides Development Services Update: On June 25 the City Council received an update on development-related current and future projects. Chief Building Inspector Samantha Everett said in response to developers' requests, her division is working on a plan to implement online payment for building permits. She also said there is a trend in single-family construction, with developers waiting for specific orders to build new homes rather than constructing them in advance and then looking for buyers. More permits now are for multi-family and commercial construction, she added.

Development Services Director Brett Limbaugh said the Highway 402 plan will be ready for adoption this summer. He is also ready to launch a northwest development project. He explained that large vacant parcels in northwest Loveland slope to the west, and have no water infrastructure, making it prohibitively expensive to build there. A lift station to pump water there would cost "millions of dollars." Given this dilemma, Limbaugh's idea is to hold a design charette for developers who own these parcels and figure out how they could all work together to make the development more affordable. He also mentioned that the City's "micro-home" project is moving forward. A consultant has been hired to design a micro-home prototype that could be used by developers to build affordable and attainable small homes.

Council to Discuss Affordable Housing Mandate: The update to Council from Development Services ended with a brief mention of an upcoming agenda item that could be problematic for REALTORS® and developers. Development Services Director Brett Limbaugh said that at Council's request "inclusive zoning" would be scheduled for study session this fall.

When contacted afterward, Limbaugh clarified this comment. Apparently, Councilmember Leah Johnson, who recently announced she would not run for re-election this fall, had asked for support from her colleagues to discuss a possible inclusionary zoning ordinance. Three other councilors backed her request (the so-called "rule of four") and so this concept will be added to a study session agenda.

Inclusionary aka "inclusive" zoning is a concept in which developers are required to sell or rent a percentage of deed-restricted units below market cost, typically 80

percent of the area median income or make a payment to the city's affordable housing fund (cash-in-lieu).

Council Discusses Infrastructure Plan: The Loveland City Council continued its discussion of the 2020 city budget on with a presentation on the City's draft 10-year Capital Improvement Plan (CIP). The CIP lays out the priority plan for funding capital projects, currently equaling about \$77 million of investment. The first year of the plan will be adopted as part of the city's 2020 budget, which will be considered this fall.

Among the plan's project priorities so far are city facility maintenance, phase two of the Pulliam Community Building's reconstruction, open lands acquisition and development and road projects. Projects on the list that, per the plan, will be fully funded in 2020 include \$3.1 million for a new 12-acre neighborhood park at the Willow Bend Natural Area in southeast Loveland; \$1.9 million for improvements to 37th Street between U.S. 287 and Dry Creek; and a traffic calming study of Cleveland Avenue.

Unfortunately, staff says their analysis shows that the General Fund can only provide \$6.4 million for 2020. In 2019 for example, the GF transfer was \$8.7 million. In addition, the remaining TABOR Excess reserve balance of \$537,139 will be fully extinguished in 2020 (dollars that citizens have allowed the City to retain in excess of "TABOR limits"). The City has many transportation projects on the "horizon" list (2020-2029) that are currently unfunded to the tune of \$137,286,507 as well as other unfunded projects related to other topics.

Some of the City's unfunded capital projects will be financed if the proposed .5 percent sales tax increase AKA "Your City, Your Future Community Improvement Program" passes this November. To review, those projects include a new rec center, a library branch, fire station renovations and the construction of a new fire station, the museum expansion, and transportation projects on US 34 and Taft.

STATE

Colorado Law Hindering SB-181: According to the Denver Business Journal, state law has emerged as a surprise obstacle to regulators hiring administrative law judges to help make decisions about permits for drilling new oil and gas wells. Senate Bill 181 included a provision allowing the Colorado Oil and Gas Conservation Commission (COGCC) to hire administrative law judges, or ALJs, and have them review some permit applications, resolve mineral rights disputes and other oil and gas related issues.

Using ALJs would allow the COGCC staff to tackle a backlog of more than 6,300 well-drilling permit applications built up at the agency. It also would free the COGCC to undertake regulatory rulemakings required by SB-181.

But the COGCC says it can't hire ALJs because Colorado's administrative procedures law doesn't authorize the COGCC to employ them. The COGCC likely will ask the state legislature to amend the administrative procedures act and allow the COGCC to hire ALJs, but the legislature is not in session to amend state law until January. A spokesman said the commission is on hold until that happens.

At the end of June, the COGCC pressed ahead this week with two days of public hearings about its proposed procedural changes for permitting decisions. After hours of testimony, the COGCC ended the hearings without deciding on the rule-change proposal, postponing a vote until its July hearings at the earliest.

Building Permit Caps: In a July 2nd special election Lakewood voters approved a cap on residential construction that will be among the strictest in the metro area. Almost 53 percent of voters favored the cap, with 47 percent against it. Question 200 limits the construction of new homes and apartments each year to no more than one percent of the existing housing stock in the city and would require City Council approval of large development proposals.

