


STEVENS & LEE
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MEMO

TO: Jenna Wargo

FROM: Charles M. Suhr, Esq., Stevens & Lee 
Derek Anderson, Residential Housing Development, LLC

RE: Workforce Housing Ordinance – Comments on August 21, 2020 Draft

DATE: August 31, 2020

The following are Residential Housing Development's comments to the draft Workforce Housing Ordinance:

1. Para. 3(Definitions). The Definition of "Workforce Housing" the last sentence (setting forth what constitutes "affordable" for a dwelling unit for rent) should be revised to only include rent and not "utilities" in the formula. "Utilities" are not included in the formula for dwelling units for-sale. Further, what constitutes "utilities" is not clear: for instance, does it include basic or expanded cable TV?

2. Para. 6(a)(iv): The Ordinance needs to recognize the distinction between "workforce housing unit," "market rate unit" and "upgraded market rate unit". The requirements for the workforce housing unit should be to a "market rate unit" exclusive of any upgrades that an individual homeowner may select. Therefore, para. (iv) should be revised to read as follows:

(iv) "Workforce Housing Dwelling Units shall be like market rate units, exclusive of upgrades, with regard . . ."

3. Para. 6(a)(iv)(4): A deviation of 10% is nominal. Allowable deviation should not limited to any specific number. For a 1,500-2,000 sf unit, this is the size of a closet. Further, what happens if a developer wants to build 10 upscale homes, say 4,000-5,000 sf? Does it make sense to require the corresponding workforce housing units to be 3,600-4,500 sf? The unintended consequence of this is to cap the size of future housing within the Township if these regulations are made applicable to the entire Township.

4. Para. 6(a)(vii): Same comment as above, basically. So, if a developer is

planning on having 10-20% (or more) units with 4-5 bedrooms, does the developer have to provide a workforce housing unit with 4-5 bedrooms? Does this make any sense?

5. Para. 6(b)(i)(2): “Multi-family” need to be a defined term as used in this Ordinance.

6. Para. 6(b)(i): Shouldn’t an incentive should be added that monies paid into the program by a developer be prioritized for its project and used to ensure the success of the project in providing workforce housing? This is only basic fairness, especially when it comes to fee-in-lieu generated by rentals. The developer is being required by the Township to provide this housing or pay fee-in-lieu. The idea that those funds would be used to subsidize other projects seems patently unfair. Therefore, something along these lines should be added as a new sub paragraph (b)(i)(4):

(4) Monies within the Workforce Housing Fund shall be made available to individual owners or renters of Workforce Housing Dwelling Units within the Development or Phase for security deposits, down payments, major maintenance and repair (such as roofing, plumbing and HVAC), and buyers’ closing costs of units within such Phase or Development.

7. Para. 6(c): Has the Township seriously considered whether it wants to be in the real estate business, buying and selling workforce housing units? The option to purchase puts a cloud on the developer’s marketing efforts as why would the developer market the unit if there is an outstanding option to purchase? We would request that this entire section be eliminated. If the Township does want to enter the real estate business, it can purchase units like any other purchaser in the market.

8. Para. 6(f): The execution of a Workforce Housing Development Agreement should be a condition of approval of the land development plan for a development, or a Specific Implementation Plan for a Phase within a Master Plan.

9. Para. 6(g): This sentence does not make any sense. What is the intent of this provision?

10. Para. 8(a)(ii): This paragraph should be deleted as it simply repeats what is set out in Para. 7(o).

11. Para. 8(b)(ii): The initial fee-in-lieu needs to be established within this

Ordinance. This is critical for settling the pending litigation, as well as providing certainty for our investors. We request that language we previously suggested be reinserted as follows:

“(b)(ii) The fee-in-lieu will be calculated, at the applicant’s option, with one of the following methods for any given Phase or Development:

(1) For Developments approved prior to or within two (2) years after the effective date of this Ordinance, including all Phases within such Developments, the fee-in-lieu attributable to for-sale units shall be \$75,000, and the fee-in-lieu attributable for rental units shall be \$37,500; or

(2) The fee-in-lieu shall be calculated on an affordability gap method by taking the value of the average of the lowest 10% of the market-rate units and subtracting the value of the 100% AMI price for a Workforce Housing Unit.”

12. Para. 8(b)(iii) and (iv). Do these provisions encourage very small phases? For a multiple year phase, why shouldn’t a developer be able to exercise fee-in-lieu anytime during that phase? Suppose, he finds that the demand just isn’t there for the next block of houses, shouldn’t he be able to change strategy? Beyond that, shouldn’t a developer be given the right to try to build the units, but change to fee-in-lieu during the process, if he determines it just isn’t going to work for that phase?

13. Para. 8(b)(v). The same comment as in No. 5, above. Suggest adding the following sentence:

“Monies within the fund shall be made available to individual owners or renters of Workforce Housing Dwelling Units within the Development or Phase attributable to paid fee-in-lieu for security deposits, down payments, major maintenance and repair (such as roofing, plumbing and HVAC), and buyers’ closing costs of units within such Phase or Development.”

14. Para. 9: It should be made clear that the various manuals are not binding as a regulation but are merely guidelines to assist with compliance with the Ordinance. What experience does the Township staff have in creating such manuals?

15. Para. 9(c): The sentence isn't correctly written.

16. Para. 10(a). Two comments: (1) Commencement and length of marketing period. Marketing of a unit will occur well prior to the issuance of a certificate of occupancy, often prior to construction. At the latest, the marketing period should commence upon start of construction of the unit. Further, one year of marketing is excessive to determine whether a unit will sell. A period of six (6) months is reasonable. (2) Fee payment? If the workforce housing unit doesn't sell to either a consumer or the Township, it is then conclusively demonstrated that there is no demand for the unit. Therefore, no fee-in-lieu should be due, as there isn't a workforce housing need being offset by the fee. Charging a fee at this point becomes an illegal tax on the developer.

17. Para. 11: 99 years is a long time for any housing unit to remain in viable condition. What is the basis for setting this as the lifespan for a constructed residential unit? This should be reduced to something closer to 50 years.

18. Para. 11(b): Does the Township really want to get involved in this type of intrusive record keeping and regulation? For any rental units, can't this be accomplished by simply having the County program administrator be responsible for monitoring that tenant residents remain compliant?

19. Para. 11(b)(2)(iii)(2)(a) and (b). The developer's financing plan will account for the requisite number of rental workforce housing units within the Development or Phase of a Development. Once the required units have been built and then occupied, the developer has met its' workforce housing obligation for such Development or Phase. A tenant's rising income should not require the developer (or future unit owner) to take a financial hit by requiring that a market-rate unit be rented at the reduced, workforce housing rate, unless funds within the Workforce Housing Trust Fund are used to subsidize the delta. Further, it is likely that a tenant with rising income will remain within the subsidized unit only for a limited time, naturally opening up a vacancy. Therefore, the only obligation that should be put on such unit is that after the vacation of the unit, the unit be made available under the program with workforce housing rent being charged.

20. Para. 14: If the purpose of the Affordable Housing Program is to make housing more affordable, why are there additional fees being added to the cost of the housing in the program? This section should be eliminated.