



TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Meeting Agenda Planning Commission

Wednesday, October 4, 2023

6:30 PM

Council Chambers

In Person Meeting

Virtual Link for Viewing & Public Comment Only: <https://bit.ly/4Oct23PCMtg>

I. CALL TO ORDER & PLEDGE OF ALLEGIANCE TO FLAG

II. ROLL CALL

III. APPROVAL OF THE AGENDA

IV. APPROVAL OF MINUTES

[23-487](#)

Approval of the September 6, 2023 Planning Commission Meeting Minutes

Attachments:

[September 6, 2023 Planning Commission Meeting Minutes](#)

V. PUBLIC COMMENTS

(This agenda item provides the public an opportunity to discuss items other than items that are on the agenda. The Planning Commission is not prepared to decide on matters brought up at this time, but if warranted, will place them on a future agenda.)

VI. GENERAL BUSINESS

[23-490](#)

Affordable Housing Update

Attachments:

[Affordable Housing Briefing - Presentation](#)
[Housing Needs Assessment and Strategy](#)

Planning Commission Legal Training

Attachments:

[Draft Presentation](#)

VII. STAFF REPORTS

(This agenda item is reserved for specific items from Staff requiring Commission direction or just relaying important information.)

VIII. COMMISSIONER REPORTS AND DISCUSSION ITEMS

(This agenda item is for all Planning Commission reports and items of information as well as Commission discussion items, not listed on the agenda.)

IX. ADJOURNMENT



TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Planning Commission

Board Meeting Date: 10/4/2023

File #: 23-487, **Version:** 1

SUBJECT:

Approval of the September 6, 2023 Planning Commission Meeting Minutes

DEPARTMENT: Planning & Development

PRESENTER: Melinda Helmer, Business Operations Coordinator

STAFF RECOMMENDATION:

Approval of the September 6, 2023 Planning Commission Meeting Minutes

SUMMARY AND BACKGROUND OF SUBJECT MATTER: N/A

ATTACHMENTS:

- September 6, 2023 Planning Commission Meeting Minutes

TOWN OF ERIE

*645 Holbrook Street
Erie, CO 80516*



Meeting Minutes

Wednesday, September 6, 2023

6:30 PM

In Person Meeting

Virtual Link for Viewing & Public Comment Only:

Council Chambers
<https://bit.ly/6Sept23PCMtg>

Planning Commission

I. CALL TO ORDER & PLEDGE OF ALLEGIANCE TO FLAG

Vice Chair Burns opened the September 6, 2023 Planning Commission Meeting at 6:30pm.

II. ROLL CALL

Roll Call:

- Commissioner Braudes - present
- Commissioner Dreckman - present
- Commissioner Baham - present
- Commissioner Laws - present
- Commissioner Booth - present
- Commissioner Hemphill - present
- Vice Chair Burns - present

A quorum was present.

III. APPROVAL OF THE AGENDA

Commissioner Braudes moved to approve the agenda of the September 6, 2023 Planning Commission Meeting. The motion, seconded by Commissioner Booth, carried with the following roll call vote:

- Commissioner Braudes - yes
- Commissioner Dreckman - yes
- Commissioner Baham - yes
- Commissioner Laws - yes
- Commissioner Booth - yes
- Commissioner Hemphill - yes
- Vice Chair Burns - yes

Motion passes unanimously.

IV. APPROVAL OF MINUTES

[23-405](#)

Approval of the Aug. 9, 2023 Special Meeting of the Planning Commission Meeting Minutes

Attachments: [08.09.2023 Meeting Minutes](#)

Commissioner Booth moved to approve the meeting minutes of the August 9, 2023 Special Meeting of the Planning Commission. The motion, seconded by Commissioner Laws, carried with the following roll call vote:

- Commissioner Braudes - yes
- Commissioner Dreckman - yes
- Commissioner Baham - yes
- Commissioner Laws - yes
- Commissioner Booth - yes
- Commissioner Hemphill - yes
- Vice Chair Burns - yes

Motion passes unanimously.

V. PUBLIC COMMENTS

No public comments were taken.

VI. GENERAL BUSINESS

[23-43](#)

Election of Chair and Vice Chair of the Planning Commission

Vice Chair Burns announced Agenda Item 23-43: Election of Chair and Vice Chair of the Planning Commission.

Lisa Ritchie, Planning Manager, noted the steps for the election process of the Chair and Vice Chair to the Commissioners.

Commissioner Hemphill asked for clarification on the Vice Chair automatically being moved to Vice Chair. Ms. Ritchie stated that it would be best to vote on the seats.

Vice Chair Burns asked if there was a motion to nominate a Chair of the Planning Commission.

Commissioner Laws moved to nominate Vice Chair Burns as Chair of the Commission. The motion, seconded by Commissioner Braudes, carried with the following roll call vote:

- Commissioner Braudes - yes
- Commissioner Dreckman - yes
- Commissioner Baham - yes
- Commissioner Laws - yes
- Commissioner Booth - yes
- Commissioner Hemphill - yes
- Vice Chair Burns - yes

Motion passes unanimously with Vice Chair Burns elected to the position of Chair.

Chair Burns asked is there was a motion to nominate a Vice Chair.

Commissioner Laws moved to open discussion on the issue as many of the Commissioners are new and it would be beneficial to discuss with the group.

Commissioner Dreckman asked if Commissioner Laws would be open to being nominated as Vice Chair as she would like to nominate him.

Commissioner Laws confirmed his interest.

Commissioner Dreckman asked if anyone else had an interest in the seat. There was no other interest from the Commission.

Commissioner Hemphill moved to nominate Commissioner Laws as Vice Chair. The motion, seconded by Commissioner Dreckman, carried with the following roll call vote:

- Commissioner Braudes - yes
- Commissioner Dreckman - yes
- Commissioner Baham - yes
- Commissioner Laws - yes
- Commissioner Booth - yes

Commissioner Hemphill - yes
Chair Burns - yes

Motion passes unanimously with Commissioner Laws elected to the position of Vice Chair.

[23-432](#)

PUBLIC HEARING: A Resolution of Planning Commission of the Town of Erie Recommending Approval of the Parkdale North Planned Development (PD) Rezoning

Attachments:

[Staff Report](#)

[Staff Presentation](#)

[Applicant Presentation](#)

[PC Resolution P23-08](#)

[Proposed Parkdale North PD-DP](#)

[Application and Written Narrative](#)

[Additional Application Materials](#)

[DRT Referral Comments](#)

[Neighborhood Meeting Notice and Summary](#)

[PC Public Notice Postings](#)

Chair Burns announced Agenda Item 23-432: A Public Hearing for a Resolution of the Planning Commission of the Town of Erie Recommending Approval of the Parkdale North Planned Development (PD) Rezoning.

Chair Burns opened the public hearing at 6:41pm and turned it over to staff.

Harry Brennan, Senior Planner provided a presentation to the Commission on the agenda item.

The applicant, John Prestwich, PCS Group, also provided a presentation to the Commission.

Chair Burns asked if there was anyone online or in the audience for public comment.

Public comment was taken from Andrea Marinucci, 670 Grenville Circle, Erie, CO. Her questions/comments included traffic concerns, roads, speed limits, additional traffic lights, and what the developers are doing to make it a safer area.

Chair closed the public comment portion of the public hearing at 7:03pm.

Chair brought it back to the Commission for questions and/or comments.

Some questions/comments included the following topics:

- Public meeting notes/attendance
- UDC - Planning Area 3/Live Work in Light Industrial clarification
- Access to the school area/crossing walk at Arapahoe Rd
- Temporary uses clarification
- Park infrastructure
- DRT comments - Will those recommendations have to be met prior to Board of Trustees vote or presentation to Board of Trustees?

- Redlines addressed?
- Traffic study
- Pre-plat/traffic study review clarification
- Intent for primary through lane
- Coal Creek Boulevard intersection/access point
- Triangular piece - commercial/high density will that need to be decided PrePlat?
- Large radius turns/rate of speed
- Abandoned & plugged wells in the area
- Clarification - page 5 of staff presentation are the lines mis-drawn? Are the purple lines included in this agenda item?
- Is that Planning Area 3 in the purple eye or within the dotted lines?
- Cash in lieu for Compass park and funding
- Parkdale open space
- Pocket parks clarification
- Page 4 of applicant's presentation - the property not being added - Will it be some type of greenway to the East?
- Trail connection clarification
- Trail connections will be maintained?
- School type
- Traffic study - If Coal Creek Boulevard moves north, will that move to Planning Area 3 depending on how that's moved?

Chair Burns closed the public hearing at 7:24pm.

Chair Burns opened it up for deliberation and final comments.

Commissioner Dreckman moved to approve Agenda Item 23-432/Resolution P22-08 based on the staff report and the consistency of the Town of Erie's Comprehensive Plan. The motion, seconded by Commissioner Baham, carried with the following roll call vote:

- Commissioner Braudes - yes
- Commissioner Dreckman - yes
- Commissioner Baham - yes
- Commissioner Booth - yes
- Commissioner Hemphill - yes
- Vice Chair Laws - yes
- Chair Burns - yes

Motion pass unanimously.

VII. STAFF REPORTS

Lisa Ritchie, Planning Manager welcomed the new Commissioners as well as the 3 existing Commissioners.

Ms. Ritchie noted that there were no agenda items planned for the next Planning Commission meeting and recommended cancelling the September 20, 2023 Meeting.

Chair Burns asked when the Planning Commission Meeting training would occur.

Ms. Ritchie noted that Sam Light with CIRSA would conduct training on October 4, 2023 and in addition, MJ Adams would conduct an Affordable Housing update the same evening.

Commissioner Braudes noted an issue he read regarding water rights and thought the Public Works Department could provide a presentation on the state of the town's water rights. Ms. Ritchie noted that in the future we could discuss this matter through the Comprehensive Plan process.

Ms. Ritchie also clarified the PAC and the regular, as well as the alternate, for this meeting. Commissioner Booth is the regular attendee and she gave an update on how these meetings are run and what is discussed.

Commissioner Dreckman asked what Commissioner Booth's recommendation would be on the PAC. Ms. Ritchie noted that Commissioner Braudes and Commissioner Hemphill had been on these Town committees and noted the alternate options.

Commissioner Dreckman asked for clarification on how the alternate(s) could serve.

Chair Burns gave an update on how the Commission receives information from the PAC as Commissioner Booth provides updates to the Commission.

Commissioner Booth would like to stay as the primary on PAC. Commissioner Baham will serve as the alternate.

Town Attorney Austin P. Flanagan introduced himself as well as his colleague, Kunal Parikh.

VIII. COMMISSIONER REPORTS AND DISCUSSION ITEMS

Chair Burns noted next Tuesday that he would be at the Sisoux Sisterhoods Annual State of the Town Meeting. It is a group of Erie women owned businesses and he will be in attendance. Mayor Brooks will also be in attendance.

In addition, Chair Burns will be presenting the Planning Commission Bi-annual report to the Board.

IX. ADJOURNMENT

Chair Burns adjourned the September 6, 2023 Planning Commission Meeting at 7:37pm.



TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Planning Commission

Board Meeting Date: 10/4/2023

File #: 23-490, **Version:** 1

SUBJECT:

Affordable Housing Update

DEPARTMENT: Planning & Development

PRESENTER: MJ Adams, Affordable Housing Manager

STAFF RECOMMENDATION:

N/A

SUMMARY AND BACKGROUND OF SUBJECT MATTER: Update and discussion regarding Affordable Housing and Housing Needs Assessment

ATTACHMENTS:

- Affordable Housing Presentation
- Housing Needs Assessment



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Affordable Housing Briefing

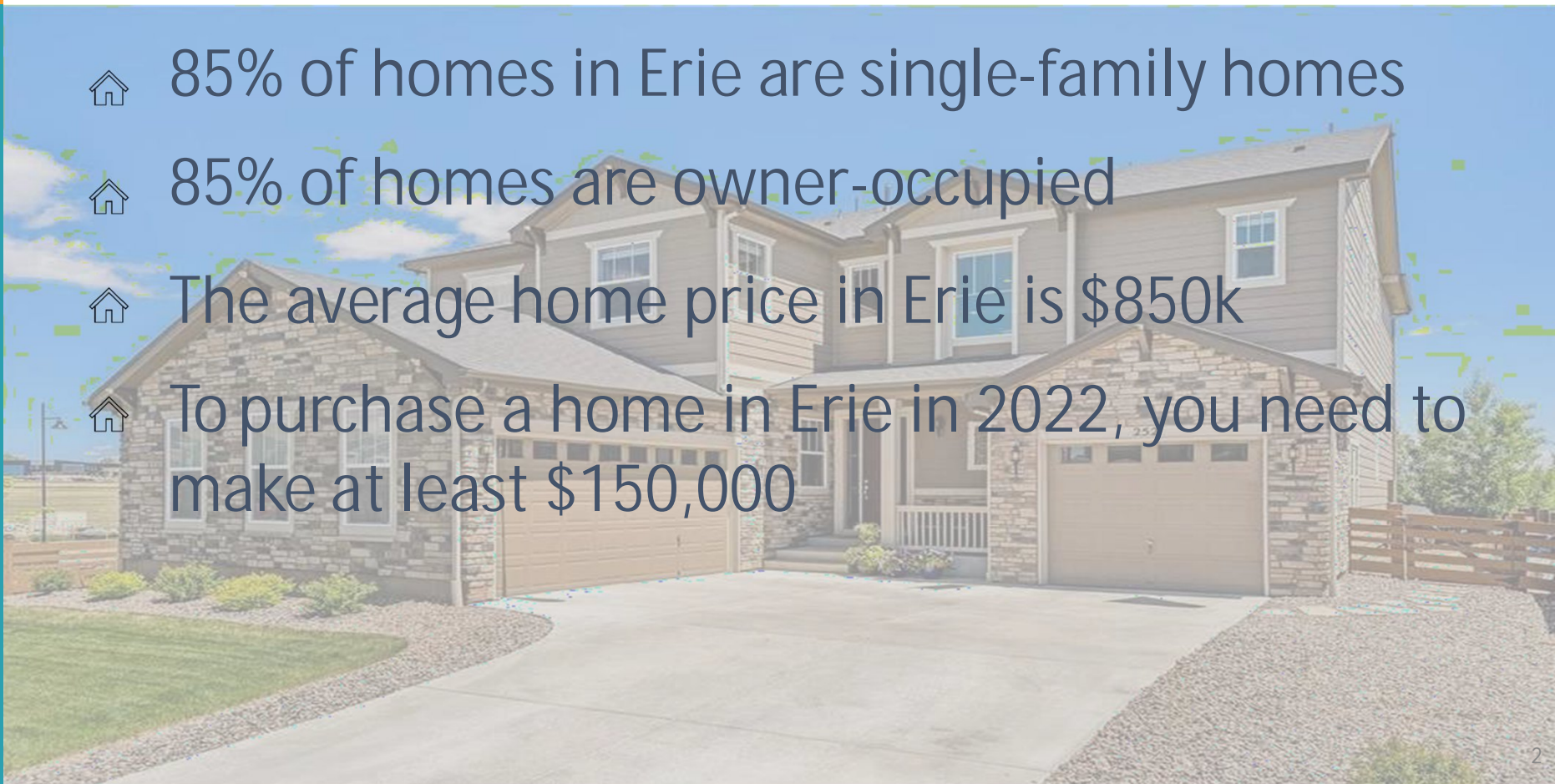
MJ Adams, Affordable Housing Manager

October 4, 2023



Housing

- 🏠 85% of homes in Erie are single-family homes
- 🏠 85% of homes are owner-occupied
- 🏠 The average home price in Erie is \$850k
- 🏠 To purchase a home in Erie in 2022, you need to make at least \$150,000





Town of Erie Affordable Housing Strategy



Affordability at all income levels



12% of all housing units being affordable



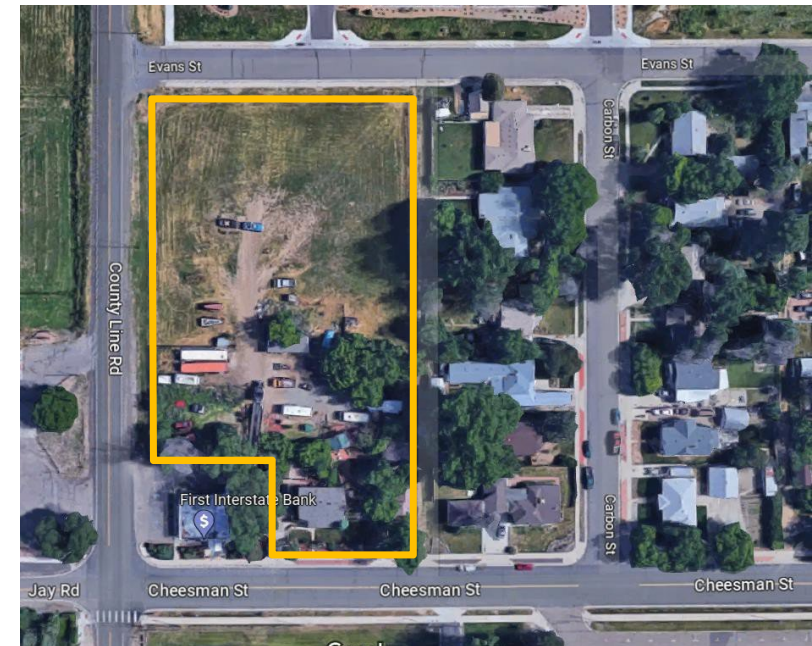
Bringing more housing types to Erie





What is Erie Doing?

