

SUBDIVISION TASK FORCE
FINAL REPORT
March 22, 2006

The Subdivision Task Force was established by the Commissioner of the Department of Real Estate for the purpose of working with stakeholders in the development and home building industry with the goal of creating concrete suggestions as to how the ADRE can, within the budgetary constraints imposed upon it by the legislature, process the backlog of applications for Public Reports, while maintaining the Department's mandate of protecting the public.

Based upon the above referenced guideline, Gary Brasher, as chair of the Task Force, convened four meetings with stakeholders, Advisory Board members and Department staff, to consider solutions for the subdivision application backlog, as well as to consider longer term ideas which may assist Department staff in processing future applications.

During the course of our four meetings, a variety of ideas were presented and discussed. **This report does not articulate each of the ideas discussed by the Task Force; rather, our report will focus on those ideas and concepts for which there was general consensus, and which were thought to present the best opportunity for meeting the joint goals of the ADRE and stakeholders.**

This report will focus on two main areas. The first is **“Short Term Solutions”**, or ideas that we felt could be implemented fairly quickly and could provide the Department and staff immediate relief in the processing of applications. The second category of ideas falls under the heading of **“Long Term Solutions”**, or ideas that will require statutory changes, but if successful, will give the Department more long range solutions and tools for the processing of subdivision applications as well as helping to address other challenges within the Department.

SHORT TERM SOLUTIONS

RECOMMENDATION:

Use of Volunteers

- The use of volunteers, while not without its challenges, was discussed at several meetings and is felt to provide a number of benefits to the Department. The use of volunteers appears to be within the Commissioner's scope of authority to implement. Volunteers provide an opportunity for the Department to receive help in areas which are "routine" thereby freeing up trained staff to assist in areas within ADRE which need the attention of trained in-house staff or employees. Volunteers have the added benefit of not placing any adverse financial pressure on the Department.

While many ideas were discussed in terms of what type of individuals might comprise the base for such a volunteer effort, it was felt by the Task Force that the specifics of who to use, what areas volunteers would be most effective in, and insuring that volunteers didn't have any conflicts of interest in serving in such a capacity, should be left to the Department itself. However, one concept which was discussed at length by the Task Force was for the Department to consider the use of "white collar criminals" who must perform "community service" as part of their sentencing. This effort would not only allow the Department to utilize individuals who are required to show up to "work" as a volunteer at a prescribed time, but could additionally provide individuals who might have legal or accounting expertise and who would require less training than other volunteers.

Another concept which was discussed at length by the Task Force was to possibly use volunteers from title companies. It was pointed out by Department staff that this idea would create conflicts of interest if the volunteers were used in the processing of Public Reports due to the relationship Title companies have with the homebuilding and development industry; however, it was felt that perhaps volunteers could be utilized who are either no longer currently employed in the title industry, or if currently employed by a title company, the volunteer could be used in "routine or non-critical areas within the

Department, thereby freeing up staff to help out in confidential areas of need.

ADRE RESPONSE:

It was felt that this solution could be more time consuming and create more challenges than the program's productivity would warrant. The main concerns in implementing this program are as follows:

1. Training volunteers and overseeing them, particularly if they are not constant, could be costly in time, efficiency and quality of work product.
2. It was felt by the Department that there could be a definite conflict of interest in using volunteers from title companies, retired attorneys, etc. Insuring that these potential conflicts are handled in an appropriate manner would consume more of the Department's time, energy and resources.

RECOMMENDATION:

Administrative Changes

- The Task Force felt that if builder/developers who have a good track record with the department could be processed more quickly than those applicants who may be submitting an application for the first time, it would be helpful in eliminating the current back log of applications, as well as helping to more quickly process future applications. As an example, it was suggested that if a builder/developer had already successfully processed a certain number of Subdivision Public Report applications with the Department, such an applicant could submit his/her new application with the Department, and if the application was determined to be "administratively complete", then the Subdivision Public Report would be issued immediately. The standard these more experienced builder/developers would meet would need to be established by the Department. Reports issued under these circumstances, would still be

subject to ADREs right to review or audit any applications in more detail.

