

**DENVER BOARD OF REALTORS®**  
**LAND USE POLICY**  
*General Statement of Position*  
*Concerning*  
*Local Land Use-Related Issues*

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**INTRODUCTION**

The Denver Board of REALTORS® (DBR), founded in 1888, is a non-profit trade association that represents approximately 2,400 residential REALTORS® and Affiliate members in the Denver area. The term REALTORS® is a registered collective membership mark that identifies a real estate professional who is a member of the National Association of REALTORS® and the Colorado Association of REALTORS® and subscribes to its strict Code of Ethics.

DBR's mission statement is to "create an environment for real estate-related participants to interact and succeed with professionalism and integrity."

DBR has prepared this paper to state its position on a number of growing public policy issues unique to local governments in the metro-Denver community and parts of the Front Range. It will serve as a guide for DBR in responding to legislative action taken by local governments on a gamut of issues – primarily, those of a housing, economic development, land-use, tax and brownfields nature. This is our general position, but it is our intent that it remains flexible enough to adjust to the changing environment.

**HOUSING**

As an Association, we reaffirm the goal of "a decent home and a suitable living environment for every family." This commitment, which also needs to be raised to the highest level of local priorities, encompasses the entire housing ladder from the homeless to the renter to the first-time homebuyer to the homebuyer in general. To that end, we encourage the development of housing for the workforce population within close proximity to employment centers. DBR recognizes the housing needs that are present among low-income households and renters and we also recognize that these are the very families who will eventually become homeowners. Our goal is to encourage homeownership opportunities and we urge that any local housing policy address in its major elements both rental assistance programs and programs to alleviate the growing problems facing first-time homebuyers, thus assisting citizens to move up the housing ladder. Moreover, while some public assistance must be part of any government housing policy, we strongly endorse the reliance on national, state, and local initiatives and public private partnerships.

**Housing for Low and Moderate Income Occupants**

DBR encourages the continued examination of the level and types of efforts within the public and private sector that are currently being utilized or contemplated to respond to the needs of the low- and moderate-income housing occupants.

\* We believe that housing for low- and moderate-income rental occupants is best managed by the private sector.

\* We support affordable housing programs that allow developer flexibility either by developing housing or contributing to a Housing Trust Fund, in lieu of developing housing.

\* We support affordable housing programs that provide incentives -- density bonuses, tax incentives, tax credits, etc.-- to assist in the developing of affordable housing units.

\* We encourage utility companies to provide assistance in the building of infrastructure, including deferred water and sewer taps, and in providing services.

***Rent Control*** - DBR supports the concept of affordable housing and defend the right of Americans to own property free of unreasonable controls. We therefore urge elected officials at all levels of government to oppose the adoption of rent control legislation and the use of government funds to finance rent control advocacy.

Rent control negatively affects the housing inventory by hastening the deterioration and loss of existing housing while discouraging the construction of new housing. By lowering the value of rental property, rent control affects a community's tax base by causing a disproportionate shift of tax burden to other real estate and potentially curtails vital municipal services. The expense of complying with rent control laws and regulations inevitably increases the cost of housing to the consumer and the expense of enforcing rent controls add to the cost of local government. Communities that have discouraged investment in new rental housing because of rent control should not be eligible for federal, state, or locally-assisted rental housing programs.

***Rental Housing*** - DBR recognizes the need in this nation to produce new affordable rental housing and preserve the current rental housing stock through recycling and renovation. We call on all levels of government to meet this demand by removing disincentives to the financing, production and improvement of rental housing for citizens of all income levels.

\*Local rent control ordinances, local moratoria on converting rental property to condominiums or cooperatives, costly and administratively burdensome regulations and restrictions are all examples of disincentives to initial investment in rental projects.

\*Owners of rental property should provide safe and decent housing for the needs of their rental occupants; rental occupants must recognize and accept their legal responsibility to maintain and care for the property and safety of their fellow occupants. The rights given each party under basic contract law should be enforced.

\*We encourage and support legislation as well as legal measures to prevent landlord-tenant ordinances injurious to the basic rights of private property ownership.

### **Equal Opportunity**

DBR subscribes to the policy of fair housing; we believe that equal opportunity in housing can best be achieved through continued leadership, observance of law, education and mutual cooperation of the real estate industry and the public through a free and open housing market. The Federal Fair Housing Law provides for the right of all people to freely choose where they will live without regard to race, color, religion, sex, handicap, familial status or national origin.

## **LAND USE/ZONING**

DBR believes in the fundamental right of all private property owners to determine the highest and best use of their land, working through appropriate governmental entities and in concert with the comprehensive plan for a specific area.