- Housing Needs Assessment
- Facilitating Development
- Expedited Review (Fast Track)
- Prop 123 Commitment
- Metro District Approvals
- Annexations Agreements
- Drafting Inclusionary Housing Ordinance





What is Erie Doing?

- Working with regional partners
- Partnering with developers
- Advancing the housing discussion in Elevate Erie and TMP
- Spreading the word on importance of affordable housing in Erie





What We Know

- We need more diversity if we want to make progress:
 - tenure (ownership vs. renter),
 - price points, and;
 - types of housing





Some Opportunities & Challenges

- Development costs are high—land, cost of construction, & financing pose serious housing challenges to the reality of building housing that can be affordable;
- We will likely need to provide for additional density and public subsidy to ensure affordable housing units are constructed.
- The Town can make an impact by exploring connected strategies around land use policy, regulations, financial subsidies, and purchasing land for constructing housing.



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Questions & Discussion

Housing Needs Assessment and Affordable Housing Strategy

FEBRUARY 2023



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Town of Erie, CO



Planning Consultant
czbLLC

Acknowledgements

The following people made the Housing Needs Assessment and Affordable Housing Strategy possible:

Erie Board of Trustees

Justin Brooks, *Mayor*
Sarah Loflin, *Mayor Pro Tem*
Ari Harrison, *Trustee*
Emily Baer, *Trustee*
Andrew Sawusch, *Trustee*
Brandon Bell, *Trustee*
Dan Hoback, *Trustee*

Town Staff

Malcolm Fleming, *Town Administrator*
Sarah Nurmela, *Director of Planning and Development*
Ariel Tolefree, *Affordable Housing Manager*
Andrew Collins, *Planner*
Erin Fosdick, *Long Range Planner*

Special thanks to members of the development community and the public at-large who provided their insights, questions, and feedback to help shape this document.

The Housing Needs Assessment and Affordable Housing Strategy was supported by funding from the Colorado Department of Local Affairs Innovative Housing Planning Grant Program.



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Town of Erie, CO



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Executive Summary

Market Conditions and Affordability Challenges in Erie



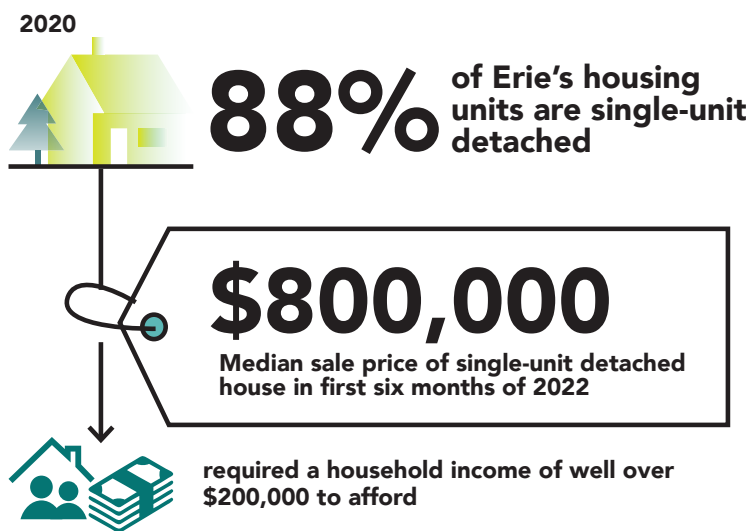
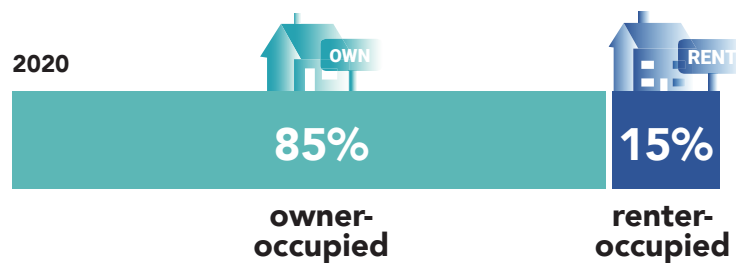
The Town of Erie is located in a region in which housing has been expensive, by national standards, for decades and which has seen rapid growth in housing costs through the 2010s and early 2020s. Erie has been impacted by, and has become a part of, this trend. In addition, Erie's housing cost conundrum has been exacerbated by its development history. The Town experienced most of its growth after the year 2000, specializing in newly built single-unit detached houses which are among the most expensive housing units that can be found in the marketplace. (Assuming the value of the underlying land is equal to that of an older house of the same size, new construction will always be more expensive on a per square foot basis than an older structure.)

Erie's development history was one of responsiveness to private sector developers and builders who themselves were responding to market demand in the region for newer, larger houses at prices the market was willing to pay. Erie's location—easy commuting distance to Denver, Boulder, and Northern Colorado—made it a perfect place for high-income families to find a relatively large amount of space for the money compared to other communities, and in new construction, which appeals to dual-income professional households who do not want a fixer-upper. The Town also has not experienced much in the way of rental unit construction, meaning that those without the means or desire to be homeowners in an expensive market also have very few rental options as an alternative.

As of 2020, 85% of Erie's households were estimated to be owner-occupied, and only 15% were estimated to be renter-occupied. Also in 2020, 88% of Erie's housing units were estimated to be single-unit detached houses. The median sale price of a single-unit detached house in the first six months of 2022 was \$800,000, an increase of \$115,000 (17%) over the same period in 2021. The 2022 median sale price required a household income of well over \$200,000 to afford. While half of homes sold for values below the median of \$800,000 for the six-month period in question, it is reasonable to assume that homeownership in Erie requires a household income of at least \$150,000.

The newness of Erie's housing stocks and its relative lack of rental units mean that potential new residents of Erie who want to be homeowners but have annual household incomes of less than \$150,000, or who do not want to be homeowners at all, will find very limited choice. This describes the vast majority of regional households. Particular household types that may struggle to find suitable and affordable housing in Erie include all renters, first-time homebuyers, and local workers with low or moderate wages.

When it comes to affordability questions for Erie's existing households, three quarters, or just over 6,500 households, were estimated in 2020 to have no affordability challenges, meaning they paid less than 30% of their gross household income for housing costs. One quarter of Erie households, or just over 2,200 households, were estimated to pay 30% of their income, or more, for housing costs.



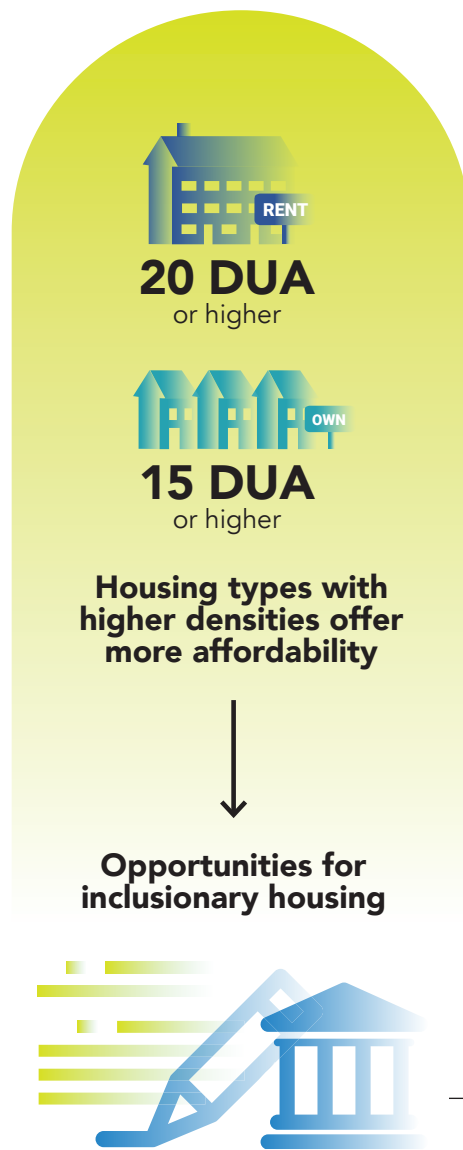
Erie households in 2020



Source: 2016-2020 ACS Five Year Estimates

Options for Taking Action

Unlike many communities which developed earlier and with more diverse housing offerings, Erie has few opportunities to preserve existing affordable housing at any meaningful scale. The Town therefore has little choice but to focus on new construction activities. New construction activities, however, will continue to provide products that are affordable only to high-income households. New houses, even if they are attached townhomes or small single-unit detached houses, will require incomes of \$150,000 or more due to the high costs of land and new construction. For the same reason, new rental units will require incomes close to, or even above, \$100,000. Achieving affordability for households with lower incomes will require public sector interventions.



More diverse new housing types, especially ownership units built at densities above 15 dwelling units per acre and rental units built at densities above 20 dwelling units per acre, offer more affordability than single-unit detached houses, which have been built historically in Erie at densities of 4-8 units per acre. But somewhat lower prices are only a starting point. More importantly, higher-density housing developments feature project economics that unlock opportunity for inclusionary housing, which is a regulatory approach to gaining even greater levels of affordability in some portion of new units. Affordable housing providers who might choose to build in Erie will also need these higher densities to lower per-unit development costs and make their projects feasible.

Erie's path to building some of its new housing at higher densities, and applying regulatory and financial tools to leverage greater affordability, requires action on the following fronts:



Planning and Land Use Policy

The Town's updated Comprehensive Plan should provide the community commitment and policy basis for more diverse housing types and for affordable housing. The Plan's future land use map should identify areas in the Town where higher-density housing types are anticipated.



Land Use Regulations

The Town's Unified Development Code (UDC) and zoning should conform to the Comprehensive Plan and future land use map, explicitly stating where higher-density housing types are allowed. The UDC should also incorporate a requirement for inclusionary affordable housing in which some portion of new housing units are required to be affordable at income levels determined by the Town.



Financial Subsidies

Land use regulations alone, even with inclusionary housing requirements, may not achieve enough affordability to serve all of the Town's potential target markets. For those households with incomes lower than what inclusionary housing can match, additional financial subsidy will be needed to close gaps. The Town may consider a variety of methods to raise funds for affordable housing activities, including a cash-in-lieu fee as an alternative means of compliance with inclusionary housing requirements.



Land Purchases and Disposition

In a market with high and rising land prices, buying and holding land can be an important future contribution to affordable housing development. The Town may consider strategically acquiring sites and partnering with affordable housing providers when opportunities arise. Preserving developable land for future affordable housing, and/or contributing land to an affordable housing project, removes one major obstacle to the delivery of new affordable units.



PART 1

Market Conditions and Affordability Challenges in Erie



There is no debate that housing has become expensive in the Denver-Boulder region by any objective measure. The challenge is regional, not just local to Erie. However, before Erie can figure out where it is going, it needs to understand its starting point. How is Erie doing when it comes to affordability? What is happening in the region's housing market and how does Erie compare?

Part 1: Market Conditions and Affordability Challenges provides more detailed information and analysis related to:

Existing housing supply and costs.

Affordability for current households.

Implications of housing supply for household composition.

Potentially impacted household types.

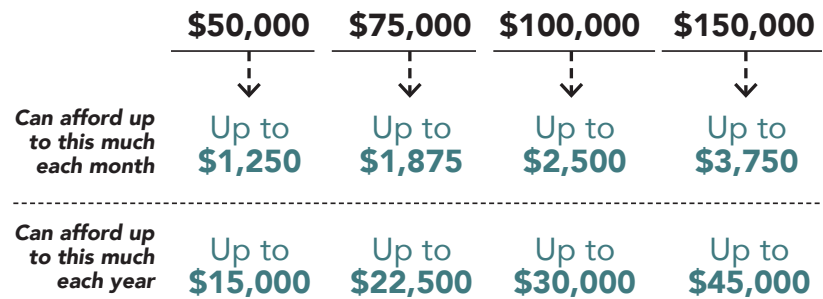
Affordability Context

What does it mean for housing to be “affordable”?

By federal government definitions, housing is considered “affordable” when it costs less than 30% of a household’s gross income, and those spending 30% or more on housing are considered “cost-burdened” which means housing is no longer affordable. Because the metric is a percentage, and not just an absolute number, affordability is relative, as illustrated in Figure 1.

(In 2020, Erie’s median household annual income was estimated to be roughly \$140,000, according to data from the American Community Survey 2016-2020 five-year estimates program. That is twice the estimated annual household income for the United States, which was about \$70,000.)

FIG. 1 Examples of Affordable Housing Costs by Annual Gross Household Income



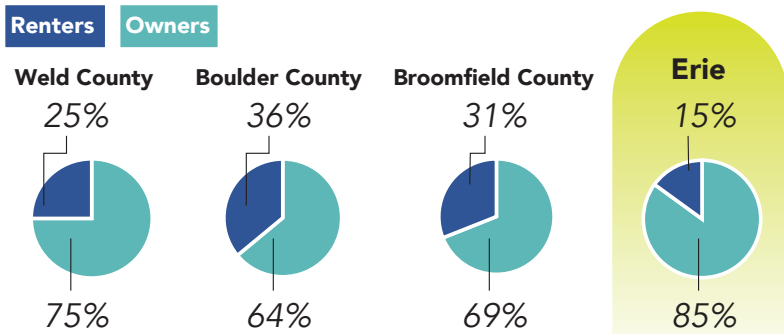
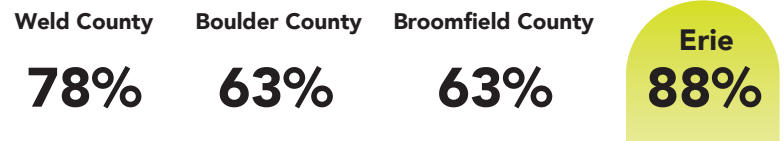
Erie’s Existing Housing Offerings: Mostly Single-Unit Detached Ownership

Relative to the region, Erie is dominated by single-unit detached houses, as shown in Figure 2. This is the largest, most land-consumptive housing type which means, all things being equal, it is almost always the most expensive. In addition, the Town features relatively few rental units.