In the meantime, a similar ballot measure for a more widespread building permit cap that would impose a 1 percent cap on new homes throughout metro Denver for 2021 and 2022 received approval from the Colorado Secretary of State's title board last week. Now known as Initiative 109, "Limits on Local Housing Growth" supporters may collect signatures to get the question on the November ballot. If this sounds familiar it is because the same group tried to get a similar question on the ballot last year.

NATION

Supreme Court Ruling Protects Property Rights: On June 21, the Supreme Court issued its ruling in the case of *Knick v. Township of Scott*, a decision which NAR believes will lead state and local governments to be more thoughtful and deliberate when developing laws or regulations that could infringe on Americans' private property rights.

Specifically, *Knick v. Township of Scott* declared that plaintiffs who have accused local governments of violating the Takings Clause of the U.S. Constitution may proceed directly in federal court rather than first litigating in local circuits, overturning a 34-year old precedent set by a 1985 Supreme Court ruling.

"A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it," the Court's opinion reads. "The Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner. In sum, because a taking without compensation violates the self-executing Fifth Amendment at the time of the taking, the property owner can bring a federal suit at that time."

Property owners had previously been required to exhaust all remedies to receive just compensation for private property seizure in state court before they could escalate the case to federal court. Going forward, property owners will have both state and federal court available to redress their property rights. NAR expects this new development to prompt state and local governments to be more strategic regarding takings, especially in the areas of land use planning and environmental regulations, in order to avoid the uncertainty of litigation in federal court.

Considerations surrounding compensation should intensify and increase, as well.

President Creates Affordable Housing Council: President Trump signed an Executive Order June 25th to create a Council on Eliminating Regulatory Barriers to Affordable Housing. This Council will focus on eliminating impediments that restrict access to affordable housing, such as zoning laws, environmental regulations, building codes and lengthy permit procedures. The Council will consist of members from eight Federal agencies. These members will engage with other government leaders, elected officials and private sector stakeholders to identify and eliminate the "regulatory obstacles that impede the production of affordable homes."

Secretary Ben Carson will lead the Council. The Departments of Treasury, Agriculture, Interior, Labor, Transportation, Energy and Environmental Protection will be represented on the panel. NAR anticipates the Council will create opportunities to provide its members with information and input related to this issue. NAR will distribute updated information on an on-going basis as the work process of the Council is developed.

Colorado Congressman Introduces Affordable Housing Bills: Rep. Joe Neguse (Boulder – Congressional District Two) recently filed two bills intended to protect affordable housing and its financing. One of the bills (HR 3478) would remove a requirement that a property must be owned for 10 years before a federal low income housing tax credit could be used to purchase the property for affordable housing. The other bill (HR 3479) would dictate that properties that receive the low-income housing tax credit remain affordable for 30 years, rather than allowing a release and conversion to market-rate housing at 15 years. Neguse in a written statement said the lack of affordable housing in communities across the county is at a crisis level.

Comply with the Do Not Call Act: Frustration with telemarketing calls has reached a new high. Do you know how to ensure you comply with federal regulations known as TCPA (Telephone Consumer Protection Act)? Here's a short video that explains it. <https://tinyurl.com/yxuwku27>

CFPB Releases Mortgage Closing Scams Tool: Earlier this month, the Consumer Financial Protection Bureau (CFPB) released its "[Mortgage Closing Scams\(link is external\)](#)" tools to inform consumers about wire fraud scams that commonly occur during closings. The tools include a [Mortgage Closing Checklist\(link is external\)](#) to help guide consumers through the home buying process and things to beware of such as being mindful of phone calls and conversations that you have during the home buying process and to never email any financial information.

The tools were also developed to be shared by the real estate industry to improve consumer education on how to protect against mortgage phishing scams, which includes relying on your trusted real estate professionals, lenders, or settlement agents, to confirm any payment instructions. In the FBI's recent 2018 Internet Crime Report, victims loss over \$149 million as a result of fraud in real estate transactions. Through the release of these tools, the CFPB is committed to alerting consumers about necessary steps to take during the home buying process and illustrates continued investment in consumer protection.

USDA Loan Rule Adopted: On June 21, 2019, the U.S. Department of Agriculture (USDA) Rural Housing Service (RHS) published a final rule adopting changes to the RHS guaranteed and direct single-family loan programs. The changes revise the definition of very low-, low-, and moderate-income to allow for a two-tier income limit structure (also known as income banding) within the single-family housing direct loan and grant programs. For more information click here:

https://www.rd.usda.gov/files/USDARD_SA_IncomeBanding_FinalRule062819.pdf