

AGENDA

JOINT WORK SESSION CITY OF ASPEN PLANNING AND ZONING COMMISSIONS & PITKIN COUNTY PLANNING AND ZONING COMMISSION

**Library Meeting Room
Aspen, Colorado**

October 13, 2009

4:30 PM WORKSESSION

1. Review of the Aspen Area Community Plan update
 - a. Review of Managing Growth – Vision & Philosophy
 - b. Review of Managing Growth – Goals & Action Items

7:30 PM ADJOURN WORKSESSION

MEMORANDUM

TO: City of Aspen Planning and Zoning Commission;
Pitkin County Planning and Zoning Commission

FROM: Ben Gagnon, City Special Projects Planner
Jessica Garrow, City Long Range Planner
Ellen Sassano, County Long Range Planner

THRU: Chris Bendon, City Community Development Director
Cindy Houben, County Community Development Director

DATE OF MEMO: October 8, 2009

MEETING DATE: October 13, 2009, 4:30pm in Library Meeting Room

RE: Managing Growth & Economic Sustainability

SUMMARY: Staff is anticipating that the Planning and Zoning Commission will review the Intent/Vision and Philosophy statements for the chapter on Managing Growth and Economic Sustainability at the October 13th meeting. Staff will project these statements on a screen so we can walk through the statements and make changes as necessary. Staff will capture revisions as we go, but is hoping to avoid overly specific wordsmithing in the interest of moving forward with the process. These statements can be reviewed and revised again once we have an overall draft plan.

Staff has also drafted policies and action items for P&Z review, based on discussion to this point. Ideally, we will be able to at least begin a review of policies and action items on the 13th. As background information for the policies and action items, staff is attaching several exhibits.

OUTLINE OF EXHIBITS: Staff would like to provide a brief overview of some of the attached exhibits, which provide important background information as the P&Zs consider Policies and Action Items, time permitting.

Staff handed out a hard copy of the “Population Segments Chart” at the September 22 meeting. Staff has since revised the 2nd Homeowner Population portion of this chart by applying an 80% occupancy rate (equal to the average lodging occupancy rate in peak seasons). Although staff does not have a scientific basis for applying this rate, staff felt that assuming 100% occupancy of second homes would be fundamentally inaccurate (please see Exhibit C).

Staff has also provided a summary and comparison of several city and county regulations with regard to sloped properties, scenic reviews and riparian reviews (please see Exhibit D.) Staff has again provided its summary of other cities and towns using building permit allocation systems (please see Exhibit E).

Finally, staff is providing an overview of 11 regulatory and non-regulatory tools regarding Aspen's downtown commercial sector. This overview sums up the exploration of this issue conducted by city staff and a consultant between 2006 and 2008 (please see Exhibit F).

ATTACHMENTS:

Exhibit A: Summary of September 22 P&Zs meeting

Exhibit B: Draft Intent/Vision, Philosophy, Policies and Action Items

Exhibit C: Population Segments Chart

Exhibit D: Comparing City + County Regulations on Slopes etc.

Exhibit E: Summary of Cities + Towns with Building Permit Allocation Systems

Exhibit F: Regulatory Tools Applicable to the Commercial Sector

Exhibit A

Summary of Joint Planning and Zoning Commissions Meeting

Sister Cities Meeting Room / September 22, 2009

The following is not intended to serve as minutes, but to summarize P&Z discussion on the questions posed in the memo. The summary of P&Z responses incorporates elements of previous P&Z discussions.

Introduction Ben & Cindy introduced the subject of sub-area planning for the area west of the Maroon Creek Bridge, out to the end of the airport along Highway 82, within the Urban Growth Boundary; Cindy explained that the County has been working with citizens who live and work and/or have business interests in this area, in a series of public meetings held over the last nine months to develop a sub-area plan and future land use map to be incorporated into the AACP update. There will be a chapter in the AACP focused exclusively on planning for this area. Questions in the Staff memo to the Planning Commissioners were intended to generate discussion at a bird's eye view, regarding residential and commercial growth in this area as it relates to the overall Managing Growth & Economy intent and philosophy statements currently being drafted.

Economy & Growth as One Chapter As one Commissioner had expressed concern about combining the chapters, philosophy & intent sections of Economy & Growth, the question was raised to confirm whether or not Commissioners agreed that this approach was appropriate – All those present agreed that it was.

Questions Raised in Staff Memo P&Z discussion focused on two questions in the Staff Memo:

Question 1) Considering the mix of uses in the AABC area today, what are the most important kinds of uses and characteristics for the future?

- Affordable Housing
- Free market residential
- Service commercial small business park uses (non-retail)
- The visual and physical entrance and transition from rural to resort area
- An incubator for affordable businesses
- Part of the tourist economy (lodging, base of Buttermilk)
- A hub for public/institutional uses (airport, CMC, ACSD, RFTA, etc.)
- A potential civic center (Pitkin County)

Question 2) What is the impact of growth in the AABC area on Aspen's commercial core? Are there types of uses that will draw vitality out of the commercial core? Are there types of uses that will compliment the commercial core?

Consensus Two areas of clear consensus were reached as a result of discussion:

- ✓ A master plan is necessary for this area;
- ✓ No growth should occur here until transportation solutions are in place along this portion of Highway 82.