As of 2020, the Town had an estimated 7,842 single-unit detached houses and an estimated 649 of them were renter-occupied. Of an estimated 1,299 total renter-occupied units, fully half were found in single-unit detached houses that were almost certainly originally built for owner-occupancy. This fact reinforces just how few housing units have been built in Erie expressly for rental purposes. See Figure 3 on page 11 for additional detail.

FIG. 2 Tenure and Single-Unit Detached Housing, 2020

% of occupied units that are single-unit detached



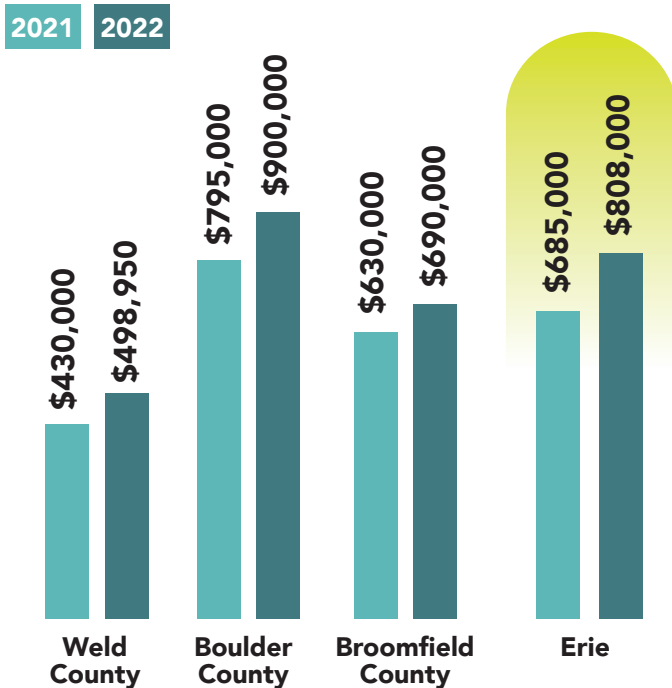
Source: 2016-2020 ACS Five Year Estimates

FIG. 3
Distribution of Occupied Housing Units in Erie
by Type and Ownership/Rental Status,
2020

	Owners	Renters	TOTAL
Single-Unit Detached Houses	7,193	649	7,842
All Other Units (Duplex, Townhome, Apartment, etc)	420	650	1,070
	7,613	1,299	8,912

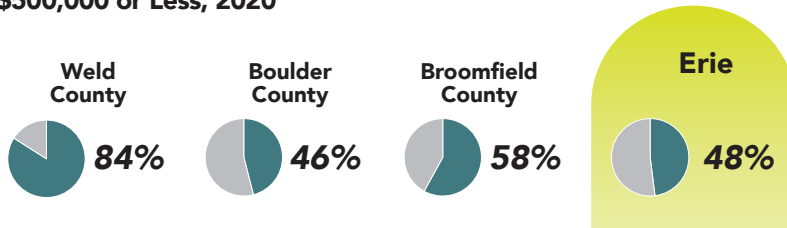
Source: 2016-2020 ACS Five Year Estimates

FIG. 4
Single-Unit Detached Median Sale Price,
First Six Months of the Year, 2021 vs 2022



Source: MLS via Colorado Association of Realtors

FIG. 5
Percent of Owner-Occupied Units Valued at
\$500,000 or Less, 2020



Source: 2016-2020 ACS Five Year Estimates

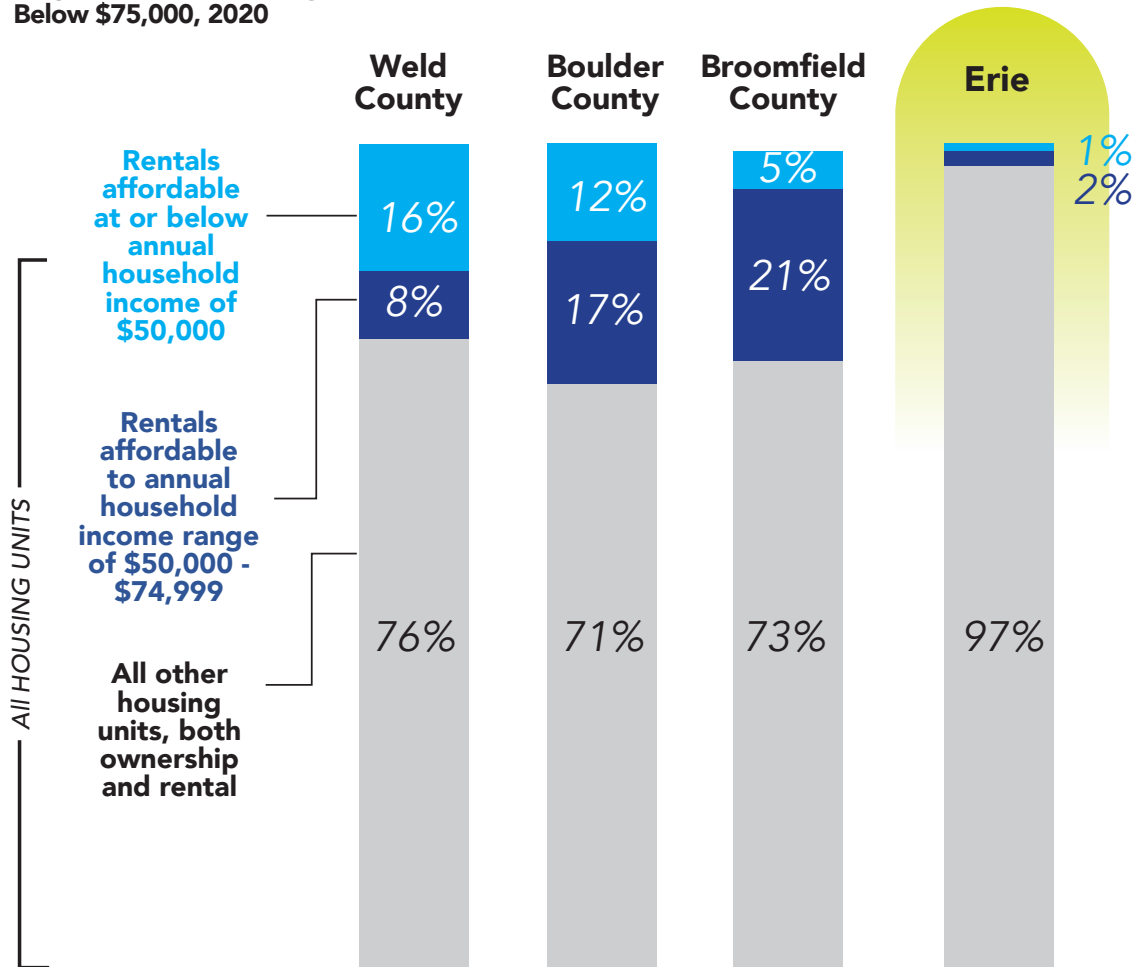
Affordability Challenges for Single-Unit Detached Ownership

The reason Erie’s largely single-unit detached stocks impact affordability is because the stocks themselves are expensive. Single-unit detached house prices have risen steadily in the region in recent years, and Erie is no exception. In fact, Erie has recorded the highest year-over-year increase in sales price of the jurisdictions analyzed for this report. Figure 4 shows the increase in Median Sale Price between years 2021 and 2022.

The income required to purchase a home varies, depending on many factors, including down payment, credit score, and interest rates. It is generally understood that a ratio of annual income to purchase price should be 3:1 to be considered affordable. Depending on individual buyer circumstances, down payment, etc., the ratio could go as high as 4:1 while remaining affordable. As a rule, however, it is fair to say that a buyer household, with few exceptions, should plan to spend in excess of \$600,000 for a detached house in Erie and such a purchase price will require *at least* a \$150,000 annual household income. (This analysis makes no attempt to predict how a shifting interest rate environment in 2022 and beyond, or any other macroeconomic factors, will impact single-unit detached house prices.)

An additional challenge to affordability in Erie is that it lacks lower-priced ownership opportunities relative to the region. The lack of housing diversity—older houses, smaller houses, condos and townhouses, etc.—in Erie exacerbates the affordability challenge. Compared to Weld and Broomfield Counties, a smaller proportion of the Town’s ownership units were estimated to be valued at less than \$500,000 in 2020. This includes all detached houses, townhouses, and condos. Ownership units below this value become affordable to households with incomes less than \$150,000. The Town’s proportion of units estimated to be valued in this range as of 2020 is similar to Boulder County’s, however, as shown in Figure 5. (While this data source is comprehensive and beneficial for comparison between jurisdictions, it should be noted that values are self-reported and the data itself is dated. As such, it is sensible to assume that the true percentage of owner-occupied units valued at less than \$500,000 is likely smaller across the region at the time of this writing than is reported here.)

FIG. 6
Proportion of All Housing Units that are Rentals Affordable to Incomes Below \$75,000, 2020



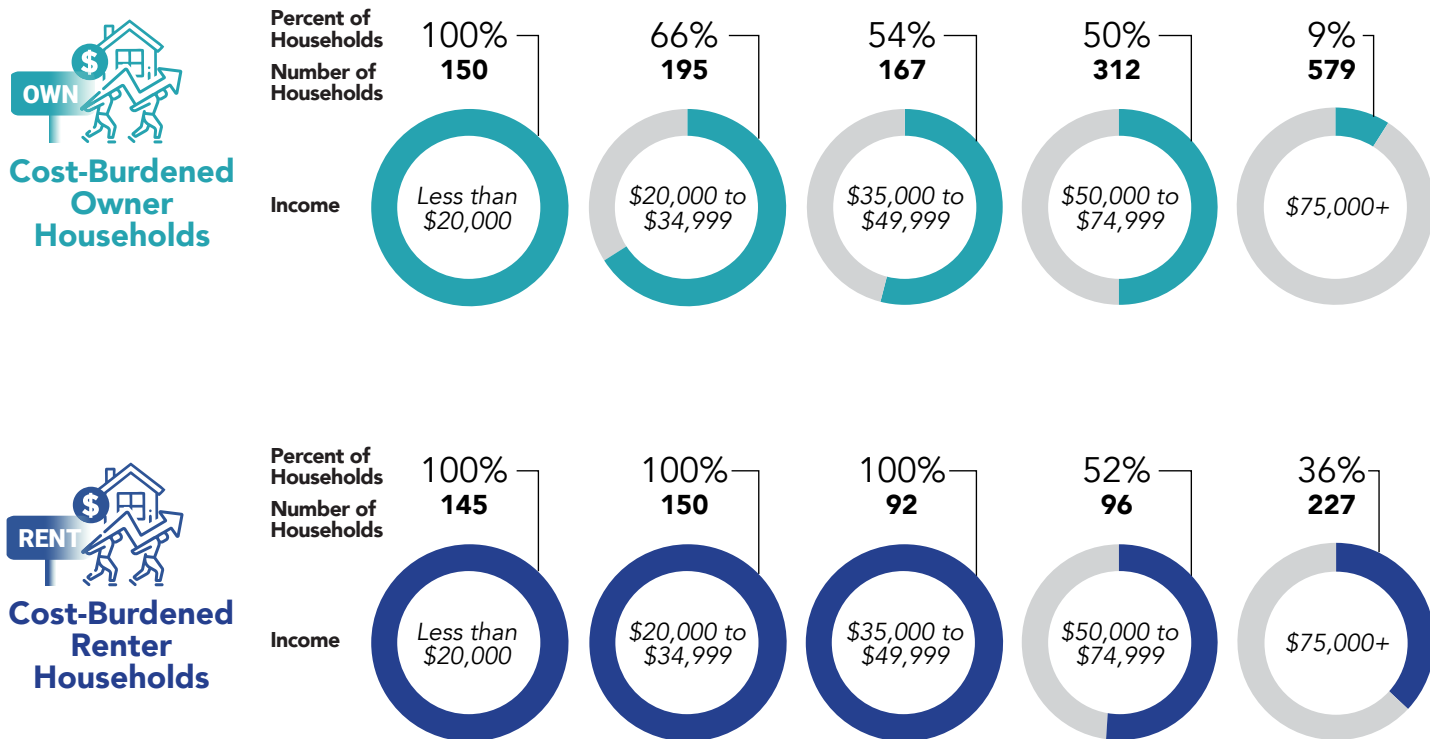
Source: 2016-2020 ACS Five Year Estimates

Affordability Challenges for Renters

For those households who cannot or choose not to become homeowners, Erie provides limited rental alternatives. Only 15% of Erie’s housing units are estimated to be rentals, far below the proportion in surrounding counties. Among this relatively small number of rentals, the lack of availability is especially acute for households with incomes below \$75,000—among Erie’s limited rental offerings, very few are estimated to be affordable below that level. Across the rest of the region, as of 2020, estimates suggested that renter households with incomes of less than \$75,000 could hope to access

roughly a quarter of all housing units. In Erie, they could access only 3% of all housing units (Figure 6). The annual income figure of \$75,000 is an important breakpoint in Erie, as can be seen later in Figure 7, as the demarcation between those who struggle greatly with affordability and those who struggle far less, or not at all.

FIG. 7
Cost Burdened Households
by Income and Tenure, 2020



Source: 2016-2020 ACS Five Year Estimates

Affordability for Existing Erie Households

The information presented thus far paints a general picture for any household that may consider locating in Erie. But what is the status of households already living in the Town? How many households, whether they are owner- or renter-occupied, are facing affordability challenges?

When households pay 30% or more of their gross income toward housing costs, they are considered “cost burdened.” Generally speaking, rates of cost burden are lower in homeowners because mortgage underwriting practices help to guarantee that buyers will not buy more house than they can afford. This system can of course be impacted by life events such as job loss, divorce,

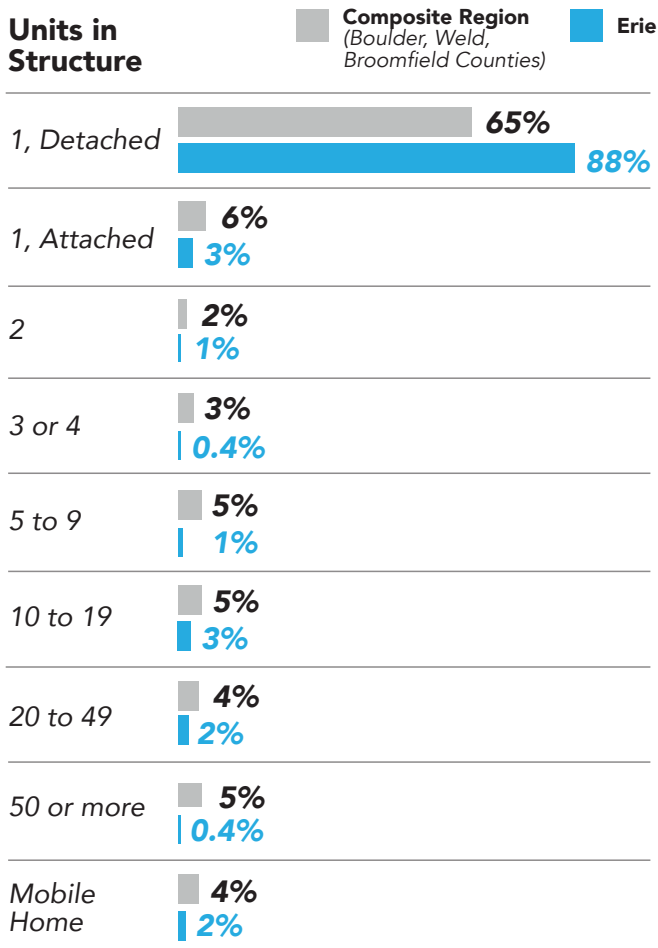
or retirement, that lower household incomes without lowering monthly housing costs. Renters generally are more susceptible to cost burden because rents can reset at the end of lease terms even if household income does not increase accordingly. Erie is so dominated by homeownership that it would be reasonable to expect a low rate of cost burden amongst its households. In point of fact, however, nearly one in every four Erie households was estimated in 2020 to have been paying 30% or more of its income toward housing, as outlined in Figure 7. Again, the rates of cost burden are clearly higher amongst owners and renters with incomes below \$75,000.

