

Zombie Subdivisions

Restore - Reincarnate – Kill - Prevent
An Interactive Implementation Workshop

Western Lands and Communities

A Lincoln Institute of Land Policy & Sonoran Institute Joint Venture



*New Partners for Smart Growth
13th Annual Conference
Denver, CO
February 14, 2014*





Arrested Developments

Combating Zombie Subdivisions and
Other Excess Entitlements

JIM HOLWAY
with Don Elliott and Anna Trentadue

Policy Focus Report • Lincoln Institute of Land Policy

www.ReshapingDevelopment.org

Working Papers
Presentations
Best Practices
How to Guide
Report Data & Tables
SCOTie

Jim Holway

Introduction, Why is this a problem? How extensive is it? Legal issues

Kathy Rinaldi & Anna Trentadue

Teton County, ID - Case Study & Lessons Learned

Linda Dannenberger

Mesa County, CO - Case Study & Lessons Learned

Don Elliott

Best Practices & Recommendations - Interactive Discussions

-----Lots of Discussion-----

Zombie Subdivisions

Restore - Reincarnate – Kill - Prevent

Jim Holway, Ph.D. FAICP

Director, Western Lands & Communities

Phoenix, AZ

Premature - Obsolete - Distressed vs. Zombie Subdivisions

➤ Premature Subdivision Issues

- Number & Location of Lots
- Fiscal Threats - Servicing Costs
- Fragmented Development Patters (Smart Growth)
- Overcommitted Natural Resources
- Housing Market Flooding

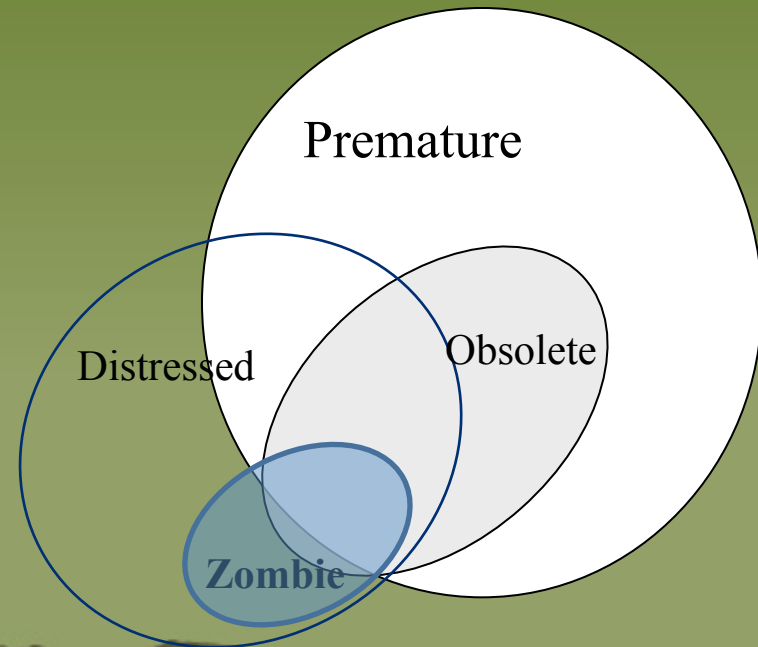
➤ Obsolete Subdivision Issues

- Quality of Lots
- Threats to Health & Safety

➤ Distressed & Zombie Subs

- Blight
- Impacts on Existing Lot Owners
- Housing Market Distortions

➤ Excess Entitlements



Audience Questions

(these could be raising hands or test of interactive clickers)

- What region are you from
 - CO
 - Other South West
 - Other Rocky Mountain States
 - Pacific Coast,
 - Mid-West
 - East
 - Outside US

- What type of community are you from
 - Urban
 - Suburban
 - Exurban
 - Small City
 - Rural

Audience Questions

- What level of government do you work with
 - City/town
 - County
 - Regional
 - State
 - Tribal
 - Federal
- What is your role
 - Public agency staff
 - Lawyer (public or private)
 - Consultant
 - NGO,
 - Developer/Builder
 - Lender
 - Other

Audience Questions

(hands raised or clickers - we can show survey results for comparison)

- Primary factors driving home construction in your area
 - Job Growth in the Community
 - Second Home Construction
 - Job Growth in a Neighboring Community
- What type of development cycles over last 10 years
 - Steady Growth
 - Normal Variability
 - A Boom and Bust Cycle
 - » Very slight
 - » Moderate
 - » Severe
 - » Very Severe

