

## **WORKSHOP MEETING**

### **1) Continued Workshop Meeting to Discuss an Affordable Housing Inclusionary Zoning Ordinance**

Chairman Berg thanked staff for the memo on this agenda item including the past discussions on affordable housing and an Inclusionary Zoning Ordinance.

Mr. Nakahara reviewed the background information provided in this memo. He stated the items the Commission has previously reached consensus on; which includes the need for affordable housing, the threshold of the number of affordable units that would be required to be provided in residential developments, and the eligibility requirements. Commissioner Keefe clarified that regarding eligibility, that priority will be given to people currently living in the Village that qualify for and wish to move to an affordable unit.

Mr. Nakahara noted that at the last meeting Commissioner Schulman brought up the point that between 30 to 50 units, 5 percent of 49 units is 2.5 units, and once 50 units are reached, 10 percent of the units would be required to be affordable or 5 units. This breakdown was modified in the chart to adjust for this difference and set at a fixed number and not a percent. Mr. Nakahara asked the Commission feedback on the modification as compared to what was previously agreed on. Commissioner Bromberg replied that he agrees with the modification, which makes more sense. Commissioners Jacoby, Keefe and Schulman agreed. Mr. Lichterman pointed out that there is an inconsistency in how the thresholds are stated and clarified that the thresholds should state 41 to 50 would require 3 affordable units and 51 or more units or would require 10% of the units to be affordable.

Chairman Berg asked Mr. Weiss for his feedback on this. Mr. Weiss replied that wherever you draw a line there will be a sympathetic case on either side. In this case, we are opting for a progressive rate where the larger the building the higher the rate of affordable units. This is in line with other communities in the area. He shared that Northbrook has adopted an ordinance that states that 15 percent of all new units developed across the board must be affordable. Mr. Weiss stated that in these progressive tiers, he does not think this will turn developers away. Chairman Berg agreed that this is a positive change.

Commissioner Stolman asked Mr. Weiss if it is traditional that communities try to have parity with others communities. Mr. Weiss replied that the Commission should keep in mind that adopting an affordable housing regulation is a big step and it is one of the more activist steps with regard to market forces that a community of this size will take, aside from having a different sales tax rate. So for every town there are different policies and politics that come into play. There are also different building environments and thresholds based on developments that we see. There is no real uniformity. Northbrook made their decisions with the desire to be more aggressive because they saw the need within their community. Mr. Weiss stated that he does not think there is a race for parity.

Mr. Lichterman provided the example that if there are 50 rental units, all affordable units can be at 120 percent of average median income (AMI), and once at 51<sup>st</sup> unit is reached, half of the affordable units must be at 100 percent of AMI and half at 120 percent, so 51 units across the board will trigger this.

Mr. Lichterman guided the discussion to look at the project thresholds and the nuances regarding these. He stated that the Commission should consider if they want to treat detached and attached housing differently regarding the thresholds and the application of these to the different structure types of attached and detached. Mr. Lichterman mentioned the example that if a golf course were to be redeveloped into single family homes. This asks the question of should a project of that scale have the same proposed threshold; or should the threshold of when requiring affordable units kicks in apply to attached and detached homes consistently. He stated that a case can be made that if there is a development of single family homes, it should have a different threshold than condos or apartments. As proposed, it states that if a developer builds a 45 single family home development, regardless of rented or owned, that 3 of these need to be at an affordable rate. Possible opportunities for a development like this would be if a corporate campus or a golf course were converted. Mr. Lichterman stated that it can be more difficult to apply affordability to single-family home developments. Attached housing like condos and rental apartments are easier because they typically have a management company there to oversee it. This would be more difficult with free standing homes. He mentioned that if the golf course were to be redeveloped, they wouldn't want to miss that opportunity. For example, Briarwood could be redeveloped into 200 single-family homes and they wouldn't want affordability. However, it may not make much sense to apply affordability to small single-family home developments like the recent Samantha's Way or Elysian Way with 7 or 8 homes each. Requiring one of these to be affordable could create barriers. He suggested that the Commission could focus on larger scale single-family home developments and require affordability to kick in at a certain number of homes, which would exempt these smaller pocket developments like Samantha's Way and Elysian Way.