Points Made with Some Agreement

- ✓ The Aspen Airport Business Center and immediately surrounding area is a vital part of our community that houses businesses that can't exist elsewhere in Aspen; a Fire Station and Airport - all critical components to the Community.
- ✓ The area functions as the entrance to Aspen, and as a hub for public/institutional uses.
- ✓ The existing mix of uses (affordable housing, light industrial and commercial) works; It's a great mix that would continue to work with a little bit more (development) than exists now.
- ✓ Affordable mixed use should be part of the equation.
- ✓ Affordable lodging at the base of Buttermilk makes sense – lodging at the AABC and/or within the rest of the corridor does not.
- ✓ The AABC has never had a significant free market residential component. While there's not necessarily opposition to free market housing here (in the AABC), some level of additional affordable housing is encouraged.
- ✓ Aspen and this area should be treated as *one* for master planning, using a comprehensive strategy. They should be considered as one community with great dialogue.
- ✓ Sprawling, uncontrolled, unmitigated, haphazard growth in this area is unacceptable. There's a need to determine how much growth here is too much.

Public Comment

- ✓ Given parking and other physical constraints at the AABC, it is unlikely that new light industrial or other uses that require more physical footprint will expand here, but building *up* in the form of additional stories should be considered. The base of Buttermilk is the best option for providing the "Holiday Inn Express" (affordable to moderate) lodging in the area, as that type of lodging won't be built in the commercial core of Aspen. As this is an appropriate place for lodging, we shouldn't displace lodging potential with mitigation affordable housing at Buttermilk. As a better alternative, place affordable housing at the AABC, allowing some additional height to absorb growth, density.
- ✓ Do not promote development of a sprawling string of motels along the corridor west of Aspen.
- ✓ Agree with initial comment regarding the need to build *up* at the AABC, given physical constraints. We should review mapping and aerial photos to accurately determine potential and constraints for development in this area. Also gather as much information as possible on the economics of hotel development, as it's very hard to make hotel development of any sort (affordable to luxury) work financially.

Hand-Outs Staff handed out a table defining population segments in the Urban Growth Boundary area, for informational purposes only. Questions are welcome.

Next meeting The P&Zs will review the draft Intent and Philosophy for Managing Growth and Economic Sustainability. If there is time, Goals and Action Items drafted by Staff (as a starting point for discussion), will also be reviewed.

DRAFT VISION/INTENT

To ensure the sustainability of our genuine year-round community and a visitor-based economy by protecting and maintaining the essential elements that create a high quality of life.

DRAFT PHILOSOPHY

The architectural, social and cultural character of modern Aspen reflects a Victorian Era western mining town, a scenic Rocky Mountain landscape and the post-war foundations of skiing, summer recreation and unique cultural institutions. These are the foundations of the Aspen Area that attracted people from across the country and around the world.

During the last 25 years, our visitor-based economy has become overshadowed by the real estate and construction industry. We recognize that the Aspen Area has a dual economy today: It includes both a visitor-based economy and a development industry, and both will continue in the future. But it is our responsibility to ensure there is balance between the two, and that one does not undercut the other.

Today, we must recognize that the original pillars of our visitor-based economy remain the foundation of our high quality of life, and is the only economy that is sustainable over the long-term. Today, the responsibility of managing growth is to ensure that the development industry does not cause damage to the long-term health and stability of the visitor-based economy.

Our character must be defined by the architectural, cultural, scenic, recreational and strong environmental ethics that originally attracted us and our visitors to enjoy a high quality of life. We cannot permit this unique character to be continually eroded by the impacts of intense construction activity, or by a built environment that is out of context and out of harmony with the unique architectural heritage of a small town in the Rocky Mountains.

As we focus on the long-term sustainability of the visitor-based economy, we are aware of the extraordinary high level of loyalty shown by return visitors over the years, and we also recognize that the Aspen Area is aging. The experiences and memories of Aspen in the 1970s and '80s are the reason why many people still live here, and why so many visitors return. Today we need to lay the foundation for the next generation of irreplaceable memories, we need to cultivate the ground so that same loyalty to Aspen will take hold again in the future.

Preserving the character of the built environment is central to our philosophy of managing growth, Aspen's genuine historical heritage remains among the most powerful visual impressions we create. To compromise this character is an enduring threat to long-term sustainability. Even our most important goals -- of providing affordable housing, of replenishing the lodging base, of a lively downtown with a healthy balance of unique shops and restaurants -- should remain subservient to a built environment that respects context and heritage.

The tools for managing growth are intended to create a healthy balance among a variety of uses, so that one kind of use does not overshadow others. We also manage growth to ensure that it does not outpace the provision of necessary infrastructure that maintains both basic public services and a high quality of life.

Our roads and water system are part of infrastructure, but so are public trails, affordable housing, lodging, a lively and interesting downtown, unique restaurants, recycling programs, compelling special events, renewable energy systems and ski repair shops. Our infrastructure is everything that is necessary to maintain a high quality of life.

The Residential Sector

While some potential remains for the development of new dwelling units on existing vacant lots, the primary source of new construction in the future will be in the area of residential redevelopment. The track record in the Urban Growth Boundary shows that residential redevelopment typically means the demolition of existing homes and replacement with expanded homes that are almost always as large as current code allows.

1. Pace of Construction

History shows that the level of construction activity in the UGB follows the strength and weakness of the national economy, and recent booms have resulted in a level of construction activity that threatens the long-term sustainability of the visitor-based economy. Therefore, a program that manages the pace of construction activity is essential.

The purpose of pacing construction is to maintain a high quality of life for residents and a high quality experience for visitors by preventing traffic congestion, noise, dust, disturbances and reduction in air quality; creating a safe and enjoyable atmosphere for pedestrians and bicyclists in a community that emphasizes alternate modes of transportation and an outdoor recreational lifestyle; preventing the disruption of the visual and aesthetic character of city and county neighborhoods and the downtown area through the presence of construction trailers, heavy truck parking, construction fences, port-o-johns and disruption of landscaping.

