REGULATORY BARRIERS TO INNOVATIVE HOUSING AND RECOMMENDATIONS
Tucson, Arizona
June 2007
Special thanks to the people who consented to be interviewed and provide the case study information for this report.

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INTRODUCTION

Population growth coupled with current dominant development patterns continues to create sprawling communities and put significant pressure on the natural environment across the United States. The impact of the built environment on the natural environment calls for special attention as environmental degradation becomes more and more severe. In this respect, Tucson faces significant environmental challenges as one of the fastest growing cities in the United States. Preserving open space, protecting wildlife habitat, maintaining air and water quality, and conserving water, one of the most valuable natural resources in the desert ecosystem, all require minimizing the impact of new development on the environment.

Incorporating innovative elements in housing development can help reduce the impact of growth on the natural environment. This report has a broad scope of “innovative elements” incorporating both innovative technologies (regarding water conservation, energy efficiency, alternative building materials, etc.) and land use patterns that are “unconventional” in the context of Tucson (such as higher densities, narrower streets, pedestrian-oriented housing developments, etc.). The reason the latter category is included even though it does not refer to features that are strictly “innovative” is because given the development patterns dominating the housing market in Tucson, more compact types of housing development can be considered rather unusual if not innovative. Additionally, since the focus of this report is on regulatory barriers to innovation, it was deemed necessary to include unconventional developments on the grounds that they face similar barriers as truly innovative developments.

Unconventional subdivisions face challenges due to an extensive set of regulations and regulatory processes overlaying one another imposed by different regulatory bodies. The resulting picture is: subdivisions with single-family houses on large lots, set far from each other; streets more than wide enough for the largest garbage collection vehicles; turning radii greater than necessary for the largest fire trucks, etc., which contribute to low density sprawling patterns of development.

On the other hand, the biggest challenge to incorporating innovative technologies comes from building codes. The prescriptive nature of the codes, involvement of multiple departments and/or agencies in the code review process, code review staff lacking the necessary skills, codes lagging behind new technologies, etc., create severe difficulties in obtaining permits for innovative projects and thus act as disincentives to innovation.

Regulatory barriers in this context can be defined as unnecessary regulations that inhibit the construction of innovative or unconventional housing. The housing industry is subject to numerous regulations at all levels of government on the grounds of protecting the health, safety, and welfare of citizens. In this respect, it is important to note that distinguishing between legitimate and unnecessary government regulations is extremely difficult. However, it is also important to acknowledge that regulations frequently operate as a double-edged sword. On the one hand, they set minimum standards to ensure that all housing developments meet the necessary health and safety requirements. On the other hand, they also pull the projects exceeding the minimum standards back down to those
standards. Consequently, housing developments which would lead to healthier
development patterns are hindered simply because the codes and regulations can not
accommodate their features which exceed the minimum standards.

This report aims to identify the regulatory barriers that inhibit the construction of
innovative housing in Tucson. Each section of the report is dedicated to a separate barrier
category where the regulations acting as potential barriers are briefly explained and the
experiences of both for-profit and non-profit housing developers in Tucson regarding
those regulations are revealed. Section I focuses on zoning and land use regulations,
Section II on regulatory processes, and Section III on building codes. At the end of the
report, a set of policy recommendations is provided parallel to the findings based on the
experiences of builders and developers.

I. ZONING AND LAND USE REGULATIONS

Zoning and land use regulations pose barriers to incorporating innovative elements in the
development when the codes reflect the characteristics of conventional suburban
development. This category specifically includes:

- Zoning and subdivision regulations such as height restrictions; density limitations;
  maximum lot coverage, minimum lot size, and minimum setback requirements
- Subdivision regulations such as specific street and right-of-way requirements.

Experiences of Builders and Developers

John Wesley Miller Companies

Certain design elements of Miller’s development Armory Park del Sol that varied from
conventional subdivisions conflicted with the City of Tucson Land Use Code. His goal
was to create a “walker-friendly, vehicle-unfriendly” development. The houses were
designed to face each other without being divided by streets and access was through
the back of the units located along what Miller refers to as “glorified alleys,” designed
to be narrower than conventional streets. Street widths, location of the sidewalks and
the streets, smaller setbacks, turning radii, and flat curbs required an appeal to the
Board of Adjustment and they were all approved unanimously. Miller was able to get a
turning radii approved that is narrower than the standards but still has enough room for
fire trucks to turn. As developers frequently state, the requirements of the Fire
Department are “greater than necessary.” The consequence is wider streets and more
concrete on the ground, which has environmental consequences.
Even though all the items on Miller’s appeal were approved, it took additional time and increased the project cost. As Miller explains, the system allows for innovation but in a roundabout way. Developers have the right to appeal when they are denied, yet it is not guaranteed that they will win in the end. This risk that comes with innovation discourages developers from trying new things. Miller thinks that regulatory bodies should look at the particular situation and evaluate it instead of being prescriptive.

