

## Commentary on Zoning Rules and Procedures

Comments by Don Elliott, Clarion Associates, Denver

Utah Land Use Institute Spring Conference -March 27, 2025 – St. George, UT  
(Transcript edited for clarity)

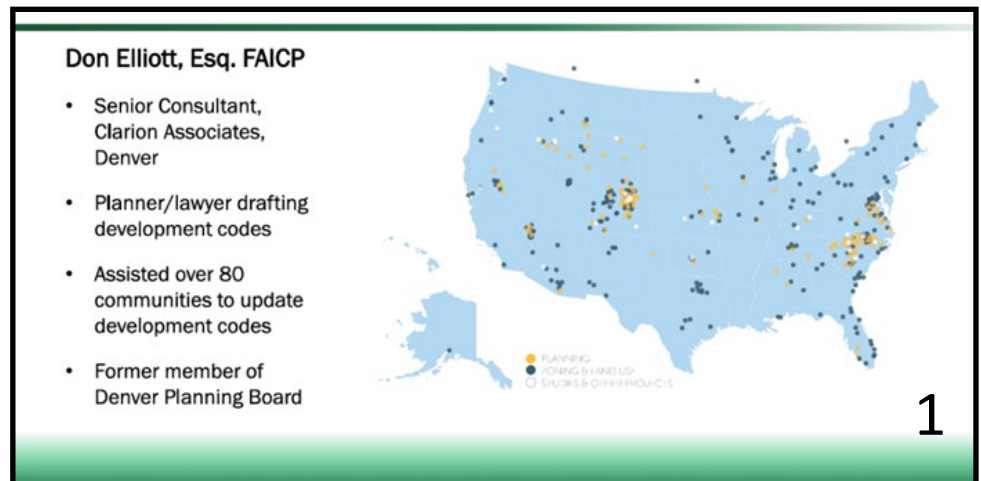
**Introduction by the ULUI** – This thoughtful, practical and valuable commentary on current land use regulation process and content is the work of the nation's most experienced and accomplished consultant in the realm of land use code writing and practice. His firm works only for municipalities, but diligently attempts to include the viewpoints and protect the interests of land use applicants, project neighbors, and other citizens whose quality of life can be significantly impacted by land use management.

### Don Elliott:

**I write development codes**, and I've done it for Clarion Associates for 30 years. Before that, I was a real estate attorney for a few years. After that, I was a planner for the city and county of Denver

for about six years, and since I had a law degree, they allowed me to pretend like I was the city attorney and write laws.

And then 30 years doing this (referring to slide 1). All of the dots you see on the map there are places where Clarion Associates has worked either on plans or codes. I work only on codes, and have done so around the country, from the DC area to Long Beach to the Seattle area. I do not represent developers. We are not a law firm; we are a consulting firm. All our clients are public sector. I like working with cities and counties to redesign their systems, to implement their comp plans.



Now, the first people I want to talk to when I do that is the builders. I don't represent builders and developers, but they're the ones who build America, and they're the ones who know what's wrong in order to fix it. It is very rare that communities get up the courage to say, "Okay, this code is so broken, or we have such a new and different plan, that we want to rewrite our laws and align ourselves" – to either fix the problems, or align it with our plan, or both. It's rare for people to do it because they're worried what'll happen if you rewrite the whole system of laws.

My comments today are taken from my experience of places who have screwed up the courage to say: "We have got to fix something that is not aligned or is broken." When you do that, obviously the contract says you'll do a variety of different things, but you want to talk to the builders, because they're the ones who know why they can't build or are not building what your plan says you want them to build.


This is just my experience. What I'd like to cover today starts with some things you do know, but I will repeat them and assure you that, frankly, they apply here too. I guess I'm probably the color commentary in the middle of the room in the mid-

dle of the day. I don't know Utah or Utah law as well as you do. I do know what I've learned over 30 years of working in all kinds of communities around the country. So I'm going to go up to the 30,000 foot level, and try to talk about what I see over 80 different projects around the country. If you like it, say, "Great, we have a national perspective". If you don't like it, say, "Well, he's from Denver. What do you expect?"

## Outline

### Prospects for Planning

1. Major Planning Trends
2. Major Housing Trends
3. Continuing Local Preferences
4. What Does that Mean for Planning?
5. What Does that Mean for Zoning?



2

**Trends.** I will talk about some trends briefly, because I can tell from this morning (referring to earlier sessions of the ULUI conference), you know much of this background. So I will quickly go through some of the major planning trends and some of the major housing trends. Some of what I wanted to put in here involves continuing local preferences, because every time I do a code project with a community, it's very clear each area is unique in terms of what they want. But there are some overriding themes, and I want to dwell on those, because when they keep coming up over 25 or 30 years, you can say there's some truth here. It may vary a little community to community, but by and large, we often get asked to do the following things. They kind of represent something in the human experience, I think.

We'll talk about these trends (referring to slide 3) and what they mean for planning and zoning. People are moving South and West, and they're moving in from the coast. I recently finished a project to rewrite the code for Boise, Idaho. That's it, in a nutshell.


They're moving in from the coasts, and they are out pricing the Idaho residents for the housing in Boise. That's just macro. It's happening generally all over the country. You have an aging population and we are all experiencing the results of that.

**Affordability.** We talked about it this morning. It will not be the only thing I talk about, but I will talk about it because it is national. It's everywhere. It is in every single place we work.

### Where are We ?

#### Major Demographic Trends

- Americans continue to relocate from the North and East to the Southwest (including Utah)
- But they are also relocating from high cost states (like California) to lower cost states (like Texas – and Utah)
- An aging population and rising imbalance between older residents needing support and younger residents contributing to that support



3

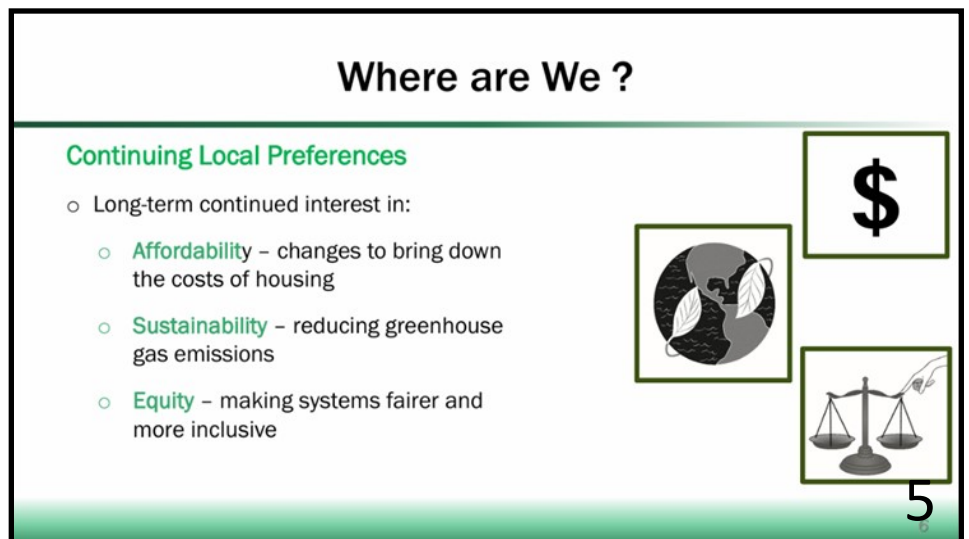
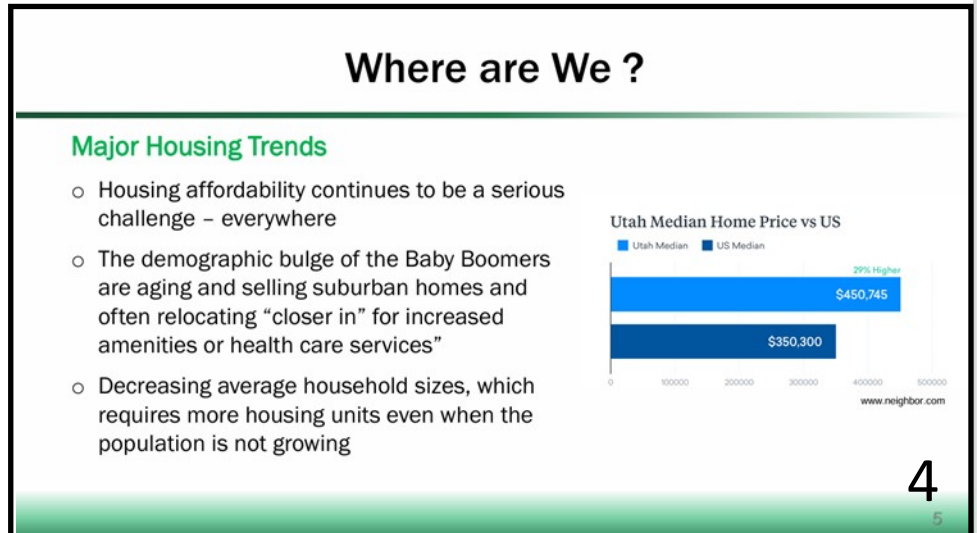
Most of us own and live in a single-family house that's not representative of the country as a whole, and it's getting less representative of the country as a whole. And then we have decreasing household size - the bar chart there (Slide 4) just says

there's an affordability problem everywhere, and Utah's is worse. Colorado, where I come from, is there too. We are all in the top level.