2. Mitigation

Although both the City of Aspen and Pitkin County require mitigation for new dwelling units and residential redevelopment, the level and type of mitigation is not adequate. The Accessory Dwelling Unit (ADU) program has provided some benefit in the form of rental units that are spread out in neighborhoods, but the ratio of ADUs that are occupied by employees is too low. The payment-in-lieu option does not adequately reflect the true cost of providing deed-restricted housing, placing too high a burden on public entities to find locations, design, review and build affordable housing.

3. House Size

The built environment defines a community's character and identity. The size of homes in the UGB is out of context with the unique architectural heritage of a small town in the Rocky Mountains. If there is no reduction in allowable house sizes, the Aspen area will continue to degrade and diffuse the community's character and identity.

New limits on house size will preserve and maintain quality of life by planning for a built environment that reflects the Aspen area's historic heritage, by preserving scenic mountain views, by limiting damage to the natural environment, by limiting the public financial burden of additional infrastructure and annual local government operations, by limiting unnecessary use of resources and unnecessary future energy use, by limiting carbon footprints, by limiting construction impacts, by reducing traffic congestion and maintaining the safety and enjoyment of our outdoor lifestyle.

The Lodging Sector

During the last 10-15 years, many small- to mid-sized lodges in Aspen have converted to other uses, resulting in the loss of many economy/moderate lodges. At the same time, the market has favored the development of deluxe lodges. We must replenish our lodging base to make our visitor-based economy sustainable in the long-term.

At the same time, our primary goal is for the development or redevelopment of lodging to respect the context of the built environment and the architectural heritage of the area.

While local government should not be in the business of developing or substantially subsidizing lodge development or redevelopment, we must focus on tools that will prevent the further loss of the small to mid-sized lodges that reflect Aspen's historic character.

New lodging development or redevelopment must encourage small room sizes and limited amenities as a method of re-balancing the lodging inventory, encouraging visitors to recognize the town and surrounding areas as their primary amenity, limiting job generation and its related adverse impacts and limiting the mass and scale that high-amenity lodges require.

Different types of lodging, from deluxe to moderate and economy, should not be separated into different location in the UGB. Lodging should integrate a mixture of different types of inventory.

The Retail Sector

While many resort areas are dominated by the presence of chain stores and formula restaurants, downtown Aspen still maintains a wide range of retail stores and restaurants that are unique to the Aspen area. This uniqueness is an asset that must be encouraged and supported.

At the same time, the strong influence of high land costs and lease rates have limited the opportunities for a wide range of merchants to open a business here, and have contributed to an unmistakable shift towards exclusivity in the retail sector during the past 10-15 years. This shift has altered the character and identity of the downtown.

High-profile locations in the downtown have converted from restaurants to retail uses that are no longer frequented by local residents, while also reducing vitality in a visitor-based economy. The number of restaurants and bars has dropped substantially over the years, as retail stores are more able to shoulder the burden of increasing rents.

The downtown is our “front porch” -- it is the place where we make our first impression on visitors. As reflected in past AACPs, local residents have grown dissatisfied with the sense of identity that is created by our retail sector. We have also grown concerned that business providing basic necessities could be the next ones to be replaced with different uses, as illustrated by the closing of Aspen Drug at the corner of Galena & Hyman.

While recognizing that government involvement in the commercial sector is a complex undertaking, we must identify methods and explore partnerships to restore and maintain a healthy and diverse balance of unique stores and restaurants – fostering a sense of vitality for both residents and visitors.

Sustainability for Future Generations

The long-term sustainability of our visitor-based economy depends largely on our ability to remain an attractive destination for future generations.

The foundations of our high quality of life must be solidly in place, including skiing, summer recreation, scenic beauty, outdoor lifestyle, strong year-round community, compelling special events, a diverse lodging inventory, our genuine architectural heritage, a vital downtown and a wide range of arts & cultural offerings.

To remember Aspen's history is to recognize of a heritage of innovation – Aspen is always at a crossroads that has never been encountered. We should once again have a clear intention to do new things first, to cultivate the ground so the next foundational institution can shape our identity into the future.

The Future of the AABC

This section will be drafted after the P&Z holds discussions on the issues of Transportation and the AABC.

POLICIES AND ACTION ITEMS

The following policies and action items are adopted to address the following critical issues: 1) the Residential Sector, 2) the Lodging Sector, 3) Aspen’s Commercial Core, 4) The AABC Area, 5) the Public Sector, 6) Non-Profit/Institutional, 7) Mitigation, 8) Pace of Construction, 9) The Next Generation.

The action items are arranged alongside the policies, so the purpose of the action item is understood. Each Policy is numbered, while the associated Action Items are lettered. For instance, Action Item “1.a” is associated with Policy “1.”