Programs of resource, land and historic preservation designed to protect aquifers, agricultural lands, wetlands, scenic vistas, natural areas, historic properties and open space, may have a positive effect on the quality of life and environment in towns, counties, and municipalities; however, they must be judged on an individual basis according to environment and situation at a given time. Land use laws and regulations enacted for the purpose of protecting and enhancing these resources provide benefits to the general public and the costs should thus be borne by the general public. (See Property Rights section).

Local governments should minimize their involvement in land use decisions and not withhold government grants, programs, and permits to enforce their policies.

Planning for the classification and use of land must adequately consider the needs of housing, agricultural, commercial and industrial growth, as well as quality of life and a healthy local economy. Land use planning should also take into account the impact of planning on housing affordability.

### **Subdivision Regulations/Design Guidelines**

Local governments should minimize their involvement in land use decisions and allow market-driven approaches that foster policies that encourage a wide-range of commercial and residential development. We support the evolution of planning, zoning, and subdivision regulations and design guidelines and laws that accommodate mixed-use development, higher densities in urban centers and transportation corridors, and changing growth patterns. To that end, we have articulated our general position relative to the following legislative actions. There may be times, however, when it is appropriate for DBR to consider special circumstances, which may warrant a modification in our position.

***Design Guidelines*** - Design guidelines lend predictability to the development process; however, design guidelines should be developed in concert with the housing and development community, as to reflect the housing and market environment at that time. Design guidelines should accommodate mixed-use development, higher densities in urban centers and transportation corridors, and changing growth patterns. They should not unfairly burden the developer with time, regulation and cost.

Design guidelines for in-fill and rehabilitation projects should take into consideration and respect the surrounding neighborhoods.

When a plan is submitted to a planning department that meets the existing regulations as required by zoning, subdivision and/or design guideline requirements, we would not support the imposition of additional requirements that overly burdens the developer.

***Open Space*** - We support open space and believe that reasonable open space requirements should be driven by developable land and the ability to offset the costs of such open space by development. We also believe that open space requirements specific to residential properties should be reasonable and not deter development and redevelopment. We believe there should be an appeals process by which special circumstances allow for special review and consideration.

***Massing and Height Restrictions*** - We support reasonable restrictions on massing and height of development, which respects the character of a neighborhood. However, with respect to urban

centers and transportation corridors, increased density to accommodate mixed-use projects should be permitted. There should be an appeals process by which special circumstances allow for special review and consideration. We would not support any additional restrictions beyond what is already provided for a property by its existing setback, massing, bulk plane, and open space requirements -- as stipulated by zoning and other guidelines.

***Density*** - We believe the goal of any urban center should be in-fill growth/density. Therefore, we support increased density, where compatible, and less height restrictions to accommodate mixed-use projects and housing. We support the maximum allowable use per the existing zoning regulations when the property was acquired.

***Mountain View Planes*** - We do not support the use of Mountain View Planes, when retroactively applied, because it changes the existing density and use allowed for a particular property. We would entertain support of a Mountain View Plane if compensation for the loss in value, due to the changes in density and use, was provided.

***Landscape/Tree Preservation*** - We encourage property owners to make reasonable efforts to save healthy and mature landscaping, when practical. If not practical, we encourage the replacement of appropriate landscaping. We do not support mandatory requirements requiring landscape preservation.

***Materials Requirements*** - We believe, within reason, materials should be of good quality and consistent with the area. Reasonable alternatives should be considered and allowed where possible. We would not support further mandatory requirements guiding materials.

***Downzonings*** - We do not support downzonings. In the event of one, all property owners in the proposed downzone area must be compensated, by the local government proposing to downzone, for the loss of value.

***Moratoria*** - We do not support the use of moratoria as a legislative process. We believe moratoria should be utilized only when there is legitimate risk to the life and safety of the public. We support public input processes, which afford due process and an opportunity to craft more permanent solutions to specific problems. Local governments should take into consideration the views and concerns of the property owners in the impacted area, when considering any moratorium.

### **Private Property Rights**

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and 14th Amendments of the United States Constitution.

We support legislative implementation of the 5th Amendment's guarantee of compensation when property rights are taken. Every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action without just compensation or the owner's express consent.

We recognize the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. However, when government actions or regulations are not founded within legitimate police powers, the government should be required to pay compensation for the inordinate burden

levied on the property owner. In the event of a condemnation of any kind, the property owner must be fairly compensated. Governmental authorities should exercise care and caution whenever condemning private property for other than public use.

In addition, we support legislation, which will provide property owners expeditious access to administrative and judicial systems at all levels - local, state and federal - to pursue Fifth Amendment takings claims or relief from other property rights violations.

## **ECONOMIC DEVELOPMENT**

DBR believes that good economic development must balance business recruitment with the expansion and retention of existing business. To keep the Denver Metropolitan area competitive in quality of life, skilled workforce and infrastructure, DBR will support positions that encourage the following:

- Business recruitment through the Metro Denver Network as well as the various area chambers of commerce and network of regional economic development agencies.
- Transit and mass transportation systems to move the workforce from communities around the metropolitan area.
- Coordination with employers and educational institutions to train and upgrade worker skills of our growing working population.
- Promotion of the development of high-density housing units in urban areas and in transit stations and in transit corridors.