**Local Preferences.** Now I'm going to talk about these things, continuing local preferences. (Slide 5) This is the preamble. I'm going to talk about three things. I'll just say it now, and I'll try to persuade you by the end of the hour that this is real.

Throughout my consulting career, there are many things that people want to see in their new code. And those three things I'm going to dwell on today. They're more of course, because everybody has their own unique policy and local preferences. But I rarely,

if ever, see an RFP to rewrite code that doesn't say we need more housing affordability, we need more sustainable development, and we need a fairer system. Those are the three things that come through.



**Federal policy** is part of this, and if you know what's going to go on with federal policy, you're much smarter than I am. We don't know. We don't know what the administration is going to do, except it probably will not result in more money for local governments. We don't know what the state will do in response to what the federal government will do, which is unknown. And we don't know what local government will do in response to what the state government does in response to what the federal government does.

We don't know, so I'm not going to dwell on that, except to say if you're expecting the same or more amounts of money, you are probably mistaken. We're going to be facing serious problems with less money dribbling down to deal with them. If you think that's wrong, I'll be happy to have a drink with you later, and you can explain to me why you think we're going to get more money from the federal government, but I don't think I'll have a lot of people taking me up on that one.

**Governance**, in my mind, (and I thoroughly enjoyed my career), is finding the doable. What is doable in this economic and political cultural context? That is constrained by what's happening in demography, housing

Where are We ?

Federal Policy Uncertainty

- Major uncertainty about federal programming and financial resources – but probably reduced significantly, including possible cuts to:
  - Transportation funding?
  - CDBG funding?
  - Conservation/open space funding?
  - Refugee-immigrant impact funding?
- ederal retrenchment will ripple through state budgets and require more focus on basic state services

6

Where are We ?

The Search for the “Do-able”

Demographic Trends

Housing Trends

Local Voter Preferences

Federal Policy Uncertainty

7

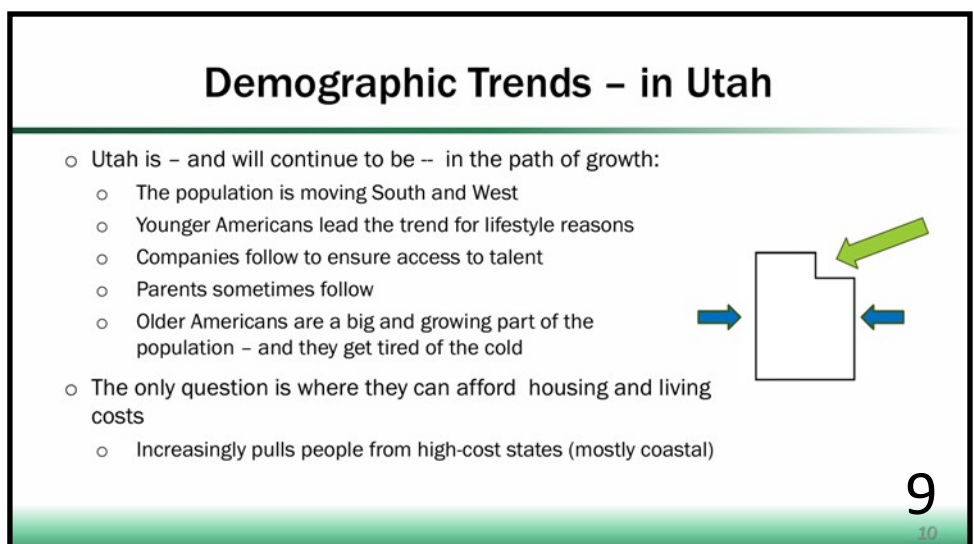
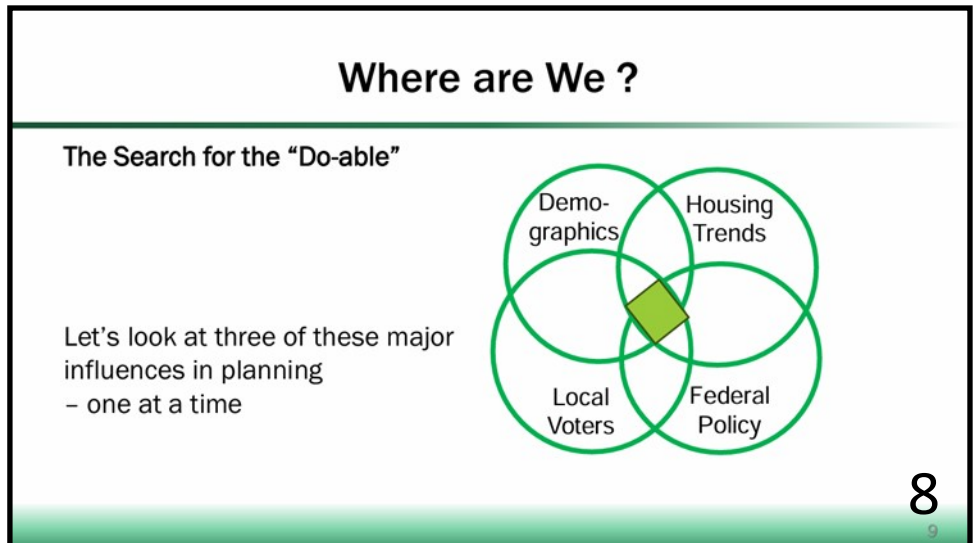


trends, voter preferences. As a result, people are not going to do some stuff. They don't vote for elected officials to do some stuff. They're not going to do it. There are limits to what they will vote for. Due to federal policy uncertainty, that's what we're looking at.

**Art of the Possible.** So we must look for the art of the possible. That's been known to be governance for a long time. I frankly don't have a lot of patience for advocates who get out there and say: "It's all about housing affordability and everything else has

to be second. It's all about fairness; it's all about bicycles, it's all about alternative transit, it's all about historical preservation." It's just not. It never is. There is always a balance. And that's entirely what government does, is balance competing public interests, all of which are valid. And we're looking for what we can do. If you thought you were immune from this. You are not. It's exactly what's happening here.

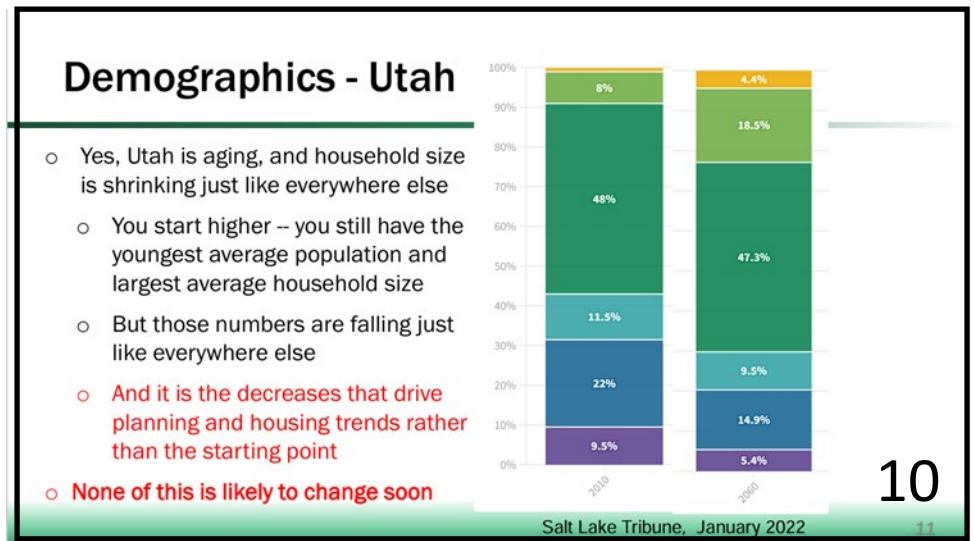
**Demographics.** Here's the demographic we see in Colorado, (Slide 9) and I bet it applies. You know, once again, we see younger people coming to Colorado from the coast. Why should we pay for higher education when Massachusetts and Texas