If, subsequent to issuance of the Subdivision Public Report, the application is found to have not been accurate or consistent with the Department's requirements, the applicant would be subject to legal recourse as currently defined in the regulations which could include the requirement that the builder/developer cease sales and rescind contracts entered into during the period the erroneous Public Report was in effect. It was pointed out to the Task Force that this option is very similar to the expedited filing process currently in effect. The recommendation would apply only to improved lot sales but may be able to be expanded to all applications including unimproved lot sales that do not have to be registered with HUD/OILSR. It was further pointed out that to expand this option to include unimproved lot sales would most likely require legislative action.

Applications submitted to the Department by applicants who did not meet the Department's established standard under the concept outlined in the previous paragraph, would be subject to the normal processes currently being utilized by the Department for processing applications. **However, it was felt that if an application is submitted under either program which is not "administratively complete" the Department would send out a form letter to the applicant letting them know of the deficiency and giving the applicant a certain number of days within which to provide the necessary documentation. During this period of time, the applicant would "preserve their place in line" for the processing of their application. However, if the applicant did not provide the necessary documentation as required by the Department during the prescribed period of time, the Department would retain the filing fee and return the entire application to the applicant and the applicant would be required to start the process over.**

ADRE RESPONSE:

The Department felt this was a viable solution for those developers/builders who have shown a good-track record. The Department is willing to work

through the necessary details and do a pilot project to implement this program.

1. If an application for Public Report were not minimally complete when it was received, this would get noted at the front desk. A form letter would be sent to the applicant letting them know of the deficiency and giving the applicant 30 Days in which to provide the necessary documentation. A checklist form would be implemented for this purpose. One suggestion was that the form which is created would be initialed by the applicant, thereby verifying that certain documents accompanied the application. The individual at the Department who received the application verifying that the documents were in fact included, would then also initial this form. In this manner, when a reviewer of the subdivision area has the application placed on their desk, they can be assured that the appropriate documents have been included as verified by both the applicant and an ADRE employee.
2. The minimal standards noted in the first paragraph would need to be identified and properly established and published prior to implementation of this program.

RECOMMENDATION:

Expand the role of the Real Estate Advisory Board

- The Task Force is recommending that the role of the Real Estate Advisory Board be expanded to include serving in the role of “ombudsman” to the public in providing some assistance to the public in filling out the Public Report application. It was discussed in our meetings that one reason for the current backlog is due to small developers or “mom and pops” coming into the Department to file applications for a small number of lots which they own and wish to sell, or individuals who are developing more than 5 lots in a given area. Since these types of individuals don’t have the same experience level with the application process that the larger builder/developers have, they are using an inordinate amount of the Departments time in assisting these individuals on routine matters such as how to fill out

the application, or what agencies to go to for certain information required on the application etc. We suggest the Advisory Board should receive training in how to best direct and help individuals in filling out the Subdivision Public Report Application. Upon request by an advisory board member, the Department would supply that board member with copies of the application for Public Report so they may be distributed to the public. It is understood that the Advisory Board would not be providing legal advice but rather directing the applicant on where to go to get the necessary information for the subdivision application.

ADRE RESPONSE:

The Department felt that the recommendation that the role of the Real Estate Advisory Board be expanded to include an Advisory Board member to serve in the role of “ombudsman” to the public on a rotating schedule for the purpose of providing some assistance to the public in filling out the Public Report Application had merit; The Advisory Board could receive training in how to best direct and help individuals in filling out the Subdivision Public Report Application. The Advisory Board would not be providing legal advice but rather directing the applicant on how and where to obtain the necessary information. It appeared this is also a solution the Department is willing to implement on a pilot program basis.

