Combating Zombie Subdivisions

How Three Communities Redressed Excess Development Entitlements

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Vacant, platted lots are a common sight in the Intermountain West, where in many counties empty subdivision parcels range from 15 percent to two-thirds of all lots.

Jim Holway with Don Elliott and Anna Trentadue

Excess development entitlements and distressed subdivisions are impairing the quality of life, skewing development patterns and real estate markets, damaging ecosystems, and diminishing fiscal health in communities throughout the U.S. Intermountain West. Since the post-2007 real estate bust, which hit many parts of the region severely, eroding subdivision roads now carve up agricultural lands, and lonely "spec" houses continue to dot many rural and suburban landscapes. Some are vacant, but others are partially occupied and require the delivery of public services to remote neighborhoods that generate very little tax revenue. In jurisdictions where lots could be sold before infrastructure was completed, many people now find themselves owning a parcel in what was supposed to be a high-amenity development but is in fact little more than a paper plat.

These arrested developments—known colloquially as "zombie" subdivisions—are the living dead of the real estate market. Beset by financial or legal challenges, once-promising projects are now afflicting their environs with health and safety hazards, blight, decreased property values, threats to municipal finance, overcommitted natural resources, fragmented development patterns, and other distortions in local real estate markets.

This article presents an overview of the economic context that fostered so many excess entitlements in the West and of the local planning and development controls that influence how those market forces play out in a given community. It

also describes how three communities in the Intermountain West have redesigned distressed subdivisions in their jurisdictions and how those efforts are facilitating recovery, creating more sustainable growth scenarios, improving property values, and conserving land and wildlife habitat.

The Economic Background that Fostered Excess Development in the West

In the Intermountain West, where land is abundant, and rapid growth is common, it's not unusual for local governments to grant development entitlements well in advance of market demand for housing. Boom and bust cycles aren't rare in the region either. The magnitude of the Great Recession, however, amplified the frequency of excess entitlements and exacerbated their harmfulness to surrounding communities. In the Intermountain West alone, millions of vacant lots are entitled. Across a large number of the region's counties, the rate of vacant subdivision parcels ranges from around 15 percent to two-thirds of all lots (tables 1 and 2).

As the economy continues to recover, will the market correct this surplus of development rights, incentivizing developers to build out distressed subdivisions or to redesign those that do not reflect current market demand? In some locations, yes; in others, it is unlikely. Subdivisions are designed to be near-permanent divisions of land. Although many areas throughout the Intermountain West are rebounding robustly, many subdivisions remain distressed, with expired development assurances, few if any residents, fragmented ownership, partially completed or deteriorating infrastructure improvements, and weak or nonexistent mechanisms to maintain new services. Uncorrected, these arrested developments will continue to debilitate the fiscal health and quality of life in affected areas.

TABLE 1
Selected Colorado Counties—Vacant Subdivision Lots in 2012
(includes incorporated and unincorporated areas)

County	Number of Subdivisions	Parcels in Subdivisions	Developed Parcels in Subdivisions	Undeveloped Parcels in Subdivisions	Percent Undeveloped
Douglas	548	59,904	51,258	8,646	14%
Eagle	1,434	19,363	13,296	6,067	31%
Garfield	822	17,271	14,388	2,883	17%
Mesa	2,900	52,871	46,478	6,393	12%
Montrose	2,570	15,945	11,713	4,232	27%