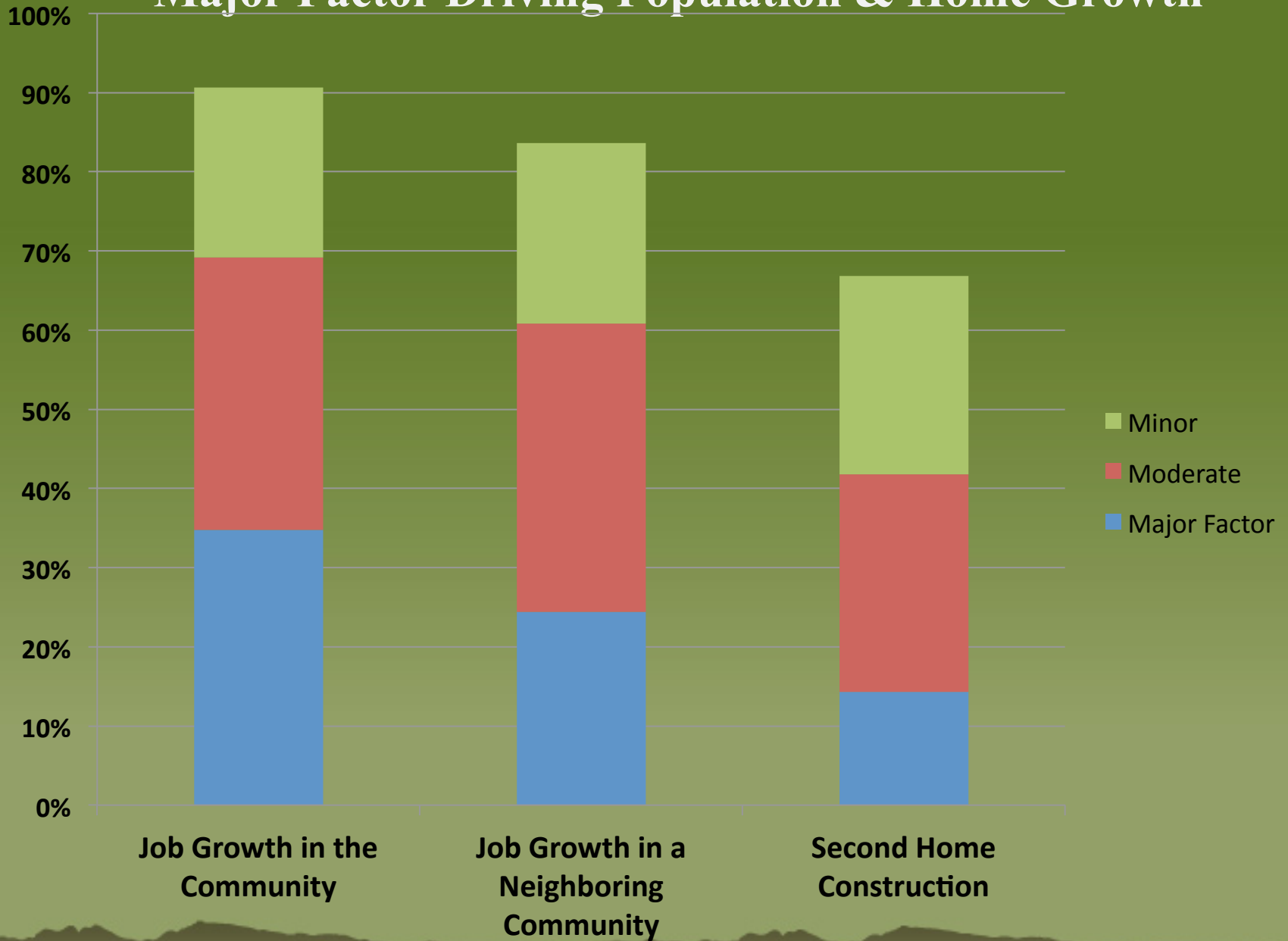
Audience Questions

- Status of housing market recovery in your community
 - Development Levels have Already Recovered
 - Within the Year
 - 2 Years
 - 3 to 5 Years
 - More than 5 Years
 - Never
 - Don't Know

Planner - Developer – Lender Survey

- Survey – Feb & March 2013
 - 302 respondents
 - 31% AZ, 19 % CO, 25 % other IMW, 5% Southeast
 - 67 % Public Agency Staff
 - 13 % Attorney/Consultant
 - 9 % NGO
 - 9 % Developer/Builder/Landowner
 - 47% City or Town 29% County
 - Population, a broad spread
 - Suburb 35% .. Rural 23% ..Central City 14% .. Exurb 11%

Major Factor Driving Population & Home Growth



Planner - Developer – Lender Survey

– Relative importance in driving growth & construction (major or moderate importance)

- Job growth in community - 68%
- Job growth neighboring community - 60%
- 2nd home construction - 41%

– Was home construction primarily driven by current housing demand or speculative building?

- Current housing demand - 27%
- Speculative building - 26%
- Both equally - 47%

Planner - Developer – Lender Survey

What Led to Excessive Entitlements

- 76% Market demand & speculative building
- 57% Easy & low cost mortgage financing
- 49% Local regulatory atmosphere for development approvals
- 38% Planning & zoning practices
- 33% Local lending practices
- 33% National housing finance policies & procedures
- 11% State & local tax structure

Planner - Developer – Lender Survey

- Development cycles over last 10 years
 - 66% had boom & bust cycle ... of these
 - 28% very severe
 - 42 % severe
 - 2% very slight ... and ... 28% moderate
 - How long for housing development levels recover
 - 10% Already recovered
 - 8% Within the year
 - 58% 2 to 5 years
 - 19 % Longer