Commissioner Goldstone asked how this would work for developments with mixed housing types; single-family homes with apartments or condominiums in one development, as seen at Reva behind Deerbrook Mall and others in surrounding municipalities. Mr. Lichterman replied that this point would be discussed later, as the decision on how to treat detached home developments will inform the decision on mixed housing type developments. He stated that Reva has 180 units total, 120 apartments and 60 townhomes. At 10 percent affordable, there will be 18 affordable units, but they will all be apartments as this is what was negotiated without an ordinance in place. Another example of a mixed housing development is Coromandel, which has single-family homes, condominiums and townhomes.

Chairman Berg commented that the small pocket development likely could not be built with an affordable component. Commissioner Goldstone agreed and added that something like Coromandel she would feel differently about. She asked how Highland Park manages their single-family homes that are in the affordable housing program. Mr. Lichterman replied that Highland Park and other and other towns with the most robust and comprehensive affordable housing ordinances often accept fees in lieu of affordable units, which is likely, what happens most often with the smaller single family home developments. He stated that with this money the city may go and buy land or homes and own it in perpetuity. They then work with a partner to rehab, market and manage the home as affordable, but the city owns and develops the property. In this option, the municipality would have a housing authority to manage and oversee the property. Chairman Berg commented that this is a costly proposition, and that the Village must have the volume and dollars to substantiate it. Commissioner Keefe asked about the sizes of the single-family home developments in the past 10 years. Mr. Ryckaert replied that there has only been the two mentioned, Samantha's Way with 8 homes and Elysian Way with 7 homes. Commissioner Keefe commented that both of these were under 10 units and would not require affordable units under this draft ordinance.

Mr. Lichterman asked the Commission if there were developments of 20 or 30 homes if they would want affordable units to be required. Commissioner Bromberg suggested that they require one affordable home for every 30 homes. He stated that he wants it to be as least complicated as possible and thinks it should apply to attached as well as detached but being required for larger developments of single-family homes only. Commissioner Keefe commented that a development of 30 homes would be a large undertaking and he agrees with this suggestion. Commissioner Bromberg commented that under this suggestion, a development like Bristol would need 5 homes to be affordable. However, he is not sure there would be another single-family home development of that size in Deerfield. Mr. Lichterman stated that the possibilities for redevelopment could be commercial properties, corporate properties along Lake Cook Road, Holy Cross, or the golf course.

Commissioner Bromberg asked that if the Village wants workforce housing, do they only want attached housing, or do they want single-family homes to be made affordable as well. He believes Deerfield would want affordable single-family homes and he would like to keep the threshold the same. Commissioner Jacoby commented that developers will likely be considering large luxury homes and they may not consider Deerfield if affordable units are required for any size development. She feels that if it is a large development of 50 or more homes, than affordability should be required. Commissioner Bromberg clarified that she is suggesting zero affordable units required for a development of up to 50 homes, and then 10 percent starting at 51. Chairman Berg suggested a flat number of units instead of a percent because it would be a disincentive to build 52 homes when they could build 49 or 50 and give none as affordable. Commissioner Bromberg asked what neighboring communities have done. Mr. Lichterman replied that Lake Forest has no affordable requirements for detached housing, but every other town with an ordinance has a consistent threshold for attached and detached housing, but AMIs are different for rented versus owned housing, as is proposed here as well. Mr. Nakahara stated that Highland Park requires 20 percent of units to be affordable across the board, attached and detached, for any development over 6 units. For example, in Highland Park if a developer builds a 10 home development, 2 have to be affordable. Mr. Lichterman shared that an option used in other communities is allowing a developer to pay a certain number of dollars and build all units at market rate, known as a fee in lieu of affordable units. Mr. Weiss shared that Northbrook recently considered a small development and they decided that affordability does not apply for developments of 5 or fewer homes even though their affordable regulations apply to detached and attached homes. They also state that the developer can build the affordable units off site or pay the fee in lieu of providing affordable units. So in the case of a small development of 12 homes they would be required to build 1.5 equivalent affordable units or pay a fee in lieu which is set at \$125,000 per affordable unit.