Rammed Earth Development

Tom Wuelpern believes that the minimum lot size requirements in the City of Tucson Land Use Code should be reassessed. They inhibit unconventional subdivisions, and do not allow for an urban setting in which density is a key issue.

In the Mercado District development, Wuelpern’s team was able to bend many of the land use regulations because it was a “Planned Area Development (PAD).” Consequently, they could incorporate more unconventional elements such as zero lot lines, row houses, alleys, narrower streets, and higher patio walls as part of a unique master plan. In other words, since the development was classified as a PAD, it was possible to have negotiations with the City on specific design elements.
In his houses in Barrio Santa Rosa, Wuelpern had to follow the “Lot Development Option.” As a result, he had to apply for permits lot by lot which became very time consuming and costly.

**Doucette Communities**

The property on which Tom Doucette’s Williams Center Project sits today already had a specific plan approved at the time he decided to develop it. The plan allowed for 150 units on 15 acres of land but it did not specify any details regarding several other development considerations including street widths, parking requirements, turning radii, etc. Doucette wanted to develop single-family homes on small lots as envisioned in the existing specific plan. Even though the City staff agreed on the vision of the plan, because of the regulations regarding the implementation of specific plans, they had to revert to the Land Use Code for all the development standards that were not specified. This situation made it impossible to build 150 units on the property because the relevant development standards as prescribed in the Land Use Code did not allow for that density. Doucette eventually got variances for waiving a number of development standards including street widths, kind and number of parking spaces, radius curves, and setback requirements which allowed for the approval of his project. However, he acknowledges the fact that the project could have been scrapped and forced to be completely redesigned at a few points along the way, resulting in loss of money, time, and work invested.
Doucette states that when developers are doing large projects with higher densities, different kinds of housing units (clusters, attached, partially attached, etc.), requiring unconventional parking, streets, setbacks, building height, or access provisions, they have to anticipate going through a public process for obtaining variances. In other words, they have to put themselves at risk. So, the system acts as a disincentive for including unconventional or innovative elements in a development. Doucette describes the web of overlying regulations as a “maze” and believes that the process acts as a sieve through which innovations are filtered.
II. REGULATORY PROCESSES

“Regulatory processes” is another category of potential barriers to the development of innovative housing. In many instances, innovative technologies and unconventional features are not accommodated by codes and regulations, making the approval processes more complicated. The problems are associated with:

- A series of regulations imposed by multiple government departments leading to minimum requirements greater than seems necessary.
- Involvement of multiple departments making the process lengthier, more complicated, and more costly.
- Lack of flexible review mechanisms distinguishing between different kinds of projects that do not precisely follow codes and regulations. (Some projects fall short while others exceed the minimum standards, yet they are usually treated uniformly.)
- Lack of familiarity of department staff reviewers with innovative materials or features resulting in prolonged and complicated review processes.

In addition to the barriers listed above, the NIMBY (Not In My Back Yard) attitude can also be included in this section, even though it is not part of the regulatory processes per se. NIMBY-related community opposition comes into play during the fulfillment of public hearing and community meeting requirements mandated by regulatory processes. Especially in communities where conventional suburban housing is seen as the norm, innovative or unconventional aspects may become problematic. Proposed housing developments incorporating higher densities, clustered homes, detached or multi-family housing units, smaller setbacks, unusual design and architectural features, and different building materials may receive strong community opposition and thereby impede development with such elements.

These barriers not only complicate the review and approval procedures, they also act as strong disincentives for developers to undertake innovative or unconventional housing projects anticipating the likelihood of longer delays and higher risks involved with such projects.

A sample flow chart is provided on page 16 for the administrative processes that a residential development project in the I-1 (light industrial) zone needs to go through in Tucson.

Experiences of Builders and Developers

John Wesley Miller Companies

- John Wesley Miller believes that because regulations can be very complicated it is difficult for developers to know every detail in advance. In his opinion, for developments with more than ten lots it would be helpful if the Development Services Department assigned a specific staff person to a developer for the entire process. This
individual would also explain the possibilities and procedures for an appeal process if the project varies from conventional developments as Miller’s Armory Park del Sol did. Miller believes that such a practice would save both sides significant time and extra work and help the regulatory process proceed more smoothly.

**Rammed Earth Development**

- It took Tom Wuelpn’s team two years to complete negotiations with all the parties involved in the review process (water, sewer, electric, transportation, etc.) for his housing project in the Mercado District. He believes that difficulties arise because there are so many departments involved in the review process and they all act individually.