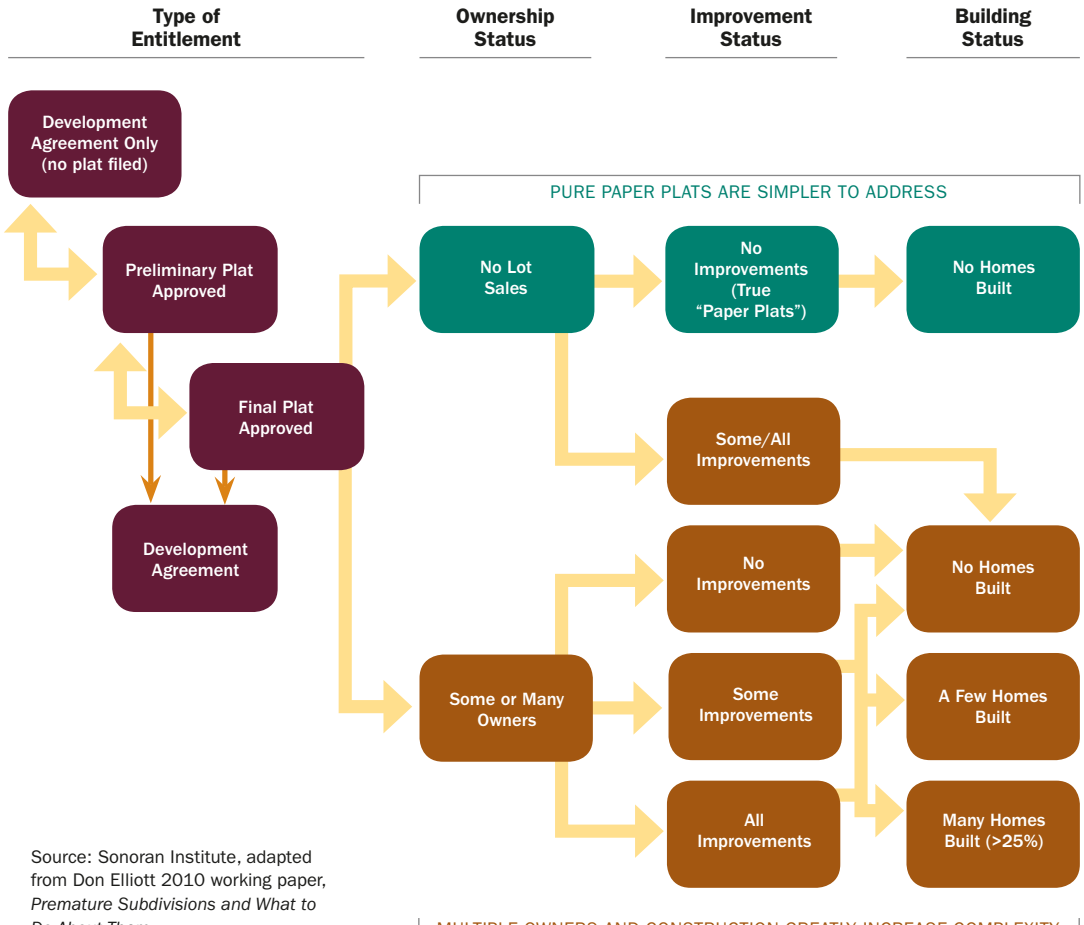
Source: Sonoran Institute

TABLE 2
Selected Northern Intermountain West Counties—Vacant Subdivision Lots in 2012

County, State	2000–2010 Growth	2010 Population	Number of Subdivisions	Parcels in Subdivisions	Developed Parcels in Subdivisions	Undeveloped Parcels in Subdivisions	Percent Undeveloped
Ada County, ID	30.40	392,365	5,460	151,319	127,451	23,868	16%
Jefferson County, ID	36.50	26,140	321	6,331	2,939	3,392	54%
Teton County, ID	69.50	10,170	403	10,225	3,300	6,925	68%
Lake County, MT	8.45	28,746	540	12,583	4,356	8,227	65%
Missoula County, MT	14.09	109,299	1,876	32,470	27,028	5,442	17%
Yellowstone County, MT	14.39	147,972	1,946	82,173	46,396	35,777	44%
Laramie County, WY	12.4	91,738	1,378	36,134	28,681	7,453	21%
Lincoln County, WY	24.2	18,106	367	5,663	2,356	3,307	58%
Sheridan County, WY	9.6	29,116	314	3,912	2,601	1,311	34%

Source: Sonoran Institute

FIGURE 1
Land Subdivision Process



Source: Sonoran Institute, adapted from Don Elliott 2010 working paper, *Premature Subdivisions and What to Do About Them*

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The Complexity of Revising Development Entitlements

Local jurisdictions shape the future of their communities through the entitlement of land, the approval of subdivisions, and the granting of subsequent development permits. These actions result in land use commitments that prove difficult to change in the future, establish development standards, and often commit the community to significant, long-term service costs.

Figure 1 demonstrates that excess entitlements are easiest to address when they're purely paper subdivisions—with one owner, no improvements, no lots sold, and no houses built. As the status of a subdivision progresses from a paper plat to a partially built development—and more than a few landowners are involved, or the subdivider has begun to install improvements, or more than a few owners have built homes—the challenges grow more complex, and the options for resolving them more constrained.