Erie vs. the Region: Housing Types and Households

Erie’s development history has led to a very different mix of housing stocks and households than the region’s overall. Erie is a community that experienced most of its housing development and population growth after the year 2000, which is different from surrounding communities that grew up earlier. The Town has less diversity in its housing stocks than the region, with a relatively large proportion of its housing having been built in the form of single-unit detached houses for purchase (See Figure 8.) The newness of the stocks, and their uniformity both in tenure (owner vs renter) and type, has had implications for affordability in Erie.

Newly built housing is generally the most expensive, on a per square foot basis. Single-unit detached houses, which have been the norm in Erie, have the greatest number of square feet. This means Erie has specialized in some of the most expensive housing stocks on the market. Newness is just as important as size. Even smaller housing types (e.g. a two-bedroom apartment or 1,300 square foot, three-bedroom house), while more affordable than large single-unit detached houses, still require about \$100,000, or more, in annual income to be affordable due to land and construction costs.

FIG. 8
Housing Units by Units in Structure,
Erie vs. Region, 2020



Source: 2016-2020 ACS Five Year Estimates

Examples of Common Housing Types

Units in Structure

1, Detached



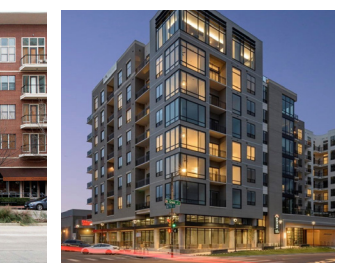
1, Attached



20-49



50 or more



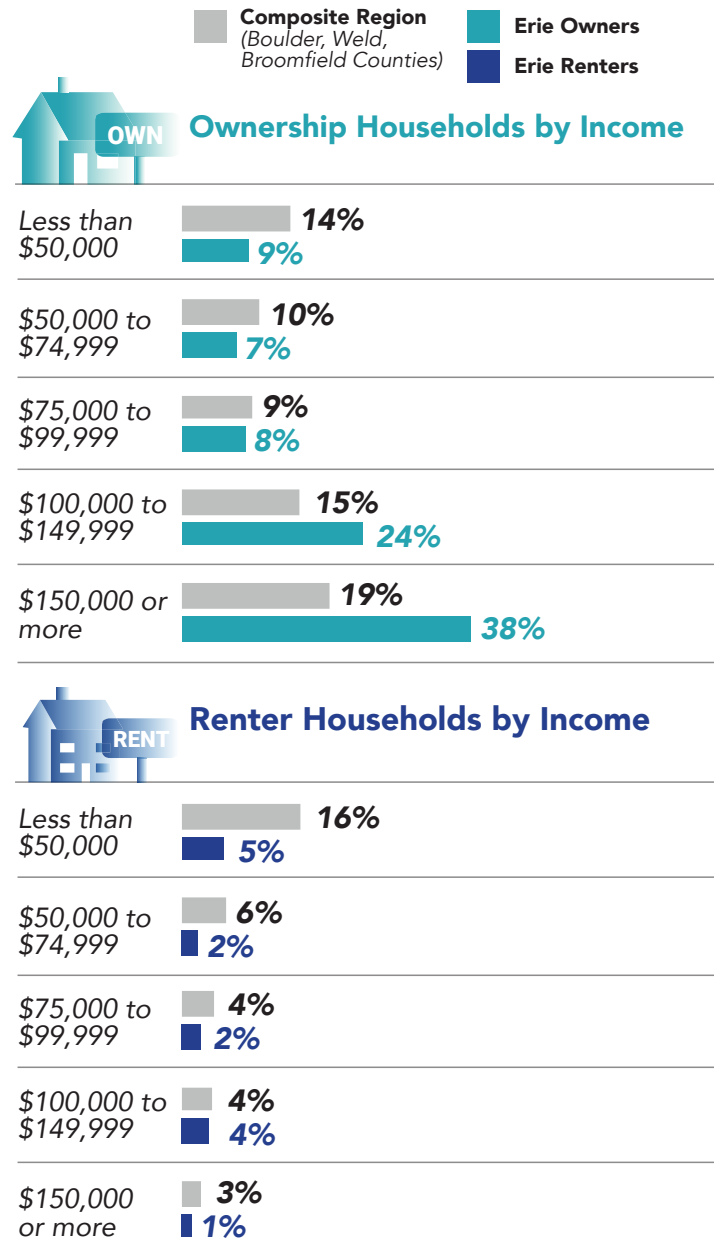
Erie skews disproportionately toward owners and higher incomes (See Figure 9.) In the region, the proportion of households estimated to rent as of 2020 was over 30%. In Erie, only about 15% of households were estimated to be renters in 2020. Rental units simply have not been built in any meaningful numbers in the Town. Newly constructed single-unit detached houses tend to be the most expensive housing units on the market, requiring the highest incomes to afford them. As of 2020, the estimated proportion of Erie households that were owner households with six-figure incomes was approximately 60% versus 35% regionwide.

A number of attributes of Erie’s physical housing stocks contribute to the Town’s affordability challenge:

- The high cost of new construction.
- The high cost of relatively large lots in a land-constrained region.
- A lack of rental units and specifically income-restricted units.
- A relative lack of older housing units that become less desirable over time and thus provide some measure of affordability.

This all suggests that Erie’s focus needs to be on developing rental housing at all income levels as well as affordable ownership opportunities. The difficulties of doing so, and options for overcoming those difficulties, are discussed later in this report.

FIG. 9
Distribution of Households by Tenure and Income, Erie vs. Region, 2020

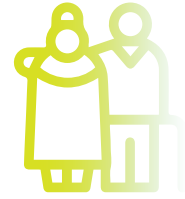


Source: 2016-2020 ACS Five Year Estimates

Determining Potential Housing Needs

There are a number of ways to think about potential future housing needs in Erie. It is a subjective, not objective, exercise. At the core of Erie’s challenge is that it is a housing monoculture of the newest and largest housing units in the region. There is little the Town can do about the age of its stocks, but it may be able to achieve a better housing balance over time, while keeping in mind the specific needs of certain groups, including older adults, local low-wage workers, renters of all incomes, and entry-level home buyers.

Anticipating Aging Homeowners



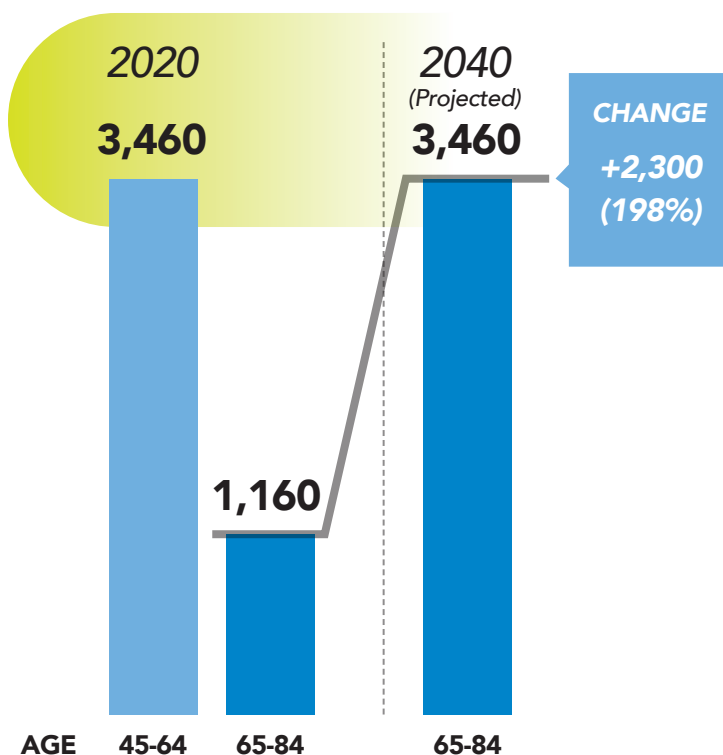
The number of elderly homeowners aged 65-84 in Erie could potentially triple between 2020 and 2040 (See Figure 10.) As of 2020, Erie was home to an estimated 1,160 homeowners aged 65-84 and an estimated 3,460 homeowners aged 45-64. If all members of the latter cohort of homeowners age another twenty years into the 65-84 age category, the category will grow by 2,300. This is a simplified method for projecting potential older adult homeowners in 2040. It is unknown, for example, whether the size of the cohort will grow or shrink via migration over two decades.

It is further unknown the extent to which aging homeowners will create demand for housing types different from the single-unit detached houses in which they are living. The group is not monolithic. Some may choose to “age in place” in their current homes. Some may choose to move to a single-story, single-unit detached house instead of the current multi-story house in which they currently live. (This may be a form of “downsizing,” though a newly constructed single-story, single-unit house could have just as many square feet of living space as the occupants’ previous home, albeit perhaps with less outdoor space to maintain.) Others may choose to sell their homes and move into rental situations that are specifically targeted at seniors, while others may choose rental options that are not age restricted.

As existing homeowners age, and if they seek new housing options, it is important to note that equity built over decades will come into play. In other words, although their incomes may fall and/or become “low” by future definitions, current Erie homeowners are likely to have substantial assets.

The impossibility of projecting the true number, financial need (if any), and housing preferences of Erie’s future senior households means the best thing the Town can do is to diversify housing offerings. This requires the Town to allow other actors to produce the housing, including developers and builders of single-story, single-unit houses and duplexes and rental products of various kinds as well as multi-story, elevator served, housing that is popular for active older adults. Rental products may be market-rate age-restricted stacked flats, age-unrestricted stacked flats, and/or affordable developments delivered by local affordable housing organizations.

FIG. 10
Projected Homeowners Aged 65-84, 2040
(Cohort Aging 2020-2040)



Source: 2016-2020 ACS Five Year Estimates

Providing Housing Choice to Local Workers

Erie is a bedroom community, housing workers employed in the greater Denver-Boulder region. According to the most recent relevant data from the U.S. Census Bureau’s Center for Economic Studies, the number of commuters living in Erie grew from roughly 3,000 in 2002 to over 12,000 in 2019 (a 300% increase). In 2019, about 2,700 (23%) of those workers commuted to Boulder, about 1,400 (12%) to Denver, and the balance spread out to dozens of other cities across northern Colorado and the Denver metro. In addition, there were nearly 1,900 jobs in Erie paying wages or salaries of \$40,000 or less. (See Figure 11.)



If a worker in one of these positions is the sole earner in the household, the chances of an affordability problem are very high in the region and affordable rental options in Erie are nearly non-existent. If two low-wage workers live in the same household, they may find affordable rental options in the region, but affordable rental options in Erie will still be nearly non-existent. Assuming two workers per household earning \$40,000 each, a total household income of \$80,000 per year can affordably pay for \$2,000 in monthly rent.

As Erie grows into a mature community, it is adding its own jobs, from first responders to grocery and retail workers, to health care workers providing critical services to Erie residents. As the need for local workers grows, and market conditions outstrip the ability of those workers to afford housing, Erie service workers of all stripes have no choice but to find housing elsewhere and commute to Erie. The Town therefore recognizes a need to take responsibility for diversifying housing offerings that could be affordable options for local workers. In a regional housing market, many local workers will inevitably choose to live in another community for reasons that go beyond affordability, but intentionally creating and preserving space for those who work in Erie aligns with the Town’s social, economic, and environmental goals.

FIG. 11
Jobs Paying \$40,000 or Less,
by Industry, 2019

INDUSTRY	JOBS
Manufacturing	194
Retail Trade	311
Health Care and Social Assistance	226
Accommodation and Food Services	198
All Other Industries	961
Total	1,890

Source: U.S. Census Bureau Center for Economic Studies, accessed via OnTheMap



PART 2

Options for Taking Action





The data clearly illustrate a set of affordability and housing diversity challenges for Erie, but what can the Town do to improve the situation? There are a handful of actions the Town can take to effectuate positive change by facilitating the delivery of affordable housing. Part 2, Options for Taking Action, identifies options the Town could explore and/or implement in short order to advance its housing goals.

Part 2 includes:

Important context related to development costs, land use, land use regulations, and the role of subsidy.

Discussion of options the Town may consider in the following categories:

- Planning and Land Use Policy
- Land Use Regulations
- Financial Subsidies
- Land Purchases and Dispositions

Development Costs, Land Use Regulations, and Subsidy



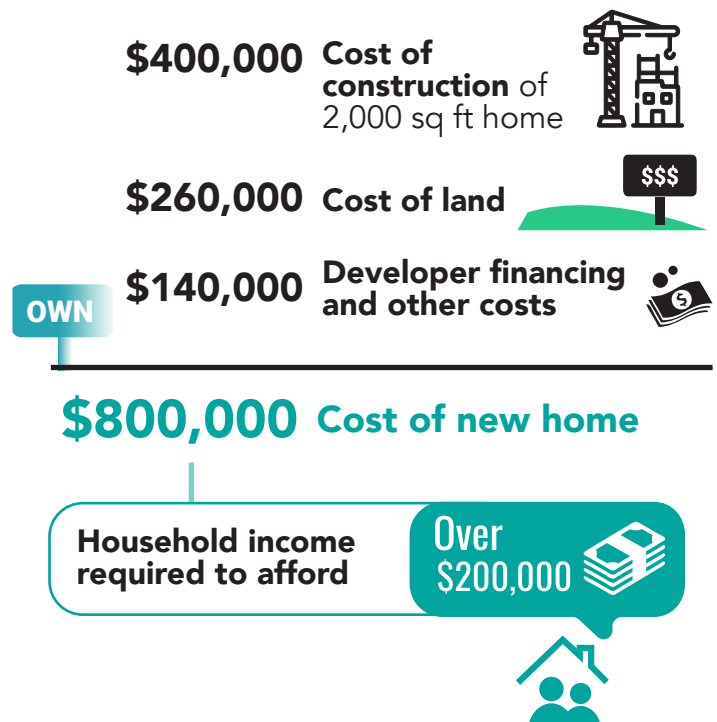
Just because housing needs are understood does not mean they will be met by the private sector. There are a number of hurdles that must be cleared. Desire for a housing unit is not the same as demand. Demand includes both the *willingness and the ability* to pay. The private sector will not bring new units online for the potential markets in question—seniors, low-wage workers, entry-level homebuyers, etc.—unless it knows the households can pay the prices required to cover the total costs of development. In the event that the gaps can be closed upon the identification of the right housing unit at the right development cost, subsidized (if necessary) by the right amount, a new affordable unit cannot be built unless it is allowed under the Town’s development code.

There are a number of tools available to help local governments diversify housing supply and support the production of affordable housing. Some may provide substantial benefits while others contribute only at the margins. Key to understanding which tools will be most useful in Erie’s specific context is first understanding why housing costs what it costs, how land use regulations can impact costs and affordability, and how public subsidy is needed to close affordability gaps.