- The City liked what Wuelpn’s team was doing because it was innovative both in terms of design and building materials (adobe, rammed earth, and raw straw); however, the innovative aspects led to more questions from the City and therefore the process took much longer.

- Wuelpn’s team had a special meeting with City staff where they requested to work with the same plan checker on this project. The City staff promised that they would appoint the same individual throughout the process, yet the second time they went in for a review they found out that their plans had been sent out to a third party private reviewer. Wuelpn believes that the system does not allow for such arrangements, not because of bad intentions but because of the complexity of the system itself and the large number of staff people involved in the process.

- Wuelpn suggests having a separate department staffed with people who can quickly review innovative projects that vary from conventional projects. This would be a good incentive for innovation.

- Wuelpn believes that the regulatory processes discourage innovation and act as a disincentive in Tucson. In his opinion, ensuring expedience would be more important than offering financial incentives.

**Doucette Communities**

- From the time the property was purchased, it took 1.5 years to start the development for Tom Doucette’s Paseo Estrella project due to neighborhood issues. The City was supportive of the development, but the neighborhood opposed it. The site was zoned partially R-1 and partially R-2. Doucette’s team wanted to rezone the entire site R-2 to allow for denser
development. They suggested turning the perimeter units outward in order to connect with the neighborhood and create the look of a street of single-family homes. Despite the fact that nobody opposed the project during the neighborhood meetings, there were several protest letters at the time of the rezoning hearing. As a result of the protests, Doucette’s team had to give up on rezoning, but changing the plan naturally cost time and money, and took more meetings. After the neighborhood’s response, Doucette’s team decided not to do anything that was not totally allowed by the existing zoning so that the neighborhood could not pose further opposition. The project was completed with 117 units, approximately 30 less than would have been possible with the R-2 zoning. The team abandoned what they felt was a superior design from a planning perspective and oriented the buildings to the inside with a wall surrounding the whole property. Doucette points out that the neighborhood lost the benefit of right-of-way improvements, while the resulting project was less expensive without those requirements.

**Lanning Architecture**

➢ There is a lack of consistency between the plan reviewers and the inspectors. They consider different elements that can lead to inconsistent decisions.

**III. BUILDING CODES**

Building codes are one of the major barriers to building innovative housing especially with regards to integrating new and innovative technologies. Listokin and Haddis (2005) classify the impact of building codes in two separate categories, namely “substantive impediments” and “administrative impediments.” Even though Listokin and Haddis examine building codes as they impact the cost of housing, nearly all of the impediments they identify also hinder innovative technologies.

Their “substantive impediments” include:

- limiting or eliminating the use of certain materials and technologies due to the delays in updating building codes or lobbying efforts of certain construction-related occupational groups to protect their self-interests
- hindering mass production and effecting the economies of scale negatively due to fragmented building codes in each different locality
- increasing the learning curve for developers because of the time and efforts involved in learning about the local regulations (Listokin and Haddis, 2005).

“Administrative impediments” include barriers similar to those reviewed in the previous section as they apply to administering building codes. The major administrative barriers are:

- disagreement among different departments involved in code review
- code personnel lacking the necessary technical skills
- delays caused during the review process.
Building codes have two-way implications due to their prescriptive nature. Because building codes set rigid requirements, they prevent construction of sub-standard housing while at the same time they lower the standards of housing that exceeds the code provisions. Often designs and materials other than what are prescribed by the code lead to significant administrative complications as discussed in the previous section.

Experiences of Builders and Developers

Drachman Design-Build Coalition (DDBC)

- The municipal building code IRC-2003 did not accommodate many of the elements in the A-Mountain DDBC-1 development. The codes are prescriptive and if the design varies from that, a structural engineer’s approval is required making the project more expensive. In this project, there was a question of the framing. The code prescribes 2-foot spacing which is not structurally necessary with the appropriate steel framing. In order to increase the spacing and reduce costs, DDBC had to have a structural engineer prove that 4-foot spacing with a heavier steel framing would work as well as 2-foot spacing with lighter steel framing. (In this case, DDBC was able to find an engineer who provided this service for free, but normally it would have added to the project budget.) After the report was submitted, the City said it didn’t have anyone who could review the report at the residential review department, so it was passed on to the commercial review department. The commercial review department kept the report for five months and continuously requested changes to the application in order to adjust it to the commercial code review process. The commercial review staff was not able to evaluate the information on rammed earth, the building material chosen, because it is not allowed in commercial construction. Consequently, the structural engineer had to write a detailed report explaining the specifications of rammed earth and its use. Finally, the project passed the review but it took considerably longer with extra requirements. DDBC’s experience is a good example of how the building code review process can lead to significant delays, increased project costs, and a discouragement of the use of innovative techniques and building materials.
John Wesley Miller Companies
Armory Park Del Sol

