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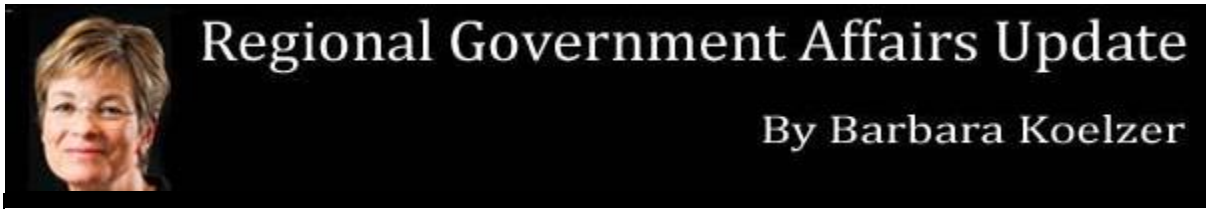
Dear Member,

I began speaking to staff at NAR about a metro district study on February 7, 2020 a few weeks before our world was turned upside down by the COVID epidemic. I am happy to announce the study is complete and its results are now available. It was worth the wait.

The study wouldn't have been possible without the assistance of our REALTOR associations (local, state, and national) and two multiple listing services -- IRES and REColorado.

To learn more about the study and review the infographics created to summarize the study and educate both real estate professionals and consumers, keep reading!

Best Regards,
Barbara Koelzer
Regional Government Director



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LOCAL

Boulder County

Longmont

Inclusionary Housing Update: On May 4 Kathy Fedler updated the City Council regarding the status of Longmont's Inclusionary Housing (IH) program. The program was approved by Council in 2019 and is designed to help the City reach its goal of creating 5,400 affordable housing units by 2035 – 12 percent of Longmont's housing stock.

The IH program requires builders to deed-restrict 12 percent of new for-sale units for those with an income of 80 percent AMI or below or pay a fee-in-lieu (FIL) to the City. Rental units can be voluntarily restricted for those with an income of 60 percent or less AMI.

In her remarks, Fedler said developers have created 73 units in 2021 to date and 90 units last year. Moving forward Longmont will need 200-300 units a year to meet its 2035 goal. She added that the City needs more rental units for residents with 40 percent AMI because the 60 percent AMI need has been met. At this point, it appears the FIL isn't "enough" due to the rising cost of construction.

Councilmember Tim Waters said Longmont needs to reduce the gap for first-time homebuyers. He argued that the City needs a target for attainable units. He warned the attainable target is important "to remain a community that looks like Longmont instead of neighboring communities."

Councilmember Joan Peck agreed with Waters but said, "we can probably build middle-tier through the (Longmont) Housing Authority." Councilmember Marcia Martin wanted to know how other Boulder County communities are doing in meeting the 12 percent affordable housing goal. Fedler said the City is in the progress of gather than data and it should be available in a few weeks.

Larimer County

Fort Collins

Council Gives Approval for 1041 Proposal: The City Council decided staff should proceed with a proposal to develop a feasibility evaluation to implement 1041 regulations. 1041

powers are intended to give local governments local control over development projects with statewide impacts. State statute requires the government to specify areas or activities of state interest and adopt guidelines for the administration of those areas (for example, about water projects). Currently, 61 Colorado municipalities use 1041 regulations.

Former City Council member Ross Cunniff had suggested the adoption of 1041 powers at his last Council meeting to delay the NISP project. “New” City Councilmember Kelly Ohlson described 1041 powers as, “a very important tool to put in our toolbox.” He was displeased with the timeline staff proposed, saying, “it shouldn’t take that long.”

Councilor Susan Gutowsky asked pointed questions, asking if the City could apply 1041 to SPAR projects currently in progress (such as CSU’s proposed Hughes Stadium project?). Paul Sizemore said it is possible. The City’s Site Plan Advisory Review (SPAR) process requires the submittal and approval of a site development plan that describes the location, character, and extent of improvements to parcels owned or operated by public entities such as schools.

In response to Ohlson’s criticisms, staff said time would be needed to research the topic. The City Manager pointed out it is already May, and it takes to get an item on the agenda. Staff will do its best to bring something back quickly. The City Attorney suggested adopting initial 1041 regulations and add other projects/activities later.

