



Report of the Mayor's Task Force on Regulatory Reform



October 2007

City of Bowling Green, Kentucky
Housing and Community Development Department

Mayor's Task Force on Regulatory Reform

In December, 2006, the City of Bowling Green became the first city in the nation to respond to the National Call to Action for Affordable Housing



through Regulatory Reform. U.S. Department of Housing and Urban Development Secretary Alphonso Jackson issued the Call to Action as a part of the Department's *America's Affordable Communities Initiative*. By participating, the City committed to work toward identifying the impact of regulatory barriers to affordable housing in Bowling Green, to pursue comprehensive solutions, and then share the results with other communities.

To assist City staff in identifying regulatory barriers, the Mayor called upon several members of private industry to participate in a Task Force. These members were appointed by

the City Commission:

Specialty Contractor -- J.B. Bridgeman, JB Electric

Banking -- Mike Davenport, Monticello Bank

General Contractor/Developer -- Todd Davis, DTD Construction

Renovation/Restoration -- Mark Hood, Hood Interiors and Exteriors

Real Estate -- Chad McCoy, Coldwell Banker Real Estate

General Contractor -- Mike Nutter, Nutter Construction

Planning/Zoning -- Laura Southard, retired planner

These members were selected to represent a cross-section of the community and all aspects of housing development, from initial concept to occupancy. The Task Force met monthly from April to October, 2007, and was subject to Kentucky Open Meetings regulations.

The Task Force's first step in identifying regulatory barriers was to answer each

The Department of Housing and Urban Development (HUD) is committed to helping communities across America identify and overcome regulatory barriers that impede the availability of affordable housing. Through the removal of burdensome regulatory barriers, we will work together to open more doors to hard-working American families who wish to buy or rent an affordable home in the community of their choice.

of the 20 questions in Part A of the *Questionnaire for HUD's Initiative on Removal of Regulatory Barriers*. Those questions and responses are listed here.

Regulatory Barriers Checklist

1. Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing Plan) include a "housing element? A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question # 4. **Response: A Comprehensive Plan is required by Kentucky Revised Statutes Chapter 100 for all communities with a Planning Commission. By statute, the Comprehensive Plan must include a Housing Element. Bowling Green is in compliance with the State Statute.**

2. If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate and middle income families, for at least the next five years?

Response: The current Comprehensive Plan was adopted in 1990, with several subsequent minor revisions. The community is presently beginning the development of a new Comprehensive Plan which will address the above housing data concerns.

3. Does your zoning ordinance and map, development and subdivision regulations or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing: a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped "as of right" in these categories, that can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.). If the jurisdiction has chosen not to have either zoning, or other development controls that have varying standards based upon districts or zones, the applicant may also enter yes.

Response: The Zoning Ordinance and Subdivision Regulations were adopted in conformance with the Comprehensive Plan. There are multiple zoning districts of varying density for both single and multi-family residential development. With regard to "b) sufficient land zoned or mapped", the Task Force had extended discussion which will be addressed later in this document.

4. Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based upon explicit health standards?

Response: No.

5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? Alternatively, if your jurisdiction does not have impact fees, the answer is also "yes".

Response: The City of Bowling Green does not assess impact fees.

6. If yes to question #5, does the statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus), and a method for fee calculation?

Response: Not applicable.

7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?

Response: Not applicable.

8. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through graduated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "Smart Codes in Your Community: A Guide to Building Rehabilitation Codes" (www.huduser.org/publications/destech/smartcodes.html)

Response: No, additional Codes have not been adopted. The Building Codes are adopted by the State and the City can not adopt any Codes that are less or more restrictive than the State adopted Codes.

9. Does your jurisdiction use a recent version (i.e. published within the last 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification. In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes? Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability.

Response: The City is required to use the State adopted Residential Code. It is based on the 2006 International Residential Code, with slight modifications specific to Kentucky.

10. Does your jurisdiction's zoning ordinance or land use regulations permit manufactured (HUD-Code) housing "as of right" in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production?

Response: The Zoning Ordinance allows modular housing in all residential zoning districts, while manufactured housing is allowed in specific residential districts. The districts that allow manufactured housing include: Agriculture, Rural Residential, Residential Estate, RS-1D (High Density Single Family Residential), Manufactured Home Subdivision, and Mobile Home Park. Modular housing is defined as a "dwelling unit constructed on-site in accordance with the State or Municipal Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation". To be considered manufactured housing, a dwelling that is fabricated at an off-site facility must meet the following criteria: a) a new unit that meets or exceeds HUD Code, or a used unit that has a B-1 seal and is not more than 10 years old; b) is affixed to a permanent foundation meeting state and manufacturer's specifications and connected to the appropriate facilities; c) has a perimeter skirting of masonry or similar materials; d) has a roof constructed of composite materials such as asphalt shingles with a minimum roof pitch of 3:12; e) has conventional siding and a minimum 6 inch eave overhang or minimum 4 inch wide guttering installed.