John Wesley Miller was faced with an unexpected problem regarding building codes in his Armory Park del Sol project. The development involved two structures comprising two houses connected (resembling a duplex) and one structure comprising three houses connected (resembling a triplex). The first two-house structure was reviewed under the residential building code. At the time of the inspection of the three-house structure, however, he found that more than two houses in a row would come under the commercial building code instead. This regulation caused delays because under the commercial inspection process a different inspector checks each aspect (such as plumbing, electrical, mechanical, etc.) unlike the residential inspections where one inspector reviews it all. Even though Miller had obtained the permits for these structures he was not informed about this procedure and found out only at the time of the inspection. When the second two-house structure was built approximately two years after the first one, it was also reviewed under the commercial code because a new regulation now dictates that duplexes also fall under the commercial code. These regulations seem to be problematic and discouraging, especially considering that Sonoran row houses have historically been one of the important architectural traditions in Tucson.

Rammed Earth Development

In the Mercado District development, Tom Wuelpern was faced with another regulation regarding row houses. A triplex structure or larger requires a registered architect to design them, or sign the drawings, increasing the project cost. Wuelpern, who designs the homes but is not a registered architect, would have needed an architect to sign his drawings for row houses with three or more units. As a result, all his units in Mercado were designed as detached housing situated very close to each other. In other words, while the units don’t share a wall, they look like row houses.

Lanning Architecture

Prescriptive standards in the building codes are fairly limiting. The projects in which Lanning Architecture is involved almost always require a structural engineer. As a result, the buildings become more conservative and innovations are filtered out. Moreover, when structural engineers are involved, the buildings are often “overbuilt” which adds to the total project cost. Additional procedural requirements, delays associated with such requirements, and anticipated increases in project costs act as a disincentive for incorporating innovative technologies in housing design.
The City requires special inspections for projects using alternative building materials. In addition to the regular city inspections, the builder, developer, or contractor has to hire a private structural engineer to come to the site which can cost $250 plus per visit.

Straw bale is a good example of an alternative building material that doesn’t fit in the pre-determined categories of building codes. Because it is not uniform, the sheer strength of a straw bale can not be precisely determined. Structural engineers look at the steel straps to see if they have enough strength for 100% of the lateral loads. As a result everything appears overbuilt. Since there is no place for judgment in the system, alternative building materials are at a disadvantage.

Mikey Block

Tucson is one of the “toughest places” to build innovative housing because people resist change. There is also a lack of awareness and sophistication on the part of many building officials. Five or six years ago the ICF (insulated concrete forms) industry supplied 1-1.5% of the new housing starts. Currently it is 15-16% in the U.S. In Tucson, that figure is probably around 4-5%.

IV. CONCLUSIONS AND RECOMMENDATIONS

This report reviewed the impact of zoning and land use regulations, regulatory processes, and building codes on the development of innovative or unconventional housing in Tucson. The findings revealed by the experiences of housing builders and developers clearly demonstrate that government regulations can significantly disincentivize incorporating innovative elements in housing developments.

Adopted codes and regulations tend to encourage the existing patterns of development in Tucson. The codes are generally geared towards the “lowest common denominator” and the system does not promote innovative or unconventional projects exceeding the minimum standards. Innovative or unconventional housing developments generally require more complicated review processes which lead to delays, increased projects costs, and greater risk. In general, the City building department treats unconventional elements as “suspicious.” Therefore regulatory processes act as a substantial disincentive to housing innovation and encourage developers to continue building what has already been built.

Current regulations also tend to encourage sprawl. Developers prefer sites on the city edges further from already developed areas where there won’t be neighborhood opposition for their projects and where they can easily meet setback and lot size requirements or take advantage of the Residential Cluster Project (RCP) because of the availability of larger tracts of land.

A number of recommendations for revising regulatory processes in the City of Tucson are provided below based on the experiences of builders/developers of innovative and unconventional housing.
• The City should **form a separate review team** staffed with people knowledgeable about alternative building materials and innovative technologies who can quickly review innovative projects that vary from conventional projects. This would ensure expedience and consistency by assigning the same staff to a particular project throughout the process.

• The City should **assign a specific staff person** for the entire review process to a developer who applies with an innovative housing project.

• A “Technical Assistance Resource Center” or program should be created to **support individuals and for-profit and non-profit builders/developers of innovative housing** through the regulatory processes. The Drachman Institute is willing to participate in technical assistance programs.

• Professional organizations such as the Southern Arizona Chapter of the American Institute of Architects and Southern Arizona Home Builders Association should **provide a technical assistance symposium** twice a year in cooperation with the City and County Housing Commissions and Development Services Departments to address the barriers described and to develop strategies for assisting builders and developers of innovative housing to overcome these barriers.

