Howard County
Internal Memorandum

Subject: **Testimony – CB 35-2013 - MIHU Expansion**

To: **Lonnie R. Robbins, Chief Administrative Officer**

From: **Thomas P. Carbo, Director** TPC
Housing and Community Development

Date: **May 31, 2013**

Council Bill 35-2013 amends the Moderate Income Housing Unit law (Section 13.400 et seq.) to allow developers of single-family detached dwellings that are required by the Zoning Regulations to provide moderate income housing units (MIHUs) the option of providing alternative compliance, including paying a fee-in-lieu of building the MIHU units.

This bill is a companion to Council Bill 32-2013, the Comprehensive Rezoning Plan which, among other things, would require any development in the RC, RR, R-ED, R-20, R-12, and R-SC zoning districts to provide at least 10% of the dwellings in the development as MIHUs.

Background

The primary goals of the MIHU program are to (a) increase the supply of housing that is affordable to households of moderate income in the County and to (b) integrate that housing into all new communities. As currently written, however, the MIHU law only applies in certain high density zones: R-SA-8, R-A-15, CCT, POR, R-SI, TOD, CAC, MXD, age-restricted adult housing, planned senior communities, and residential mobile home developments. This leaves many new communities without housing that is affordable to moderate income families. Moreover, it places the full economic burden of providing the affordable units on the developments in the higher density zones.

In order to more fairly distribute moderate income housing throughout the County, and to provide greater affordable housing opportunities for moderate income households, CR 32-2013 would require that at least 10% of all units built in a development in any of the following zones should be subject to the MIHU requirements: RC, RR, R-ED, R-20, R-12, and R-SC.

Recognizing that development of MIHUs in some single-family detached subdivisions may be economically infeasible, developers would be allowed to pay to the County a fee in lieu of actually building the MIHUs, or provide other means of alternative compliance. The fee-in-lieu would be equivalent to the County's cost of providing an MIHU of similar size. The fee would be calculated as the difference between the prevailing market price and the MIHU price of a three-bedroom, single-family attached unit. Currently, that difference is about $76,000. The per unit fee for the overall development would therefore be about $7,600. For example:

- Subdivision: 120 SFD units.
- MIHU Requirement: 10% (12 units)
- Average sales price of 3-bedroom SFA units in the County: $298,000
- MIHU sales price for 3-bedroom SFA unit: $222,000
- Difference: $76,000
- Total Fee: $76,000 x 12 = $912,000
- Fee per unit = $912,000/120 = $7,600

Fees collected by the County would be placed in the County's Housing Initiative Fund and used for the County's affordable housing programs, such as the Settlement Downpayment Loan Program, Rehabilitation Loan Program, and Rental Housing Development Program.

Some may argue that expanding the MIHU program to single-family zoning districts will adversely impact the housing market by artificially imposing higher costs and, thus, forcing higher market rate prices and rents. To the extent that markets will not bear higher prices, they may argue, this could lead to a decrease in housing production.

Empirical studies show, however, that inclusionary zoning programs do not adversely impact housing production. For example, a study of single-family and multi-family building permits in 28 jurisdictions in California, where inclusionary zoning has been prevalent for 30 years, shows that housing production was unaffected or, in some cases, actually increased after the adoption of inclusionary housing ordinances.

Neither will inclusionary zoning increase housing prices. The notion that inclusionary zoning regulation impacts prices belies the fundamentals of the real estate market. Housing prices are not a function of development costs, but of supply and demand – developers cannot sell or rent homes at prices higher than the market will bear, nor will they sell for less if their costs decrease.

What may be affected, however, are land prices and/or the developers' margin. What this proposal offers to developers and landowners is predictability. The developer may opt to pay a fee-in-lieu of the MIHU obligation under an objective formula. The option to pay the fee is not subject to County approval, but entirely at the discretion of the developer. Consequently, the developer/landowner can operate with a reasonable level of predictability as to what their economic costs will be before entering into a transaction or project.

CB 35-2013 offers two other alternatives that a developer may pursue. The developer may provide substitute MIHUs by acquiring, rehabilitating and offering for sale existing comparable foreclosed properties. The property must be offered for sale to an eligible MIHU buyer at the lower of the developer's costs or the prevailing MIHU price. Alternatively, the developer may provide 1/3 the required number of MIHUs on site, provide they are offered to low income households at a low income housing unit price determined by the Department.

Fiscal Impact

To the extent developers opt to pay a fee in lieu of MIHUs, the bill will generate revenue for the County. The bill provides that this revenue will be dedicated to housing programs.

DPZ's Development Monitoring Report dated May 2013 indicates that about 500 use and occupancy permits for single-family detached units have been issued each of the last three years (page 37, Table 30). If this rate remains the same in coming years, and assuming that all developers of single-family detached dwellings opt to pay the MIHU fee-in-lieu, then annual revenues would be approximately 500 x $7,600 = $3,800,000. This amount will fluctuate based on changes in housing prices (upon which the fee is based) as well as the single-family detached housing development market.

The Howard County Department of Housing and Community Development recommends approval of the Resolution.

cc: Ken Ulman, County Executive
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