Workshop Objectives

What Is Most Interesting to You

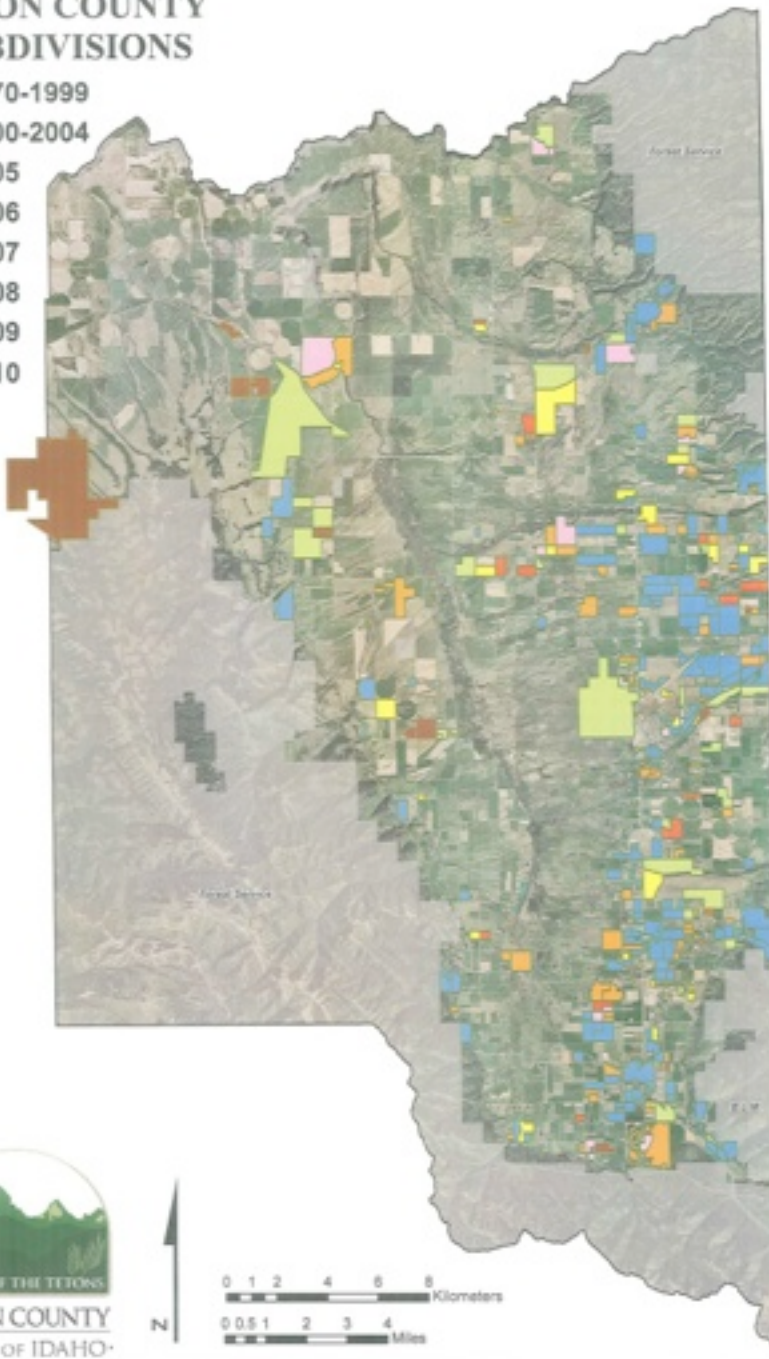
- Extent and type of development entitlements
- Impacts of entitlements
- Legal and planning framework for entitlements
- Potential tools to address distressed subdivisions
- Best practices for local policy and enabling authority
- Community processes and education
- Others ??? (*discuss & add before voting*)

Extent of Excess Entitlements

- Highly Variable Across Communities
- Rural Communities – Very Long Term Market & Fiscal Impacts
- Fast Growing & Metro Regions – Smart Growth Impacts
- Vacant Lots – 12% to 2/3rds of all lots across counties