I. RESIDENTIAL SECTOR POLICIES	I. RESIDENTIAL SECTOR ACTION ITEMS
<p>1) Adopt additional controls on the location and size of homes in order to:</p> <ul style="list-style-type: none"> • protect the natural visual quality of river and stream corridors and the surrounding mountainsides to preserve a scenic Rocky Mountain experience; • reduce environmental degradation; • limit infrastructure costs and local government operating costs; and • reduce a wide range of short- and long-term job generation impacts, including traffic congestion. 	<p>1.a Amend City’s 8040 Greenline process by 1) Adding emphasis in Purpose section to scenic protection rather than only to mitigate for environmental damage, 2) Strengthen criteria re: visual impacts, 3) Require that applicants provide a 3-D model of proposal, as well as requiring a range of specific views from “below.”</p> <p>1.b Amend City code regarding allowable FAR on slopes with the intent of establishing smaller house size that is more appropriate to sloping, mountainside sites. <i>(City currently reduces allowable square footage by a <u>maximum of 25%</u> to calculate house size, regardless of the steepness of slopes.)</i></p> <p>1.c For parcels on slopes, amend City code to adopt a new site plan review process that locates building envelope in area of lot with lowest slope and/or smallest visual impact. Also adopt new criteria to avoid environmental degradation and minimize visual impacts on slopes, much like 8040 Greenline review. <i>(Pitkin County currently has similar regulations for sloped sites, regarding the location of homes and engineering requirements.)</i></p>

	<p>1.d Explore legality of prohibiting any building on slopes of 30% or greater, regarding takings law. <i>(Neither the City nor County currently have an outright prohibition regarding building on slopes.)</i></p> <p>1.e Amend County code to reduce allowable FAR on slopes. <i>(County code currently reduces the number of dwelling units allowable based on slopes, but does not address FAR.)</i></p> <p>1.f Amend County code to reduce maximum “hard cap” for house sizes within Urban Growth Boundary from 15,000 s.f. to 7,500 s.f. <i>(County philosophy has been to allow large homes near urban area, where services are available. A reduction of house size in the UGB may place pressure on other areas of County where house size limits would remain higher than 7,500, and would likely require the County to look at a countywide house size reduction.)</i></p> <p>1.g Ensure that the TDR market remains stable and healthy if changes are made to the hard cap on house sizes in the County. Scope of work would include: a) Estimate future TDR supply, b) Review potential adjustments to ensure adequate demand, such as reducing the FAR awarded for a TDR, c) Explore a sliding FAR scale for TDRs based on scenic or other value related to sending site, d) Explore potential for inter-jurisdictional TDR exchange between County and City, e) Explore other possible “awards” for receiving sites (aside from FAR).</p> <p>1.h Amend code to address proper solar orientation of homes, and the accommodation of renewable energy structures.</p> <p>1.i. Amend both city and county codes with regard to development in riparian area, with the intent to strengthen regulations and establish consistency as appropriate.</p>
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<p>2) Protect the visual quality and character of residential city neighborhoods by requiring development and redevelopment to reflect the context of architectural heritage in terms of site coverage, mass, scale and form, while encouraging the preservation of residential historic landmarks.</p>	<p>2.a Amend City code to reflect policy, using some combination of, 1) site coverage requirements in residential zone districts, 2) amended Residential Design Standards that address individual neighborhoods, 3) explore the potential of form-based design standards. (<i>Current Residential Design Standards were based largely on the City's West End [R-6 Zone District], which currently has site coverage requirements in place.</i>)</p> <p>2.b Amend City code to reduce maximum house size using a sliding scale appropriate for different neighborhoods, allowing additional square footage through Historic Preservation TDR program to a hard cap of 5,000 square feet. Study historical FAR and site coverage in Aspen and other similar mountain communities such as Crested Butte and Telluride. (<i>Part of overall intent is to eliminate the current potential for the largest homes now allowed on the largest city parcels, while creating more demand for City TDRs that would preserve historically designated homes as is.</i>)</p>
<p>II. LODGING SECTOR POLICIES</p> <p>1) Lodging development or redevelopment should emphasize the town and surrounding area as the primary amenity rather than including extensive amenity space on-site, thereby encouraging the integration of visitors with residents, promoting the use and enjoyment of local businesses and recreational opportunities, reducing the need for bulk and mass to accommodate extensive on-site amenities and limiting unnecessary job generation.</p> <p>2) Encourage the development or redevelopment of moderate/economy lodging to maintain a balanced lodging inventory.</p>	<p>II. LODGING SECTOR ACTION ITEMS</p> <p>1.a Amend city and county codes to implement policy.</p> <p>2.a Explore the potential for city fee abatements and limited public financing with regard to the development/redevelopment of moderate/economy lodging.</p>

<p>3) Prevent the further loss of lodging inventory in the Lodge Zone District.</p> <p>4) Different types of lodging inventory (deluxe, moderate, economy) should be mixed on-site and throughout town rather than segregated geographically.</p>	<p>3.a Amend City code to eliminate provision for new multi-family free market residential use in Lodge Zone District.</p> <p>4.a Amend city code to accommodate and incentivize a mixture of types of lodging inventory on-site.</p>
<p>III. ASPEN COMMERCIAL CORE POLICIES</p> <p>1) Ensure that new Commercial Design Standards and Historic Preservation Guidelines will result in development that reflects the context of architectural heritage in terms of site coverage, mass, scale and form and will maintain a diversity of heights.</p> <p>2) Ensure that stores providing basic products and necessities are maintained in the long-term.</p> <p>3) Encourage a downtown commercial mix that is balanced, diverse, unique and vital.</p>	<p>III. ASPEN COMMERCIAL CORE ACTION ITEMS</p> <p>1.a Use City’s new 3-D model of downtown area to test Commercial Design Guidelines and Historic Preservation Guidelines. (<i>Commercial Design Guidelines were adopted in 2007, but have never been applied to an actual development proposal.</i>)</p> <p>2.a Establish working group including representatives of City, ACRA, Aspen Retail Association to conduct outreach with property/business owners providing essential products in an effort to explore succession planning.</p> <p>2.b Explore potential for adopting criteria to identify an “Essential Public Service” with regard to private sector retail.</p> <p>3.a Explore Growth Management incentives for non-prime commercial space including basements and alleys.</p>
<p>IV. AABC AREA POLICIES</p> <p>1) Ensure that comprehensive transportation services are in place as part of any substantial new development in the West of Aspen Corridor.</p>	<p>IV. AABC AREA ACTION ITEMS</p> <p>1.a Establish Master Plan for West of Aspen Corridor, from Maroon Creek Bridge to end of airport runway. (<i>This is anticipated to be completed as part of the AACP update.</i>)</p>