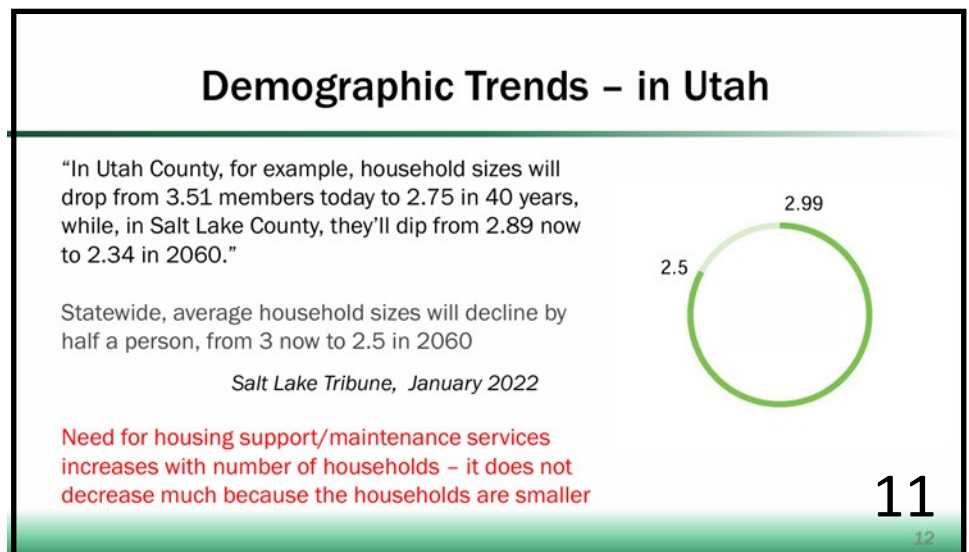
and California will do it and then they'll move here to ski? So they move here. Their parents move here. Their families move here. The businesses move here because they need access to talent. None of that's going to change. The only question is, as we heard several people say earlier, where can they afford to live? And yes, you are just the same as the rest of the country in terms of an aging population.

**Utah.** This is from Salt Lake City, Tribune.  
(Slide 10) The left is 2010 the right is 2060. Those bars are age. The yellow is you're getting more older people. The purple at the bottom is you're getting fewer younger people. Utah starts higher, as you all know. You have high household sizes, but they are declining. And you know what? It's the decline that drives the housing price. It's not where you start. It's whether you're going to need more housing as housing sizes decline, as household sizes decline. It is the people living in smaller groups in the existing housing that creates a lot of the housing demand. You are not immune from that just because you have high household sizes.

The arrow points in the same direction it does all over the country. You're going to have it. None of this is going to



10



11

change. None of this is going to change. I think everybody in this room knows, everybody online knows, but I sometimes run into citizens who think the issues we're having now with affordability are cyclical. They are not cyclical, and I'll talk to you about why they're not cyclical.

**Household Size.** None of these pressures are going to change. Household size is going to decrease. You now have the highest household size. That's not a place to rest on your laurels, because it's going to head in the same direction as everybody else is. That is going to drive housing needs. This is something just important to keep in your head. People say too many people moving here. Yeah, a lot of people moving here. Lots of kids. Yeah, lots of kids. You have the highest numbers.

But we are creating a lot of the housing shortage ourselves by our decisions to live in smaller and smaller groups by one person, two person households. When four people that could have lived in one household decide to live in two different households, that generates housing shortage. We have to build a house. Nobody moved in, nobody had a child. They chose to live more alone, and that needs another housing unit.

All of these are valid. But when you say it's migration into the state, that's not just it. Much of this is driven by our personal choices and lifestyles as to how we choose to live. That creates a lot of this housing change. The need for housing maintenance, the need for the utilities to deal with housing don't decrease because it's a smaller household. A lot of those numbers stay the same.

So if you say instead of one four-person house that we're going to have to do two-person households, the costs went up. The cost per house didn't go down very much. They do a little bit because it's a smaller household, but it's a whole other housing unit that has to be maintained and serviced over time.

**Global.** Let's move on to global and then we'll get to some of these local voter preferences. The reason that housing is such an intractable problem in America, in my mind, is that it's global forces. (Slide 13) The upper curve, of course, is housing prices. The lower one is wages. Housing prices are determined by concrete, wood, trucks, transport in Utah. If you can't pay the people, they can't



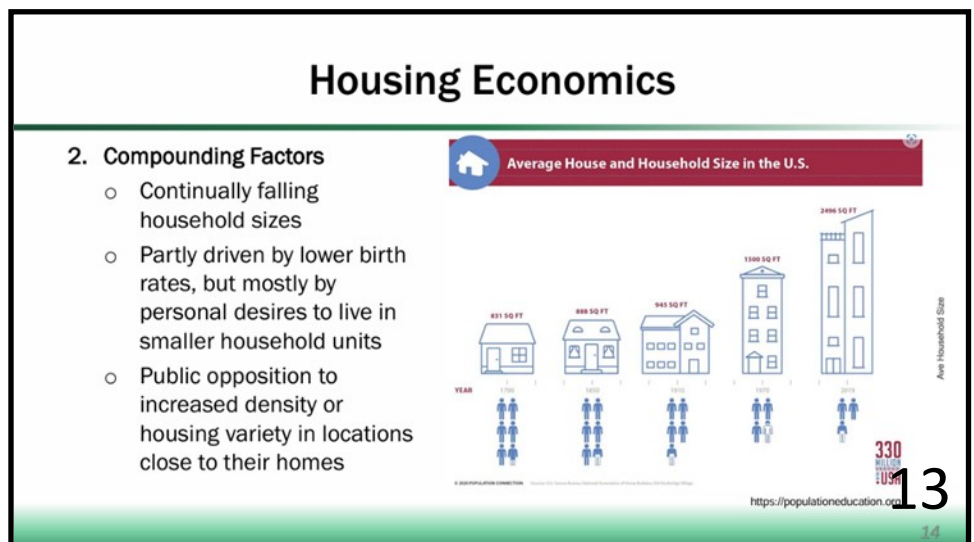
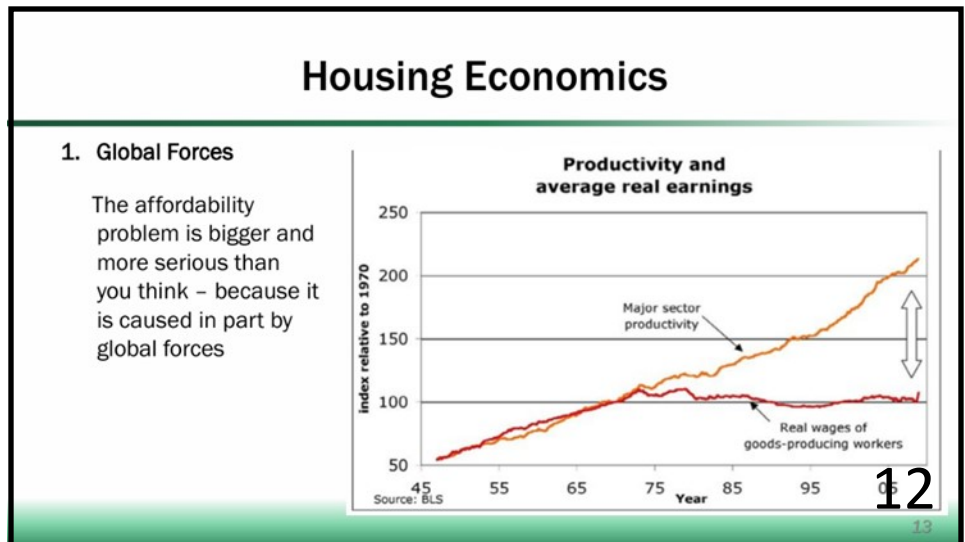
build the houses. Wages are determined by whether your job can get outsourced somewhere else or not, or whether it can be replaced by technology.

Those are global forces over which you have very little control. And

that's, I think, the essence of it. There's another curve of this to take a look at it in a different way. Until about 1975 when Americans were among the most productive workers in the world, productivity gains went into wages until about 1975. Since that time, workers (the red lower line on Slide 12) have captured less of the value of how productive they are. The rest of it goes to either technology or ownership, the portion of our society that owns the means of production.

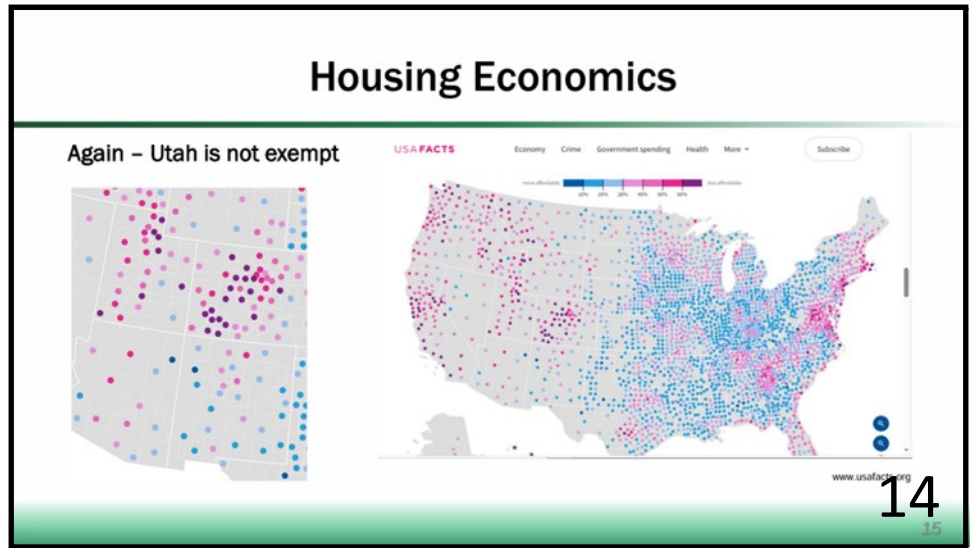
That's a dramatic change that happened in the '70s, and that's another reason why wages have not kept up. Because what used to be true, which is that as we get more productive, the workers and the people who do the work reap that through higher wages, has not been true for the last 30 years, basically 40.