• The City should work to **eliminate the inconsistency** between the decisions of the Development Services Department plan review staff and the inspectors.

• Plan review sessions should be as comprehensive as possible at earlier points in time in order to **prevent add-on requirements** during later reviews unless the development plans have changed substantially.

• The City should **develop strategies for building cooperation** among different review departments/agencies in order to reduce review time and facilitate consistent decisions and requirements.

• Decisions should be **consistent at all levels** of the organizational chart within the reviewing agencies in order to eliminate the need for resorting to the use of social or political capital.

• The City should **adopt a more flexible and cooperative approach** geared towards performance-based evaluations for reviewing innovative or unconventional housing projects instead of “by the book” implementation of prescriptive codes.

• A joint “Innovative Housing Public Relations Council” should be formed with the Housing Commissions of the City and County to **bring together innovative housing builders and developers with neighborhood leaders to address the issue of NIMBY-ism.** Annual neighborhood acceptance workshops and educational campaigns should be organized to overcome the NIMBY attitude against higher densities and other concerns relating to innovative housing. This campaign should focus on design quality and best practice examples as a means to make higher densities and innovative design and development acceptable to existing neighborhoods.

• The City should **develop a team responsible for reviewing and incorporating innovative new technologies** in the local code amendments. This would eliminate the barriers associated with delays in integrating new technologies in the international codes.
• The City should **create a new set of street design guidelines** to allow for and promote pedestrian-oriented developments.
• The City should **create an overlay zone to facilitate the development of innovative residential uses** in the designated artist studio/residence area (see Map 1, page 17) instead of permitting studio/residences as special exception land uses.

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Doucette Communities - Tom Doucette, 12/18/2006
Rammed Earth Development - Tom Wuelpfen, 02/02/2007
Lanning Architecture - Bob Lanning, 02/20/2007
Mikey Block - Dave Taggett, 03/06/2007
Drachman Design-Build Coalition – Corky Poster, 03/20/2007

**Note on Photos:** All the photos used in this report are obtained directly from the builders/developers interviewed or from the websites of the organizations/companies with which they are affiliated.
**OPTION 1: LIMITED NOTICE PROCEDURE**

* Used for the approval of Special Exception Land Uses (Artist studio/residence is the only residential special exception use in I-1 if located in the designated area.)
* Fees apply as specified by the Development Standards

* See Attachment 1 for details

**OPTION 2: ZONING EXAMINER LEGISLATIVE PROCEDURE**

* Used for Rezonings (All residential developments other than artist studio/residences require a rezoning.)
* Fees apply as specified by the Development Standards

* See Attachment 2 for details

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**OPTION 2-a: DIRECT ORDINANCE ADOPTION**

* If the application includes detailed development plans in compliance with all the conditions that may be required by the Mayor and the Council as well as the Development Standard 1-07

* See Attachment 2 for details

**OPTION 2-b: AUTHORIZATION FOR CHANGE OF ZONING**

* If the application is based on conceptual plans

* See Attachment 2 for details

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**SUBDIVISION PLATTING PROCESS**

- a) Subdivisions
- b) Minor subdivisions
- c) Land Splits
- d) Land survey exception

* See Attachment 3 for details

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**PERMIT PROCESS**

* Building, plumbing, electrical and mechanical permits

* See attachment 4 for details
Limited Notice Procedure is one of the three possible procedures to review a Special Exception Land Use. The procedure requires limited notice to be given to parties who may be affected by the proposed development.

Artist studio/residences are the only residential uses that can be considered for special approval as Special Exception Land Uses in areas zoned as I-1 (Light Industrial Zone) which promise great opportunities for innovative types of housing. The use is limited to the designated artist studio/residence area as shown below. The area falls within the boundaries of the Empowerment Zone.

Map 1 - Designated Artist Studio/Residence Area

Source: City of Tucson Land Use Code 6.2.1

Proposed artist studio/residence developments require approval through a Limited Notice Procedure. Other restrictions stated in the Land Use Code are as follows:
A. The use is limited to structures in existence on February 25, 1991, within the designated artist studio/residence area.
B. The use will not displace existing industrial uses.
C. The appearance and structural integrity of the structure are preserved or enhanced.
D. Residential use of the property is incidental and secondary to the artist studio use, with no greater than fifty (50) percent of the floor area devoted to the secondary residential use.
E. The secondary residential use is occupied by an artist who is also the occupant of the primary artist studio use.
F. Adequate measures are provided to assure the health, safety, and welfare of the occupants in relation to any industrial process, use, or storage carried out in the artist studio/residence or on adjacent properties.
G. The use will not impair or interfere with the continued industrial use of adjacent properties or with the purposes of the industrial zone. (City of Tucson Land Use Code 3.5.7.10)