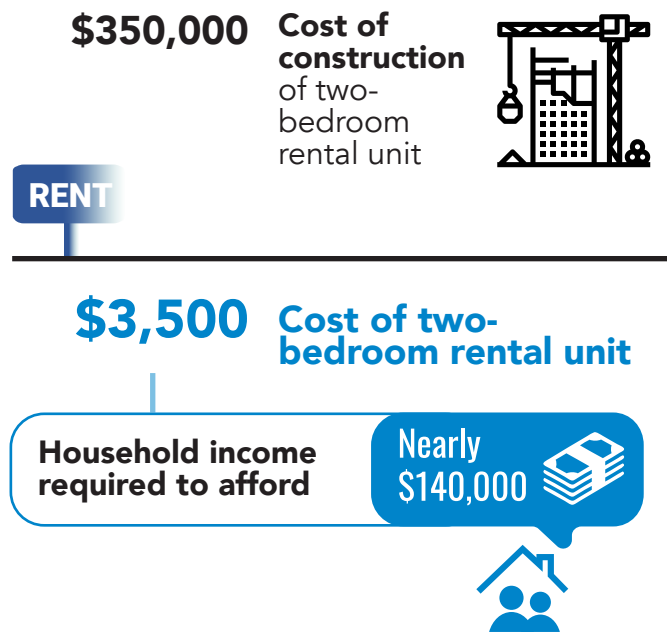
Development Costs Pose Affordability Challenges

Local market construction cost data indicate that the costs of labor and materials are on the rise, which impacts the cost to build housing. This is in addition to rising interest rates during 2022. Discussions with local developers working in Erie confirm the following analysis.

Between the costs of construction, the cost of land, and the other costs of developing housing, new residential units are expensive. If the construction cost of a house is \$200 per square foot, which is a typical amount in the Denver region at the time of this report, a 2,000 square foot house costs \$400,000 to build. If land costs **\$1.3M per acre**, which is a typical amount in the Denver region at the time of this report, and **five** houses can be built on an acre, then the land for that house costs \$260,000. Once developer financing and other costs are taken into account, the **new house costs \$800,000** requiring well **over \$200,000 in annual household income to afford**.



When it comes to rental projects, costs in the Denver area in 2022 suggest that Erie should anticipate a **two-bedroom rental unit may cost, on average, \$350,000 to produce**. In some cases, the figure may be higher. As a general rule, monthly rents are about 1% of the cost to develop a rental unit, meaning that average two-bedroom rents for newly constructed projects in the area will hover around **\$3,500 per month, which likely requires \$140,000 in annual household income to afford**. (Whether, in fact, these rents are too high for the local market, and whether therefore new rental construction may slow, are open questions.)



When it comes to affordability, the first question to ask is whether development costs per unit can be lowered. A number of development costs are outside the control of developers and builders. These include costs for land, materials, labor, and financing to name a few. There are only a handful of variables a developer can adjust in order to lower the cost of delivering a housing unit. Among them are size, materials, and quality of the finishes. But a key lever that is held by the municipality—in this case, the Town of Erie—is land use controls that determine the number of units that can be developed per acre of land.

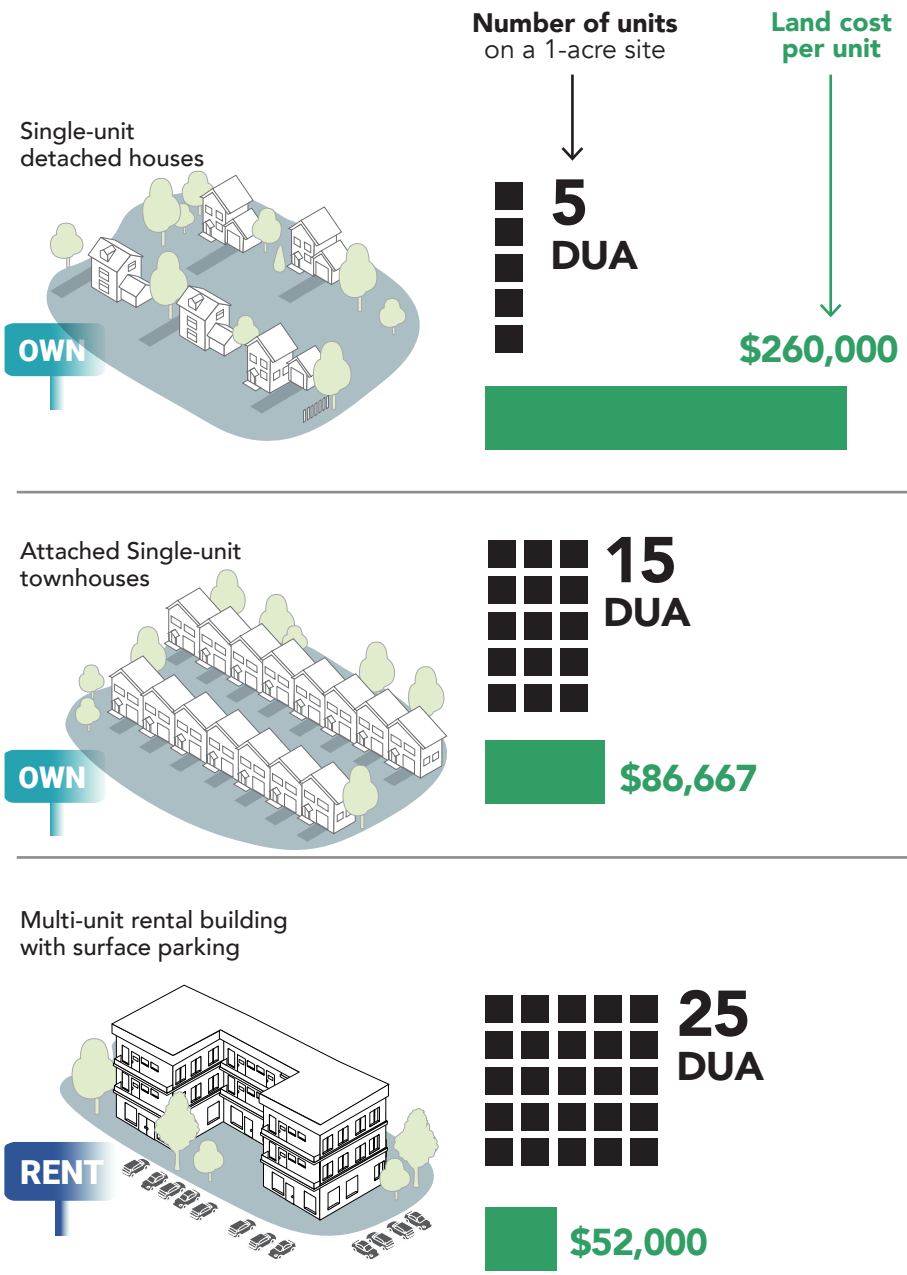


Role of Density in Decreasing Development Costs

Increased residential densities can lower the land cost per unit and make units more affordable. Returning to the example from page 20—land valued at \$1.3M per acre and developed as single-unit detached houses at 5 dwelling units per acre (DUA)—the hypothetical scenarios at right illustrate how land costs per unit fall substantially as density increases. The difference in land cost alone between the 5 DUA scenario and the 15 DUA scenario, which is more than \$170,000, reduces the household income necessary to purchase the unit by about \$50,000.

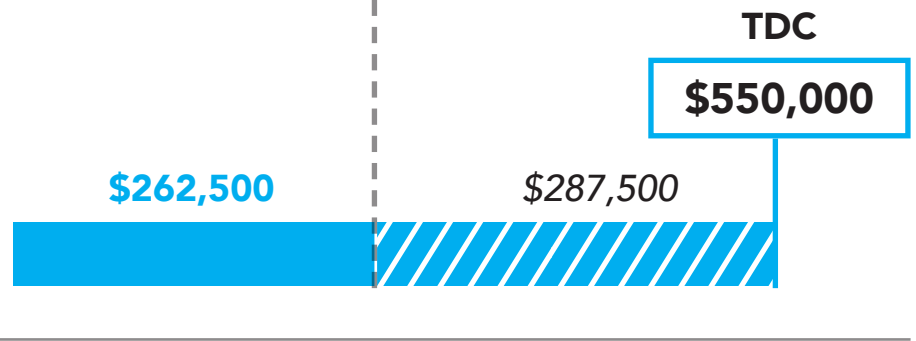
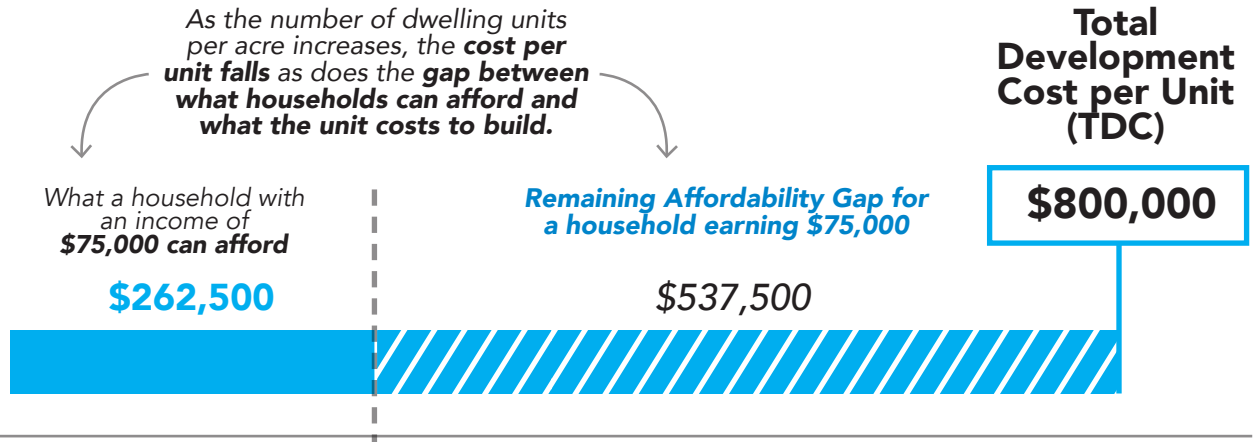
However, increasing density is not a panacea for housing affordability. The examples illustrate that increasing densities can decrease affordability gaps, but not necessarily eliminate them. In the 5 and 15 DUA examples, which are, respectively, a single-unit detached house and an attached townhouse, the total development cost is the same as the sale price—\$800,000 or \$550,00. A household with an annual income of \$75,000 can afford to pay \$262,500 for a house (about 3.5 times annual income), which leaves a significant gap in either case. Even moving to a newly built rental product at 25 DUA, which has an average development cost of \$350,000, still leaves an affordability gap. (With monthly rent generally about 1% of TDC, the rent for a new unit would be roughly \$3,500 while a \$75,000/year household can afford \$1,875 per month, which is 30% of the household’s gross income.)

Hypothetical Development Scenarios

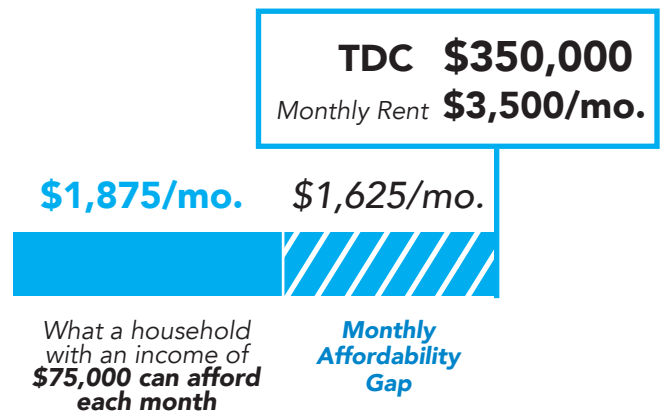


- Assumptions:**
- Q3 2022 Denver MSA Construction Costs, RS Means
 - Land costs based on developer discussions.
 - Homebuyers can afford 3.5 times annual household income.
 - Total development costs are \$800,000, \$550,000, and \$350,000 respectively.
 - Detached house is 2,000 sf and townhouse is 1,600 sf. Rental unit is 2-BR, 850 sf.
 - Renter households can afford to pay no more than 30% of gross income toward housing.
 - Monthly rent is 1% of a rental unit’s total development cost.

As the number of dwelling units per acre increases, the **cost per unit falls** as does the **gap between what households can afford and what the unit costs to build.**



It is clear that **even a multi-unit rental product at 25 DUA, constructed under 2022 conditions, still has a significant cost gap** that needs to be addressed for any household with an income of \$75,000, and certainly for those with lower incomes as well. It should also be noted that 25 DUA is a level of density that would mark a departure from historic development character in the Town, to say nothing of even higher densities.



To summarize, in markets like Denver-Boulder where land is expensive relative to incomes, low density development results in high land costs per unit, which is a substantial driver of housing costs. Developing housing at higher densities, whether for ownership or for rent, helps decrease costs per unit and improve the affordability of new housing. However, it is also true that increasing housing density, on its own, does not solve the totality of the affordability problem.

If substantially higher densities can improve affordability, but only to a point, what other regulatory tools might the Town be able to employ? For example, can inclusionary housing be another municipal tool to help close the gap?

See Appendix for a full list of unit development cost gaps by incomes.

Inclusionary Housing as a Regulatory Tool for Affordability

Inclusionary housing is a legal mechanism that requires developers or builders to provide some portion of new units as affordable, with affordability definitions determined by the regulating municipality. Inclusionary housing requirements can be a powerful tool to cause the private sector to deliver affordable housing units. A challenge with inclusionary housing is that because it relies on subsidy internal to a project, conditions must be right in order for it to work. There are a number of important considerations to decide if inclusionary requirements will be workable. Among them are the type of housing being built and the required percentage of affordable units.

Assuming that inclusionary housing requires the affordable units to be of the same type, size, and quality as the market-rate units, then the conclusion is that the affordable units must cost the developer and/or builder the same amount to produce. However, they must be sold or rented for less than their development cost and this results in a financial gap that needs to be closed. When developers are faced with these gaps, they may “sharpen the pencils” to make adjustments to the project to close the gaps. They may seek to increase prices on the market-rate units where they believe it is possible, which is subject to many factors in the marketplace, or they will find ways to lower costs a bit where it makes sense. There are always limits to the adjustments that can be made. It is czb’s assessment that a 10% inclusionary requirement could be feasible, but with caveats: **the allowed densities must exceed 10 DUA and the targeted household incomes must not be less than 60% of the Town’s median household income for rental units and 80% of the median for ownership units (See Appendix for median income figures.)**



(Additional information on inclusionary housing can be found later in Part 2 of this document and in the Appendix.)

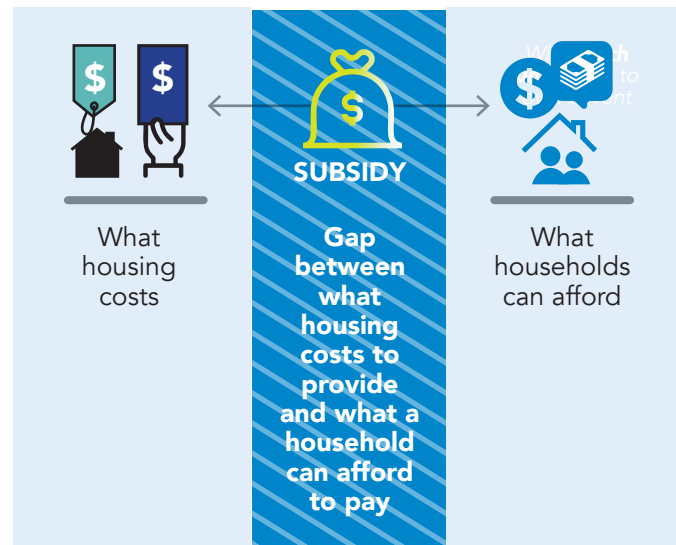


Importance of Public Subsidy

Higher densities and inclusionary housing requirements can only achieve certain levels of affordability on their own. If those tools do not meet local affordability goals, either because they do not produce enough affordable units, do not produce units affordable to incomes that the Town hopes to assist, or both, then additional resources are needed to close gaps.