I want you to memorize this image, (Slide 13) because I think it captures the whole thing. This gets back to my earlier point on household size. We used to have lots of people in small houses. Now we have few people in big houses. Memorize this,

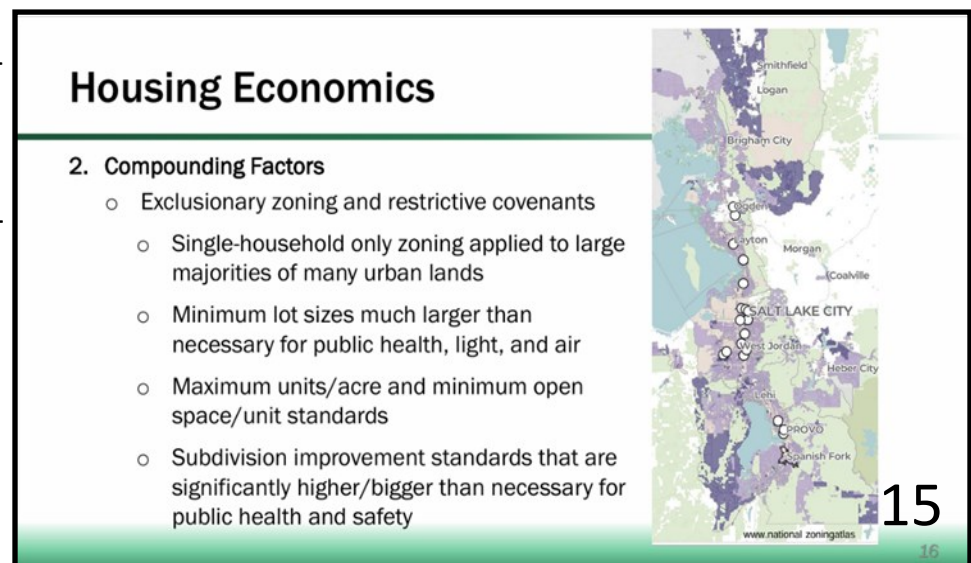


guys. This has nothing to do with migration. This has to do with household choices and what we expect in a house, and how few people we want to live with in that house. This is really important stuff. This is a major cause, in my mind, of the housing shortage.

So again, you're not exempt. Here red is not a political map. (Slide 14) Here red means expensive. Blue means less expensive. And there's Colorado, Utah, New Mexico, Arizona. In Utah you got a lot of red. As in Colorado. New Mexico has a little bit more blue. But the point is, you're not immune from any of these forces.



**Compounding Factors.** Now I do want to move into what I know most about and that is zoning -- exclusive, exclusionary zoning. It's a compounding factor. Once again, I'm wary of the fact that if all you have is a hammer, every problem starts to look like a nail. I write zoning, so I'm very aware of zoning's role in our problems. Of course, financing is an issue. Of course, an issue that hasn't come up here today, but has come up in national conversations, is the lack of skilled trades. There is an absolute shortage nationally of skilled trades - people who know how to do the things that have to be done to build good housing. That's a major issue, plus financ-



ing.

But I'm going to focus on zoning. Because this is law, and it's local. You know all this, so I'm not going to read every bullet (Slide 15), but all these things, lot sizes, single household zone only, maximum unit per acre, all are compounding factors. I'll talk about that in a while, and then what I call, if not gold plated, silver plated subdivision standards. We have just continually raised the bar in the interest of quality, every one of which has a cost implication.

No one ever goes back and says, "Do we really need this?" Each five years, we adopted a new code that made it better, and we tried not to look at the fact that it made it more expensive. The single stair thing (allowing more units that are accessible from a single stairway, which is a code revision that seems to be gaining traction) is an exception to that rule. It's a hard fight to go back against anything and unwind what you did in the interest of quality and safety. A very hard battle. I hear that the Colorado single stair bill is on the House floor today. We'll see how that goes.

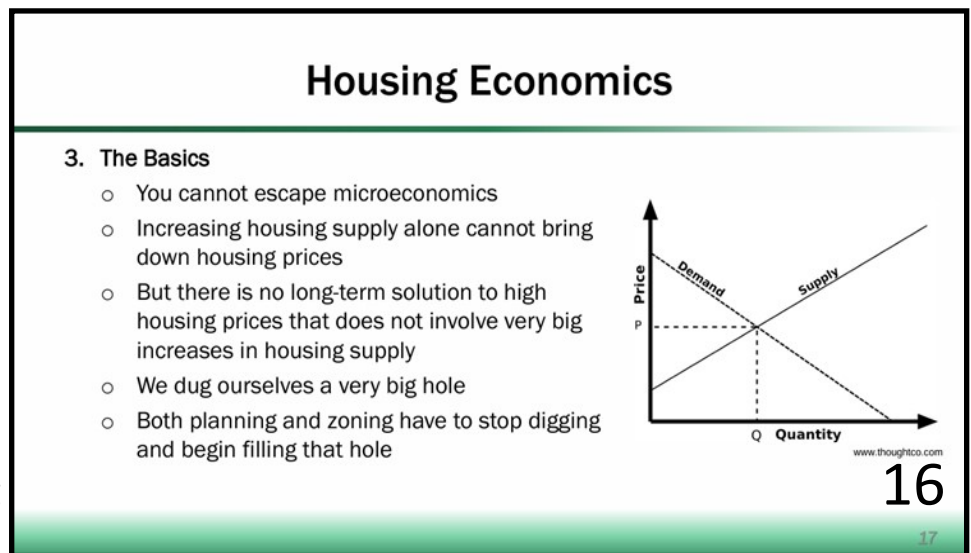
### Basics of housing. I

won't spend much time on this. There is no escaping microeconomics. Read it again, say it to yourself when you go home at night.

There is no escaping microeconomics. There is no solution. I'm going to state it in red. More

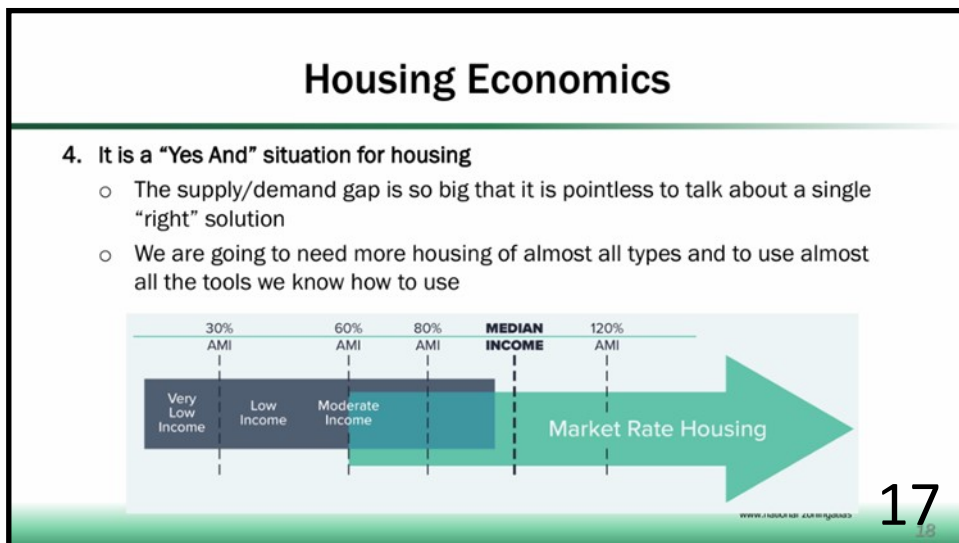
housing will not solve this problem, but there is no solution to this problem that doesn't involve a lot more housing. You can't do it.

It has been mentioned that Utah is 35,000 units short. I think in Colorado we may be 90 or 100,000 units short. Multiply that across the states, in the country, there is no smoke and mirrors that makes up for being 35,000 units short of something.



There just isn't. The only thing that could possibly bring it down is a plane load of money over a huge period of time which we don't have -- or more supply. That's the only thing that can bring it down.