According to the Land Use Code (3.2.3.2), the following development regulations apply to artist studio/residences in the I-1 zone:
- Minimum site requirement: 0
- Maximum floor area ratio: 2.00
- Maximum building height: 75’
- Perimeter yard: DD

**Limited Notice Procedure Timeline**

- Pre-application conference with city staff to review requirements for the proposal is encouraged.
- Meetings with property owners who are entitled to notice of the application, the neighborhood association and other interested parties are encouraged.
- Notice of application has to be given to property owners within 50 feet of the site and to the neighborhood association that includes the site.
- There is a 10-day period during which the public can submit comments on the proposal.
- The Development Services Director makes a decision regarding the application within 1 to 10 days after the expiration of the public comment period. The Director may impose conditions for approval or require a full notice procedure.
- The Director notifies the applicant and the other parties within 3 days of the decision.
- A party of record may appeal to the Board of Adjustment by submitting a notice of intent of appeal to the Development Services Department within 5 days after the notice of decision. The appeal has to be filed within 30 days of the decision.
- The time period for public comment, for notice of the decision and for the filing an appeal may be waived if the applicant provides written documentation that all parties of record have waived one or more of these provisions.
- Upon receiving a complaint, the Zoning Administrator can invalidate an approval if s/he decides that the notice failed to accurately or adequately describe the

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1 The information presented in the Timeline is taken from the City of Tucson Development Compliance Code, Division2, Sec 23A-40.
effects of the proposed development on other property owners. In that case, the application has to obtain a new approval.

POTENTIAL BARRIERS

- The Limited Notice Procedure can be lengthy if there are appeals which may lead to increased project costs acting as a disincentive to pursue this option. The process is much shorter compared to the rezoning process if there is no opposition.
- The NIMBY factor can be influential during the limited notice process just like the rezoning process which can lead to increased project costs by causing delays. However, new innovative residential development may sometimes be more welcomed in an industrial area than in a traditional, established residential neighborhood.
- The current review procedures for the designated artist studio/residence area do not facilitate and encourage the development of innovative studio/residential uses.
ZONING EXAMINER LEGISLATIVE PROCEDURE

Zoning Examiner Legislative Procedure is used for reviewing rezoning applications. The Zoning Examiner holds a public hearing(s) regarding rezoning applications for recommendation to the Mayor and Council who make the final decision.

In areas zoned as I-1 (Light Industrial Zone), all residential developments require a zoning change except for artist studio/residences which can be reviewed through a limited notice procedure if located in the designated artist studio/residence area.

Zoning Examiner Legislative Procedure Timeline\(^2\) (See Zoning Examiner Procedure Flow Chart, page 24):

- **Pre-application conference:** A pre-application conference with city staff is required to review the requirements for the proposal.
- **Neighborhood meeting:** A neighborhood meeting must be held 15-60 days prior to the application (A notice about the meeting has to be sent at least 10 days before the meeting)
- **Notice:** Property owners within 300 feet of the site and neighborhood associations within 1 mile of the site have to be given notice by mail regarding the public hearing. Additionally, posted notice and published notice has to be given. (15-30 days prior to the hearing)
- **Public Hearing(s):** The Zoning Examiner holds a public hearing within 70 days of acceptance of the rezoning application. S/he may close the public hearing after the first hearing is held or continue it by scheduling another meeting within 30 days.
- **Preliminary Recommendation:** The Zoning Examiner issues a report with preliminary findings and a recommendation within 5 days of the close of a hearing.
- **Reconsideration:** If a party requests reconsideration of the preliminary recommendation or reopening of the hearing due to errors, the request has to be submitted to the zoning examiner within 5 days of the preliminary recommendation and the Zoning Examiner has 5 days to respond to the request. S/he can deny the request, revise the preliminary recommendation or reopen the public hearing.
- **Final Recommendation:** Within 14 days of the close of the public hearing or the re-opened public hearing, the Zoning Examiner issues a final recommendation report to the Mayor and Council. Minor revisions to the preliminary recommendation can be incorporated into the final recommendation without additional procedures; however, significant changes require reopening of the public hearing.

\(^2\) The information presented in the timeline is taken from City of Tucson Land Use Code, Section 5.4.3
• **Reopening of the Public Hearing:** If the reopening is necessary, the new hearing has to be held within **40 days** of the close of the last public hearing.

• **Mayor and Council Public Hearing Request:** Any person may request that the application be heard at a public hearing before the Mayor and Council if the request is filed with the City Clerk within **14 days** after the date of the Zoning Examiner’s public hearing or reopened public hearing.

