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COUNCIL CONSIDERS CONDOMINIUM CONVERSION POLICY

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Berkeley's City Council is in the midst of a far-reaching policy debate about condominium conversion. The law has changed recently such that some conversions of rental property are now allowed, but the debate is far from over. The outcome will make major changes in Berkeley's housing landscape over the coming years. As always in the case of government regulation, there will be winners and losers.

The prevailing progressive wisdom, up until 2005, was that condominium conversion should not be allowed because conversions would reduce the stock of rental housing. In the old days, before Costa-Hawkins, all rental housing was firmly rent controlled. By 1990 rents in Berkeley were lower than rents anywhere in the Bay Area. All rental housing in Berkeley could therefore be thought of as "affordable housing". Reducing the stock of rental housing through condominium conversions, it was believed, would therefore reduce the number of rental units available to lower income households. Allowing reductions in the rental housing stock violated the prevailing wisdom, which assumed that homebuyers could take care of themselves but that renters needed the City's help. Condominium conversion was therefore prohibited.

But with rents and therefore property values artificially depressed by rent control, because restrictive rent control had caused the rental market to become so tight that the vacancy rate was near zero, and because the creation of condominiums was prohibited, adventuresome lower and middle-income people began in the 1980s to buy and occupy rental property under tenants-in-common arrangements. A "TIC", as these properties soon came to be known, is an arrangement whereby several people pool their resources to convert property to owner-occupant use more informally than through condominium conversion. This movement developed considerable momentum through the 1980s. It seemed clear that, in another decade or so, a significant proportion of well-located rental property in Berkeley might be converted to TICs. So the City, following its progressive wisdom, in 1992 prohibited additional TIC creation for properties with four and more units, at the same time reaffirming that condominium conversions were still prohibited.

The TIC prohibition was accompanied by a program of disinformation. Focusing on the disadvantageous aspects of TICs (joint mortgages, principally), the City said that TICs were unwieldy, even dangerous, and that buyers should be protected from being lured into

participation. TIC conversions were to be prohibited, it was said, so as to protect unwary buyers from getting into a mess. Real estate professionals were told that they must warn prospective buyers about the dangers of TIC arrangements. There were forms to distribute and penalties for non-compliance. This program made quite an impact. TICs came under a dark cloud.

But having made it out that TICs were dangerous and contrary to public policy, the City got itself in a jam with the owners who had converted to TICs during the 1980s and before the passage of prohibition in 1992. These owners, a tiny but articulate minority, lobbied for, and eventually received, permission to convert their properties to condominiums, the more appropriate conversion option according to the City. So during the remaining years of the 1990s there were no new TICs and no conversion of rental property to condominiums, but most of the pre-1992 TIC properties were converted to condominiums. Also allowed to convert during that decade were two homes on one lot, golden duplex properties, and family-occupied properties.

Meanwhile, the underlying premise had changed. The State of California in 1995 passed the Costa-Hawkins Act, which meant that, gradually, the old, controlled rents would disappear. No longer could the progressives count on rent control to provide a pool of affordable housing. A decade later, by 2005, rents were at or close to market for roughly 75% of the rental units in Berkeley. This being so, these units could no longer be considered “affordable housing”. In time, none of Berkeley’s rental units will be rent controlled in the old sense. The City has therefore redoubled its efforts to create and preserve affordable housing by subsidizing the creation of permanently affordable housing through the efforts of non-profit housing suppliers, principally RCD (Resources for Community Development) and AHA (Affordable Housing Associates).

But the City soon ran out of money for these projects. Federal funds for housing initiatives also have dried up. By mid-2005, the Affordable Housing Trust Fund, the source of funds for these projects, was empty.

Meanwhile, a 2004 San Francisco lawsuit resulted in what is known as “the Tom decision”, a ruling that cities cannot prohibit tenant-in-common ownership. So the City planners were faced with the prospect that rental property would be sold to owner occupants as TICs, since the City’s 1992 prohibition ordinance no longer held water.

Steve Barton, the head of the Housing Department at that time, put two and two together and devised a new strategy. Since rent control could no longer be relied upon to provide affordable housing, the City would continue to develop permanently affordable housing in partnership with the non-profits. Since TICs could no longer be prohibited, condominium conversions would be allowed, hopefully stemming a flood of TIC conversions. Since condominiums are worth more than TICs, and far more than rental property, the City would place a tax on conversions, with the proceeds going into the Affordable Housing Trust Fund.

It was brilliant, really. A win-win of sorts. Property owners would be allowed to convert their property to condominiums, but the City would receive a cut, with which it would create affordable housing projects. At the initial limit of 100 units per year and at the initial tax rate of

12.5% on sale prices, the plan was projected to generate something like \$4,000,000 to \$5,000,000 per year for the Affordable Housing Trust Fund – a significant sum by any standard. Leveraged with other funds, this might allow the creation of 50 to 100 affordable units per year. In time, it could be expected that Berkeley would have enough affordable housing for its lower income citizens.

But the devil is in the details. The topic has become highly political. There is no solid consensus among Council members about how these policies should be implemented. Those on the left decry the loss of even 100 units of rental housing per year and think the tax should be higher. Those further to the right think that 12.5% may be too high and would favor conversion of more than 100 units per year. Council members are all over the map when it comes to the hot topics of exemptions from the fee and “inclusionary conversions”.

In May 2005, the Council passed the basic conversion plan. In October of that year, the Council amended the plan in minor ways. A Council workshop was scheduled for January 17, 2006, then postponed four times. As of the Spring of 2007, no conversions had been completed under the new law.