Commissioner Jacoby asked where that fee would go. Mr. Weiss explained that the fees developers pay in lieu of providing affordable units go into a housing trust fund that is created by the municipality. Communities use them in different ways. Highland Park has bought and constructed multi-unit affordable housing with it. Other communities will use it to work with a partner organization and buy distressed properties, fix them up and resell them with covenants to keep them affordable. Some towns will use it to provide rental assistance to residents. There are many different options on how the funds can be applied.

Chairman Berg asked if the Village could reasonably do this if they decided to take payments from developers in lieu of affordable units. Mr. Weiss replied that a staff person or a partner organization with a staff liaison typically handle this. Mr. Lichterman added that if they were to

accept these fees they would likely need to form a housing commission. He stated that there was a comment from the Board of wanting to keep it simple and not wanting to take on the management of the funds and a new commission for this purpose. Mr. Ryckaert added that this would require quite a bit of oversight and management as well as a new housing commission. Highland Park has a dedicated staff member, a housing planner that handles this. Commissioner Jacoby stated that she feels that Deerfield does not have the size to merit this.

Mr. Lichterman returned to the golf course example stating that a development such as this could be 200 homes, which would trigger affordability no matter what. Commissioner Goldstone asked about the option of building the affordable units off site. Mr. Lichterman replied that he is not sure this happens in practice or if it is just written in ordinances as an option. Mr. Weiss confirmed that he does not see this in practice in this area. Most often it is much easier for developers to pay the fee than to find an open space for building. Mr. Lichterman shared that when the Village met with Reva to negotiate for 10 percent of the units to be affordable, they immediately asked to pay their way out of it instead. However, the Village does not want that burden, they want the developers to build the affordable units and manage them. Chairman Berg agreed that it would be a big burden for the Village to accept the fees and manage this. Commissioner Goldstone stated that she does not like the idea of developers being able to buy themselves out of it; it defeats the purpose and does not bring affordable units to Deerfield.

Commissioner Bromberg suggested that for detached housing there is no affordability required for 0 to 30 units. Chairman Berg agreed a larger number of homes warrants affordable units for single-family homes and 30 sounds like a good number. Commissioner Keefe agreed. Mr. Nakahara asked at 31 detached units how many affordable units should be proposed or should there be a percentage required. Commissioner Bromberg suggested that 2 affordable units be required for 31-40 homes, 3 be required for 41-50 homes, and 10 percent be required for 51 and more. Chairman Berg agreed that a number and not a percentage is a good idea to make it more simple. Commissioner Jacoby agreed. Mr. Lichterman stated that they can move on and revisit this in summary at the end.

Commissioner Schulman asked how rentals of single-family affordable homes could be overseen. With owned units who would monitor who is buying them and ensure that they qualify for them and that they are not renting them out for profit. Mr. Lichterman replied that when the homes are developed there are restrictive covenants placed on them. The duration of these covenants can be in perpetuity to remain affordable or they can have a limit. The covenants state that they cannot be rented and must be owner occupied. They can also cap the appreciation so that the homes cannot be flipped and sold, eliminating the affordability. Chairman Berg added that they can also include a hardship restriction allowing a unit to be rented as an exception if necessary. Commissioner Goldstone suggested they can state that the owner must live there for a year before it could be rented. Mr. Nakahara shared that Northbrook does annual checks to make sure that the people who purchased these homes are living in them. Mr. Weiss added that these scenarios are hypothetical, and he has learned from housing partners that every possible living situation occurs. A recent example was in Highwood; a member of the Air Force was being temporarily stationed abroad and wanted to rent his affordable unit and be able to come back to it after his tour. He commented that once you are dealing with an ownership model, it is very different from an annual lease you get into all complications of peoples' lives. This is why a housing partner organization is helpful.