So this is my favorite graphic in all the world (Slide 17). It basically says this is not that hard. The green arrow is what the market can build. The darker arrow, the left, is what needs some sort of a help. On the green end, the market knows how to build



expensive housing. It doesn't need help, and we drive up the price. I'm not blaming them. I'm not blaming greed at all. My experience has been that that's a fake thing to blame, but we know how to build market rate housing for those who can pay more. We're the best in the world at doing that.

It's the dark area way over there to the left that takes money. There's no smoke and mirrors. Somebody's got to get a tax abatement. They've got to get cash. They've got to give it, provide it with money, money that somebody has to take from somebody and give to those projects which can then house those with 30 to 60 AMI. There is no trick there.

In between where these things overlap is where zoning and development restrictions can make a difference. And I've considered it part of my job to say, how much can I push the left end of that green arrow further left, so that the market can do most of this through zoning reform. And the limited money that is available to subsidize the dark part of the arrow can be focused on the poorest people. That's an important thing that all local governments can do. You've heard some examples about it this morning, but this is the macro view of it. If you don't do this, the market will never be able to move and cover more of the AMI spectrum.

I'm going to move on now to some things we haven't talked about yet today. I'm going to skip over a lot of the affordability, a little bit go quickly, because we all know it. And then discuss sustainability and equity.

I want to preface this by saying, I'm not making this up.

Ever since I have written zon-

ing codes in 1995 people have not -- the local governments I'm working with have not -  
- backed away from saying we want more sustainable development.

I thought in 2009 after the crash, they would say "We just need to build and get our housing back. We really don't care about the environment anymore." Not true. Didn't happen. Don't predict it's going to happen.

And equity is the same way. I've been very aware, not just since 2010 or since George Floyd, but since the beginning of my career, that people understand that zoning procedures have unfair outcomes on poor people. And that poor people overlaps women-headed households, and it overlaps less-abled households, and it overlaps racial and ethnic minorities.

A lot of equity happens through economics. That's what I say to myself at night. You'll never find unfair language in a code. It never will have any racial or gender or gender language on anti-women, anti-less-able persons. Yet we know that it's facially neutral language that has a disproportionate effect on poor people through that economic driver. On the very people we would not want to admit to our children we're adopting rules that are hard on. We wouldn't want to admit that. And yet, we know that a lot of equity works through economics.

**Efficiency?** Should efficiency be the fourth trend? No, because it's always there. Government is always under pressure to do more with less, to do it faster, to do it better, to be more consistent. Fine, but I take that as underlying noise, yes, and we all should

## Local Voter Preferences

### Three Substantive Trends over the Past 25 Years

- **Affordability** – changes to bring down the costs of housing
- **Sustainability** – reducing greenhouse gas emissions
- **Equity** – making systems fairer and more inclusive

### No Change ?

- Also not new, but by the time consultants are hired the need for some level of change to key regulations is clear – at least to the planners and elected officials

18



push for that, but that's not a substantive thing. That is just a general "Yes. Of course, government should be as efficient as it can".

**No Change.** I want to put this up just for the heck of it (referring to the colored block on Slide 18). No change. We know that local voter preferences -- one of the things that comes up over and over again -- is, "I don't want change". I had a very fulfilling project with the City of Albuquerque several years ago. I'll show a picture of it, what I learned in the process. Their lead planner said, "You know what our city motto is? 'Improvement Without Change' ". We all want it better without changing anything.


It's not new. Change is hard. You've said it several times. I don't need to make that point. But you can't take that as the end of the story. I will say this, I love the generational talk earlier this morning. I've been in several meetings where the first half hour of the project hearing was older white people like me who own their own houses, saying, "I don't like change". But if you wait long enough, you'll get younger people showing up and saying, "I will never be able to live here unless you change your rules". It is a generational thing. And to be honest, the younger people are much more polite than the older people. But you have to wait for that to happen. They have to be cultivated, because those people do exist. They're just not the first ones up, and they're not the angriest. They are out there. I have seen numerous elected officials say, "I'm torn. You both have, you all have great arguments, but I'm going to vote with the young people for the future of this community."

That's what they need -- political cover to say: "I'm kind of torn". We've heard both sides here. Nobody blames you for saying you are voting for the future. They do blame

## Local Voter Preferences

### Affordability

- Rapidly rising public concern about affects of high housing prices on:
  - Ability of your children to live in the community
  - Ability to recruit health, education, public safety, and service workers
  - Ability of parents to age in place
- Planner concerns about lack of "Missing Middle" housing to loosen up the market



1920



you in the room, but as a whole, they're going to say, you voted for the future. That's okay. That's your job, actually, to vote for the future, not for the past. So affordability, I'm not going to go into too much to do this. You know what the concern on affordability is.

**Sustainability.** Literally, I still don't have RFPs that don't want to do these things. More reduction of greenhouse gasses. We know how to do that through more mixed use. We know how to do that through shorter distances, more connectivity. We know all of that,

more walking and biking connections, more local food production. Not a big contributor, but it is a contributor to equity.

**Equity.** And then let's talk equity. Planners have been worried about this for the long term. Whatever career you work in, if you stare at zoning long enough you become aware of its weaknesses and where it doesn't do what it says it wants to


do, or does it poorly or badly. And so there's a rising public concern about this.

Again, I've made the point. I've organized this presentation around the fact it's not new. This is not post 2020. This is not post 2015; it's not post 2008; this is a

### Local Voter Preferences

#### Sustainability

- Continuing desires to have local governments approve developments that:
  - Reduce contributions to greenhouse gasses
  - Allow more renewable energy generation and use
  - Allow more walking and biking and shorter vehicle trips
  - Allow more local food production




20

21

### Local Voter Preferences

#### Equity

- Long-term planner concern – and rising public concern – that planning and zoning systems tend to reinforce historic disparities in:
  - Income
  - Wealth
  - Access to good schools and public services
  - Access to opportunities for advancement
- Better public engagement is badly needed
  - But not enough



21

22

long term concern, particularly from planners, but also in the general public.

We get more RFPs saying that “Zoning is having unintended negative consequences. We need to do something about that.” When housing prices go up and other barriers or zoning map issues are not corrected, you are contributing to the disparities in income and in wealth and in access to good schools and in access to services and opportunities for advancement. So that's why people have been and continue to be concerned. Those two covers (Slide 21) are the Planning for Equity Policy Guide from the American Planning Association and the Equity and Zoning Policy Guide. One is about advisory plans. The other one is about zoning.

I was one of eight authors of the one on the right, the Equity and Zoning Policy Guide. We got eight different people who both understood the impacts, but also understood how zoning works, to write that policy guide. Policy Guides (PGs) are APA's, official positions on these things. You can get that document and wave it around for your elected officials and say, the American Planning Association's position on this is this. This is what we should be doing.

That one on the right (Slide 21) is very unlike the one on the left and all the other policy guides that have been written by APA before, because it's not just general language. We as a bunch of authors came in and said, “If you're going to fix zoning, you're never going to find it in the wrong language. You're going to find facially neutral language that has predictable unfair impacts or predictable anti-poor impacts. Here's 84 places where you will find them, where you can fix it.” Nobody can do all 84, we know. But it doesn't help to just say zoning is unfair. Fix it. It does help to say this is where the impacts are created, and this is what you could do to reduce those impacts.

More public engagement is great, but it's not enough. I was on the Denver planning board for six years. Knowledgeable good English speakers who understand how local government works and how zoning criteria work, make their point. People with less experience, less English skills, less income and less knowledge of local government also get up. I know who wins that; I know who wins it almost every time.

It is not a matter of just “If they're in the room, it would turn out fairly”. I've been in lots of rooms where they were in the room. They made their points, and it didn't come out in the way I had hoped it would be to redress some of the unfairness in the system.

So I won't read most of this (Slide 22), except to say if you are a planner or if you are an elected official who hires planners, just realize this is not me talking. The principles of the professional association say you are supposed to be helping and redressing the impacts that planning and zoning has had on poverty and the perpetuation of poverty and unfairness in our outcomes.

It's not optional. It's not a good idea by advocates. These are principles that professional planners are supposed to be doing. If you don't like them, that's great, but don't blame your planner for trying to live up to this any more than you

blame your lawyer for trying to live up to the right and duty to zealously represent their client's interest. It's part of their professional duties. That's part of the planning professions duties.

So planning (Slide 23)

## Local Voter Preferences

### AICP Principles

People who participate in the planning process shall work to achieve economic, social and racial equity.

- “Seek social justice by identifying and working to expand choice and opportunity for all persons, emphasizing our special responsibility to plan with those who have been marginalized or disadvantaged and to promote racial and economic equity.”
- “Recognize and work to mitigate the impacts of existing plans and procedures that result in patterns of discrimination, displacement, or environmental injustice. Plan for anticipated public and private sector investment in historically low-income neighborhoods to ensure benefits defined by the local community. Promote an increase in the supply and quality of affordable housing and improved services and facilities with equal access for all residents, including people with disabilities.”