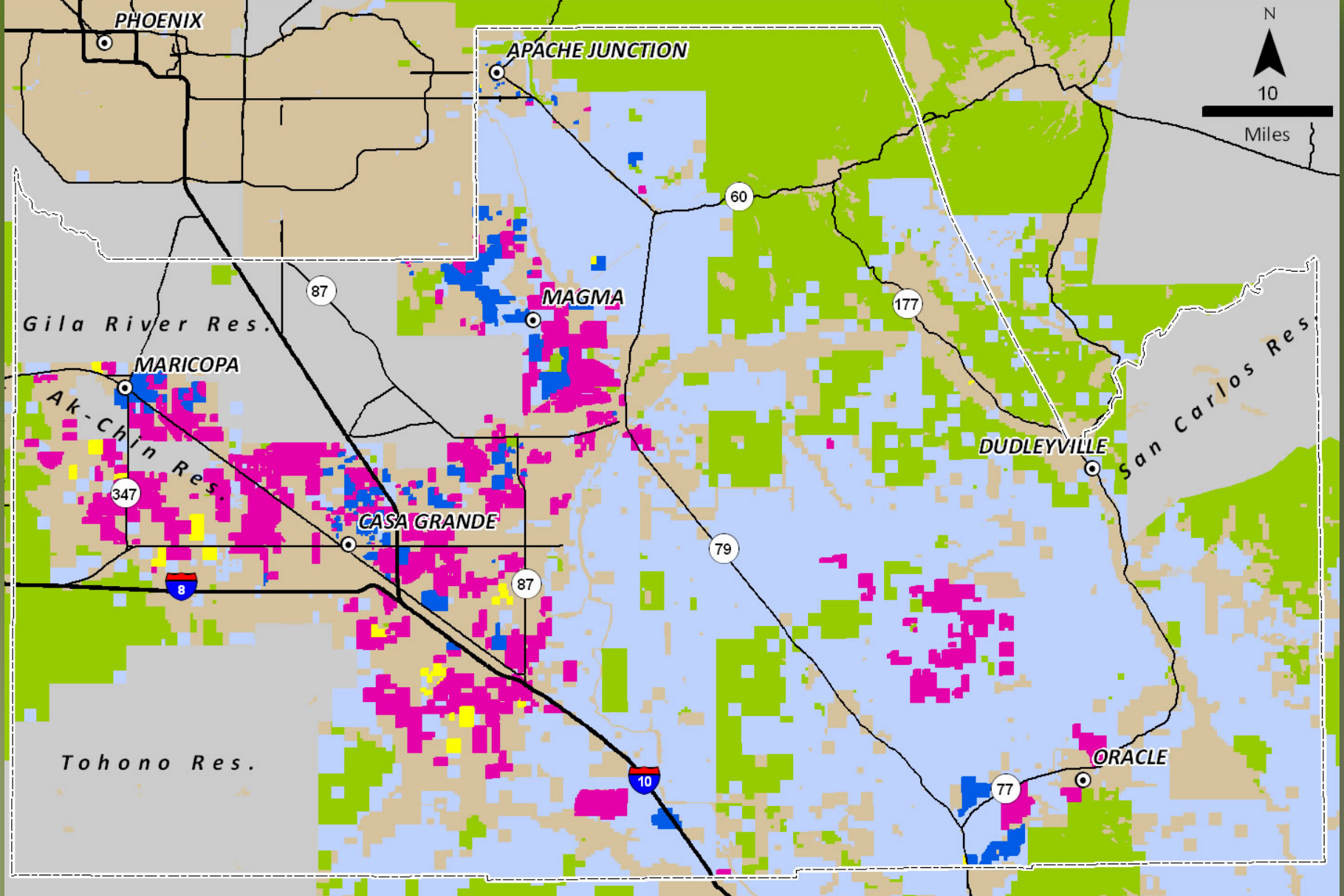
TETON COUNTY SUBDIVISIONS

- 1970-1999
- 2000-2004
- 2005
- 2006
- 2007
- 2008
- 2009
- 2010



3 out of 4 lots vacant

Updated map to 2013 in report



Pinal County Subdivisions - 2009

Development Status:

- Active
- Entitled
- Tentative Plat

- State/Federal Land
- Indian Reservation
- State Trust Land



Pinal County - Total Units and acres (2009)

- Active 140,828 (39,848 acres)
- Under Construction 8,195 (2,380 acres)
- Entitled 623,010 (184,763 acres)
- Tentative Plat 28,667 (8,396 acres)

Existing Housing & Population (2007):

- Total Dwelling Units 142,677
- Occupied Dwelling Units 105,316
- Population 326,398

City of Maricopa - 2003



City of Maricopa - 2008



Extent of Excess Entitlements

- Number of vacant parcels in your jurisdiction?
- Planner – Developer Survey Results
 - None 2%
 - Very few 25%
 - Moderate number 42%
 - Many 32%

Impacts & Causes of Excess Entitlements

➤ Premature Subdivision Issues

- **Number & Location of Lots**
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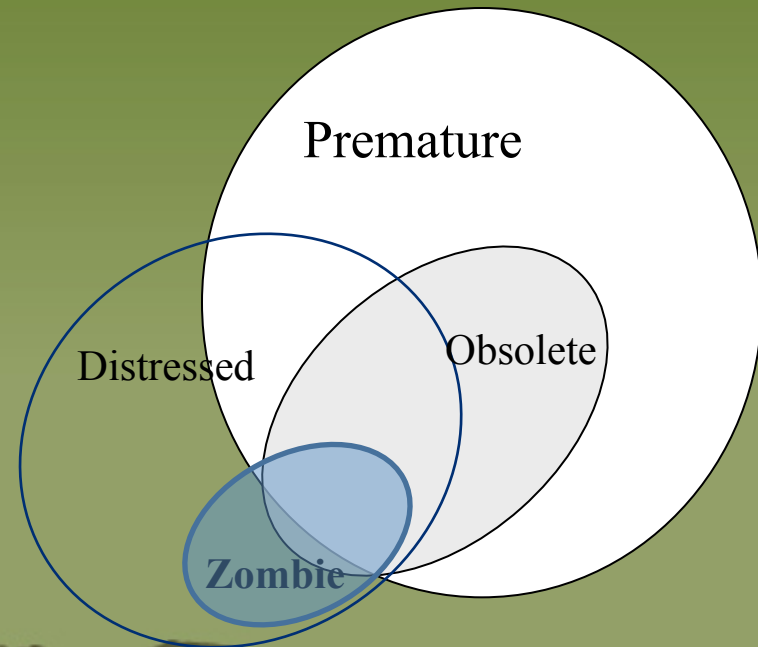
➤ Obsolete Subdivision Issues