The revision or revocation of a paper plat requires the agreement of only a single property owner who hasn't made any major investments that might constrain the ability to alter design plans, allowing for the simplest resolutions (though the situation becomes more complicated if a lender must also approve any changes). The sale of even one lot to an individual landowner makes entitlement issues in the subdivision harder to resolve for three major legal reasons: (1) the need to protect the property rights of lot owners, (2) the need to preserve access to sold lots, and (3) pressure for equal treatment between current and potential future homeowners. Some of these issues can give rise to lawsuits, creating potential liability for the

town or county. The revision or revocation of a plat with sold lots will require the agreement of multiple owners—each of whom may decide to file a lawsuit on one or more of these grounds.

Once the developer makes significant investments for infrastructure and other improvements, complications escalate. Although the purchase of land does not in itself create a "vested right" to complete the development, once an owner invests in improvements to serve anticipated houses, it is difficult to stop construction of those homes without reimbursing the developer for the cost of infrastructure.

Completed homes—particularly if a number of them are already occupied—further compound the complexity of resolving distressed subdivisions. Access roads will need to be retained and maintained, even if the homes are widely scattered in inefficient patterns. If the developer committed to building a golf course, park, or other community facilities, individual lot owners could claim a right to those amenities—whether or not they have been built, and whether or not the associations slated to upkeep them exist or have enough members to perform the maintenance. Even if the developer was clearly responsible for constructing the amenities, the local government could become liable for them if it has prevented the developer from building the amenities by vacating parts of the plat where those amenities were to be built.

Larger subdivisions split into several phases at various stages of completion pose the most intricate and extensive challenges. The first phases of construction may be mostly sold lots with most infrastructure in place, but later phases may be mere paper plats—unbuilt, with no lots sold and no improvements in place. Thus, a single distressed subdivision may pose several types of legal entitlement issues, with varying levels of risk and potential liability, in different corners of the development.

How Three Communities Successfully Redesigned Excess Entitlements

Local governments seeking to remedy the potential negative impacts of excess development entitlements and distressed subdivisions have many different land use and zoning measures at their disposal. We identified 48 tools and 12 best practices as a result of our research, which draws on case studies, lessons shared by experts during several workshops, data analysis, and a survey of planners, developers, and landowners in the Intermountain West. (For the scope of preventive and treatment strategies, consult the full Policy Focus Report, *Arrested Developments: Combating Zombie Subdivisions and Other Excess Entitlements*, p. 30). Generally, they fall into four

Distressed subdivisions are hardest to treat once construction begins.

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Signs of trouble: deteriorating billboards advertise a forsaken development project in Mesa County, Colorado

categories: economic incentives, purchase of land or development rights, growth management programs, and development regulations:

1. **Economic incentives**—such as targeted infrastructure investments, fee waivers, and regulatory streamlining—avoid controversial regulations.
2. **Purchase of land or development rights** is the most direct way to eliminate unwanted development entitlements, but it may be too costly for some communities.
3. **Growth management approaches** include relying on urban service area boundaries or adequate public facility requirements to limit new development entitlements.
4. **Development regulations** include rezoning, changes in subdivision ordinances and development assurances, initiation of plat vacating processes, and revised development agreement templates.

The following three case study communities primarily utilized development regulations. Mesa County in Colorado and Teton County in Idaho revised their development agreements to redesign local distressed subdivisions. All three jurisdictions, including the city of Maricopa in Arizona, facilitated voluntary replatting efforts as well.

How Mesa County, Colorado, Revised Its Development Approval Process and Abandoned Paper Plats

During the oil shale boom and bust of the 1980s, Mesa County, Colorado, was one of the regions hit hardest. When ExxonMobil ceased operations in the area, the population of Grand Junction, the county seat, plummeted by 15,000 people overnight. All development halted. In the bust's wake, more than 400 subdivisions, encompassing about 4,000 lots throughout the county, were abandoned. Nearly 20 percent of Mesa County's subdivisions were left with unfulfilled development improvement agreements.

When the county's bond rating dropped in 1988, it put several measures in place to clean up the excess entitlements. It negotiated with local banks and the development community to establish a development improvements agreement form and procedure. It also established a new financial guarantee called the "Subdivision Disbursement Agreement" between construction lenders and the county. The agreement puts the county in a direct partnership with financial institutions to ensure, 1) an agreed-upon construction budget, 2) an established timeline for construction of the improvements, 3) an agreed-upon process, involving field inspections during construction, for releasing loan funds to developers, and 4) the county's commitment to accept a developer's improvements, after certain conditions have been met, and to release the developer from the financial security.