11. Within the past five years, has a jurisdiction official (i.e., chief executive, mayor, county chairman, city manager, administrator, or a tribally recognized official, etc.), the local legislative body, or planning commission, directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or hearings, or has the jurisdiction established a formal ongoing process, to review the rules, regulations, development standards, and processes of the jurisdiction to assess their impact on the supply of affordable housing?

Response: The City Commission appointed the Regulatory Reform Task Force that was instrumental in the production of this report.

12. Within the past five years, has the jurisdiction initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the jurisdiction's "HUD Consolidated Plan?" If yes, attach a brief list of these major regulatory reforms.

Response: Not yet applicable.

13. Within the past five years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (e.g. water, sewer, street width) to significantly reduce the cost of housing?

Response: With the implementation of Phase II of the Clean Water Act, local Best Management Practices have been developed to incorporate the newest technology available to stormwater management. In addition, the Zoning Ordinance contains a zoning district called Planned Unit Development that allows the developer to propose and implement alternate infrastructure standards.

14. Does your jurisdiction give "as-of-right" density bonuses sufficient to offset the cost of building below market units as an incentive for any market rate residential development that includes a portion of affordable housing? (As applied to density bonuses, "as of right" means a density bonus granted for a fixed percentage or number of additional market rate dwelling units in exchange for the provision of a fixed number or percentage of affordable dwelling units and without the use of discretion in determining the number of additional market rate units.)

Response: There are no current standards that offer density bonuses.

15. Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits? Alternatively, does your jurisdiction conduct concurrent, not sequential, reviews for all required permits and approvals?

Response: Zoning changes and subdivision approvals are separate processes that are handled within the same agency, the City-County Planning Commission. The building permit process is managed by the City's Housing and Community Development Department which coordinates the concurrent review of building permit applications by all public agencies. Generally, single family residential permits are reviewed and ready for issue within 5 days of application.

16. Does your jurisdiction provide for expedited or "fast track" permitting and approvals for all affordable housing projects in your community?

Response: No; however, most single family permits are issued within 5 days and most multi-family permits are reviewed within 15 days.

17. Has your jurisdiction established time limits for government review and approval or disapproval of development permits in which failure to act, after the application is deemed complete, by the government within the designated time period, results in automatic approval?

Response: No.

18. Does your jurisdiction allow “accessory apartments” either as: a) a special exception or conditional use in all single-family residential zones or, b) “as of right” in a majority of residential districts otherwise zoned for single-family housing?

Response: No. Accessory apartments are allowed by right in these zoning districts: Agriculture, Rural Residential, Residential Estate, Public, Neighborhood Business, and Central Business.

19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments?

Response: Yes, the Zoning Ordinance provides that the developer may produce an alternative parking study to support a request for reduced parking in any development.

20. Does your jurisdiction require affordable housing projects to undergo public review or special hearings when the project is otherwise in full compliance with the zoning ordinance and other development regulations?

Response: No.

After completing the 20 point questionnaire, the Task Force members identified possible regulatory issues that needed additional discussion. These issues were derived from the questionnaire as well as personal experience and anecdote. Each issue was discussed in detail. At subsequent meetings, staff from the City’s Housing and Community Development Department, the City-County Planning Commission, and the City’s Public Works Department participated in discussions with the Task Force and helped clarify issues and the related regulations. Task Force members then sought solutions that follow each issue as suggested recommendations.

Issue 1: There is some difficulty in getting land zoned for new residential. Insufficient land exists in the City that is currently zoned for residential. NIMBYism.

Discussion: Nearly all requests for any expanded residential zoning in Bowling Green and Warren County are met with opposition in the public hearing from concerned neighbors. Often, the objections relate to whether the new development will negatively impact the existing neighborhood’s property values. Price point, design, exterior materials, and lot size are all common inquiries in the hearings, and to some extent, can become NIMBY issues (Not in My Back Yard). One way to counter the objections is to make sure that home buyers are aware of any known future plans of adjacent land. There seems to be opposition to any development, not just affordable housing (for example, there was extensive opposition to the development of the upscale Cross Ridge residential subdivision by the adjacent Mitchell Heights residential subdivision).



The current Comprehensive Plan has a policy recommending that developers hold neighborhood meetings to discuss potential re-zoning cases.