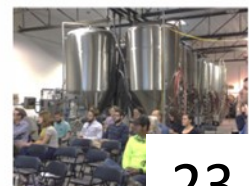
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23

## What Does this Mean for Planning?

### The Planning Process

1. Go WAY beyond traditional public engagement practices
  - Reach the tenants
  - Listen to the younger voices
  - Listen to older voices
  - Seek out the missing voices
2. Be prepared to do more with less but:
  - Do not rely heavily on engagement platforms
  - Beware of AI tools until they improve



23

needs to go way beyond what we've normally done. I'm separating this into planning and then zoning. In planning, I'm doing process and substance.

**Public Engagement.** When you're doing your plans, just go way beyond what we would normally do to get people into the room. Every code I've written in the last five years goes beyond notifying property owners to notifying tenants as well. It's not that expensive. We don't know who lives where but the post office knows who lives where. It's cheap. Get it. Do it. Because they are your residents as well. Do them both. You're not freezing out the property owners. But tenants, they don't have property rights unless the state's giving it to them. But why are you keeping them out? It's a growing part of the American populace. Why shouldn't they know what's going on here?

So reach the tenants. Listen to all of the missing voices. Be prepared to do more with less. I'll be happy to have questions on this.

I am suspicious that online engagement works very well. I think it amplifies the voices that would have been there anyway most of the time. It does not get you new voices. Oh, the numbers went up. Yeah, you got more people saying the same thing they did before because they don't have to drive downtown and park. But that's not necessarily a wider variety of voices that you're getting.

And be aware of AI tools until they improve a lot. I can talk more about that.

**The substance.** Try to be as realistic as possible. And that's what the whole morning has been about. I love this morning's discussion. There have to be ways. And I loved Ari and the survey results, talking to people about how it leads rational people to understand that we

## What Does this Mean for Planning?

### The Plan Substance

1. Embrace reality about
  - Demographics
  - Non-residential uses
  - Fair shares of housing supply
  - Reuse and redevelopment
2. Prioritize housing
  - Especially for the old and young
  - Use real numbers
  - Emphasize historic mixes of housing types

Growth in U.S. home values outpaces that of incomes  
Change since 1965

Source: Redbubble Urban Analysis of U.S. Census Bureau data

24

need more housing. And there's not any good reason why you should be exempt from this. I know you didn't want to experience your fair share of it, but there's no good ethical reason why you should have that right, and those opinions can change.

I was interested in the dynamic discussion up here (during an earlier session of the conference). My experience, after a long time, has been when you face a room of people, and there's an angry bunch; you're not talking to the angry bunch, you should be talking to the middle of the room. The angry is going to go away angry. The rest of the room, you want them to walk out saying "That guy was the most reasonable voice in the room", because in general, people can rely on their better instincts and can do that. I don't need them to show up in support of it, of a new approach, or new project or new code. I need the ones in the middle who are persuaded to stay home next time. I need them to stay home and not show up in opposition to the whole thing. I need them to just leave the angry by themselves. I'm sorry. I don't mean to demean their real concerns about quality of life, but they are not the only concerns. And to act as if you have to make a decision, because they are the angry voices in the room. You know better than that. We know better than that, and so you need to let them be angry.

I'll tell you. I've had a lot of codes adopted around the country when the same people who were angry at the first meeting are angry at the last meeting. Guess what? The elected officials listen to how much outreach you've done, listen to the compromises you've made, listen to what you've done to try to make it acceptable. And they look out on the crowd and they say, "It's the usual suspects. I don't have to do that. I don't have to go with them this time. They're there yes; they're angry. They were born angry. They woke up angry. They're always angry. But they're not making policy. I'm making policy."

**Mixed Use.** So the substance, obviously mixed use. We see almost every commercial zone now allowing housing, having to, basically to open up more land. Don't get too focused on vertical mixes. Planners are subject to saying, "Oh, I want a cafe on the ground floor, and I want the housing above." There's not enough ground floor coffee drinkers for all the ground floor stuff. Don't do that.

Horizontal mixed use almost makes the same environmental and walking benefits as vertical mixed use.

I've seen codes that say vertical mixed-use district -- vertical mixed-use as a use. It's not a use, it's a building type,

and we've forced too much of it. It hurts the housing market and housing production.

**Protect vulnerable areas.** This is planning substance. Identify it. Your city, as you all know, or your county is not homogeneous. There are poor areas, there are rich areas, you don't have to treat them the same, we can acknowledge zoning has hurt some of our poor neighborhoods disproportionately. That does not have to continue. Economics is not a black box that says "It's capitalism. It's just what happens." What happens is what your local government allows to happen. And part of that is recognizing the past impact and saying we don't want that aspect of unfettered capitalism to continue, because we can see clearly over time what it's doing so and that's increasing housing prices. Do it.

Once again, look for facially neutral language.

So many of the impacts are indirect of our zoning decisions; that's another equity issue, which is that when you up the bar of quality, or you make any neighborhood more exclusive through housing costs, through landscaping requirement, through anything, where is that market demand going to go? It doesn't evaporate. I think some people believe it'll go to my neighboring jurisdiction, and I won't have to worry about it. What it does do is go to where the market will support it, or the market is forced to accept it some other place because you won't allow it in the place where the builder wanted to build them. I'm speaking about exclusive zoning. Exclusionary zoning.

### What Does this Mean for Planning?

**The Plan Substance**

3. Emphasize mixed-use (with guardrails) to:
  - Shorten travel time and emissions
  - Respond to COVID-driven changes in where work gets done
  - Don't get too focused on vertical mixes
4. Identify and protect poor and vulnerable populations and businesses
  - Always working closely "with" (not "for") them

The negative impacts of plans and zoning on poorer and more vulnerable populations are not found in discriminatory language

- They are found in facially neutral language that has known negative outcomes for racial and ethnic minorities, women-headed households, and households headed by disabled persons
- Often the impacts are indirect – they happen because exclusion of uses and housing types on some neighborhoods forces them into other

25  
26



**Exclusionary zoning** doesn't usually exclude a use completely. The use goes to where it can go because it's meeting a market need. We don't look at that. I had a lot of discussions on this at the Denver planning board. If we say we won't allow this over here, where will that go? We don't ask that question, because if you batted it around, you'd know what would happen to it. It would go to a different neighborhood. Is it our policy to have it over there but not over here? If so, that's great, but don't ignore the indirect impacts of zoning decision.

### Simple Framework.

Finally, here's a simple framework. When we wrote the equity guide and, as a general approach to zoning, I find that citizens are kind of baffled. They know zoning is complex. They know that they are just upset. They don't like it. They think it makes stupid decisions.

They do have vision, but they don't know how it works. Zoning works by the rules and by the procedures and by the map. There are things you can do in each one of them. Explaining it to the public helps them break it down into a digestible pieces.

**Rules.** Sometimes I write codes where there's an entire part of the code project that says: "Let's get the rules right." This parking requirement needs to go down or up. What about the landscaping? What about the uses that are allowed in different places? Let's get the rules in each district right.

**Process.** Then we could talk about the process. If every commercial project near a residential neighborhood has to step down the heights next to the residential neighborhood, then maybe you don't need a public hearing about that project. Because you're asking, "What are you concerned about - height?" "Okay, we put

## What Does this Mean for Zoning?

### A Simple Framework to Organize Needed Changes

- 1. The Zoning Rules**
  - This is where many key improvements to affordability, sustainability, and equity get "built in"
- 2. The Zoning Procedures**
  - This can be as important to affordability and equity as the rules
  - But the public cannot talk about process changes until they have discussed the proposed changes in zoning rules
- 3. The Zoning Map**
  - Do this last to avoid distracting from the hard work of rules and procedures

26

it in there". "What are you concerned about -- lighting at night?". "We put it in there."

You take away the needs for some of these things and say we have written them in the rules. Now we can simplify the procedures. That saves a lot of time. This is where many of the key improvements in projects happen. The unique thing about zoning is that it's not ideas, it's not a plan, it's law. This is where you have to say: "That's acceptable; this will be rewarded; that's not acceptable."

That's how zoning works, and we've gotten used to excluding a lot of things without thinking about what happens if we exclude them sequentially or make them hard to do. But basically, this is the essence of zoning – it's the rules.

The procedures can be just as important. 10 years, 20 years ago, before they wrote their new code, when Denver asked me "What in our current code is making it hard to develop affordable housing?" This was 20 years ago, guys, 20 years ago. They were saying, "We need more affordable housing. What is stopping us to do that?"

I talked to the builders, and I said, "What is it? Parking? Height? Incentives? Setbacks? Open space?, Design rules?, What is it? What is it that kills your project?" And their answer was "The process. I die on the hillside of discretionary meetings. Not over rezoning, but trying to get projects approved after I've technically got the right to do this stuff. If you could get me out of a discretionary approval process for the project -- I'm not talking about zoning, I'm talking about a project -- I would give you the parking and the height and all the rest of it."