Loveland

Council Votes to Lower Water Heater Permit Fees: The City Council has been talking about water heater installation permit fees for over a year. The issue first came up during the Council’s discussion before the adoption of the 2018 building codes. State and local laws require all water heater installations to be inspected and permitted, with the installer generally being either a licensed contractor or the resident-owner of the property in question. Loveland hadn’t enforced the permit requirement until 2020.

Some Councilors had concerns about charging a fee of any sort for a heater permit, saying it shouldn’t be necessary because homeowners could replace water heaters themselves. Then there was a debate over how much the permit fee should be. Some “big box” stores unknowingly charge customers for a permit when they buy a heater, a

situation that created consternation for some Councilmembers.

Chief Building Official Samantha Everett said a flat fee of $100, which was suggested by some Councilmembers, wouldn't save homeowners because the average permit fee is about $48 and the cost to the City (to process permits and inspect them) is $200. Everett recommended keeping the current fee, which is based on the cost of the heater, a contractor fee, and the City's time to inspect the installation.

Overcash said, "We are missing an opportunity to offer added value for residents who shop in Loveland. Why not offer the permit and inspection for no fee to encourage 100 percent compliance?" Olson suggested offering the permit based only on the cost of the heater excluding the installation cost. Molloy supported Olson's suggestion. Samson agreed, saying that was a good "baby step." Mayor Marsh said she preferred that option as well. Olson's motion was unanimously approved.

Note: The Council will also consider a motion directing retailers to charge the same permit fee as the City and not more, once the City Attorney researches it to make sure it is legal without unforeseen consequences.

Weld County

New Solar Regulations: The Weld County Commissioners recently approved changes to the County Development Code for solar energy facilities. The new regulations redefine solar facilities by size as opposed to the amount of energy produced, impacting the permitting and approval process.

The first category is for small solar farms that are less than 5 acres. These may be in the near/urban area or the agriculture/rural area, per a land use map from the county. These must undergo the zoning permit process, and approval is subject to the discretion of Weld County Planning Services.

Only one solar facility may be present per 35 acres; no facilities may be placed adjacent to one another. The Planning Department may approve these small projects without a public hearing if the application criteria are met and the project has not received opposition from 30 percent of surrounding property owners within a 500-foot radius.

Mid-sized projects are broken into two subcategories: solar facilities between 5 acres and 160 acres in the near/urban area, or facilities in the ag/rural zone between 5 acres and 320 acres. These must undergo the use-by-special-review process.

Mid-sized projects must receive additional consideration by the developer, the planning department, and the county commissioners before approval, to ensure they are compatible with existing and planned developments in the area. Developers must meet with the planning department before submitting a special review application, to discuss any potential changes or considerations. Once approved by the planning department, proposals will go before the planning commission, which will make a recommendation to the county commissioners for a final decision.

The third category is a 1041 solar energy facility. These apply to projects of more than 160 in the near/urban area or more than 320 acres in the ag/rural area. These are only allowed by permit and must receive approval from the planning department, planning commission, and county commissioners.

In Fall 2020 issues arose regarding concerns about solar developers circumventing subdivision regulations. The staff's proposed regulations didn't sit well with landowners. So, after convening a stakeholder group, the County drafted new regulations which seem to have the support of landowners and the solar industry.

REGION

REALTORS® Research Metro Districts: The rapid increase in the number of residential metro districts left Realtors® in Northern Colorado with a lot of questions. Do metro districts make new homes more affordable? How does the additional property tax paid by owners affect housing costs? A study proposed by the Fort Collins Board of REALTORS®, the Greeley Area REALTOR® Association, the Longmont Association of REALTORS® and the Loveland-Berthoud Association of REALTORS® and funded by a grant from the National Association of REALTORS® is the first in Colorado to delve into this complicated topic.

Read more about the study's findings here: https://ires-net.com/what-is-a-metro-district/

COLORADO ASSOCIATION OF REALTORS®

Legislative Update:

SB-262 “Special District Transparency” Sponsored by Rep. Hugh McKean (Loveland)

CAR Position – Support

This bill would require a debt obligation disclosure and property tax estimate for any new home beginning in 2022. It would also direct buyers to copies of a Metro District’s formation plans as well as how much debt a development is authorized to undertake, debt homeowners would have to repay. Finally, The bill requires Metro Districts to have a website including the information listed above.