It took Mesa County 15 years to fully address the excess entitlements stemming from the 1980s bust, but the work paid off: During the Great Recession, the county had the lowest ratio of vacant subdivision parcels to total subdivision lots among approximately 50 counties examined in the Intermountain West. Not a single developer backed out of a development agreement when only partial improvements were made. While some subdivisions remain vacant, all improvements have been completed to the point that the parcels will be ready for construction once they are sold.

River Canyon (figure 2), for example, was planned as a 38-lot subdivision on 192 acres. When the real estate bubble burst in 2008, the entire site had been lightly graded with roads cut, but no other improvements were complete,

and no parcels had been sold. Realizing the lots would not be viable in the near-term, the developer worked with the county to replat the subdivision into one parent lot until the owner is ready to apply for subdivision review again.

The resolution is a win-win: The county escapes a contract with a developer in default and avoids the sale of lots to multiple owners with whom it would be difficult to coordinate construction of subdivision improvements. The developer avoids the cost of installing services and paying taxes on vacant property zoned for residential development.

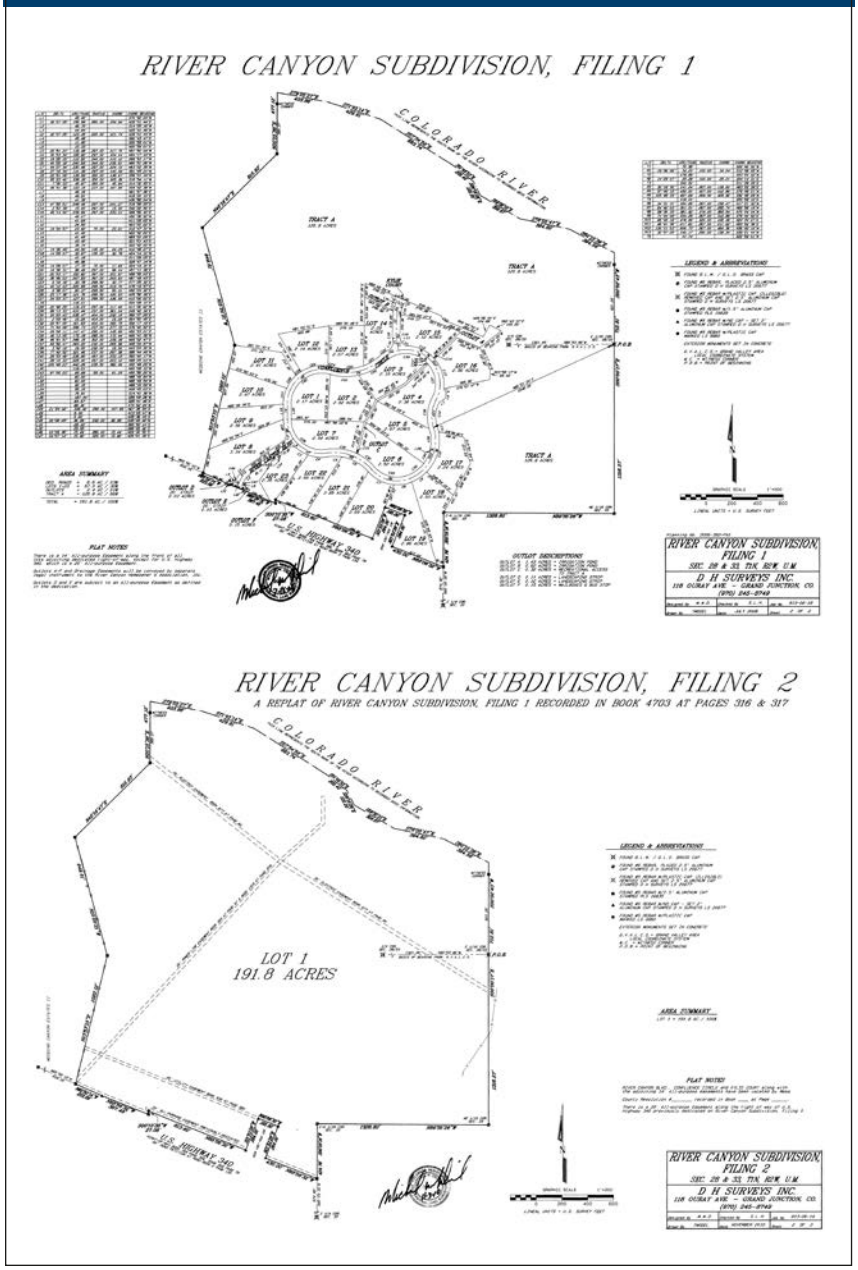
Now, lenders in Mesa County often encourage the consolidation of platted lots, because many banks will not lend money or extend the time on construction loans without a certain percentage of presales validating the asset as a solid investment. The landowner generally complies as well, to avoid paying taxes on vacant residential property, which carries the second highest tax rate in Colorado. If market demand picks up, property owners may submit the same subdivision plans to the county for review, to ensure compliance with current regulations. If the plans still comply, the developer can proceed from that point in the subdivision process. Mesa County consolidated parcels this way a total of seven times from 2008 to 2012, to eliminate lots where no residential construction is anticipated in the near future.