<p>V. PUBLIC SECTOR POLICIES</p>	<p>V. PUBLIC SECTOR ACTION ITEMS</p>
<p>VI. NON-PROFIT/INSTITUTIONAL POLICIES</p>	<p>VI. NON-PROFIT/INSTITUTIONAL ACTION ITEMS</p>
<p>VII. MITIGATION POLICIES</p> <p>1) Ensure that new residential development and residential redevelopment fully mitigates for a range of impacts.</p>	<p>VII. MITIGATION ACTION ITEMS</p> <p>1.a Conduct a comprehensive review of all mitigation options. The action items below reflect a range of studies needed for this review.</p> <p>1.b Conduct updated study on job generation impacts of residential development and redevelopment.</p> <p>1.c Recalculate cash-in-lieu payment amount to reflect the job generation study, as well as the actual cost of providing off-site affordable housing, including the “soft” costs of locating developable property, design, planning, public process, identifying buy-down properties etc.</p> <p>1.d Review potential for establishing a “mitigation menu” of deed-restricted housing projects and potential buy-down properties. Property owners developing or redeveloping single-family or duplex homes may choose from menu to fulfill mitigation requirements. A payment calculation would still be made based on net new square footage, and would determine from which “mitigation menu” they could choose. <i>(The rational basis for this approach would be the immediate offset of mitigation rather than accumulating cash in lieu payments for future projects.)</i></p> <p>1.e Re-evaluate City and County ADU programs to determine overall effectiveness, including updated database, rate of rental, survey of ADU owners to explore rental incentives, and investigating legal capability of requiring mandatory occupancy.</p>

	<p>1.f Review existing city and county policies allowing APCHA-eligible homeowners to defer mitigation payments until property purchased by non-APCHA-eligible owner. Amend city and county policies so they are fair and consistent.</p> <p>1.g Revise list of affordable housing mitigation options for residential redevelopment based on the outcome of studies recommended in action items above.</p>
<p>VIII. PACE OF CONSTRUCTION POLICIES</p> <p>1) Manage level of construction activity so that it does not degrade quality of life for residents and visitors.</p> <p>2) Reduce the “spike” of construction activity during national economic booms by limiting speculative development practices.</p>	<p>VIII. PACE OF CONSTRUCTION ACTION ITEMS</p> <p>1.a Adopt Building Permit Allocation System in City and County, following a review of other cities and towns using such a system. Examine potential for a Building Permit Allocation System with a “sunset” that is tied to specific infrastructure improvements or other accomplishment that ensures improved quality of life.</p> <p>1.b Identify development to be exempt from pacing system, i.e. explore potential for local working residents to “go to the head of the line,” and defer mitigation [see Action Item VII(1.f)].</p> <p>2.a Amend City and County code to implement stricter criteria for the extensions of vested rights after initial three-year term, based on the provision of substantial community benefits. (<i>Vested rights must be granted for three years according to state law.</i>)</p> <p>2.b Amend building code to restrict the extensions of building permits unless development includes substantial community benefits.</p>
<p>IX. NEXT GENERATION POLICIES</p> <p>1.) Ensure that Aspen is an attractive place to live, work and play for the “next generation.”</p>	<p>IX. NEXT GENERATION ACTION ITEMS</p> <p>1.a Establish working group with representatives of major non-profit institutions, City, ACRA, APCHA, Aspen Retail Association, CCLC etc. to generate recommendations for implementing this policy.</p>

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Exhibit C

Population segments in the Urban Growth Boundary / Peak Season

Population Segment	1990	2000	2007/08	2000-08 +/-
Jobs in UGB	11,581	14,313	15,706	+1,393
Commuters from outside Pitkin County into UGB	6,410	7,815	8,290	+475
UGB population in Affordable Housing (<i>Owners + renters</i>)	1,941	4,055 (estimate)	6,170	+2,115
UGB population in local-owned free market residences (<i>Owners + renters</i>)	Not avail.	4,840*	3,610	-1,230
Visitors in UGB	Not avail.	15,111	15,205	+94
Population staying in 2 nd homes (<i>4-6 weeks per year / 80% occupancy.</i>)	Not avail.	8,563*	9,427	+864
Population in lodging/fractionals (<i>At 80% occupancy for peak months</i>)	7,742	6,548	5,778	-770

* Estimate based on residences in 2003.