LONG TERM SOLUTIONS

RECOMMENDATION:

Statutory approval for outsourcing various responsibilities

Many state, county and municipal agencies have the capability of outsourcing to private companies certain aspects of the agencies' responsibilities. It was the feeling of the Task Force that "outsourcing" be evaluated as one long-term solution to alleviating some of the workload of the Department. An example of one area where this might be helpful relates to subdivision inspections. If the Department found it valuable to "outsource" inspections, those dollars currently being committed to accomplishing this goal from the Department's budget, could be redirected to areas of greater need. Under this suggestion, it was discussed that if statutory authority of this nature existed, the Department could require that the applicants pay a fee to the private company responsible for conducting the inspections. This would result in an overall savings to the Department in both time and financial resources. As with any of the recommendations of the task force, it would have to be understood that the Department reserved the right to audit or check the work being accomplished on an outsourced basis to insure the process maintained the highest integrity. The Department staff may also be able to suggest other areas where outsourcing could be beneficial.

ADRE RESPONSE:

In talking with the Department the subdivision inspections issue seemed to be the least of the problems for the Department; therefore at this time I suggest we focus our attention on more pressing matters. The Department is outsourcing inspections now as they have hired a former employee to work an average of 1 week per month. During that time frame the employee completes the majority of inspections required by the Department.

RECOMMENDATION:

Legislative funding

This recommendation won't be new to anyone within the Department nor to those on the advisory board. The Task Force realizes that if ADRE could position itself to keep more of the funding generated within this agency, then the Commissioner would have much more financial latitude with which to solve challenges within the ADRE.

The Department, as well as some stakeholders, to accomplish this goal, has used tremendous time, effort and resources already. Those efforts have had some success; however, it was felt by the Task Force that this long-term goal should be looked at once again to see if there are new opportunities for stakeholders and the Department to reach common ground with a unified approach to this legislative challenge.

ADRE RESPONSE:

The Department agreed that working toward a 90/10 Board would be an excellent solution for Department's funding. The Department also indicated they would support a dedicated fund and would commit to use any additional fees paid by developers/builders into this proposed fund to be solely used for Subdivisions. The Department would have oversight responsibility for this fund.

RECOMMENDATION:

Inspection Affidavit

There was some discussion by the Task Force to recommend the Department consider the use of Affidavits signed by a **Principal** of the subdivider

(applicant) certifying that the application is correct in all respects and/or that the promised improvements have been installed according to the application as filed with the Department. Under this suggestion, if an application for Public Report were accompanied by such an Affidavit, the Department could then move forward to issue the Public Report immediately. As with other recommendations, the Department would reserve the right to audit any applications. If the statements in the Affidavit were found to not be true and correct, the Department could still pursue those penalties permitted by regulation. In addition, the Department could take action against the individual who signed the Affidavit. It was suggested that this type of “liability” to the individual signing the application would help insure that proper care was taken in the application’s filing.

ADRE RESPONSE:

In my discussions with the Department it was felt that the use of an Affidavit signed by a **Principal** of the applicant, Corporation, Partnership, Limited Liability Company, etc., certifying that the application is correct in all respects and/or that the promised improvements have been installed according to the application as filed with the Department had merit. If an application for Public Report were accompanied by such an Affidavit, the Department could then move forward to issue the Public Report immediately. The Department would reserve the right to audit any applications. If the statements in the Affidavit were found to be false or incorrect, the Department could still pursue the appropriate remedies they currently utilize. In addition, the Department could take disciplinary action against the individual who signed the Affidavit if that became the appropriate course of action. It was noted that honest and legitimate mistakes are made, and that under this program, the Department would reserve their rights to have the Applicant make corrections or rescissions, prior to going to enforcement, however, it was felt that the concept of having a **Principal** sign the application would give the Department the comfort they need to implement this program and ensure themselves that “low level” managers or designees are not responsible parties for purposes of the Subdivision Public Report application under this program. It was also discussed that this idea and the “pilot program” mentioned under “Administrative Changes” on page one of this response could be implemented as part of the same program.