How Maricopa, Arizona, Partnered to Convert Distressed Parcels to Nonresidential Uses

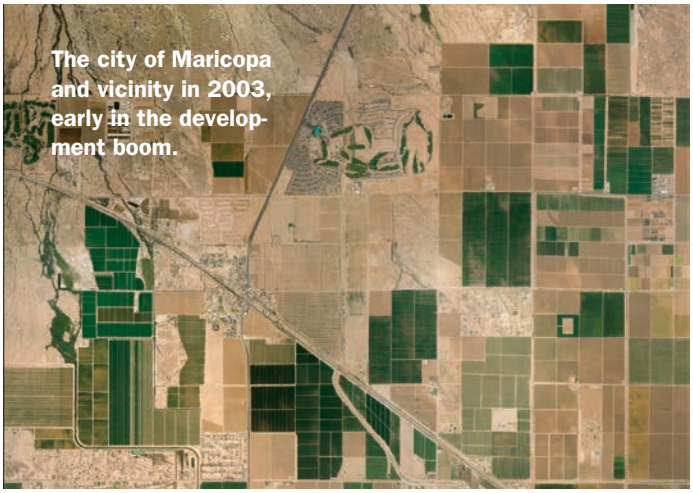
Maricopa—incorporated in 2003, in the early years of Arizona's real estate boom—is typical of many new exurban communities within growing metropolitan regions. Faced with an influx of new residents "driving until they qualified," the community quickly committed the majority of available land to residential subdivision entitlements. At the height of the boom, the small city—37 miles from downtown Phoenix and 20 miles from the urbanizing edge of the Phoenix metro area—was issuing roughly 600 residential building permits per month.

Pinal County had approved many of Maricopa's residential subdivisions before the city was incorporated, in accordance with the county's 1967 zoning code. In fact, following standard practice for newly incorporated communities, the city initially adopted the Pinal County Zoning Ordinance. For a time, the county planning and zoning commission also continued to serve as the city's planning oversight body. But this older rural county code did not consider or create incentives for mixed-use development, areas with a downtown character, a balance between jobs and housing, institutional uses, or social services. The lack of diversity

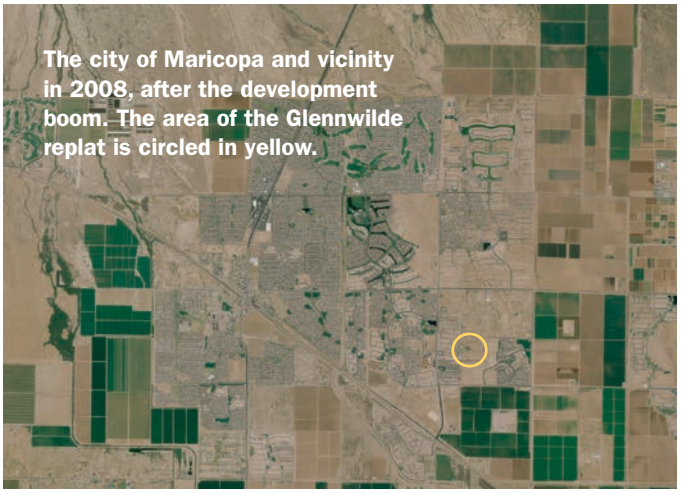
FIGURE 2
River Canyon Original Filing & Vacating Replat



Source: Mesa County, Colorado



The city of Maricopa and vicinity in 2003, early in the development boom.