• **a) Authorization for Change of Zoning (Type II):** If the rezoning is requested based upon **conceptual plans** (The conditions of rezoning are met before the Mayor and Council makes a decision regarding the adoption of the ordinance):
  
  o The Mayor and Council make a **preliminary** determination regarding the authorization of the zoning change subject to fulfillment of the conditions that may be imposed.
  
  o If the request is authorized, the applicant typically has **5 years** to meet the conditions of approval.
  
  o This **preliminary** authorization does not grant any vested rights to the applicant.

• **b) Direct Ordinance Adoption (Early Ordinance - Type III):** If the rezoning is requested based upon **detailed development plans** (building size, setbacks, parking requirements, landscaping and screening requirements, pedestrian and trash dumpster access, and architectural design) in compliance with all the conditions that may be required by the Mayor and the Council as well as the Development Standard 1-07, then the Mayor and Council can directly adopt the ordinance. (The ordinance adoption is considered before the conditions of rezoning are met.

  **Note:** “The Type II and the Type III Legislative Procedures are identical, except for the application requirements and the point in the process at which an ordinance is presented to Mayor and Council for consideration.” (City Of Tucson Development Standard No. 1-07.0 Rezoning Procedures)

• **Mayor and Council Decision:** The Mayor and Council may authorize the case to proceed; modify, delete or add to the proposed conditions for approval; remand the case to the Zoning Examiner for further proceedings; adopt an ordinance changing the zoning; deny the application or take other appropriate action.

• **Ordinance Effective Date:** Ordinances granting changes in zoning are subject to referendum and do not become effective until thirty **(30) days** after the date of adoption or the date the final ordinance is available from the City Clerk, whichever is later. The effective date of the ordinance is not necessarily the effective date of the change of the zoning (rezoning). The effective date of the change of zoning is when compliance with conditions of approval is completed and certified by the DSD Director.

• **Reconsideration:** A member of the Mayor and Council may request the reconsideration of an authorization decision or decision on a proposed ordinance provided the vote to reconsider is made within thirty **(30) days** of the date of decision.
• **Change in Conditions of Approval:** The applicant may request a change to conditions of approval which requires additional procedures depending on the extent of the changes requested.

• **Time extension:** Time extension requests regarding completion of all conditions also require additional procedures.

• **Completion and Certification:** Zoning on the property is changed in compliance with the adopted ordinance, when all conditions are met and verified by the DSD Director.

**POTENTIAL BARRIERS**

• Rezoning can be a very lengthy process which may lead to increased project costs. (The decision-making process regarding a request that includes **detailed development plans** can last as long as 139 days [after the pre-application conference] even when the plan is in compliance with the conditions and the matter is resolved in a single zoning examiner meeting. Multiple meetings, applications based on conceptual plans as opposed to detailed development plans, requests for reopening of public hearings, request of a member of the Mayor and Council to reconsider an authorization decision, and delays in meeting the conditions of the rezoning approval can result in a rezoning process lasting much longer.)

• The NIMBY factor can be influential during the rezoning process. It can increase the cost by causing delays or it can lead to the disapproval of the project which acts as disincentive for building innovative housing or unconventional subdivisions.

• The direct ordinance adoption option requires significant preparation. Detailed plans need to be prepared at an early stage. This necessitates considerable expenditures even though there is no guarantee or certainty that the intended development will be permitted.
Zoning Examiner Procedure Flow Chart

Meet 15-60 days prior to application. Notice* to be sent at least 10 days prior to meeting date.

Preapplication conference

Required

Neighborhood Meeting

Included in review for plan compliance

Application

DSD Director’s recommendation

Not less than 15 days prior to public hearing

Examiner's public hearing

Within 70 days of acceptance of application

Examiner’s decision

May be continued up to 30 days

Examiner’s recommendation

Public notice* Not less than 15 days or more than 30 days prior to hearing

Public notice* Not less than 15 days prior to hearing

Mayor & Council consideration

Applications with detailed development plans in compliance with preliminary conditions can proceed directly to ordinance adoption

Examiner’s recommendation

Public meeting or hearing

Public meeting or hearing

Public meeting or hearing

Mayor & Council decision to authorize conceptual plans

Applicant has 5 years to complete conditions of approval

Compliance with rezoning conditions (CDRC review)

Notice of decision*

Application for Mayor & Council ordinance adoption

Notice of decision*

Mayor & Council ordinance adoption

Compliance with rezoning conditions (CDRC review)

Notice of decision*

City Zoning Map change

Amended after effective date of the rezoning

* All notices are to be sent to property owners within 300 feet of site and neighborhood associations within 1 mile.