Mr. Lichterman stated that the major control is capping the appreciation to avoid flipping it for profit. The other limiting factors are that there are private property rights, and it is a balancing

act of how much local government should be intervening in the free market. If you limit rentals and appreciation, you hope to find a balance of achieving policy goals without going too far. Commissioner Schulman suggested that they can interfere with the developers but after this stage that it is peoples' lives and restrictions could alienate their rights. However, a cap on appreciation seems standard and this should achieve not being able to rent units for profit with the intent not to move in. Mr. Lichterman stated that they can add language to the draft ordinance to verify that these units are owner occupied at the time of purchase. The partner organization will then check once a year. Commissioner Schulman asked about the cost to the Village for monitoring this. Mr. Lichterman replied that the Village would be prepared to enter into a contract with a third party housing contractor, which would likely be around \$20,000 a year. It would be more if they accepted the fee in lieu and added a housing commission or were to purchase land. He added that the partner organization would monitor rentals as well as single-family homes.

Mr. Lichterman moved on to the next topic of how long units should be required to be affordable. At the last meeting, there was discussion of keeping them affordable in perpetuity. There was also discussion of a 25-year period. The difficulties of a limited duration would be telling people living there in year 25 that their affordable rental rate is about to go up to market rate rent. Mr. Lichterman added that most towns in the area keep the units affordable in perpetuity. However, Reva negotiated a time limit of 25 years and Zion Woods is a 99-year time frame because of the ground lease. Mr. Nakahara noted that Highland Park and Lake Forest both state affordability in perpetuity or so long a permissible by law, however affordability in Evanston have a time limit of 30 years. Commissioner Stolman asked why an end date or a cap at 25 years would be considered. Mr. Lichterman stated that for property owners, their property might become more valuable after a 25-year period, and restrictive covenants going away would be more valuable to a future investor. Commissioner Bromberg stated that he does not see the desire for affordable units going away and he is in favor of perpetuity. Chairman Berg and Commissioner Stolman agreed commenting on the difficulties of time limits. Commissioner Goldstone asked that if a property is affordable in perpetuity, can a property owner appeal this in the future, if they believe it becomes unnecessary. Mr. Weiss replied that a future Village Board could strike or modify this requirement or release covenants on properties. He added that the sense on the North Shore is that properties have not gotten more affordable over time, so creating and preserving affordable units will stem that decline. However, they could be reversible by a future Village Board. All commissioners agreed they are in favor of perpetuity.

Mr. Lichterman next asked about multiple housing types in one development and which units should affordable housing be applied. There can be equal application among all housing types, or it can only apply to the townhomes, condominiums or apartments. Commissioner Schulman commented that he wouldn't want developers to cherry pick, and he thinks they should match affordable units to each housing type and not shift them from one type to another. He is in favor of equal application among all housing types. Commissioners Keefe and Bromberg agreed. Chairman Berg agreed and summarized that they should keep it equitable as well as simpler.

Next, Mr. Lichterman brought up design standards for discussion. He asked the Commission if affordable units should have to be the exact same as market rate units or if there can be a different percentage. They can set standards to define differences allowed. It is common to see a limit on how flexible this can be so that the affordable units are not unreasonably small. However, often affordable units do not all need to be the same. Some towns allow them to be no less than 75 percent of the square footage of the market rate units. Or they may allow for different finishes or appliances. The Commission can decide if the affordable units should be the

same or allow for some flexibility with limits. Chairman Berg asked how this could be applied to an ordinance. Mr. Lichterman replied that in Highland Park for example the square footage of the affordable units have to be at least 75 percent of the market rate units and they specify minimums by number of bedrooms. Commissioner Schulman commented that the least desirable apartment units might be made affordable; however, the affordable units could change within a development in the future. Mr. Lichterman added that when a developer is building a large-scale apartment building they would not add different finishes as it wouldn't make sense. He added that developers may not always take advantage of this flexibility and the Commission can decide whether to include it or not.