Procedures are essential if you're going to do any one of these things. Make it easy to do what you want them to do. Don't make them go for a public hearing every time. It brings out the worst in people. I'm sorry, but I do believe that.

**The Map.** And finally, do the map last. As soon as I roll out a map, I have lost people's discussion about the rules, the incentives, and the procedures. They're staring at the map. Why? Because it's visual, because they thought that's what the zoning was about. And they can focus on their own house and their own neighborhood. And I have lost their ability to think about what's fair, what's good

for the environment, what's good for affordability, what is a fair rule to allow more opportunity in lower income neighborhoods?

I strongly recommend you, of course, fix the map, but do it last, because people can talk about the map better when they know what the rules are in each area and how hard it will be, in what hearings or what processes you'll have to get an approval.

**Zoning is designed to exclude.** That's how it works. Just be very cognizant of that. We have overdone that significantly, and that is, in my mind, a significant contributor to lots of things. Not just to affordability, but to sustainability. Because new

ideas, if you put them through a separate process, are going to get killed. It looks different. It smells different. It's not what I expected. So even more sustainable types of development get killed through this. Every line that is drawn is a possible exclusion.


Zoning can't make you do anything that the market won't support you in doing. It can't make you build affordable housing where you can't make it pencil out. But it can stop you from building anything, anywhere that city council tells you not to do within the limits of state law. It was designed to exclude. It does that by drawing lines.

Don't draw more lines than you need to. Don't put more things in the exclusion than you need to. And basically it contributes to all these things. I love this picture (Slide 27). This is the mayor of Albuquerque, pointing to a stack of regulations. That's the amount of regulations they had because every neighborhood had a plan. Every plan was regulatory. Every plan was a little bit of a novel about

### What Does this Mean for Zoning?

**Remember**

1. Zoning was designed to exclude – and it does that
  - Through line drawing between different zoning districts
  - By adopting exclusionary rules
2. Every line drawn and every rule added is a barrier that often contributes to:
  - The affordable housing crisis
  - Disproportionately negative impacts on poor populations
  - Inefficient government – by complicating administration
4. So – look for and erase lines and rules that have these impacts



27

the history and the desires and the yearnings of that neighborhood. When you added it up with the zoning ordinance, nobody knew what the law was.

The two on the right (Slide 27) are city council people. One Republican, one Democrat, who came back and said: "Let's fix it. We throw all those out." The result is about that big. It's about a zoning code that is not as short as I wanted, but it's a whole lot shorter than that. And that was a matter of saying, "What are we excluding that we shouldn't be excluding?" We've taken this drug so long that we can't imagine life without this drug. Let's figure out how we can get rid of some of these lines.



### Start with an eraser.

I wish I had titled my next book. "Start with an Eraser, Not a Pen". Because we wrote these rules. We wrote these rules. They weren't God given. They're not in the Ten Commandments. We wrote them. Ever since 1916.

## What Does this Mean for Zoning?

### 1. The Zoning Rules – Generally

- Simplify – we wrote the rules and we can erase them
- Focus on reuse and redevelopment
  - It is 80% of what happens in many communities
  - Particularly in mature communities
  - Beware of "greenfield" thinking
- Avoid "zoning to a picture," which often
  - Results in overly rigid rules and expectations that then need multiple amendments
  - Contributes to over-zoning for ground floor pedestrian uses that the market cannot support



28

And if you write them, you can unwrite them. That's what we ought to be doing in a lot of these cases. Obviously you need some new ones, but that's not what you need nearly as much as getting rid of the bad ones.

**Simplify.** Focus on reuse and redevelopment. We heard the vertical discussion this morning about condos. Eighty percent of what we do in most cities is reuse -- redevelopment of stuff that's already been built. Most zoning codes are written as if it was a blank sheet of paper, and we get to just wish for what we want in that location.

**Focus** on what zoning really does in most communities. That is guide to what happens next, not what you wish would have been built in the first place, or a picture of your ideal thing. Avoid zoning to a picture. There are lots of great place

-making tools out there. Form-based zoning is fine. Denver has it. But try to build in some flexibility.

Once you show a picture of how it's going to turn out, you are going to face a lot of flak when it doesn't look like that. And the point is, redevelopment needs flexibility to do something you didn't expect. If what you expected could be done, it would have been done by now. It takes somebody to see the opportunity that wasn't expected there, and that means don't you can't have a picture of it in advance.

**Allow more types of housing. Incentivize.**

Don't overdo the ground floor, pedestrian spaces. Protect naturally occurring affordable housing. This is key.

How much does the housing stock expand every year? 2%? 3%? 1%? When you talk


about cottage developments and duplexes, I love it. We want to allow those. But you're playing with new development that is a tiny percentage of the housing market. Allowing better use of everything that's already been built addresses the vast majority of the potential for housing, allowing more people, dealing with more property that way.

But the point is, you need to be working with what we have. That's why zoning needs to focus on that. Greenfield and expanding new housing is a small part. If you think we can build ourselves out of affordable housing, you are deluding yourself. You can't. It's helpful, but it doesn't get to the volumes of what we need in order to solve that problem.

### What Does this Mean for Zoning?

#### 1. The Zoning Rules – Specifics

- Allow more types of housing in more places
- Remove unneeded du/acre and open space per unit regulations – and beware of FARs
  - Use better building scale/form/envelope controls
- Incentivize affordable housing
- Don't over-require ground floor pedestrian active uses
- Protect Naturally Occurring Affordable Housing (NOAH)
  - We already do that for historic districts and manufactured home parks
- Tailor housing rules to avoid gentrifying vulnerable communities that want those protections



29



(Slides 30 and 31 are provided here but were not discussed in the session.)

**Minimum parking standards.** We just heard the discussion this morning about parking. I'm not really minimizing it, but I will tell you nationwide the number of places that are eliminating it or substantially reducing it is growing. Denver substantially reduced it and now it's eliminating, I think the trend is growing rapidly; that the market can do most of this stuff, and to the degree it can't, it's an unintended impact.

But it is not clear we should be reducing the amount of housing that we're constructing because of car parking spaces.

And so the number of cities that have had problems after they repealed them is a very small number. It

## What Does this Mean for Zoning?

### 1. The Zoning Rules – Specifics

- Maximize opportunities for adaptive reuse of existing buildings wherever possible
- The greenest building is the one already built
- Allow multi-family development in most or all commercial districts
- Allow more types of home occupations
- Important for post COVID work habits and for equity



30

31

## What Does this Mean for Zoning?

### 1. The Zoning Rules – Specifics

- Ensure that public serving childcare, elder care, and medical/health care/delivery uses are available with administrative approvals throughout the community
- Avoid singling out drug treatment facilities from medical clinic office uses if possible
- Avoid singling out commercial uses with low entry barriers for more restrictions
- Important for equity and to avoid zoning based on stereotypes instead of land use impacts



31

## What Does this Mean for Zoning?

### 1. The Zoning Rules – Specifics

- Reduce or remove minimum parking standards from most uses – especially commercial and mixed-use
- Allow small scale/accessory renewable energy facilities in most areas of the community
- Allow small scale/accessory food production in most areas of the community
- Replace conditional uses requiring a public hearing with administrative approvals subject to objective standards wherever possible



32



is fear of the unknown.

**Conditional Uses.** Don't have very many conditional uses. This is another thing. There are cities that have completely gotten rid of conditional uses, when you write a code based on a plan, decide; It's not acceptable; or it is acceptable; or it's acceptable with these conditions. Do not have a public hearing on it each time. That is another huge thing.

**Procedures.** (Slide 33)  
Expand public notice,  
reduce public hearings.  
I want to point this out.  
I call this the trifecta.

Time, expense and uncertainty are what kill projects. This is the trifecta you don't want to win. A lot of codes do exactly this. The position

of the American Planning Association is, don't have any more public hearings on project approvals that meet zoning requirements. Don't do it. A. time, B. expense, C. unpredictability. D. equity. We know who shows up. We know who kills projects. We know who doesn't show up and winds up having the projects that can't be built some-

where else. It is very clear. We went round and round about that nationally. That's where it came out.