- **Quality of Lots**
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➤ Distressed & Zombie Subs

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➤ Excess Entitlements





Planner - Developer – Lender Survey

What issues are a major problem in your jurisdiction
(from a list of 17 issues the top – (moderate or major problem))

- Number of vacant platted lots - 41 / 41%
- Large unfinished subdivisions - 40 / 38%
- Owner/lender not adjusting for lost value - 39 / 41%
- Obtain & Maintain Development Assurance - 31 / 37%
- Impacts on individual homeowners - 30 / 41%
- Unplatted lots entitled by dev agreement - 27 / 38%

Lowest level of concern

- Health & Safety concerns due to unfinished subs
(48% not a problem, 21% moderate or major problem AZ similar)

Impact of Excess Entitlements

DISCUSSION

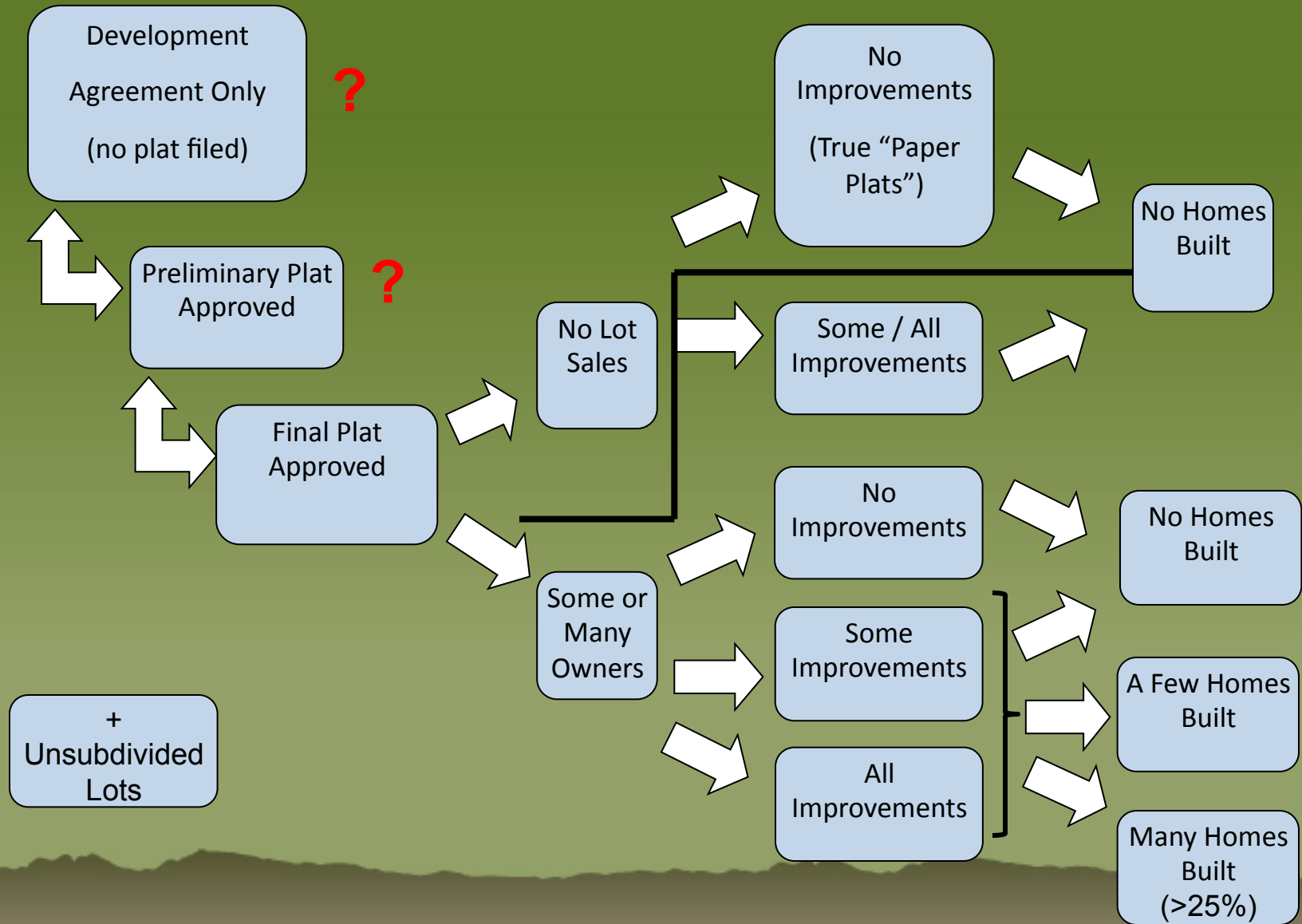
- Looking at p30 – Figure 3.1 Survey Results
 - Other issues in your communities
 - What issues most critical for you
 - Agree / Disagree with ranking of issues from the survey