Commissioner Jacoby commented that different finishes or size may be mostly applicable for detached homes versus apartments. She suggested that they offer the flexibility, whether developers choose take advantage of it or not. Mr. Lichterman replied that there can be some parameters defined by the Commission. For example, a smaller garage, less square footage, but while ensuring the affordable units are reasonable for living. Commissioner Keefe stated that he is in favor of reasonable, well-defined flexibility. Commissioners Bromberg and Schulman agreed. Commissioner Schulman added that the exterior should be indistinguishable and look like the market rate units. Mr. Lichterman replied that they could add language to require the units to be indistinguishable from the exterior. Chairman Berg and Commissioner Jacoby agreed.

Mr. Lichterman guided the discussion to the topic of incentives. He summarized that the Commission is in favor of no fee in lieu but may consider other incentives. A common one offered is a density bonus. The application of this most often manifests in greater building height. A density bonus is when affordable units are included, the developer can add a certain ratio of market rate units above and beyond zoning for density. This often leads to greater building height than otherwise allowed. There can also be a parking ratio reduction, reductions in fees and waivers, and expedited permit processing. Expedited permit processing may be the least valuable and may not be worth the staff capacity. However, it is a way of showing that the Village is also making concessions. Commissioner Schulman stated that he is favor of all of these incentives. Commissioner Bromberg clarified that expedited permits may be of little value to the developer and more work for the staff. Mr. Lichterman replied that the Building Department may not like this as these permits will skip ahead of single-family homes, which may cause complaints. Mr. Lichterman shared that first comments on a plan review can take up to four weeks and expedited processing can save up to four weeks of time. Mr. Nakahara added that he discussed this with Building and Code Enforcement Supervisor Clint Case, and he shared that it depends on the developer whether this would be a valuable incentive or not. For example, depending on the time of year, a developer may want to break ground on a project before winter comes and time can be of the essence and an expedited review would be valuable.

Mr. Nakahara explained more about the density bonus as compared to other incentives. He noted that if the ordinance allows a density bonus, then a density bonus is done by right, the developer will receive the density bonus, as defined, by providing affordable units. However, parking waivers or increased building height are not automatically allowed but developers can be eligible for them. An example of a density bonus is if a developer is allowed to add one more market rate unit for every affordable unit, it can be a one to one ratio. In Highland Park the density bonus is 1.5 market rate units for every affordable unit and in Lake Forest and Northbrook, they use a 1:1 ratio. Again, density bonuses are given by right but incentives for building height, increased lot coverage and or parking waivers are not automatically given but

developers can be eligible for them. The Commission would still need to make sure that these eligible incentives do not impact the health or safety of the surrounding properties. Mr. Weiss confirmed that density bonuses are given by right and included in the initial development plan. It is a mathematical formula that can be plugged in. Commissioner Bromberg commented that he is also in favor of all incentives. Commissioner Goldstone asked how this is an incentive and how it is different than the current process of a developer asking for a variation. Mr. Nakahara replied that the process is not different but extra consideration could be given to granting variances to a development with affordable units.

Mr. Ryckaert added that developments with affordable units could be entitled to the density bonus as well as permit fee waivers as a sure thing and the rest would require approval. Mr. Nakahara stated that permit fee waivers are often applied to just the affordable units. For example, if 10 percent of the development is affordable, then there would be a reduction of 10 percent of the total permit fees. The reduction would be proportionate to the affordable units in that development. Chairman Berg agreed that he endorses all incentives. Commissioner Goldstone agreed but stated that she does not see them all as pure incentives. Mr. Lichterman agreed that some of these incentives would still be a case-by-case decision. Another option would be giving affordable units a different parking ratio automatically. Commissioner Schulman and Chairman Berg stated that they would be in favor of this. Mr. Lichterman replied that they can modify the language around this and bring it back to the Commission.

Commissioner Stolman asked if a developer can choose as many of the incentives as they would like. Mr. Lichterman replied that yes, all of the incentives can be on the table for developers to take advantage of. Mr. Nakahara asked about applying a cap to the density bonus so that a developer couldn't continuously add more market rates while adding more affordable units. Mr. Lichterman replied that the cap on density bonuses is often tied to floor area ratio (FAR), so that a building can go to a certain height but at some point cannot exceed FAR by that factor. Mr. Lichterman confirmed that this language will be added so that the density bonus can be capped.