Boiled down to its bare essence, **affordable housing work is about filling the gap between what housing costs to provide and what a household can afford to pay.** This requires, in some way, shape, or form, **subsidy** flowing from somewhere, and this is almost always from the public sector. Even in cases where housing can be built less expensively, through adjustments to allowed units per acre, unit size, or quality, subsidy may still have a role to play because the gaps between what housing costs to provide and what many households can afford is so great. For example, if a typical two-bedroom market-rate rental unit has a total development cost of \$400,000, and somehow that cost could be reduced by 25% to \$300,000—a significant reduction—through higher density or decreased square footage, the resulting monthly rent of \$3,000 would still require \$120,000 in annual household income. In a market like Erie's, the private sector is unable to build cheaply enough to provide affordability for households with annual incomes much below \$100,000.

Public sector funding of affordable housing goes back to the very first public housing projects before the middle of the 20th century. **Low Income Housing Tax Credits** and **Community Development Block Grants** have been important sources of subsidy to affordable housing developers for decades. Individual households are also recipients of housing subsidy, via **Housing Choice Vouchers** for example. **Local governments also have the ability to raise and spend their own funds to subsidize affordable housing**, whether to developers or to households, or both. As with every other public expenditure, **the decision to allocate resources to affordable housing is a matter of political will, prioritization, and trade-offs.**



Framing Strategic Options

The dominant housing type in Erie is the owner-occupied single-unit detached house, most of which are relatively recently built. The Town has limited rental options and therefore also limited naturally occurring affordable housing, which tends to exist in aging rental units which have become less desirable in the marketplace over time and thus relatively affordable. Any household with an income of less than \$150,000 seeking to become a homeowner, or any household that prefers to rent, will find their choices severely limited in Erie.

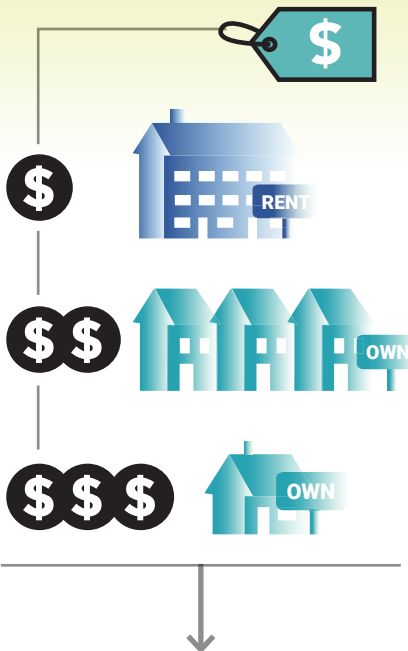
If Erie is to make any progress on housing affordability, it will need to *diversify the housing stocks both in tenure and price point*. As the Town's housing stocks become more diverse, the growing numbers of different types of units will become opportunities to capture some affordability benefits.

More diverse new housing options, on their own, will not achieve substantial affordability gains, but diversity is a precondition for the effectiveness of other tools.

There are a number of considerations for adding affordable housing in Erie:

Product type and tenure dictate price point.

Generally speaking, rental products, usually in the form of stacked flats, can be constructed and operated so as to be affordable to households with incomes around \$100,000 while attached ownership products will likely require tens of thousands of dollars beyond that, and new detached ownership products will require incomes well above \$150,000.



This means Erie needs **more stacked flat rental units first, and attached ownership products second.**



Density allowances dictate product type and tenure...and scale matters.

Under prevailing conditions, rental products are infeasible in nearly all cases unless they can be built at 20 DUA, and attached townhome products ideally should be built at 15 DUA or higher. It is also the case that insofar as an affordable housing supply will have to come from new units, and the affordable units will be some percentage of the total new units, the supply of affordable units will be dependent on the Town's total growth in housing units. Greater allowed densities will facilitate the delivery of more units.



This means Erie needs more areas where explicitly allowed **densities can reach or exceed 20 DUA.**



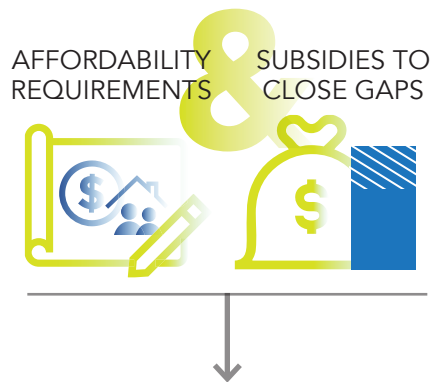
Planning and policy dictate density allowances.

Density allowances will be codified in the Town's UDC, but policy precedes legal implementation. The community needs to support, and the Board of Trustees needs to embrace, increased housing diversity production, densities, and affordability.



Denser housing types alone cannot solve affordability.

The most affordable new market-rate housing unit is not necessarily affordable to the Town's potential target markets. Although new rental units will be more affordable than new ownership units, development costs at the time of this report will cause new rental units to be affordable only to households with incomes around \$100,000. Getting newly built housing to a price point affordable to lower-income households means requiring some affordability from developers and likely also providing additional financial subsidy to close cost gaps.



This means the Erie comprehensive plan, when adopted, needs to explicitly call for **more affordable housing** and areas where **densities can reach or exceed 20 DUA.**



This means Erie will need more than just land use changes—it will need to consider **inclusionary housing requirements** and it will need to find **subsidy.**



Discrete interventions for better affordable housing outcomes in Erie are not, in fact, discrete at all. In reality, new tools and approaches need to be carefully woven together into a system.

A systems approach acknowledges that:

The delivery of affordable housing is technically challenging and expensive, and it requires significant efforts by the public sector in terms of political capital, funding, and staff resources, as well as the legal imposition of requirements on development. In order to responsibly undertake these efforts, there must be a strong policy basis reflected in the Town's adopted policy documents, such as the Comprehensive Plan.

 **Planning and Land Use Policy**



Comprehensive Plan

Housing development is controlled by the Town's UDC, in particular its zoning. To shape development in the community, the UDC and zoning must be well-designed, calibrated both to market conditions and desired outcomes, and clear. Getting the regulatory requirements right is critical to achieving better affordable housing outcomes. These legal requirements must have their origins and justifications in the Comprehensive Plan.

 **Land Use Regulations**



Zoning and Inclusionary Requirements

No matter how firm the policy basis and well-crafted the land use regulations, there are limits to the levels of affordability that the private sector can provide because too many of the costs involved in housing development are outside the control of developers and builders. At a certain point, where the Town wants specific levels of affordability beyond what the private sector can produce, additional subsidy must be employed to close affordability gaps, and this may come in the form of money or perhaps contributions of land. The Town's land use regulations can ensure that subsidy stretches as far as possible as higher-density housing generally has smaller gaps per unit.

 **Financial Subsidies**

 **Land Purchases and Disposition**



Money and Land

The Town should consider these four main categories of interventions to diversify its housing offerings and achieve some measure of affordability in Erie

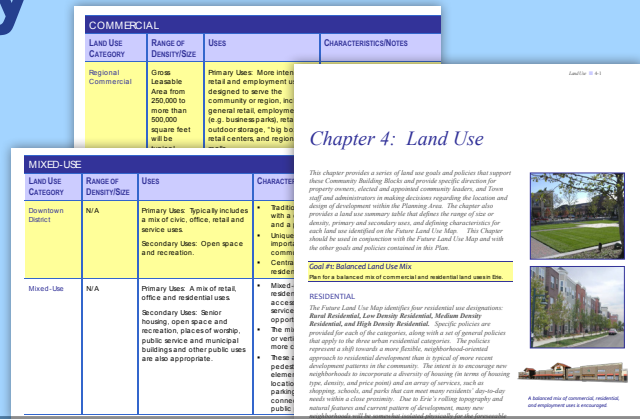
Planning and Land Use Policy

Comprehensive Plan

Erie's comprehensive plan, last updated in 2015 and just beginning another update at the time of this report in early 2023, makes many statements about the need for increased housing diversity in the Town. The most direct and substantive is Policy HN 3.2 regarding the future of housing and neighborhoods:

HN 3.2—MAINTAIN AND ENCOURAGE HOUSING THAT MEETS THE DIVERSE NEEDS OF RESIDENTS

There is growing concern about the availability of attainable housing for low and moderate-income families in Erie. The Town will work with the private sector and non-profit agencies to ensure that sites that are potentially suitable for housing are available within the Planning Area to achieve a variety of price points. This should include sites at a variety of scales to accommodate both small infill projects and larger redevelopment or green field projects. In addition, the Town will encourage innovative design in housing by considering financial incentives and other mechanisms to reduce development costs.....



As an extremely high-level policy, this statement is a good start. However, if the Town is committed to greater action on housing affordability than that which resulted from the 2015 update, the new comprehensive plan should be more explicit and detailed in its call for implementation of affordable housing efforts. Specifically, the next comprehensive plan should:

- Acknowledge and incorporate the data and analysis included in this report.
- Establish a housing vision that includes a much greater proportion of rental units than the Town now has.
- Recognize that new housing should and will be built at much higher densities than Erie's historical norm.
- Explicitly identify the locations within Erie—neighborhoods, intersections, and special planning areas, but not exact parcels—where higher density housing will be allowed.
- Acknowledge that affordable housing means income-restricted housing, regulated by the Town, and that specific income targets must be identified.
- Acknowledge that the Town's Unified Development Code will need to require some level of affordability because the private sector left on its own will not produce it.
- Acknowledge that the Town will almost certainly need to identify sources of financial subsidy to support affordable housing development.



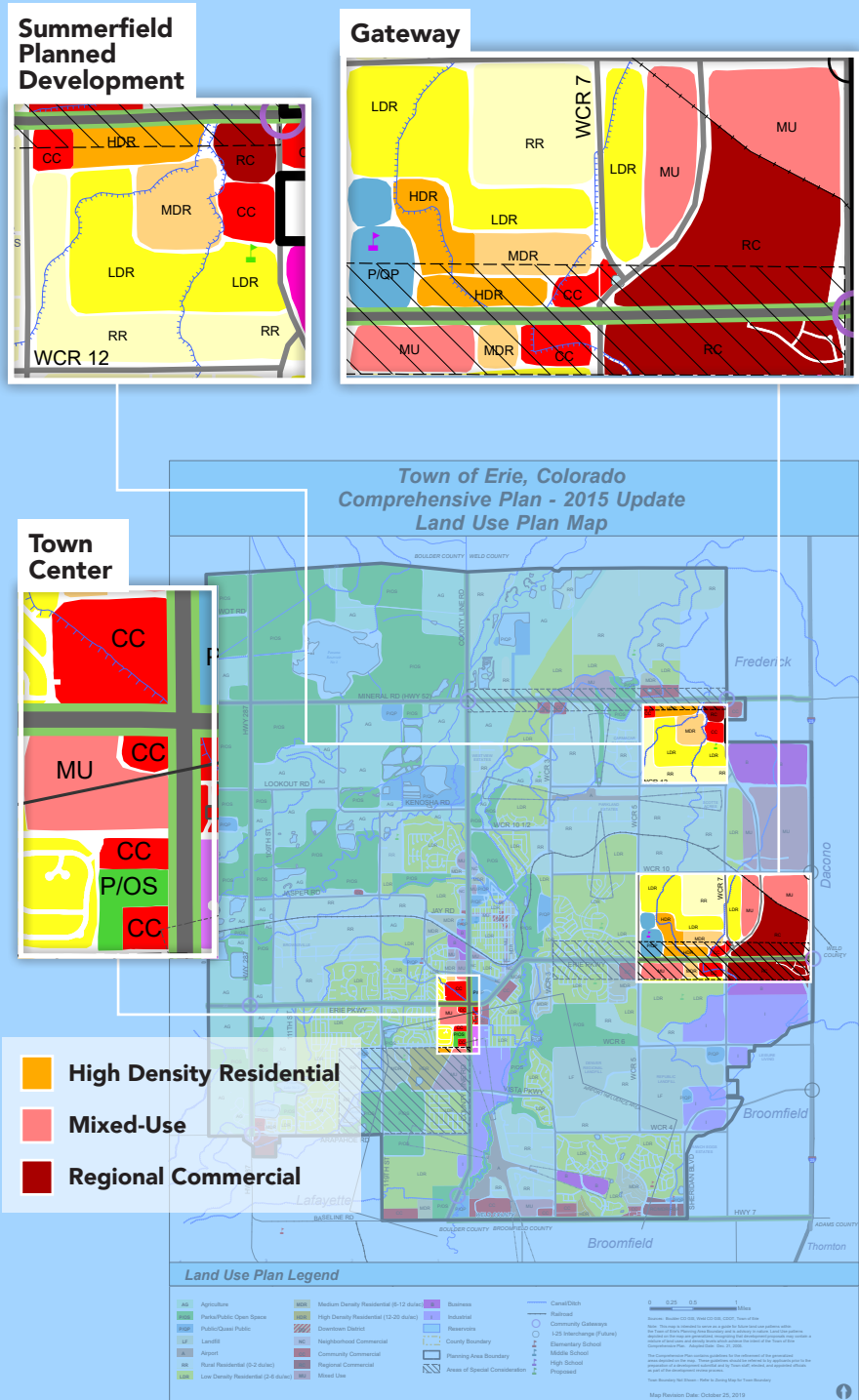
Future Land Use Map

The Town’s future land use map, which is locally referred to as the Comprehensive Plan Map, is in fact comprehensive, specifying what kinds of land uses should go where and accounting for nearly the entirety of the Town’s planning area.

The existing land use descriptions for areas in which higher density and affordable housing may best be located—High Density Residential, Mixed-Use, and Regional Commercial—are not explicit in suggesting such uses for those areas. Admittedly, land use descriptions at the comprehensive plan level are meant to be somewhat general, but more detailed encouragement of denser and more affordable housing is appropriate if Erie is committed to addressing housing affordability.

As of the time of this report, the future land use map has only a few spots that envision High Density Residential uses, which describes attached townhouse and stacked flat rental products. It has greater acreage devoted to Mixed-Use and Regional Commercial, especially at the Erie Gateway and, to a lesser extent, Erie Town Center.

Assuming development of the Gateway and Town Center proceeds as generally envisioned, and areas designated as High Density Residential are proposed for development (e.g. the Summerfield planned development south of Highway 52), these constitute the Town’s best, and perhaps last, opportunities to leverage housing affordability. The land use designations and the future land use map need to explicitly set expectations for housing densities and affordability, specifically areas suitable for minimum of 15 DUA for townhouses and 20 DUA for multi-unit rental (these densities also support inclusionary housing as outlined on the following pages). It is also appropriate within the comprehensive planning process, and the future land use mapping, to examine whether some areas currently envisioned as Rural or Low Density Residential might in fact be candidates for higher-density residential use in the future.



Land Use Regulations

Zoning

The Town’s Unified Development Code, Title 10, was updated in January 2022 with particular attention given to the zoning districts and uses section. In general, the updated district designations and allowed uses align well with what has actually been built to date town-wide, however, there are some apparent discrepancies between the 2015 comprehensive plan, the future land use map, and the zoning code.

Achieving Sufficient Densities in More Locations

As described throughout this report, densities above 15 DUA and 20 DUA are necessary to create products that can diversify the Town’s housing stocks in tenure and in price point, and support potential inclusionary requirements. The only base zoning districts that would allow at least 15 DUA—High Density Residential, Neighborhood Mixed-Use, and Commercial Mixed-Use—are not widely used. If the Town is committed to facilitating better housing affordability, starting with increased housing density, the zoning districts and their mapped locations should send a stronger signal to the development community that such uses are allowed by right in a greater number of locations.