- Jobs in UGB:** Colorado Dept. of Labor & Employment for PitCo jobs; multiplied by .73 factor to determine jobs in UGB per State of the Aspen Area report. 2007 numbers low by at least 350 due to relocation of contractors, building suppliers outside of PitCo but with workers performing jobs in PitCo/UGB, according to SOAA Economics chapter, Fig. 5.
- Commuters:** PitCo jobs minus people living and working in PitCo (reduced by .08 factor for people living in PitCo and working outside PitCo according to 2000 Census) and reduced by .27 factor for people living in PitCo and working outside UGB, according to SOAA. 2007 numbers low by at least 350 due to relocation of contractors, building suppliers outside of PitCo, but with workers performing jobs in PitCo/UGB.
- AH Pop.:** Based on 1990 and 2009 inventory by type of unit, using population factors based on APCHA guidelines for occupancy rates. 2000 population based on average of 1990/2009.
- FM Pop.:** Based on Assessor's Office mailing address w/Aspen zip codes, multiplied by 2.05 people per household, according to 2000 Census. Number of residences from 2007/8 increased by 600 to obtain number of residences in 2003, according to SOAA, Housing Chapter, footnote 5.
- UGB Visitors:** Adding together 2nd home population and lodging/fractional population.
- 2nd Home Pop:** Based on Assessor's Office mailing address w/non-local zip code, multiplied by 1.5 people per bedroom, according to Venturoni Surveys & Research. Number of residences from 2007/8 reduced by 600 to obtain number of residences in 2003, according to SOAA, Housing Chapter, footnote 5. Population calculated using 3.5 bedrooms per residence, as found in Assessor's study. Assumed 80% occupancy.
- Lodging Pop:** Pillow counts from SAS and RRC, multiplied by average peak season occupancy rate.

Exhibit D

Comparing City + County Regulations on Slopes, Scenic + Riparian Areas

Regulation	City	County
FAR Reduction on Sloped Parcels	FAR reduction based on excluding lot area with more than 20% slopes, with a maximum total FAR reduction of 25%.	Does not reduce FAR based on slope calculations.
Density Reduction On Sloped Parcels	Does not reduce density based on slope calculations.	Reduced density based on slope calculations.
Site Plan Review for Sloped Parcels	No site plan review for sloped sites per se, unless site falls under 8040 review.	Site plan review for parcels on Steep and Potentially Unstable Slopes.
Site Plan Review in Scenic Areas	Site plan review for parcels at 8,040 feet, or within 150 feet below this line. Includes criteria regarding visual impacts. Seven viewplane areas in downtown, reducing building height to retain views of mountains.	Site plan review for parcels in Scenic View Protection Area, visible from Hwy 82, Castle Creek Rd, Maroon Creek Rd, Owl Creek Rd, McLain Flats Rd, Woody Creek Rd, etc
Prohibition on Development on Sloped Parcels	No prohibition.	No prohibition.
Stream Corridors Review	No development between river and “top of slope,” and 15 feet beyond “top of slope,” as defined in city map. Development within 100’ of high water line must meet criteria.	100-foot standard setback from high water line, unless range of criteria and mitigation is met for development between 50’ - 100’.

Exhibit E

Summary of Cities & Towns with Building Permit Allocation Systems

The following is a review of six cities and towns across the country that have a growth management program limiting building permit allocations on an annual basis. The review includes the purpose and various important elements of the different programs, and ends with staff conclusions.

City of Boulder

Purpose. To establish a 1% annual growth rate, starting in 1981, to preserve “the unique environment and high quality of life, to avoid deterioration of air and water quality” and so the pace of development doesn’t exceed the availability of public facilities and services.

Number of Allocations Calculated each year based on a 1% increase in number of existing dwelling units.

Exempt or Partially Exempt Uses

No allocation is required for lodging units, college housing, affordable housing, mixed use development or single-family lots established prior to 1976. No allocation is required for residential redevelopment that does not increase the existing number of dwelling units.

Up to 30 exemptions per year for historic landmark properties and group homes. The planning board may grant exemptions for “unmet community need”; or if constraints of building size/configuration/infrastructure phasing requires more allocations.

Banking/Carry-Over. If some allocations are not used in the prior year, they can be rolled over to the next year, up to 25% of total allocations in current year.

Allocations can be “banked” without planning board approval if banking is based on minimum building size. They may be banked with planning board approval if building configuration/infrastructure requires a certain amount of project to be built at one time.

Timing. First-come first served, quarterly basis.

City of Golden

Purpose. The intent was to implement the “People’s Ordinance” of 1995 to establish a 1% annual residential growth rate. It was based largely on Boulder methods.

Number of Allocations Calculated each year based on a 1% increase in number of existing dwelling units.

Exempt Uses Allocation system does not include college housing, residential redevelopment that does not increase existing number of dwelling units. Exemptions may be granted by ballot election or Council approval if it is a senior or urban renewal project near transit and trails, or a mixed use project with at least 25% commercial.

Banking/Carry-Over. No carry-over from year to year. Same banking requirements as Boulder.

Timing & Method. Semi-annual. Via lottery.

Hudson, Ohio

Purpose. The goal was to slow down the boom in residential development so public infrastructure and services were available at the same time as development, and to prevent further deterioration of facilities, infrastructure and service levels. Also to protect “the community character of the city as a desirable place to live and conduct business” and “to prevent overcrowding and congestion.”

The City Council also found that the cost of services and infrastructure exceeded the financial capability of the city to provide them; there was a growing imbalance between residential and non-residential uses that contributed to budget shortfalls; the city needed time to plan and provide infrastructure and services to accommodate new residential development and attract commercial development; and there was a need for affordable and senior housing that wasn't sufficiently addressed.

Number of Allocations Set annually by City Council upon hearing a report on previous year, budget information, progress toward infrastructure and service improvements.

Exempt or Partially Exempt Uses Eighty percent of annual allocation set aside for “priority development,” including (in order) affordable housing, senior housing, single-family homes on lots legally established before 1996, single-family lots on a minimum of five acres with direct access to public streets and utilities.

City Council may approve 30 more allocations per year if they are for a project that sets aside 25% of units as affordable housing for seniors, or mixed use projects that revitalize downtown or existing subdivisions that amend plans to reduce density, protect riparian habitat, preserve open space.