Recommendations:

- The upcoming Comprehensive Plan update should include a future land use plan. This will identify projected uses of land within the City so potential home buyers can be aware of possible development of adjacent land.

Jurisdiction: Planning Commission

- Educate both the real estate agents and potential home buyers about the importance of reviewing the future land use map, as well as all existing zoning and plat restrictions, for the parcel that is being purchased.

Jurisdiction: Planning Commission; City

- Acknowledge that both rehabilitation of existing housing stock and new residential construction are needed to continue housing affordability in the City.

Jurisdiction: City

Issue 2: The development pre-planning process needs refinement – making sure the developer gets all of the necessary information about requirements, codes, and regulations up front and making sure inspectors are consistent with reviewers.

Discussion: Awareness of all the details in development regulations and process saves the developer from back-tracking to make corrections and saves money in the overall development. While pre-application and pre-construction conferences are helpful, there are instances where different interpretations are made in the field than were made in the review process or where additional requirements are asked of the developer after the plans have been approved. The 2002 Subdivision Regulations revision has helped the pre-construction interaction between reviewers and inspectors and with the developers. Additional time will allow the further enhancement of this relationship.



Recommendations:

- No recommendations at this time.

Issue 3: There is inadequate land available within the City for large-scale housing development. The City needs to look at annexing to expand developable land stock. Redevelopment within the City requires expensive property assembly.

Discussion: Much of the land within the corporate City limits has been developed and few opportunities exist for large scale residential developments. Redevelopment and infill development are both “smart growth” techniques, but are somewhat limited in scale in Bowling Green due to the cost of acquisition and clearance in previously developed areas. New greenfield development in areas outside the City can be less expensive than redevelopment within the City. Annexation of additional areas close to the City may provide additional developable land; however, current State Statutes restrict the

means for annexation and most annexation in Bowling Green is a result of a voluntary request.

Recommendation:

- The City should continue to look into ways to annex land that can be developed to meet residential market demands.

Jurisdiction: City

- The City should continue to work with Kentucky League of Cities to petition the Kentucky Legislature for changes in the annexation statutes.

Jurisdiction: City, State

Issue 4: A simplified approval process is needed for simple variance requests.

Discussion: Two examples of situations where the regulations/fees/time requirement appears to exceed the apparent usefulness of the regulation:

Example 1: alteration of an existing home on a small lot (usually in the older neighborhoods of the City) may require a variance hearing and plat revision because of more restrictive standards than when the home was built.



Example 2: replacement of a dilapidated outbuilding in a historic area may require a demolition permit, a variance, a plat revision, a certificate of appropriateness, and a building permit at a cost of \$750 or more and 3 months or more in time.

In both of these situations, an apparently simple project became complicated by applying newer standards to older structures. These problematic variances for infill development or redevelopment are a minority of the cases brought before the Board of Adjustment.

One recent improvement in the Zoning Ordinance was the development of the “variable front yard setback” for infill development which allows the builder to take an average of the setbacks of existing structures on a block face to determine the front set back line for a new structure. Additional provisions like the variable front setback would assist in renovation/redevelopment/infill in older neighborhoods.

Recommendations:

- The Zoning Ordinance contains a provision for “variable front yard setback” which allows a lesser setback for infill development to reflect the other structures in the neighborhood. Other similar provisions should be examined for infill development or redevelopment, including variable rear and side setbacks and lot coverage.

Jurisdiction: Planning Commission

- As with zoning change requests, potential applicants for Conditional Use Permits and Variances should consult with the neighborhood before appearing in the public hearing setting.

Jurisdiction: Planning Commission

Issue 5: There is inconsistency in Code interpretations among building inspectors. The Building Code adopted by State is often outdated before a new Code is adopted.

Discussion: The Residential Building Code is a fairly flexible Code, but that also means there are variations in the interpretations made by individual inspectors. Consistency in interpretation of key Code issues from one project to the next would help builders in project planning and costing. Also, the City can only adopt the Code that is adopted by the State. The State may go 3 to 5 years or more between adopting new Codes, which means the Code is sometimes outdated and may not keep up with construction technology.

Recommendations:

- The City, through its Building Inspection program, should continue to encourage the State to adopt Code changes in a more timely manner.

Jurisdiction: City, State

- The City Building Inspection program should continue to discuss Code interpretations among inspectors on a formal basis to ensure consistency in interpretations.

Jurisdiction: City

Issue 6: Climbing land costs and required amenities, such as sidewalks and green space, contribute to the rising cost of housing.