Legal & Planning Framework

- Local Planning & Development Controls influence market forces
- State Enabling Authority & Case Law provide context within which local ordinances operate

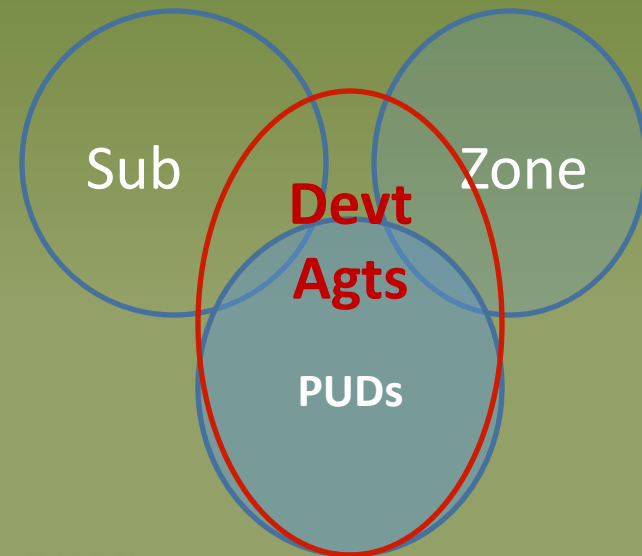
Subdivision Categorizations & Vacant Lots

--Type of Entitlement-- --Ownership Status-- --Improvement Status-- -- Building Status--



What to do about them

- Major concerns of elected officials
 - Lot Owner Rights
 - Lot Access
 - “Equal Treatment”
- Major legal powers Involved
 - Subdivision powers
 - Zoning powers
 - PUD powers
 - Development agreements
 - Others (unique to each state)



Four Potential Legal Claims

That may arise from attempts to
“Reshape Development”

- Lack of Authority
 - Statutes assume but do not say that plats are forever
- Vested Rights in the Plat
 - Common law and statutory vesting
- “Taking” Property Rights
 - Physical vs. regulatory takings
- Violations of Procedural Due Process
 - Legislative vs. quasi-judicial actions

Tools to Reshape Development

- Four Types of Tools
 - Economic Incentives
 - Purchasing Land or Property Rights
 - Regulating the Land
 - Growth Management

Zombie Subdivisions

Restore - Reincarnate – Kill - Prevent

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Zombie Subdivisions

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Linda Dannenberger
Planning Services Director
Mesa County, CO

Zombie Subdivisions

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Don Elliott

Director, Clarion Associates

Denver, CO

CLARION

DISCUSSION

- Interactive Discussion on Potential Planning Tools & Policies (30 min)
- Don lead discussion (with everyone assisting) with all participants including additional discussion of types of issues the audience members are dealing with in their communities. We could utilize the Tool Sustainability Table/Matrix from the PFR Appendix II in this discussion (my inclination is looking at all tools here ... listed in suitability matrix ... but focusing on the 12 best bets (PFR Chapter 4).
 - As issues come up Don can also address the basic legal considerations for the types of actions being discussed
 - Audience identify additional tools & audience experience with tools
 - Any audience disagreements with our ratings in the tools suitability matrix
 - A key question is how deep we get into details (this may be a decision we make based on interest and size of audience) Regardless of level of detail a key point to make is about the need to tailor solutions to individual communities and even the details of specific subdivisions.

Key Challenges

- **Lack of Authority**
- **Lack of Community Planning & Foresight**
- **Lack of Regulatory Tools & Inconsistent Application**
- **Inability to Adapt to Changed Circumstances**
- **Inadequate Development Assurances**
- **Unsustainable Fiscal Impacts**
- **Government Unwillingness to serve as a Facilitator**
- **Insufficient Information & Tracking**
- **Low Community Capacity**

Preventing & Treating Problems

Recall The Four Categories of Tools

- Economic Incentives
- Purchasing Land or Rights
- Revising Land Use Regulations
- Adopting Growth Management

Original (2009) List of 20 Tools:

- Grew to 48, then
- Shrank to 7 most likely to be effective at treating common existing problems