### **Objective Standards.**

Once again, use objective standards, remove subjective criteria. I

## What Does this Mean for Zoning?

### 2. The Zoning Procedures - Generally

- Expand public notice
  - Even for projects not requiring a public hearing
  - Always include tenants
- Reduce public hearings for specific conditional uses and site-specific development approvals that comply with zoning
- Replace with administratively approvals subject to objective standards
  - Public hearings are a major source of exclusion
- Avoid procedural "Trifecta"

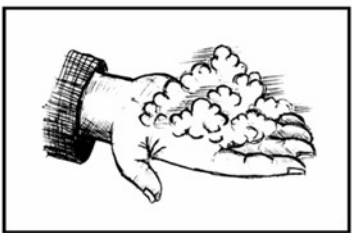


33

## What Does this Mean for Zoning?

### 2. The Zoning Procedures - Specifics

- Remove subjective criteria for approval of rezonings, conditional uses, and site-specific development standards
  - "Harmonious," "compatible," "consistent," "attractive," "quality," and "character" are the worst offenders
- Just invitations to argue and exclude
- Address possible adjacency concerns with step-downs, scale controls, or hours of operation controls



34

would like to go into your code and erase every one of these words: “harmonious”, “compatible”, “consistent”, “attractive”, “quality”, and “character”. The State of Connecticut has made it illegal to use the word “character” to turn down a zoning change. You have to have another objective reason, because that's how someone gets up and says “It's not that I'm not in favor of it. It's just out of our community character, so don't do it”. Take the words out. Take them out. They're just invitations to argue.


**Appeals.** The position is, if you appeal, you need to have a specific reason to appeal, and it's an appeal on the record. We have a growing tendency in the West to use appeals to delay and hope your guy will run out of money. Who does that hurt? Does it hurt the big builders? It hurts the small builder. That's exactly who we want to encourage to be building stuff.

**The zoning map** - fewer lines. Getting rid of red-lining. That's the one thing many citizens know about zoning: “Let's get rid of redlining.” But that's very hard and very dangerous.

### What Does this Mean for Zoning?

#### 2. The Zoning Procedures - Specifics

- Remove opportunities to use appeals to delay projects that otherwise comply with code standards
  - Clarify that appeals are “on the record” – not “de novo”
  - Require that appellants cite specific code provisions allegedly ignored or mis-applied
  - Using objective standards will help a lot
- Allow administrative adjustments in the development approval process where needed to accommodate unique site conditions
  - List which standards can be adjusted and by how much

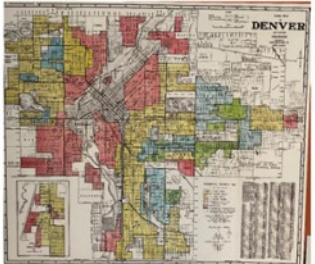


35  
36

### What Does this Mean for Zoning?

#### 3. The Zoning Map

- Fewer lines (reflecting fewer, more flexible zone districts) are generally better
- Remember the map just reflects the rules, and many changes to rules will avoid map changes
- Be careful about erasing lines “redlines” to equalize rules between more and less vulnerable neighborhoods without first consulting with the more vulnerable neighborhood about what they want



36  
37

We think “If I could just erase the lines between the privileged and unprivileged, the black and white --the poor and rich neighborhoods.” But in such an event, there's a lot of speculative development that could happen that would hurt exactly the people that we did not want to hurt. I'm not going to go into detail except to say it's difficult. Be very careful.

If you get the rules right and you get the procedure right, you often don't have to do a lot with the map. Map changes are great. Some map changes tend to just look at an old red line map, like that one from Denver, and erase them and say: “They shouldn't have had this distinction between these neighborhoods. Look, one's rich and one's poor. We shouldn't have had different zones.” That can turn out really badly for a lot of people involved, not the people that you were trying to help when you said we need to fix this map.

**Final check.** And it's just a summary slide.

**Colorado Legislation.** I do want to say, if you want to, we can talk about this, but it sounds like you did a lot more legislatively than we did last year in Colorado. Two years ago, our bill crashed and burned. Last year, everything got through. It was a really interesting thing, but we didn't have 700 pages, so it must have

## What Does this Mean for Zoning?

### Final Check

Always evaluate proposed zoning changes for their:

- Consistency with major demographic trends:
  - Growth, aging, and smaller household sizes
- Responsiveness to regional housing needs:
  - Will this do our fair share in filling the housing gap
- Effectiveness in promoting improved:
  - Affordability
  - Sustainability
  - Equity

Growth in U.S. home values outpaces that of incomes Change since 1965

Source: Real Estate White analysis of U.S. Census Bureau data

37

38

## What Does this Mean?

### 4. Possible State Intervention

Colorado (2024)

- SB24-174: Comp planning/housing needs assessment
- HB24-1313: Transit Oriented Communities (TOC) bill
- HB24-1007: No Family Relationship Occupancy Limits
- HB24-1304: Limits Minimum Parking Requirements
- HB24-1152: Allows Accessory Dwelling Units
- HB23-1255: Limitations on local government growth caps (2023)
- HB21 -1117: Inclusionary Housing Bill (2021)
- HB25-1169: YIGBY (2025)

38

39

been simpler than what you did. So I'm happy to talk about what Colorado's doing over the last few years, it's been very active in Colorado and trying to figure out barriers to affordable housing, perhaps not as active as Utah.

### Questions and Moderator Comments:

**Arthur C. Nelson –**  
Moderator You just heard the nation's finest expert in zoning code writing. Thank you very much.

Response to question from the audience related to **floor area ratios**:

**Don Elliott:** I am not a

fan of floor area ratios, and I'm not a fan of dwelling units per acre. Those are two of the highly exclusionary things that we do out there.

If there's a floor area ratio, if your building envelope would allow you to build a three-story building, park it even on surface parking, and put in 10 units that you think you could sell or rent in the market, but your open space per unit, or your lot coverage says you can only build eight units. What are you going to do? You're going to build eight more expensive units, rather than 10 less expensive units.

The whole point is these are the kinds of things that hold people up. I'm a huge non-fan of a couple of factors. Please look carefully at whether that's right. The numbers tend to go up or down. If you need open space, require open space, get open space, buy open space, require it. But I do think that in many cases, our open space per unit -- or our maximum units per acres -- force builders rationally to build more expensive units and fewer units than we need.

So I really am not a fan of that, and I'm completely persuaded that the public has no ability to visualize. I'm sorry. I don't mean this in a tenor that's demeaning. So

## Questions and Discussions

**Don Elliott, Esq., FAICP**

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39

40

I'll just apologize in advance. We have no ability to tell the difference between six to the acre and three to the acre and two to the acre and four to the acre and seven to the acre. We're arguing about numbers when a developer or a designer could say: "You think seven is unacceptable, let me show you seven." If we hadn't argued about the numbers, you'd find that perfectly acceptable. We don't know. It's a number we use. But basically, "units per acre", most of the public has a very hard time visualizing that. We are provoking arguments over numbers that we don't understand. They don't understand. Many planners don't even understand the impacts of that number.

**Audience:** So what's the alternative?

**Building envelopes.** If you don't have three stories, have three stories. If you want to have a lot size, then you say the minimum lot size is for some amount of open of lot area. Have setbacks defined, but this is primarily for multi-family. The examples I've given you are multi-family examples. How big a building is too big? Tell them that. But don't tell them how many units they can have in that building.

**Audience Question:** How do we incentivize traditional development?

**Don Elliott:** There's a tension here. You want integrated, diverse neighborhoods and yet the market gets efficiencies by building a lot of the same thing, or at least a certain amount of the same thing. In Colorado Springs, we finished writing their codes a couple of years ago, and that's a very developer friendly city. It's very conservative. But they ended up, we proposed one thing called a flex residential zone that basically says there's a range of density you can do. There's a range of housing types you can do when you get your zoning, you get to do them all, but you are going to have to stay within that density range on that menu of things. But you can do what you are going to be able to finance. You could do parts of it a single family-owned small lots. You could do parts of it as low-rise apartments or duplexes or -- they call them "tall skinny" in Colorado -- small lot single-family. But the point is, there are parameters. And before you build, you the developer are going to have to bring us a plan about where you're going to put the different types of housing. So yes, we will allow you to mix things together. You've got a density range, which means you won't get to do it all at the high end, you are go-

ing to have to decide and build the variety within your plan, or you'll go over your cap, or you'll go under your base. We came up with what's called a flex residential district.

That plan is where you're going to put what in order to protect the neighborhoods and get the kind of housing you want. It is administratively approved by the planning department. We're not going to have a hearing on that. We're going to have a hearing on the box of density and housing types that are going to occur here. Often the plan will say: "But nothing near the existing edges of this property more than three stories". So protect the surrounding neighborhoods. Otherwise, you've got a canvas to work with. We proposed that. They loved it. They came back and said, "Can we have three of those? Can we have residential flex low, residential flex medium and residential flex high?" So that's what they ended up doing, to try to give the developers the ability to do little enclaves, but to make sure that they think, they think they have a way it's going to work.

And there were a lot of developers and builders involved in this project. Builders want to hit more than one type of the market. But for each type of housing, they need a certain type of financing and a certain type of builder, but often they prefer to be able to do different points of the market in the same development. This allows them to do that, but it says we won't make you pre-plan it and then come back and have to go to city council over and over and over to amend it. You can do it once. You do have to show us you're going to play by the rules, but we will approve that administratively.

And if you come back because you got your sold part of the land, you got a different builder, and you want to shuffle it around a little bit, fine. That's administrative too. The guard rails to protect the neighborhood around it are built into the zone to begin. That's one thing you could do.

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