We will be advocates for public policy, which promotes better education, improves transportation, and increases the workforce housing stock.

## **SMART GROWTH**

In conjunction with economic development, DBR is supportive of "Smart Growth" in the areas of mobility, livability and affordability that will make more efficient use of the land, protect the environment, and preserve the quality of life at a reasonable level that makes the Denver metro area competitive for continued expansion and economic development.

DBR will support positions regarding the following:

- RTD and CDOT's long range plan for transit systems and improvement of highways.
- Local planning departments incorporating regional transportation into their comprehensive plans as well as open space designations and more efficient land use in commercial, mixed-use and residential, development.
- Creating awareness and assisting with procedures and guidelines to be developed by the DRCOG Policy Committee on Open Space so that a reasonable and equitable balance between open space and future development will be addressed.
- The Governors Smart Growth Agenda, Metro Vision 20/20 plan, CACI's Blueprint for Colorado, and any other agency that will further the quality of life in the Denver metro area while still promoting economic development and protecting individual property rights.

Colorado has been experiencing rapid growth. In an effort to mitigate growth-related problems, local governments in the Denver-metro area are enacting “Smart Growth” techniques. It is our opinion that homeownership is the cornerstone of the American Dream and deserves a preferred place in our system of values as it contributes to community responsibility; civic, economic, business and employment stability; family security and well being. To that end, it is our belief that in order to accommodate growth and to facilitate home ownership, while maintaining the quality of our communities, local governments should allow market-driven housing approaches to foster a wide-range of urban and suburban mixed-use developments and housing choices at all price levels to suit a diverse population. To assist communities in developing growth plans and policies that provide housing opportunities and choices, DBR supports and encourages implementation of the following objectives.

Objectives:

- The provision, in all growth management plans, of an adequate supply of land for mixed-use developments and housing at all price levels, to meet existing and forecasted housing demand in accordance with future economic and projected population growth patterns.
- Local and regional consensus-based development plans that allow for a wide range of urban and suburban mixed-use developments and housing types and choices in accordance with a market analysis reflecting an area’s diverse population needs and income levels.
- Recognition of the tradeoffs and unintended consequences, via economic impact studies and market analyses, of restrictive growth policies, such as urban growth boundaries, building moratoria, and down zonings, on housing affordability and choices. Generally, we do not support such measures.
- Reduction and elimination of local regulatory barriers to home rehabilitation, such as excessively long development review processes, in order to ensure preservation and modernization of older homes and to keep costs down.
- Evolution of planning, zoning and subdivision laws to accommodate mixed-use development, higher densities, and changing growth patterns.
- Implementation of fair and reasonable procedures to increase the level of certainty in the development and building review and permit processes.
- The formation of local/regional public-private partnerships to promote, preserve and rehabilitate existing homes and to encourage mixed-use developments and housing that offer consumers an affordable choice.
- Proper land-use planning that provides for viable transportation and infrastructure systems to ensure the efficient and effective functioning of new developments.
- Local governments, who want to purchase land in order to preserve it, must compensate the willing seller(s) based on the property’s highest and best use.

## TAXES

### ***Property Tax***

Property taxes may place an undue burden on the acquisition and ownership of real property. We support the restructuring of taxes to reduce unreasonable reliance upon property taxes.

### ***Impact Fees***

Local governments and school districts in many states have imposed impact fees on development as a way to fund capital improvements directly or indirectly attributable to the development and as a source of general revenue. The imposition of impact fees causes:

- A disproportionate increase in the cost of new construction;
- Higher costs for new construction which, in turn, results in upward pressure on the cost of existing properties;
- Urban sprawl as developers seek political jurisdictions without impact fees;
- A reduction in either the quality and/or quantity of new construction due to increasing costs;
- A disproportionate disadvantage to lower income households (i.e., impact fees are regressive).

With this in mind, DBR opposes the imposition of impact fees. Where impact fees are currently in place, we urge their repeal or reduction, but in any event:

\*Proceeds from impact fees should be segregated from other government revenues.

\*Impact fees should be used solely for capital improvements related to a specific new development.

\*Municipalities or schools should have the burden to demonstrate specific infrastructure needs as a prerequisite to assessing impact fees.

\*Credits should be given to developers to offset impact fees (e.g., from such sources as increased property tax revenues paid as a result of the development, land dedications and infrastructure work performed by the developer).

\*Impact fees should be collected only at the point the impact is realized by the local community.