The city of Maricopa and vicinity in 2008, after the development boom. The area of the Glennwilde replat is circled in yellow.

resulted in a shortage of retail and service use areas and a scarcity of designated areas for nonprofits such as churches, private schools, daycare, counseling, and health services. As new residents looked for public services and local jobs, this dearth of land for employment and public facilities became increasingly problematic.

Eroding subdivision roads carve up agricultural lands, and lonely "spec" houses dot many rural and suburban landscapes. Some are vacant, but others are partially occupied and require the delivery of public services to remote neighborhoods that generate very little tax revenue.

When the Great Recession hit and the housing bust occurred, supply overran demand for residential lots, and many became distressed. Maricopa faced this challenge and seized the opportunity to re-examine its growth patterns and address the multiple distressed subdivisions plaguing the community.

The city chose to partner with the private sector—including developers, banks, bonding agencies, and other government agencies—to address distressed subdivisions and the lack of institutional and public land uses. The first test of this new approach began when a Catholic congregation was looking for a church site in an urban location with existing sewage, water, and other necessary infrastructure. The city of Maricopa served as a facilitator to connect the church with the developers of Glennwilde, a partially built, distressed development. The church chose a site in a late phase of the subdivision—at that point still a paper plat. The city vacated the plat for that site and returned it to one large parcel, which the Glennwilde developer then sold to the church.

Construction has not yet begun, but the project has served as a model for other arrested developments. The collaborative effort among the city, owners of currently distressed subdivisions, and other interested parties has also inspired approved proposals for a Church of Latter Day Saints stake center, a civic center, a regional park, and a multigenerational facility throughout the city.

How Teton County, Idaho, Demanded Plat Redesign, Vacation, or Replatting

Rural, unincorporated Teton County, Idaho—with an estimated year-round population of 10,170—has a total of 9,031 platted lots, and 6,778 are vacant. Even if the county's annual growth rate returned to 6 percent, where it hovered between 2000 and 2008, this inventory of lots reflects a stockpile adequate to accommodate growth for approximately the next 70 years. This extreme surplus of entitlements —with three vacant entitled lots for every developed lot in the county—stems from three poor decisions the board of commissioners made from 2003 to 2005.

First, the county adopted a quick and easy process for landowners to request the right to up-zone their properties from 20-acre lots to 2.5-acre lots. None of these zone changes were granted in tandem with a concurrent development proposal; virtually all were granted for future speculative development. It was not uncommon for the county to up-zone hundreds

of acres in a single night of public hearings; the agenda for one meeting could include up to ten subdivision applications.

Second, the county's *Guide for Development 2004–2010* called for aggressive growth, with a focus on residential construction to drive economic development. The goals and objectives, however, were vague, and the plan failed to specify the type and location of projects. Discredited by the community, the document was ultimately ignored during the approvals process and fostered explosive, random development, resulting in six years of land use decisions made without any coherent strategy.

Third, the Board of County Commissioners adopted a Planned United Development (PUD) ordinance with density bonuses in 2005. Under the PUD cluster development provisions, developers could exceed the underlying zoning entitlements by as much as 1,900 percent. Typical PUD density bonuses for good design range between 10 and 20 percent. Now areas with a central water system that were zoned for 20-acre zoning—with 5 units per 100 acres—could be entitled with up to 100 units. In addition, Teton County's PUD and subdivision regulations allowed the sale of lots before infrastructure installment, which provided a huge incentive for speculative development.

After the 2008 market crash, some owners of incomplete developments began looking for ways to restructure their distressed subdivisions. In 2010, Targhee Hill Estates approached the county with a proposal to replat their partially built resort (figure 3). At the time, however, there was no local ordinance, state statute, or legal process that would permit the replatting of an expired development.

The Teton County Valley Advocates for Responsible Development (VARD) stepped in and petitioned the county to create a process to encourage the redesign of distressed subdivisions and facilitate replatting. VARD realized that a plat redesign could reduce intrusion into sensitive natural areas of the county, reduce governmental costs associated with scattered development, and potentially reduce the number of vacant lots by working with landowners and developers to expedite changes to recorded plats.