Allocation system does not include residential redevelopment that does not increase existing number of dwelling units.

Banking/Carry-Over. No automatic carry-over. May be carried over by Council.

Timing & Method. Semi-annual. City Manager recommends allocation list to Council.

Key West, Florida

Purpose. To manage growth due to the unacceptable length of time needed for hurricane evacuation. System was the result of legal challenges and state court decision, which required specific implementation of city's 1990 Comprehensive Plan.

Number of Allocations Annual limit on new residential/lodging permits of 91 per year from 1990 to 2002.

Exempt or Partially Exempt Uses Thirty percent of annual allocations for affordable housing. Does not include residential redevelopment that does not increase existing number of dwelling units. Does not include projects with existing vested rights. Annual "sub-quotas" on different types of residential and lodge uses were "sensitive to differing trip generating characteristics ..."

Banking/Carry-Over. No details on banking. No carry-over.

Timing & Method. No details available.

From City of Key West website, 2008: "Over time, most of the available allocations were exhausted, although a small pool of units dedicated to affordable housing and for "beneficial use" (the minimum use needed to provide owners with reasonable use of their land) have been reserved.

"On February 29, 2008, in response to legal challenges, the City invoked a "zoning in progress" doctrine to address deficiencies in the existing Building Permit Allocation System Ordinance. During the preparation of the new ordinance the City will only allocate new units for workforce housing. Because so few new units existed in the system anyway, the zoning in progress resolution has had little impact on actual development in the City. Most development continues to be redevelopment of existing units which are either acknowledged as lawfully established prior to the institution of the Building Permit Allocation System or can demonstrate that they have valid allocations."

Mount Pleasant, South Carolina

Purpose. To manage growth for a 10-year period in order to implement capital improvements for roads, school system and improve other municipal infrastructure and services to handle new residential development.

Town Council found that town has experienced unprecedented residential growth due to proximity of City of Charleston and public beaches, increasing traffic congestion and noise, and requiring greater town workforce and infrastructure. The town's road system is barely capable of handling current traffic volumes, a situation which will worsen, posing a threat to public safety in the face of a hurricane. Growth has outpaced the town's ability to gain funding for road upgrades – these can be funded and implemented by 2010. If growth not managed, taxes will increase substantially to maintain levels of service of town facilities, including roads and schools etc.

The allocation program “recognizes the expectations of owners and developers, allows all applicants a fair opportunity for a permit, but at a pace that allows for capital improvements needed to maintain the coveted quality of life in the town.”

The town seeks a plan that would not foreclose to the less fortunate the opportunity for access to reasonably priced safe and sanitary housing.

Number of Allocations Annual report to Council describes number of permits sought and obtained in the past year and progress toward capital improvements. Allocation between 2000 and 2005 is 3,442 single-family and 253 multi family, based on 3% annual growth. From 2005 to 2010, allow 3,720 single family and 1,590, based on 3% annual growth rate.

Exempt or Partially Exempt Uses Each residential unit requires one allocation (including duplex and multi-family), but multi-family allocations granted in bulk and may exceed quarterly allocations. Does not apply to residential redevelopment where no new dwelling units are created. Affordable housing is exempt.

Banking/Carry-Over. If allocations run out, allocations from the next quarter can be used – but NOT at end of each year. Unallocated permits can carry over to the next year.

Timing & Method. Quarterly process. First come, first served.

Half Moon Bay, California

Purpose. Electorate approved Measure A in 1991, limiting annual building permits to 3% growth with a priority for downtown infill. Purpose is to preserve the quality of life in the community; protect and enhance public and private open space, parks and recreation facilities; and ensure that adequate public school facilities will be available to serve new development.

Electorate approved measure D in 1999, reducing annual growth rate to 1%: To protect the health and safety of existing and future residents by controlling the rate of future residential growth in the City during periods of infrastructure capacity constraints, particularly those related to water supply, sewage treatment capacity, school facilities, open space, parks, and streets and highways.

Number of Allocations Calculated by determining how many additional dwelling units would result in 1% growth in population. Half of the allocations to be used only in downtown infill area.

Exempt or Partially Exempt Uses Affordable housing density bonuses as provided by state law are exempt. Allocations not required for residential redevelopment that does not increase existing number of dwelling units.

Banking/Carry-Over. Information not available.

Timing & Method. Semi-annual. Via Lottery.

Conclusions

In all cases, the purpose of an annual cap on the issuance of building permits is a mixture of preserving quality of life and natural resources, preventing traffic congestion and allowing the municipality to provide necessary infrastructure and services.

In some case, setting the annual limit on building permits is a simple calculation allowing for a 1% growth rate (either in dwelling units or population). In other cases, the annual limit is set after the legislative body reviews a report on progress toward providing necessary infrastructure and services. In Mount Pleasant, there is a “sunset” on the permit-capping program. The permit allocation system is tied to a specific period of time (10 years) during which the town will upgrade roads and schools. Once infrastructure projects are completed, Mount Pleasant intends to drop the pacing program.

This provides the P&Zs with a choice of different rationales for implementing a pacing system, ranging from the somewhat undefined (quality of life) to very specific achievements (for example, ‘solving’ the Entrance to Aspen, or some other major improvement). Interestingly, local public feedback revealed an interest in future growth at the AABC, but only if “substantial improvements” are made to the transportation system.