### ***Tax Increment Financing***

Urban Renewal Agencies are the only entities that have statutory power to fund redevelopment through the use of Tax Increment Financing (TIF). Urban Renewal Agencies use this mechanism to eliminate blight, prevent slums and remove unsafe conditions in an effort to spur the redevelopment or development of a site. This financing mechanism utilizes an increment of property and/or sales taxes derived on-site, or within a defined area, to contribute to the funding of a specific redevelopment project. DBR recognizes that TIF works to provide a community benefit and, therefore, supports the use of it.

### **Balanced Budget**

We support the principle and concept of maintaining a balanced budget in all political jurisdictions. Balanced budgets should be maintained by reducing unnecessary expenditures, sunseting, capping and/or reducing the growth of programs and services that are not essential.

### ***Tax-Exempted Institutions***

All tax exempt institutions, including but not limited to municipal, legitimate religious, charitable and educational organizations should be required to pay for local public services received, but should maintain their real property exemption due to their positive contributions to the communities in which they reside.

In those instances where tax exempt institutions occupy only a portion of larger land holdings, those sections of the properties not directly used by the institutions should be fully taxed.

Many religious, cultural, educational, civic, fraternal institutions and the like maintain real estate holdings that do not have any direct relationship to the purpose for which the institution is established. Indeed, many such holdings are made for purely investment purposes, yet enjoy tax benefits at a cost to those who pay taxes. Such holdings should be fully taxed.

### ***Transfer Tax***

Whether as a general or earmarked revenue source, real estate transfer taxes and fees are a major burden to buyers and sellers, particularly at time of closing. Additionally, these taxes and fees have a negative impact on housing costs and, therefore, economic development. Finally, because of their extreme volatility, these taxes and fees are a particularly poor revenue source for the general operating budgets of local governments.

With this in mind, DBR opposes the establishment of transfer taxes or fees. However, where they currently exist, we urge their repeal; opposition to any increases; and/or the redirection of this revenue source to be used for one-time capital acquisitions which are related to housing or commercial property improvements (e.g., infrastructure).

## **BROWNFIELDS/ENVIRONMENTAL CONTAMINATION**

Brownfields are abandoned, idled or underused industrial or commercial property where reuse is complicated by real or perceived environmental contamination. This can include large sites and sites as small as a single city lot. Examples include former manufacturing facilities, automobile service stations, metal finishing and fabrication shops, dry cleaners, lumberyards, and commercial agricultural uses (greenhouses, horse farms, etc).

Until recently, contaminated property had no place in an investment portfolio and was purposefully avoided. The advent of stringent environmental regulations three decades ago created a legal framework that virtually removed affected properties from the marketplace. Although actual contamination at a site may have been minimal, cost and legal liabilities impeded properties from being cleaned up and reused. However, there is now a growing market niche of investors seeking these opportunistic investments.

On-site contamination, nearby contamination or just the perception of contamination negatively impacts the marketability of brownfields sites. The overarching challenge to brownfields reuse is uncertainty. These properties carry risks relating to environmental conditions, costs, time frames, and long-term liability. These sites also represent a market opportunity for redevelopment. The availability of liability relief, financing mechanisms, and land-use based cleanup standards are essential in establishing a viable market for brownfields sites as well as help to spur economic growth, setting the stage for healthy real estate markets.

In general, DBR supports:

- The Colorado Voluntary Cleanup Program and efforts to broaden and improve the program to further facilitate real estate transactions.
- The recognition by regulators and the public that risk-based cleanup standards can be an effective means of ensuring the safety of human health and the environment.
- Cleanups based on intended land use, rather than necessarily returning a site to pristine conditions, are generally more cost-effective and can improve the feasibility of redevelopment.
- State and local sponsored brownfields financing mechanisms such as tax increment financing, grants, revolving loan funds, and tax credit incentives for parties interested in brownfields sites, as well as direct public investment in support of brownfields site reuse.
- Brownfields financing mechanisms should be available to sites in all jurisdictions of the state, regardless of population or setting, i.e.- rural, urban.
- The notion that polluters' bear liability, while clarifying and strengthening liability exemptions for existing land owners who have not caused or contributed to pollution, and for purchasers who have exercised due diligence.
- Regulatory amendments that ensure that cleanups conducted under a state cleanup program preclude subsequent federal Superfund enforcement. The threat of additional intervention at the federal level must be minimized in order to entice property owners and developers to undertake development of a site.
- Providing regulatory liability protection for owners of properties contiguous to sites at which here has been a contaminant release.

## **CONCLUSION**

This paper was prepared in an effort to clearly articulate DBR's position, according to its mission, on policy and legislation. While we have taken general positions on matters ranging from housing to economic development to land-use/zoning regulation to taxes to brownfields, DBR intends for this paper to be a work in progress and flexible enough to adjust to the changing environment. It will, however, be utilized as a tool to guide DBR and its Board and Government Affairs Committee in advocating for, and against, issues that impact the Denver-metro real estate community and its members.