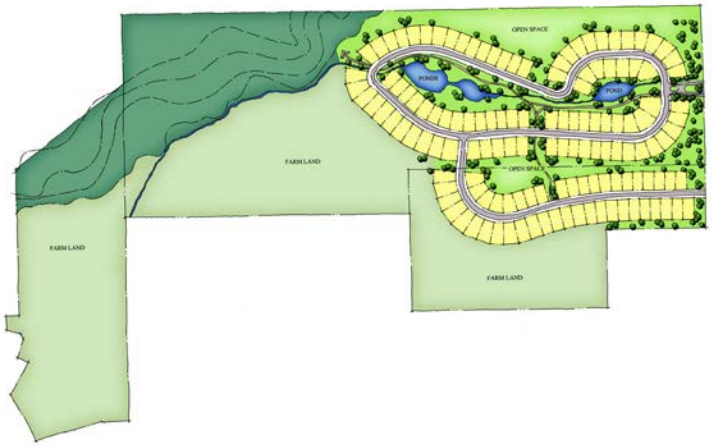
On November 22, 2010, the Board of County Commissioners unanimously adopted a replatting ordinance that would allow the inexpensive and quick replatting of subdivisions, PUDs, and recorded development agreements. The ordinance created a solution-oriented

An arrested development succumbs to blight in Teton County, Idaho.

FIGURE 3
Teton County—Replat of Targhee Hill Estates

Entrance to Targhee Hill Estates

Original Sketch Plan



Prelimary Replat

Sources (top to bottom): Anna Trendadue, Valley Advocates for Responsible Development; Land Equity Partners; Land Equity Partners

process that allows Teton County to work with developers, landowners, lenders, and other stakeholders to untangle complicated projects with multiple ownership interests and oftentimes millions of dollars in infrastructure.

The ordinance first classifies the extent of any changes proposed by a replat into four categories: 1) major increase in scale and impact, 2) minor increase in scale and impact, 3) major decrease in scale and impact, 4) minor decrease in scale and impact. Any increases in impact may require additional public hearings and studies, whereas these requirements and agency review are waived (where possible) for decreases in impact. In addition, the ordinance waives the unnecessary duplication of studies and analyses that may have been required as part of the initial plat application and approval. Teton County also waived its fees for processing replat applications.

The first success story was the replatting of Canyon Creek Ranch Planned Unit Development, finalized in June 2013. More than 23 miles from city services, Canyon Creek Ranch was originally approved in 2009 as a 350-lot ranch-style resort on roughly 2,700 acres including approximately 25 commercial lots, a horse arena, and a lodge. After extensive negotiations between the Canyon Creek development team and the Teton County Planning Commission staff, the developer proposed a replat that dramatically scaled back the footprint and impact of this project to include only 21 lots over the 2,700 acre property. For the developer, this new design reduces the price tag for infrastructure by 97 percent, from $24 million to roughly $800,000, enabling the property to remain in the conservation reserve program and creating a source of revenue on it while reducing the property tax liability. The reduced scale and impact of this new design will help preserve this critical habitat and maintain the rural landscape, which is a public benefit to the general community.

Conclusion

While recovery from the most recent boom and bust cycle is nearly complete in some areas of the country, other communities will be impacted by vacant lots and distressed subdivisions well into the future. Future real estate booms will also inevitably

Photo: © Anna Trentadue

Mountain Legends in Driggs, Idaho, was planned as a 114-lot vacation home PUD. Through the use of Teton County's newly adopted replatting and plat vacation ordinances, the paper plat was vacated and returned to farmland.

result in new busts, and vulnerable communities can build a solid foundation of policies, laws, and programs now to minimize new problems stemming from the excess entitlement of land. Communities and others involved in real estate development would be well-served by ensuring they have mechanisms in place to adapt and adjust to evolving market conditions. For jurisdictions already struggling with distressed subdivisions, a willingness to reconsider past approvals and projects and to acknowledge problems is an essential ingredient to success. Communities that are able to serve as effective facilitators as well as regulators, as demonstrated in the case studies presented here, will be best prepared to prevent and then respond and treat distressed subdivisions and any problems that may arise from excess development entitlements.

For More Tools and Recommendations

This article was adapted from a new Policy Focus Report from the Lincoln Institute, Arrested Developments: Combating Zombie Subdivisions and Other Excess Entitlements *(p. 30), by Jim Holway with Don Elliott and Anna Trentadue. For more detailed information—including best practices, policy recommendations, and a how-to guide for communities dealing with excess entitlements—download the full Policy Focus Report or order a print copy* (www.lincolninst.edu/pubs). *Additional information is available on the companion website* (www.ReshapingDevelopment.org).

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