20 DUA
or higher

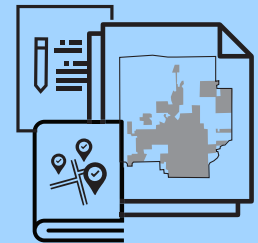


15 DUA
or higher

Aligning Zoning Districts with Future Land Uses



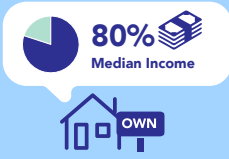
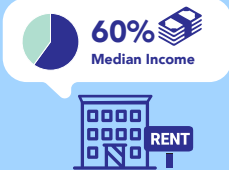

The future land use classifications in the comprehensive plan suggest that the densest housing types should be allowed not only in High Density Residential and Mixed-Use locations, but also in Regional Commercial locations. For example, Outlook Nine Mile and Enclave Vista Ridge are both rental developments in locations designated as Regional Commercial on the Future Land Use Map. At the time of this report, however, the associated Regional Commercial zoning district does not allow multi-family residential. Furthermore, it is reasonable to expect that other locations with Regional Commercial future land use designations, such as the Erie Gateway, will be attractive for dense housing development but it is unclear which zoning district is most appropriate to achieve dense housing outcomes.

Everywhere the Town’s highest density housing types are found (e.g. Blue Sky at Vista Ridge and Outlook Nine Mile) or where future land use designations suggest they might be built and where they have been proposed at the time of this report (e.g. Summerfield and North Station), Planned Development zoning is in place. What this suggests is that the Town currently lacks a base zoning district that can effectively support housing development above 15 DUA as it is being delivered by the private sector in recent years and at the time of this report. Planned Development zoning is a tool that can flexibly achieve a range of desired outcomes, including housing outcomes. But it is a reactive tool that does not make clear at the outset what the Town can say “yes” to and what it clearly wants. The new comprehensive plan, expected to be complete in 2024, should set a clear vision and expectations at a policy level, and in the Future Land Use Map, and the Town’s UDC, zoning framework, and zoning map, should align with the comprehensive plan.



Inclusionary Housing

Inclusionary housing is a legal mechanism that requires developers or builders to provide some portion of new units as affordable, with affordability definitions determined by the regulating municipality. These requirements usually exist within the part of the municipal code that controls land use regulations, such as zoning. Given the affordability challenges described in Part 1 of this document, and the development cost and market realities described earlier in Part 2, Erie may consider an inclusionary housing approach as follows:

Minimum project size	5 units	
Affordable Set Aside	10% (one in every ten newly built units must be affordable)	
Annual Household Income Targets	80% of the Town median income for ownership units	
	60% of the Town median income for rental units	
Alternative Means of Compliance	Cash-in-lieu fee , to be calculated and updated annually	

It is impossible to know exactly what such an ordinance will produce, but it can be reasonably speculated based on development cost and market realities at the time of this report that the following would occur in the near-term (2023 and 2024) if those realities do not drastically change:

- Developers of larger single-unit detached houses (i.e. those built at densities of less than 10 DUA) will find it challenging to deliver affordable units and will seek to pay the cash-in-lieu fee.
- Developers of somewhat smaller single-unit detached houses and attached townhouses built at densities of 10 DUA or greater may choose to deliver the units or pay cash-in-lieu, depending on specific project conditions. As project density increases in these cases, the incentive to build affordable units should also increase.
- Developers of rental projects should be willing to deliver the affordable units.

The approach can be further calibrated by fine-tuning the cash-in-lieu fees. In nearly all inclusionary housing systems, a number of details must be worked out and within these details are incentives and disincentives. For example, some communities tilt the system toward producing cash-in-lieu by making it a more attractive option than building the units. Others may do the opposite, setting the cash-in-lieu fees at such a high level that building the units is less onerous than paying the fee.

The approach outlined above is biased, by design, toward the delivery of units over the payment of cash-in-lieu fees. It also assumes that planning, policy, and zoning tools will shift in the direction described in this document. If they do not, an inclusionary housing program is far less likely to produce many affordable housing units. This approach is basic, simple, and straightforward but fundamentally sound in its construction and ambitions. If the Town adopts such an approach, and it shows signs of success in the early years, it should be reevaluated to see if the program could be more ambitious, either in requiring a greater percentage of units as affordable, or deeper levels of affordability, or both. Before an inclusionary ordinance is passed by the Board of Trustees, discussion of the details will be critical and it should be made clear that regular updates to the ordinance, as frequently as every year, will be necessary as conditions change.

Financial Subsidies

While inclusionary requirements can procure some affordable units from the private sector, the percentage of units and the affordability levels are constrained by project realities. Achieving additional affordability requires additional subsidy. In cases where the Town desires deeper affordability than inclusionary requirements can provide, it will have to pay the difference. In addition, affordable housing developers are in a highly competitive situation when it comes to leveraging major subsidies such as Low-Income Housing Tax Credits (LIHTC). Beyond establishing zoning tools that can explicitly accommodate a multi-unit rental project of at least 20 DUA, local municipalities hoping to attract such a project should be willing to make financial investments and thus help the LIHTC developer succeed in putting together such a deal. Locally derived revenues can be used as grant or loan funds to affordable housing projects, or to purchase property or land for future affordable housing development. Local funding can be derived from different sources.

Inclusionary Housing Cash-in-Lieu Fees



As described previously, inclusionary housing requirements are one way to add affordable housing to the Town's supply. But some communities look to inclusionary housing at least partially as a funding source for affordable housing. Cash-in-lieu of units is a common means of complying with inclusionary requirements, meaning the developer pays a fee instead of providing the required units. The cash can then be applied to other affordable housing endeavors. It must be noted that although the revenue is a useful tool, it only flows to the Town if affordable units are not built. Whether this is seen as positive depends on overall strategy. Local governments with sophisticated affordable housing operations, whether in-house or in partnership with local providers, may see the cash as preferable to the units, because the local government has its own plan to produce the units.

Development Impact Fees



In some communities that do not have inclusionary housing requirements, affordable housing impact fees may be imposed on development to help pay the costs of affordable housing development. There are limitations and restrictions to impact fees, and they may only be used to defray the costs of *meeting service needs created by new development*. Because of the law governing impact fees, careful thought and analysis would be needed to quantify the impact of new development and to establish eligible uses for the fee revenue.

Dedicated Taxes



Local governments commonly impose taxes specifically dedicated to funding affordable housing. Taxes on hotel stays, short-term rentals, restaurant meals, and various other transactions have all been used to provide revenues to local government coffers for this purpose.

One-Time Monies and Grants



Local governments from time to time find themselves with budget surpluses, unspent funds of various kinds, or unexpected revenue sources such as federal funding from the American Rescue Plan Act (ARPA). These are all opportunities to set funds aside for affordable housing opportunities. Similarly, grant opportunities may become increasingly available due to State action in Colorado on affordable housing.

General Fund Appropriations



Regardless of the exact revenue source, local governments have the ability to simply allocate affordable housing resources from the General Fund, which is normally the local source of funding for basic government services such as public safety, public works, etc. This is especially true if the community sees housing expenditures as a basic obligation and ongoing cost of local government, as opposed to a special or one-time obligation.



Housing Related Fees in Area Communities

	Inclusionary Housing	Residential		Non-Residential	
		Mechanism	Amount	Mechanism	Amount
Boulder	✓	 Cash-in-Lieu Fee	\$65,184 - \$301,680 per required affordable unit	Affordable Housing Capital Facility Impact Fee	\$17.76 - \$30.45 per square foot for most uses \$1,746.03 per bed for nursing home/assisted living \$5,238.09 per room for lodging
Broomfield	✓	 Cash-in-Lieu Fee	\$88,566 per required affordable ownership unit \$55,295 per required affordable rental unit	N/A	N/A
Lafayette	✗	 Development Fee	\$1.00 per square foot of interior floor area	Development Fee	\$1.00 per square foot of gross floor area
Longmont	✓	 Cash-in-Lieu Fee	\$7.90 per finished square foot for ownership \$1.90 per finished square foot for rental	N/A	N/A
Louisville	✓	 Cash-in-Lieu Fee	\$9.24 per finished square foot for ownership \$4.72 per finished square foot for rental	N/A	N/A
Superior	✓	 Cash-in-Lieu Fee, <i>but only for projects of fewer than ten units</i>	Undetermined at the time of this report	N/A	N/A

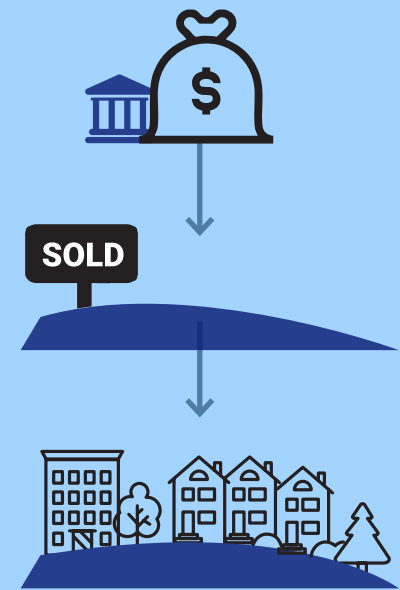
Land Purchases and Dispositions

In a market with high and rising land prices, buying and holding land can be an important future contribution to affordable housing development. First, sites are critical for affordable housing developers and the public sector holding a site, or sites, while a deal comes together is one less stressor for the developing entity to worry about. Second, ownership equals control in a marketplace with strong development pressure. And third, as values rise over time, and sites become rare, the public contribution of a site may be just as good as a cash contribution, or better.

Purchases

The Town should consider acquiring land if and as opportunities arise if the site(s) in question are appropriate locations for future housing development. This is especially important in anticipation of the kinds of projects that will support uncommon affordability, even above and beyond what is possible via inclusionary housing requirements. These include fully affordable projects that might someday be completed by local nonprofit housing agencies, or complex mixed-income projects unlikely to ever be completed by the private sector without public sector involvement.

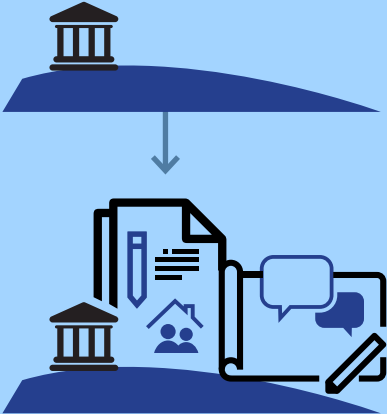
This approach is nothing new for the Town, which most recently purchased nearly 20 acres at the northwest corner of County Line Road and Erie Parkway in order to move its Town Center vision closer to reality. Funding for land acquisition, should opportunities arise, would come from affordable housing funds generated via the mechanisms described on page 34.



Disposition

Another reason that public ownership of land for affordable housing development is a wise investment is because carefully considering the best use of a site, and doing the commensurate planning work it requires, can take a good deal of time.

When the Town is able to establish a vision, refine it to a conceptual small area or even site plan inclusive of all the goals and expectations the community may have, and commit to a regulatory approach and potential incentive package that will make it all work, the odds of a development project making its best possible contribution to the Town increase dramatically. This is more easily done when the Town itself controls the site, can give the project the proper thought and public vetting, and can then seek a development partner to bring the community's vision to fruition. Again, the Town's request for proposals for a development partner at the Town Center site is a clear example of how such an approach would work, with future opportunities more directly aimed at affordable housing outcomes.





Appendix





Town of Erie Median Household Income by Household Size

Household Size	2020	2021
1-person households	\$66,216	\$66,446
2-person households	\$116,204	\$124,291
3-person households	\$142,633	\$160,938
4-person households	\$159,583	\$166,389
5-person households	\$137,384	\$165,417
6-person households	\$160,536	\$164,239
7-or-more-person households	\$177,857	\$148,558

Source: 2016-2020 and 2017-2021 ACS Five Year Estimates





Inclusionary Housing Impacts to Project, per 20 Units, by Income Targets, at Select Densities (Hypothetical Scenarios)

Project Gaps to Close

Resulting TOTAL GAP

	Target Household Income for Affordable Units	Per Unit Gap, Sale Price	5% Requirement (1 of 20 units)	10% Requirement (2 of 20 units)	20% Requirement (4 of 20 units)
5 DUA 	\$50,000	\$625,000	\$625,000	\$1,250,000	\$2,500,000
	\$75,000	\$537,500	\$537,500	\$1,075,000	\$2,150,000
	\$100,000	\$450,000	\$450,000	\$900,000	\$1,800,000
	\$125,000	\$362,500	\$362,500	\$725,000	\$1,450,000
	\$150,000	\$275,000	\$275,000	\$550,000	\$1,100,000
15 DUA 	\$50,000	\$375,000	\$375,000	\$750,000	\$1,500,000
	\$75,000	\$287,500	\$287,500	\$575,000	\$1,150,000
	\$100,000	\$200,000	\$200,000	\$400,000	\$800,000
	\$125,000	\$112,050	\$112,500	\$225,000	\$450,000
	\$150,000	\$25,000	\$25,000	\$50,000	\$100,000
25 DUA 		Per Unit Gap, Monthly Rent			
	\$50,000	\$2,250	\$2,250	\$4,500	\$9,000
	\$75,000	\$1,625	\$1,625	\$3,250	\$6,500
	\$100,000	\$1,000	\$1,000	\$2,000	\$4,000
	\$125,000	\$375	\$375	\$750	\$1,500
\$150,000	\$0	\$0	\$0	\$0	

Assuming all units in a project are roughly the same, on average, inclusionary housing requires some number of units in a project to be sold at or rented for prices below the average break-even price. Early in project planning, this projected decrease in project revenue creates a financial gap that needs to be addressed. The gap is a function both of the number of units that must be set aside as affordable and the level of affordability the regulations require. Based on the hypothetical examples from pages 22 and 23, which are based on realistic development costs in late 2022, the table above illustrates the project gaps that preliminarily result from inclusionary requirements at selected densities, whether for ownership products (5 or 15 DUA) or rental products (25 DUA). The project gaps for the ownership projects are reported as sale revenue and the rental project gaps are reported as monthly rent revenue.





Gaps of
0% - 3%

Gaps of
3% - 5%

Inclusionary Housing Impacts per Unit by Income Targets	Project Gaps to Close		
	Resulting PER UNIT GAP		
	5% Requirement (1 of 20 units)	10% Requirement (2 of 20 units)	20% Requirement (4 of 20 units)
\$50,000	\$31,250	\$62,500	\$125,000
\$75,000	\$26,875	\$53,750	\$107,500
\$100,000	\$22,500	\$45,000	\$90,000
\$125,000	\$18,125	\$36,250	\$72,500
\$150,000	\$13,750	\$27,500	\$55,000
\$50,000	\$18,750	\$37,500	\$75,000
\$75,000	\$14,375	\$28,750	\$57,500
\$100,000	\$10,000	\$20,000	\$40,000
\$125,000	\$5,625	\$11,250	\$22,500
\$150,000	\$1,250	\$2,500	\$5,000
\$50,000	\$113	\$225	\$450
\$75,000	\$81	\$163	\$325
\$100,000	\$50	\$100	\$200
\$125,000	\$19	\$38	\$75
\$150,000	\$0	\$0	\$0



For example, when a developer contemplates selling what is projected to be an \$800,000 house, and is faced with a **potential gap of \$22,500 (for a household with an income of \$100,000) or \$26,875 (for a household with an income of \$75,000) created by a 5% inclusionary requirement**, developers must ask themselves whether they can cut costs by the gap amount or pass the costs on to some of the buyers. Depending on the cash-in-lieu amount, they may decide instead to simply pay the cash-in-lieu fee.



If the project is apartments for rent, and the future operator is required to rent some percentage of the units to households with incomes no higher than \$75,000, whether 5% or 10%, developers must ask whether costs can be cut to **reduce the average monthly rent by \$81 or \$163**, or pass those higher rents on to future tenants. Or, they may decide to pay the cash-in-lieu fee.