Mr. Lichterman asked the Commission if there might be an appropriate place and time that they should consider accepting fees in lieu of affordable units, for example to pay for a ratio of an affordable unit instead of adding another one to the development. Commissioner Keefe stated that staff and the Board seem averse to the Village creating and administering a fund and he is not in favor of accepting any fees. Chairman Berg agreed that the management of it would somewhat outweigh the benefits. Commissioner Bromberg agreed that the Village Board did not seem to want to do this so he would vote no. Commissioner Goldstone stated that she believes accepting fees defeats the purpose and does not bring affordable units to Deerfield. She added that if you can buy your way out of it does not achieve the goal. All commissioners agreed.

Mr. Lichterman reviewed the discussion thus far and decisions made. He stated that there is consensus that an ordinance is needed, and the ordinance would be mandatory. It applies to owners and renters, although there are different thresholds for detached and attached structures. The Commission agreed to change the threshold for detached homes to kick in after 31 or more homes to not stifle single-family home development. For rental unit developments of 50 units or less, the affordable units will be 120 percent of average median income (AMI), and at 51 units and above, half of the affordable units have to be at 120 percent of AMI and half at 100 percent of AMI. For owned units, all affordable units will be at 120 percent of AMI. For eligibility, priority will be given to those who live or work in the Village with no regard to age. Affordability will run in perpetuity. There will be equal application of affordable units to all housing types in a

development with the carve out for detached structures if less than 31. And staff will add language on design standards to allow for some flexibility on the interior and size, but it must be indistinguishable from the exterior. The Commission is in favor of all incentives and staff will bring back language on how this will work with the nuances. The Commission also agreed that there will be no opportunity to pay your way out with a fee in lieu of affordable units.

Mr. Nakahara suggested that the Commission decide how to handle fractions. For example 0.5 will be rounded up and 0.49 rounded down. Mr. Weiss shared that this is different in almost every community; it is a policy decision and there could be a sympathetic case on either side. Schulman said instead of rounding up can offer pay out for just the rounding. He added that this is where the fee in lieu can be useful in these hard cases. Mr. Lichterman reported that the Village does have a small rental assistance fund that it could be placed in if this were considered. Mr. Weiss added that there is a certain cost in administering this that the Commission has expressed opposition to. He added that the Village will be absorbing some cost just by having an affordable housing program that this fee can be applied to. Commissioner Bromberg stated that he is in favor of rounding fractions up or down. Mr. Lichterman pointed out that Northbrook who allows this requires 15 percent of a new development be affordable, even a development of six single family homes, so they may need to offer more relief to developers in this way. As proposed, Deerfield's required percentage of units and AMI are lower which is very developer friendly. Commissioner Keefe added that fractions will only occur at 51 or more units as below this whole numbers of units are required, so this will not be a common occurrence. Keefe likes rounding down and up. Chairman Berg and Commissioner Bromberg commented that these are great points and that they are in favor of rounding fractions. Mr. Lichterman replied that he will include rounding fractions as described in the draft ordinance.

Mr. Weiss commented that there are some important points to emphasize to the Commission. He stated that when we talk about the thresholds for income that those thresholds are also scaled by the size of a household. So you can have a household that has an average median income of 100 percent of the average median income, but the way housing costs are assessed by Housing and Urban Development (HUD), it depends on if you are a single person, a married couple, a family, and how many children are in the family. So the affordability can still apply. He shared that the Commission would see this in action in the ordinance presented which include a detailed chart of 100 and 120 percent of AMIs for different family sizes as well as a single person.

Mr. Nakahara commented that the Commission can also decide if there are developments that should be excluded from the affordable housing requirements. Mr. Lichterman reported that assisted living facilities and nursing facilities are often excluded, as these have monthly costs that more than just occupancy and include meals and care. These can be listed as excluded in the ordinance. Commissioner Goldstone clarified that affordability would still apply to senior independent living developments, just not assisted living or nursing homes.

The Commission agreed to continue this discussion with one more Workshop Meeting before bringing this matter to a Public Hearing.

~~Document Approval~~

~~1. 2021 Zoning Map Recommendation~~