Delaware Housing Coalition
P.O. Box 1633 • Dover, DE 19903-1633
(302) 678-2286 • FAX (302) 678-8645
www.housingforall.org

October 22, 2007

Mr. Charles L. Baker
Land Use General Manager
Department of Land Use
New Castle County
87 Reads Way
New Castle, DE 19720

RE: INCLUSIONARY ZONING ORDINANCE

Dear Mr. Baker:

On behalf of the Delaware Housing Coalition (DHC), thank you for the opportunity to comment on the proposed inclusionary zoning ordinance. In general, it is well-researched and formulated and is a very welcome contribution to advancing affordable housing in the county. Affordable housing advocates and developers, the homeless community, social service providers, representatives of labor and the faith community have been looking for this kind of proposed relief for a long time.

I offer the following observations and suggestions regarding specific aspects of the proposed measure in the spirit of strengthening its overall ability to serve its purpose.

A. Fee-In-Lieu (40.28.115)

1. If it takes the fees-in-lieu from at least four unbuilt units to create one new actual affordable unit, the burden of creating affordable housing, in this instance, falls on the County. You should consider making permanently affordable any units built with this kind of hard-earned subsidy, in order to prevent its further erosion.
2. We wonder whether the proposed fee-in-lieu formula (at $9,900 per unit) is high enough to encourage participation.

B. HTF Contribution (40.28.116)

1. We think it would be more in line with the goals of the program to levy this fee only against the market rate units.
2. Another alternative, depending upon other factors, including the final equity-sharing arrangement for the first sale after the control period ends, would be for the housing trust fund (HTF) contribution to be deferred (rather than waived) for affordable units, and recaptured at that point.

C. Density Bonuses (40.28.210)

1. The proposed incentives seem to cover “low-income” (below 80% of AMI) and “moderate” (80% to 120% of AMI) only. On the definition of “moderate,” we suggest making the upper limit 100% of median, since studies show little need above 100% of median income.
2. At DHC we are very concerned that programs make provisions for very (below 50% of AMI) and extremely (below 30% of AMI) low-income households. Otherwise, developers of affordable housing will be less inclined to attempt to serve them. This is primarily a matter of the difficulty of financing such units.
3. We recommend restricting the definition of affordable units in rental developments to very low-income, as there is dramatically less need as you go above 50% of median income.
4. We suggest that you consider even higher, graduated density bonuses for serving households below 50% of median or else restructuring the 100% bonuses to reflect serving this need.
5. If this cannot be done, we recommend finding other incentives which can help make affordable housing more feasible to very (and extremely) low-income households.

D. Affordability Control Period (40.28.411)

1. Prolonged affordability periods are the very best way to make subsidy work. The community land trust (CLT) model opts for permanent affordability in order create a portfolio of affordable units rather than a wave of continually expiring units needing new and larger infusions of subsidy.
2. Homeownership: We recommend that the affordability control period be no shorter than twenty-years.
3. We also recommend that the language of this section be changed to make it clear that the affordability control period re-starts if a unit is re-sold any time during the control period. It would require a single owner-occupier for twenty years in order to release the unit from affordability controls.
3. Rental: A thirty-year control period is now common for most multi-family rental projects. Despite public comments requesting that this be shortened, we think this should be maintained. We realize that this may make rental unit production under the ordinance difficult without extraordinary financing, such as forgivable loans from the County housing trust fund (HTF). This is another area where targeted density bonuses, based on incomes, could also help.

E. Household Income Eligibility (40.28.412)

1. It is unclear whether income eligibility would be monitored after purchase. In keeping with the community land trust (CLT) mission of “keeping units affordable, not keeping households poor,” we recommend that eligibility not be monitored after sale.
2. As explained above, we urge you to find ways to provide for very low-income and extremely low-income in your program design.

F. Deed Restrictions (40.28.413) and Resale Restrictions (40.28.414)

1. The resale restrictions are a mechanism for sharing equity during the affordability period. In this regard, if stewarding scarce public resources is paramount, subsidy retention is preferable to subsidy recapture. Even in the best case, where 100% of subsidy is recaptured, the costs of developing new affordable housing continue to rise by factors that require that new funds be added to the recaptured amount in order to create each new affordable unit. The community land trust (CLT) model, which attempts to balance individual and community benefits, embraces the subsidy retention philosophy for just this reason. Unless the County anticipates having a well-endowed housing trust fund or other sources for affordable housing creation, DHC recommends that, as with the affordability period, the resale formula lean toward retaining subsidy as long as possible.
2. Regarding the resale formula itself, the Diamond State CLT uses an appraisal-based resale formula which gives households increasing equity based on their original equity investment and their time in the unit. It avoids the issue of fair market value for improvements because of the difficulty of administering this provision. Perhaps administration of such a provision is not as much of an issue for the County.
3. The CLT model uses a ground lease to enforce resale restrictions and permanent affordability. It is a much more reliable mechanism for monitoring purposes. We suggest you consider making use of such a mechanism when possible. The housing trust fund (HTF) right of first refusal would allow you to designate units for inclusion in a CLT from the outset.

Thank you for all you hard work on this critically important issue.

Kind regards,

Ken Smith
Director

cc: Anne Farley
Councilman Hollins
County Executive Coons