Potential Tools and Approaches	Impacts							Approach			Implementation Difficulty 1-easy ... 3-hard
	Health & Safety	Blight	Existing Lot Owners	Fiscal Threat	Fragmented Development	Natural Resources	Flooding Market	Reduce No. of Lots	Improve Lot Quality	Change Lot Location	
RESPONSIVE											
For Those With Problems Now											
ECONOMIC INCENTIVES											
Streamlined Voluntary Replatting with Fee Waivers	●	○		●	●	●	●	●	●	○	2
Facilitated Plat Redesign with Fee Waivers	●	○		○	●	●	●	●	●	○	2
Voluntary Development Delays in Return for Development Assurance Flexibility	○			○	○	○	○			●	2
Targeted Infrastructure Investments	●	○	○	○	●	●			○	●	2
Development Impact Fees at Building Permit Stage	○			●	○	○	○			●	2
Transferrable Development Rights (Voluntary)	○				●	●	○	○		○	3
LAND/PROPERTY PURCHASE											
Purchase through Voluntary Sale or Land Swap	○			○	●	●	○	●	○	●	2
Purchase Easements & Deed Restrictions	○			○	●	●	○	●	○	●	3
Eminent Domain	○	○		○	●	●		○		○	3
REGULATORY TOOLS											
Adopt Deadlines For Improvements and Development Agreement Extension Criteria	●		○	●		○	●		●		1
Require New Development Agreement before Permits Issued	●		●	●					●		1
Require Additional Development Assurances or Development Hold Agreements before Permits	●	●	○	●		●	○	○	○	○	2
Vacate Plats or Phases of Plats	○			○	○	○	○	●		●	2
Change Zoning Text or Maps to Require Larger Lots	○	○		○		○	○	●	○	○	2
Change Zoning Text to Require Adequate Services Prior to Building Permits on Platted Lots	●			●	●		○		●		2
Change Zoning Text or Maps to Upzone Easier to Serve Areas and Downzone Distant/Difficult Areas				○	○	○		○		●	2
Improve Enforcement of Vacant Land/Building Maintenance Regulation	●	●	●				○		○	○	2
Required Public Disclosure of Subdivision Condition	●			○	○	○	●	●	○	●	1
GROWTH MANAGEMENT TOOLS											
Define Urban Service Areas and Do Not Provide or Permit Urban Services in Other Areas	●	○	●	●	●	●	○	○		●	3
Require Adequate Public Facilities Prior to Building Permits	●			●	●	●	○	○		●	3
Adopt Regulation to Limit Annual Building Permit Issuance to Match Provision of Services				●	○	○	●	○	○	●	3
Transferable Development Rights (Mandatory)	○			●	●	●	○	○		●	3

● well suited ○ may be usable [blank] not usable

Suitability of Planning Tools

From the list of 48 potential tools, we asked if they were used and if so how effective were they in addressing development entitlement issues

.....

Tools cited most often as effective or very effective

-
-
-

Planner - Developer – Lender Survey

Tools cited most often as effective or very effective

- 70% General Plan (AZ -73%)
- 66% Requiring consistency with General Plan (78)
- 56% Development agreement templates (62)
- 51% Development agreement – deadline/extension criteria (55)
- 52% Development assurances – development holds (55)
- 50% Development assurances – bond & letter of credit (48)
- 50% Development assurances – sub-phasing (52)
- 51% Record keeping / GIS system (54)
- 51% Changing Zoning Standards in general (56 ... PUD 66%)

Planner - Developer – Lender Survey

Tools that have rarely been used

but considered effective by those who use them

- Streamlined voluntary replatting
- Replatting fee waivers
- Public / private partnerships to facilitate resolving issues
- Targeted infrastructure investments
- Adoption of a strategy to address distressed subdivisions
- Fiscal impact evaluation and planning systems
- Required public reports & subdivision condition disclosure

(AZ 51% no or don't know ... 37% effective / 14% not)

Lessons Learned – Best Practices

5 Preventive Measures

Best Practices to adopt if you don't have a problem now .. And want to minimize potential for future problems

.....

7 Treatment Measures

Best bets to pursue if you already have the problem.

Preventive – Baseline Best Practices

1. Community Comprehensive Plan language addressing the need to avoid entitling development very far in advance of market demand & providing residential zoning in excess of need and laying foundation for TDR
2. Ordinances Consistent with the Comprehensive Plan
3. A good Development Agreement template
 - Timeframes for development / lapsing of approvals
 - Phased sale provisions tied to percentage sale of earlier phases and infrastructure installation
 - Mechanisms for not finalizing, or for vacating, phases of plats that remain undeveloped for X years beyond timeframe
 - Requiring improved Development Assurances



Preventive – More Challenging Measures

4. Require market feasibility, demand analysis and lot inventory
 - a. Study based on documented historical building (not lot sales) rates and patterns,
 - b. Establish criteria for subdivision approval related to:
 - Existing inventory of lots within X miles
 - Distance between subdivision and existing roads and utilities
 - Ability to provide services when needed
 - c. Encourage rezoning to a holding category
5. Development Assurances



Treating Existing Problems

Evaluate Each Subdivision Phase Separately

“What problems does it cause?”

- Health and Safety?
- Blight (no maintenance)
- Homeowner Impacts
- Fiscal (service costs)
- Un-Smart Growth (scattered/sprawl)
- Resources (ties up water rights)
- Market (saturates sales market)



Treating Existing Problems

Does Solving those Problems Require you to Focus on:

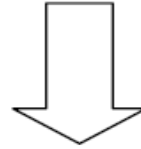
- Numbers -- Reducing the number of lots (both current and future potential)?
- Location -- Reconfiguring the lots to safer/better/more efficient locations without reducing their number?
- Quality – Imposing additional standards to ensure better minimum quality/service requirements are met?