Discussion: Land cost is one of the single greatest factors affecting affordability of homes, adding an estimated 30 percent to the cost of the home. Construction material costs seem to have returned to pre-hurricane disaster prices. Amenities such as sidewalks, playgrounds, green space, and street lights are expected by home buyers in the Bowling Green area and add significant costs to development of housing. Some of these amenities are required by regulation, while some are not. There does not seem to be a large difference between what the market demands and what the subdivision regulations require. In addition to infrastructure in new development, the City has initiated a sidewalk program that is retrofitting existing neighborhoods with sidewalks.



Recommendations:

- Investigate the idea of establishing “incentive” areas where subdivision regulations could be relaxed without sacrificing the quality of life for home buyers (example: Lee Square with its reduced street width, wider trail, zero lot line).

These could be used to entice builders to do business within the City of Bowling Green.

Jurisdiction: City and Planning Commission

- Entertain the possibility of reduced fees and technical requirements for Planned Unit Development zoning district when the proposed neighborhood will contain a substantial number of affordable units.

Jurisdiction: Planning Commission

- Consider expanding the permit fee waiver that is now extended to non-profit housing agencies to all affordable housing development.

Jurisdiction: City

- Continue support of the sidewalk retrofit program.

Jurisdiction: City

Issue 7: Property tax rate in County is much less than tax rate in City.

Discussion: The 2006 Tax Rates for real property in the three taxing districts in Warren County were: \$1.21 per \$100 for the City (within City limits and within City School District). \$0.895 per \$100 for the City Annex (within City limits, but in County School District), and \$0.64 per \$100 for the County (outside City limits and within County School District). For a home and lot valued at \$125,000, the annual property taxes are nearly double in the City compared to the County (\$1,512.50 compared to \$800.00). For a new home buyer, the difference in taxes could add as much as \$60 per month to a house payment due to the needed escrow. During the tenure of this Task Force, the County government has discussed several new taxes which may affect this difference; however, as of the writing of this document, those rates were not yet published.

Recommendation:

- Explore the possibility of a lower property tax rate for homeowner occupied units that have a property value below some affordability level.

Jurisdiction: City

Issue 8: Need a way to obtain mass pre-approval of erosion control plans for approved subdivision.

Discussion: If a subdivision has been approved for development, including a stormwater plan, then each individual lot should not have to undergo separate review for compliance. The Public Works Department has streamlined the approval process as much as possible; the Erosion Prevention and Silt Control prepared form is not onerous. The Clean Water Act Phase II is enforced at both the local and State levels. At the State level, there is still a lot of gray area interpretations and the local level



needs better direction. It is important to keep the approval process local as much as possible.

Recommendation:

- Local governments, the building community, and citizens should lobby the State to make clear Statutes and determinations.

Jurisdiction: State

Non-Regulatory Issues

In addition to these eight regulatory issues, other non-regulatory issues were discussed by the Task Force over the course of its meetings. While these issues are not directly related to regulatory reform, they are presented here simply as observations.

1. The Number 1 issue in getting families qualified to purchase a home is credit. Recent focus on financial literacy with programs such as the Mayor's DollarWi\$e Campaign and the Daily News column "Dollar\$ and Sense" are steps in the right direction. The "Get the Facts" Campaign is also a good tool for demystifying the home buying process. Homeownership and financial counseling needs to be expanded to moderate income families as well.



2. Is there a demand for affordable housing that is not being met? The Housing and Community Development Department will work with a consultant in the next year to develop a market study that will project the needs for affordable and market-rate housing in the next 20 years. This market analysis will be used in the preparation of the next five-year Consolidated Plan for the Department.
3. Making sure that existing homes in the community maintain value is an issue that frequently comes up in residential zoning cases. It is also one of the reasons that the City has a Property Maintenance Code Enforcement Division. Maintaining property values is essential for homeowners to build wealth.
4. Manufactured housing is not necessarily more affordable than site built in Bowling Green due to transportation costs.
5. The City should look at developing a Community Land Trust and other creative incentives and solutions, such as tax moratoriums, to help address the need for affordable housing.
6. Conversion of existing structures to condominiums and existing housing rehabilitation could be two ways to provide affordable housing for homeownership.

The Mayor's Task Force on Regulatory Reform was tasked with reviewing current regulations and processes to identify regulatory barriers to the development of affordable housing in Bowling Green. As summarized by one of the members:

The review and permitting process is in good shape in Bowling Green, but we need to keep it sharp.

Periodic review of the process and appropriate adjustments will ensure that this continues. Several recommendations are made in this report that can help make certain that development and redevelopment regulations do not become cumbersome; the goal is to balance the protection of the public health and welfare, while not becoming overly burdensome on the developer, the builder, or the general public. Responsible entities identified in this document are encouraged to review the Task Force recommendations and their applicability for now and in the future.