SB21-260 “Sustainability Of The Transportation System” CAR Position - Amend

As reported in my last update, this bill includes an array of new fees, including a road use fee on gasoline that will grow from 2 cents a gallon to 8 cents a gallon, as well as other fees on all kinds of “road users,” including delivery vehicles and ride-share providers like Uber. The bill creates 3 new enterprises to manage the revenues. Some expert observers saying the bill is “taking from roads to fund electric vehicles and greenhouse gas reduction.”

HB-1117 Amended: “Local Government Authority Promote Affordable Housing Units”

Recently I heard a city council member proudly tell her colleagues that their city would now be able to use rent control to create affordable housing. Fortunately, she was wrong.

HB- 1117 as introduced, would have opened up the Town of Telluride decision that prohibits rent control by expanding the ability for local governments to offer options to developers in their inclusionary zoning ordinances including rent control or other methods to require a certain numerical amount of affordable housing.

However, on Second Reading in the House of Representatives, CAR successfully passed an amendment that confirms this legislation does not give local governments the authority to adopt or enforce rent control policies for existing buildings in their communities. The

CAR amendment clarified in the bill that rent control is not an allowable option.

The Senate State, Veterans, and Military Affairs Committee passed two amendments that improved the bill by addressing issues around zoning changes and jurisdictional authority. With these amendments, the bill provides incentive options to create more affordable housing units such as reducing parking requirements for projects near transit stations, reducing fees and permit costs, and repurposing surplus locally owned property for housing development.

The bottom line: CAR lobbyists worked hard to make sure this bill was amended, much to the relief of the Legislative Policy Committee.

NATION

Court Rules on Eviction Moratorium: On May 5, 2021, the U.S. District Court for the District of Colombia struck down the Center for Disease Control's (CDC) nationwide eviction moratorium set to expire at the end of June, concluding the moratorium exceeds the limits Congress placed on the CDC's authority. The Department of Justice (DOJ) quickly filed a notice of appeal and a motion for an emergency stay of the order pending its appeal.

In response, the D.C. District Court issued a temporary administrative stay on its order vacating the moratorium pending resolution of the DOJ's motion, meaning the CDC eviction moratorium remains in place across the country pending further action by the court. This decision stems from litigation filed by the Alabama and Georgia Associations of REALTORS®, two housing providers, and their property management companies challenging the CDC's authority to issue the eviction moratorium on a number of statutory and constitutional grounds, namely under the Public Health Services Act (PHSA).

The plaintiffs filed the case in defense of the millions of small housing providers across the country whose livelihoods have been in danger of financial ruin following months of lost income due to unpaid rent as a result of the moratorium. Housing providers rely on the rental payments to pay the mortgage on the properties, taxes, and general upkeep to maintain the properties' safety and livability.

Housing providers should continue to monitor the case, as the CDC's eviction moratorium remains in effect nationwide given the D.C. District Court's temporary administrative stay. A decision by the D.C. District Court on the DOJ's emergency motion for a stay pending its appeal is anticipated in the next two weeks. If the D.C. District Court denies the DOJ's request, the DOJ will likely elevate its request for an emergency stay to the D.C. Circuit Court of Appeals. Housing providers should also keep in mind that some state and local governments may have their own eviction moratoria that are not affected by the D.C. District Court's rulings.

In the meantime, NAR remains focused on ensuring the effective deployment of rental assistance to protect tenants and housing providers alike and ensure all can meet their financial obligations to stabilize the housing market.

DOL Withdraws Independent Contractor Rule: The U.S. Department of Labor (DOL) announced withdrawal of the independent contractor rule for determining how workers are classified under the Fair Labor Standards Act (FLSA). DOL published the final independent contractor rule in January 2021, but the rule never went into effect. The independent contractor rule would have adopted an economic realities test for classifying workers as employees or independent contractors, and would have provided greater clarity for how independent contractors are classified under the FLSA.

It was expected that the Department of Labor would withdraw the independent contractor rule, but it is unclear how the Department will proceed with a new rule and potential regulations on this matter. NAR has remained engaged on this issue, and will continue to provide updates. For more information on NAR's advocacy efforts on worker classification matters, please visit nar.realtor/independent-contractor-status.