The project gaps described on the previous page can be converted to per unit gaps as shown above. The per unit gaps are simply the total project gap divided by twenty units. This helps illustrate, for every unit that a project will include, the average gap that needs to be closed in order for the inclusionary requirement to be absorbed and addressed.

czb estimates that, generally speaking, developers and builders can likely find ways to close a gap of 3% or less (highlighted in yellow). It may be possible, though difficult, to close a gap of 4% or 5% (highlighted in orange). Beyond 5%, something fundamental may have to give, meaning the project could become infeasible.

Where the Town sets these requirements has important implications for effectiveness of an inclusionary system and careful calibration is required.





Integrating Higher Densities into a Suburban Context

The term density has been used throughout this document to help explain how future development projects might achieve economies of scale to diversify housing offerings and support inclusionary housing policies and requirements. This will require explicit changes to the Town's Comprehensive Plan and Unified Development Code (UDC) as outlined in Part 2 of this document.

That work began in late 2022 and offers the perfect opportunity to ensure the new land use plan as well as the ensuing zoning map and zoning code identify growth districts throughout the Town that can and should accommodate increased densities that allow for, and require, the construction of affordable housing via an inclusionary housing ordinance.

The following illustration, from a 2019 presentation to the League of California Cities – Planning Commissioners Academy, illustrates housing types at various densities with associated building heights and images of what each housing type might look like. Each of these housing types may be applicable in the Town of Erie, in the right locations.





Examples of Higher Density Housing Types than are Typical in Erie

Berry Farms in Franklin, TN with multi-unit stacked flat housing located in a mixed-use district.

Credit:tennesseean.com



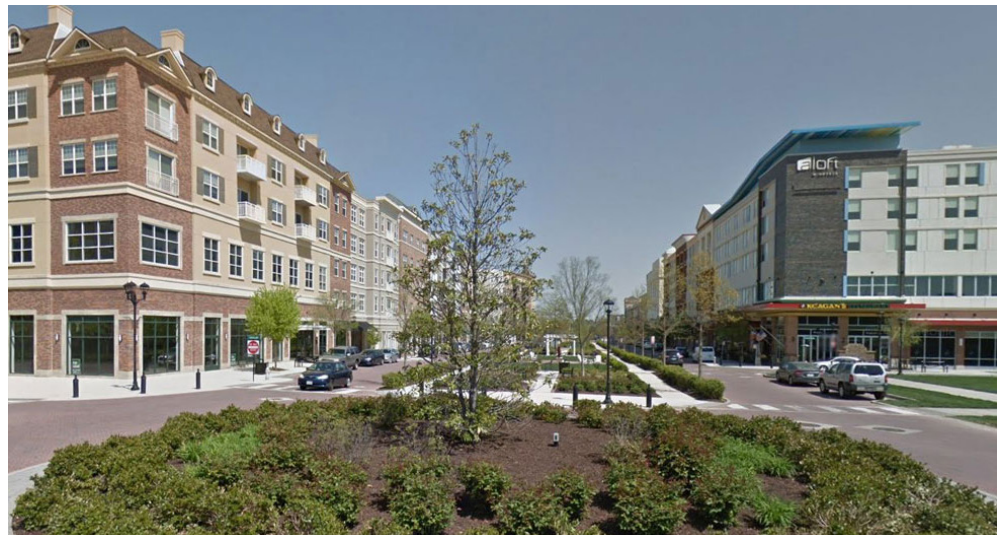
A six-plex unit with pitched roofs typical of suburban attached single-unit dwellings.

Credit:yankee-capital.com



West Broad Village in Glen Allen, VA is an example of a mixed-use development of four and five story buildings that support housing on the upper levels and commercial development on the first floor.

gathersbergmd.gov



Housing Needs Assessment and Affordable Housing Strategy

FEBRUARY 2023



ERIE Town of Erie, CO
COLORADO



Planning Consultant
czbLLC



TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Planning Commission

Board Meeting Date: 10/4/2023

File #: , Version: 1

SUBJECT: LEGAL TRAINING

DEPARTMENT: N/A

**PRESENTER: Sam Light, CIRSA
Austin Pierce Flanagan, Town Attorney**

STAFF RECOMMENDATION: N/A

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Sam Light with the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and the Town Attorney will provide legal training to the Planning Commission

ATTACHMENTS:

1. Draft Presentation



Quasi-Judicial Proceedings

Town of Erie Planning Commission 10.4.23

Presented by Sam Light, CIRSA Deputy Executive Director/General Counsel



Introduction

Presentation Overview

- Power to make land use and other “property rights” decisions at a local level is a significant, important, and cherished power.
- And can be a source of claims/disputes/litigation. Given the significant risks in this area, including potential for federal constitutional claims, CIRSA and its members share a keen interest in reducing risks in this area.
- In our training, we focus on “suggestions for success” in your role as a quasi-judicial (QJ) decisionmaker – best practices – which in turn will reduce risk for the Town and you individually.
- Presentation is a training resource only and not intended as legal advice. In case of any inconsistency between author’s remarks and views of your Town Attorney...your Town Attorney’s views prevail!

Suggestion One

Honor Due Process

- As you know, the Commission sometimes act as “legislators”—i.e., making recommendations on policies and rules that apply generally (e.g., updates to the Town’s comprehensive plan or general amendments to the development code).
- But most of the time you act as “judges,” deciding specific cases where you apply the general rules to specific persons/property. For these “quasi-judicial” matters—which include most land use applications, such as a rezoning, special review use, subdivision, PUD plan, site plan—you are essentially acting as judges and therefore must behave like judges.
- In this role you are required by law to provide “due process” and a failure to provide due process exposes you and the Town to liability.

Suggestion One

Honor Due Process

- Quasi-judicial “rules of engagement” have a familiar source: “No person shall be...deprived of life, liberty, or property, without due process of law.”
- At the local governmental level, for land use decisions affecting property rights, the Commission (and other QJ bodies) and its members are responsible for delivering the due process required by the Constitution.
- What are the key characteristics of a quasi-judicial process? Notice, a public evidentiary hearing, and a record-based decision made by a fair and impartial decisionmaker—that’s you!
- All decision-makers in the process—those making recommendations and those making final decisions—must commit to providing due process. Each step in the process is a critical building block!

Suggestion One

Honor Due Process

- In litigation, quasi-judicial decisions aren't usually overturned because the judge didn't "like your decision."
- Rather, they more likely overturned because the quasi-judges either made an arbitrary decision or—as a group or because of individual behavior—deprived the applicant or other interested party of fundamental fairness (i.e., their due process rights).
- Therefore, individually and as a group...honor due process...do the things that judges would do, and don't do the things that judges wouldn't do!

Suggestion One

Honor Due Process – Some Tips

- Don't make up your mind before the hearing.
- Don't make prejudicial pre-hearing statements.
- Don't engage with one side or the other before the Commission hearing (ex parte contacts, more in a moment).
- Don't participate if you have a financial or other personal interest in the matter (code of ethics).
- Don't sign any “pro” or “con” petitions; be a judge, not an advocate.
- Don't be a witness in your own hearing. Instead, have the parties provide you with information.

Suggestion One

Honor Due Process – Some Tips

- Discuss and consider quasi-judicial matters only at your duly noticed Commission public hearing; that is:
 - Wait until the matter is before you on your public hearing agenda; only then is the matter “ripe” for you to hear, deliberate, and decide.
 - Don’t engage in pre-hearing “buzz”—you get to make the decision or recommendation but with that power comes the responsibility to be fair and unbiased and follow the QJ rules of engagement.
- Once the Commission has made its recommendation or decision, let the decision speak for itself and even if you held a minority view, recognize the members’ need to respect the body’s decision.

Real-Life Scenarios – What do You Think?

“We recently approved a controversial site plan and resolved the Fire District’s concerns with a condition of approval requiring the developer to obtain a fire access over the neighbor’s land. The neighbor testified at the hearing that he’s willing to grant an access easement. One of our members who voted against the project (it was a 4-3 vote) has approached the neighbor to suggest he not grant the easement.” Concerns?

“From prior comments, it seems one of our members generally disfavors auto dealerships. We have an upcoming special review use hearing for this use and the member has been asking staff to include information about light pollution in the packet and has been posting on social media about the upcoming hearing.” Concerns?

Suggestion Two

Run a Good Hearing

- The way the quasi-judicial body runs its hearings—and how the members conduct themselves in hearings—significantly impacts your risk profile and the community’s trust and confidence in your work.
- Follow “best practices” for hearings:
 - Individually, come prepared for your “judicial” role.
 - Use your script and standard procedures; follow them throughout.
 - Maintain formality and engagement; limit distractions.
 - Use and expect civility; that applies to all meetings and participants.

Suggestion Two

Run a Good Hearing – Best Practices

- Stay focused on the matter and issues at hand and directly manage the crux issues to get the necessary and relevant information.
- Use opportunities to “recalibrate” if discussion is straying off topic/off task.
- Consider steps to manage the flow: e.g., don’t engage or allow others to engage in free-wheeling “back-and-forth” during staff, applicant, or public comments or during Commissioner questions.
- Don’t stray the course for insistent questioners. Better to hold questions until a defined question period and to instead let the questioner know they’ve been heard and move on.

Suggestion Three

Avoid Ex-Parte Communications

- A critical duty of the quasi-judge is to avoid “ex-parte” contacts, meaning any “outside the hearing” discussion with an interested party about the subject matter of the hearing. Examples:
 - Meeting with the applicant outside the hearing to discuss the pro/cons of the request and how you might decide the case.
 - E-mailing your fellow decisionmakers before the hearing to persuade them why they should vote yes or no.
 - Attending meetings where folks for or against the application are discussing the application, even if you’re not participating.
- If it were your application and your property interests at stake, would these activities seem fair to you?

Suggestion Three

Avoid Ex-Parte Communications

- A proceeding loaded with “ex-parte” contacts is a clear path to having your decision overturned and, as important, having the integrity of your process eroded.
- When we and your Town Attorney advise against ex-parte contacts, we are protecting your ability to participate in the decision-making, and your ultimate decision.
- An ex-parte contact can be problematic whether with the applicant, citizens, or in some instances, staff.
- Or, even in the hearing itself (i.e., no texting or e-mailing about the subject matter of the hearing within the hearing itself).

Suggestion Three

Avoid Ex-Parte Communications

- Arm yourself with knowledge you need when persons want to talk about a pending quasi-judicial matter outside the hearing. Keep some “talking points” ready; e.g.:
 - “Thanks for your interest [or e-mail, etc.] but I can’t engage with you about this application outside the upcoming hearing. I’d love to hear your views but because this is a specific property rights case, I need to hear and consider the evidence only through our public hearing process. Please plan to attend the hearing if you can. If you can’t attend, you can send written comments to our staff and they’ll include those in the hearing materials we receive.”
- Direct citizens to staff and the quasi-judicial “FAQ” page on the Town website: <https://www.erieco.gov/2010/Quasi-Judicial-Proceedings>.

Suggestion Three

Avoid Ex-Parte Communications

- Contrast – For general legislative discussions—e.g., when the Commission is considering generally applicable changes to standards in the development code—it is okay: to lobby (and be lobbied) outside the meeting; to base your decision on your own personal policy perspectives, and to base your decision on information obtained from most any source.
- But, for a quasi-judicial matter, it is not. Rather, just like a judge presiding over a trial, because of constitutional due process requirements, you must make your decision based on the evidence presented to you at the hearing, and you must base your decision upon existing legal standards, and you may not engage with interested parties about the case outside the hearing.

Real-Life Scenario – What do You Think?

“Commissioner Nile is unable to attend the Planning Commission meeting next week at which the Commission will hold a public hearing on an SRU request for a group home. Over the weekend he emails Commissioner Tami to tell her she should vote no because the proposed home is too tall. Tami responds to Nile and copies in Commissioner Bruce, telling them both that the number of proposed bedrooms is also a huge concern for her. Bruce responds to Tami (copying Nile) adding that there is a lot of social media “buzz” about the request and “people around Town don’t want us approving these things.” Concerns?

Suggestion Three

Beyond Ex-Parte Communications

- In addition to due process concerns for ex-parte communications, public officials are subject to other laws of transparency.
- Commit to the “openness” requirement of the Open Meetings Law (OML).
 - Applies to 3 or more or a quorum, whichever is less, and requires that discussion/action on public business take place at a meeting open to the public.
 - A “meeting” includes any gathering to discuss public business, in person, by phone, or electronically.
- Separate from OML requirements, e-mails sent and received by public officials that concern their official duties are generally public records.
- Using social media?

Suggestion Four

Deliberations Matter

- Once you've heard the staff and applicant presentations, heard public comment and asked your questions, **it's time to deliberate.** 😊!
- Discussion of the evidence and the criteria is critical; this is where:
 - You as quasi-judges formulate the bases of your impending decision.
 - The applicant and others obtain an understanding of the reasoning for your decision.
 - The reviewing judge looks to understand why you decided the matter as you did (and whether it comports with your criteria and the law).
- So Deliberate – Talk Amongst Yourselves!

Suggestion Four

Deliberations Matter – Tips

- Focus on the key issues and on the relevant decision-making criteria:
 - In quasi-judicial matters, you must make your decision based on the relevant existing criteria and not on the basis of personal preferences, or irrelevant or non-existent standards, or considerations that don't apply to the application in front of you.
 - Have the criteria at the ready and ask questions of each other and staff as needed (“Staff, remind me, what’s the standard that applies to this issue?”)
- Commissioners should discuss with each other how the relevant criteria apply to the evidence that has been presented.
- Remember - when you are prepared to discuss the criteria, you will arrive at a discussion of the defensible reasons for your decision.

Deliberations Matter



Suggestion Four

Deliberations Matter – Use the “Rule of Why”

The Rule of Why In Action:

Chair: “I’d like to thank everyone for their comments on this SRU request. Now it’s time for the Commission to deliberate. Who would like to start the discussion?”

Member Sam: “I would, thank you. I think we’ve heard a lot of differing opinions here and I just want to say I’m adamantly opposed and I’m voting no.”

Member Tami: “Sam, may I ask: Why do you intend to vote no?”

Member Sam: “I’m voting no because it doesn’t meet our standards.”

Member Nile: “Sam, why doesn’t it meet our standards? I also have concerns but if you’d tell me what standards concern you and why you think they aren’t met, I think that’s a good way to start our discussion.”

Member Sam: “I’d be happy too. I think the building design is an issue because...”

Suggestion Four

Deliberations Matter – Closing Out the Hearing

- All quasi-judges should have—and take—the opportunity to speak during deliberations.
- When getting ready to act, make sure the decision document is accurate and reflects your criteria, findings, desired conditions, etc.
 - If conditions of approval are being added or revised, be sure they are appropriate; follow your staff and attorney suggestions on conditions.
- Take the time you need to prepare the proper decision document, even if it requires another meeting.

Concluding Thoughts

- The most important job for quasi-judges to is provide great process!
- Therefore, respect, follow, and be a champion of the fair and due process that you are set up to provide. Avoid process flaws and other acts that can cast doubt or create a sense of unfairness.
- Know that *if* you've carried out your hearing fairly and properly, and *if* you've issued a decision that is based on your hearing record and the applicable criteria, then your decision will withstand legal challenge...
- ...And interested parties and citizens will have faith and trust in how you handle quasi-judicial matters concerning their property. That's a great place to be!

Conclusion

Thank you for your public service and the opportunity to present!

Resources: For more on quasi-judicial “rules of engagement”, see handout and these presentations: <https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4> and https://www.cml.org/docs/default-source/uploadedfiles/events/annual-conference/cml-2022-conference---qj-decision-making.pdf?sfvrsn=b0a4e3a3_0.