Source: City of Tucson Land Use Code Section 5.4.3
Attachment 3

SUBDIVISION PLATTING PROCESS

I- SUBDIVISIONS

1. Tentative Plat Review

   a. Pre-application conference with DSD staff: Encouraged
   b. Application: A tentative plat serves as a document on which the proposed development is overlaid on a map showing the existing conditions of the property and the surrounding area. These conditions include topography and infrastructure improvements, as well as existing structures. In addition to all the documents required as a part of tentative plat application, any other documents resulting from imposed conditions on a rezoning case are also submitted at this time. A development plan is also included as a part of the application packet if the property is part of a rezoning or if the development plan is a condition of a Mayor and Council action on the property. Additional documentation may be necessary depending on the requirements that the proposed development is subject to.
   c. Review: Tentative plats applications are reviewed by each CDRC (Community Design Review Committee) agency. The applicant has 1 year from the date the application to secure approval of the tentative plat based on the regulations in place.
   d. Approval: The Development Services Department approves the tentative plat within 5 days of receiving notification of approval from all CDRC members. If there is a rezoning involved with the use of property, the tentative plat can only be approved after the effective date of the rezoning ordinance.

2. Final Plat Review

   a. Pre-application conference with DSD staff: Encouraged
   b. Application: A final plat serves as a survey document suitable for recordation of all or part of an approved tentative plat. The final plat must conform to the approved tentative plat in lot configuration, design, and required conditions of development.
   c. Review: Final plats are reviewed by the CDRC. The review is normally initiated after the tentative plat is approved, however, final plats may also be submitted for review prior to the tentative plat approval if a minimum of tentative plat reviews have occurred.
   d. Approval: Final plats are considered for approval by the Mayor and Council.
   e. Recordation: The final plan documents are forwarded to the Office of the Pima County Recorder for recordation within 5 days after the Mayor and Council approval. If the use of the property is subject to rezoning, the recordation takes place 5 days after the effective date of the rezoning ordinance.

3 Information gathered from City of Tucson Chapter 23A-33, Development Standard No2-03.0, and Land Use Code Article 4
II- MINOR SUBDIVISIONS

A minor subdivision plat is small in size and simple in design to the extent that a tentative plat is not required. The review process of minor subdivision plats require less documentation and take less time compared to large subdivisions. The eligibility criteria for minor subdivisions are established by the Section 4.2.2. of the Land Use Code.

**Minor Subdivision Plat Review**

a. **Pre-application conference:** A pre-application conference is required in order to determine whether or not a tentative plat review is necessary.

b. **Application and Review:** Minor subdivision plats are reviewed following the same procedures provided for final plat review for regular subdivisions as described above. However, because a tentative plat has not been reviewed, any reviews that are normally conducted during the tentative plat process will be conducted as a part of the final plat process.

III- LAND SPLITS

The Land Use Code defines land splits as “the division of improved or unimproved land which is not defined as a subdivision, whose area is two and one-half acres or less in size, into two (2) tracts or parcels if previously platted or three (3) tracts or parcels of land or less if not previously platted of land for the purposes of sale or lease”

a. **Pre-application conference:** Not required but available to potential applicants

b. **Application:** Land split applications need to include a drawing of the proposed land split showing the lots, existing structures, streets and easements, setbacks etc.

c. **Review:** Land splits are reviewed by the Development Services Department within 10 days of application acceptance.

IV- LAND SURVEY EXCEPTION

A Land Survey Exception is a proposed land split that would ordinarily require a plat, but due to the small size and simplicity of the design an exception may be granted under certain circumstances.

a. **Pre-application conference:** A pre-application conference with CDRC is required in order to determine whether or not the application can be considered as a land survey exception.

b. **Application:** Blue line prints need to be included in the application showing the conditions within the 1 square mile around the site.

c. **Review:** Land Survey Exceptions are reviewed following the same procedures as in a plat review.

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4 Information gathered from City of Tucson Chapter 23A-33, Development Standard No2-03.0, and Land Use Code Article 4
5 Information gathered from City of Tucson Chapter 23A-33 and Land Use Code Article 4
6 Information gathered from City of Tucson 2-03.11.0 Land Survey Exception (Draft Document)
POTENTIAL BARRIERS

- The platting process can pose significant barriers especially when inconsistencies are present between the criteria of different reviewing parties.
- The process can be very lengthy particularly when new issues are introduced at each review meeting.
- The process can be more complicated for unconventional subdivisions.
Attachment 4

PERMIT PROCESS

Permits are issued upon the review of all plans for conformity with all relevant codes. More information on the permit review process is available at: http://www.tucsonaz.gov/dsd/Permit_Review_/permit_review_.html

POTENTIAL BARRIERS

- Building code-related barriers typically come into play at the permit review stage.
- The inconsistencies between the decisions of the plan review staff and the inspectors can pose substantial additional barriers.
- The process can be particularly complicated for proposed housing developments incorporating innovative elements that are not accommodated by the codes.