Treating Excess Entitlements – 6. Model Process

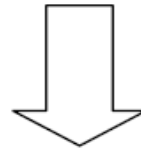
1. Assess the Extent and Nature of the Problem

ID subdivision status – market - community wide entitlements



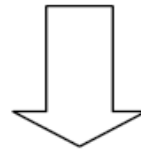
2. Assess the Causes and Impacts

ID impacts – approaches – community wide severity



3. Identify Community Capacity to Address Entitlements

Consider planning resources - political will - stakeholders



4. Establish a Strategy for Addressing Excess Entitlements

Conduct triage - prevention or response – promising tools – subs to address

Treating Existing Problems

7. Facilitating Subdivision Redesign, Repurposing, and Replatting

- Administrative flexibility & waive the platting fees
- Provide market information and facilitate problem solving .. e.g. identify most inefficient, unsafe, unsustainable portions of the subdivision and vacate those portions while granting the owner additional rights/density in portions of the development with better location and infrastructure



Treating Existing Problems

8. Plat Lapsing or Vacating Procedures

- Adopt regulations providing that if infrastructure is not installed per the development timetable (or within X years of the ordinance), unbuilt and unserviced lots are subject to vacation by the BOCC (though access to sold lots will be maintained) and record a note to that effect in the plat records



Treating Existing Problems

9. Revise Zoning or Subdivision Regulations

- Adopt additional health and safety regulations if necessary to keep houses off unsafe lands and areas
- Revise zoning to require larger lot sizes
- Adopt requirements for adequate servicing of roads/infrastructure as precondition for building permit



Treating Existing Problems

10. Identify and Address Problematic Infrastructure Gaps

- Create an inventory of missing or incomplete infrastructure elements for each subdivision phase
- Document related health and safety issues
- Adopt a regulation requiring installation or improvement of substandard elements as a precondition of building permit issuance.



Treating Existing Problems

11. Improve Development Assurances

- Require additional assurances of road/ infrastructure development and maintenance prior to additional lot sales
 - Performance bond or
 - Lot sales agreements / permit holds or
 - Revised development agreement, perhaps with sub-phasing
- Specify clear consequences for failures to satisfy conditions



Treating Existing Problems

12. Transfer of Development Rights

- Require that new subdivisions – or new/better located portions of an existing subdivision -- “retire” some of the most problematic old lots as a condition of final plat approval, or prior to lot sale



Treating Existing Problems

But Watch Out

- All but the first of these tools (voluntary/assisted replatting) are likely to be very unpopular with the current owner of the undeveloped portions of the subdivision – and probably also with the current residents.

AND

- Always include a relief valve for owners of individual lots who will have no reasonable economic use of their land remaining if they are not allowed to build a house on it.



Recommendations

Adopt new state enabling authority

Prepare and revise community comprehensive plans and entitlement strategies

Adopt enhanced procedures for development approvals and ensure policies up to date and consistently applied

Adapt and adjust policy approaches with market conditions

Recommendations

Rationalize development assurances

Establish mechanisms to ensure that development pays its share of costs

Serve as a facilitator and pursue public-private partnerships

Establish systems for monitoring, tracking and analyzing development data

Build community capacity & political will

Recommendations

- **Adopt new state enabling authority** to ensure local governments have the tools and guidance they need
- **Prepare and revise community comprehensive plans as a foundation** for local action and establish a strategy for addressing excess development entitlement issues
- **Adopt enhanced procedures for development approvals**, including a development agreement template and ensure that approval policies and criteria are up to date and consistently applied
- **Adapt and adjust policy approaches with market conditions**, including verifying market feasibility, streamlined procedures for subdivision redesign or vacating, transferring of development rights and enforcement of blight or health and safety issues

Recommendations

- **Rationalize development assurances** to ensure they are affordable and enforceable
- **Establish** mechanisms such as **fiscal evaluation tools** and impact fees to ensure development pays its share of the costs that it imposes on the community
- **Recruit the public sector as a facilitator**, bringing parties together to forge sustainable solutions and pursue public/private partnerships
- **Establish development data monitoring**, tracking and analysis systems to enable effective and targeted solutions to specific, documented problems
- **Build community capacity** and maintain the necessary political will to take and sustain policy action

Legal & Procedural Cautions

1. Cite as many sources of authority as possible
2. Avoid actions prohibited by vested rights statutes
3. Recognize legitimate rights (vs. expectations) of individual lot owners and treat them fairly
4. Leave each property owner with a “reasonable economic use” of their property
5. Follow & document required procedural steps
6. But .. Take lack of statutory and case law as an opportunity to action, not a barrier



Zombie Subdivisions

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An Interactive Implementation Workshop

www.ReshapingDevelopment.org

- *Access working papers, presentations, best practices*
 - *Contribute to the growing list of best practices*
- *Download Arrested Developments Policy Focus Report*

Publications & Resources

- “Premature Subdivisions and What to Do About Them” Don Elliott 2010
- “A Review and Analysis of State Enabling Authority, Case Law, and Potential Tools for Dealing with Zombie Subdivisions and Obsolete Development Entitlements in Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Utah, and Wyoming” Anna Trentadue and Chris Lundberg 2012
- “Addressing Excess Development Entitlements: Lessons Learned In Teton County, ID” Anna Trentadue 2013
- “Rural Real Estate Markets and Conservation Development in the Intermountain West” Bruce Burger and Randy Carpenter 2010
- “The Fiscal Impacts of Development on Vacant Rural Subdivision Lots in Teton County, Idaho” Gabe Preston 2010

Visit

www.ReshapingDevelopment.org

For additional resources and best practices