In all the above cases, exemptions are made for affordable housing and a list of other “desired” types of development, such as senior housing, mixed use development in downtown areas etc. One potential in the Aspen Area would be to exempt residential redevelopment from pacing if the property is owned by a local employee who agrees to place a Resident Occupied designation on the property until it is sold to someone who doesn’t qualify under APCHA eligibility requirements. (This was a suggestion from Marcella Larson.)

It is interesting to note that all of the building permit capping systems in this study exempt “scrape and replace” redevelopment. They specifically exempt redevelopment that does not increase the number of dwelling units. This does not mean the city or county must also exempt residential development from a pacing program.

It is important to recognize that the *annual cap on building permits* is the method by which these cities and towns manage growth: Staff refers to this kind of system as *downstream growth management*. In contrast, the City of Aspen and Pitkin County have placed annual caps on the *number of development approvals* since 1976: Staff refers to this kind of system as *upstream growth management*. There are no examples of municipalities that use both an *upstream* and a *downstream* growth management system. The likely reason is that both kinds of growth management control growth, with the only difference found in *when* such controls are applied during the review process.

In certain ways, both systems have similar weaknesses in terms of actually controlling the number of building permits that are acted upon each year. In *downstream* systems, the capability for “banking” building permit allocations (in some cases, for up to five years) allows applicants to vary when construction will actually occur. In *upstream* systems, the legal notion of “vested rights” allows applicants to vary when construction will actually occur.

In both cases, growth control municipalities remain at the whim of the national economy to a significant degree when it comes to the intensity of construction activity. One of the key questions becomes: Is a municipality willing to deny/limit the banking of building permits allocations, or deny/limit the extension of vested rights beyond the three years mandated by state law, or deny/limit the extensions of building permits?

Exhibit F

Regulatory Tools Applicable to the Commercial Sector

Between 2006 and 2008, City staff and a consultant explored a wide range of regulatory tools used in other cities and towns that could be applicable in Aspen's commercial sector. While numerous work sessions and public feedback meetings were held, none of these tools have been adopted.

As the joint P&Zs discuss goals and action items for the commercial sector, staff felt a review of this recent exploratory process would be helpful. The following is a review of various regulatory tools, and non-regulatory methods. This review includes public feedback and some staff evaluation of their appropriateness and effectiveness.

The tools examined include:

- Prohibition
- Quota
- Conditional Use
- Performance Zoning Standards
- Traditional Zoning Solutions
- Commercial Rent Control
- Commercial Mitigation
- Growth Management Incentives
- Public-Private Partnership
- Publicly-Owned Space
- Succession Planning / Community Cooperatives

PROHIBITION / QUOTA/ CONDITIONAL USE

The most significant trend regarding the regulation of commercial mix in the United States in recent decades has been the establishment of prohibitions, quotas and conditional use reviews. As shown in Table 1 below, these tools have been used to regulate chain or "formula" stores, and chain or "formula" restaurants.

Many cases cited in Table 1 are from resort areas, or areas where tourism is important. For example, a political controversy erupted in Portland, Maine in August 2006 when word got around that a Hooters wanted to open in downtown Portland, a historic area of the city with many unique shops and restaurants. One member of the local chapter of the National Organization for Women (NOW) called the prospect "just icky."

Table 1: Prohibitions, quotas and conditional uses in other cities and towns

Regulatory Tool	Prohibition	Quota	Conditional Use
Summary	If a certain type of business applies for a business license, the license would not be granted.	If a certain type of business applies for a business license, <u>and the quota is filled</u> , a license wouldn't be granted.	If a certain type of business applies for a business license, a hearing would be held requiring the applicant to meet review standards.
Statement of Public Policy	This type of use does not belong in our town; or, this use does not belong in a certain area of town.	This is an appropriate use for our town, but we are saturated or oversaturated with this type of use.	This is an appropriate use, but only if certain conditions are met.
Cities and towns using this tool	Prohibits formula retail: <i>San Juan Batista, CA</i> <i>Martha's Vineyard, MA</i>	Quota for certain types of retail: <i>Berkeley, CA;</i> <i>Gift shops etc.</i> <i>Carmel, CA;</i> <i>Jewelry stores etc.</i>	Conditional Use for Formula Retail: <i>Coronado, CA</i> <i>Calistoga, CA</i> <i>San Francisco, CA</i> <i>Sausalito, CA</i> <i>Laguna Beach, CA</i>
	Prohibits formula retail in certain parts of town: <i>Nantucket, MA</i> <i>Port Townsend, WA</i>	Quota on formula retail in certain part of town instituted, and was later rescinded: <i>Portland, ME</i>	
	Prohibits formula restaurants: <i>Ogunquit, ME</i> <i>San Juan Batista, CA</i> <i>York, ME</i> <i>Calistoga, CA</i> <i>Sanibel, FL</i>	Quota on formula restaurants: <i>Arcata, CA</i>	

In November 2006, after a local group emerged called Keep Portland Real, the City Council voted to adopt a quota that limited “formula businesses” to 23 in the downtown, which was the amount that existed at the time. The following year, a new City Council rescinded the rule and opted instead for a Task Force on Economic Diversity.

When a PetCo gained approval in 2000 to open in downtown Coronado, Calif. – an island off San Diego – the City adopted a Conditional Use Review requirement for formula stores and formula restaurants. Coronado residents feared their historic downtown would ultimately be dominated by chains, rather than small, unique and locally-owned businesses. The town recently approved a Panera Bread “formula” restaurant in the downtown, after a conditional use review process found that it met the required criteria.

An Over-saturation of ‘High-End’ Stores?

If the overriding concern in the City of Aspen was the proliferation of chain stores, a prohibition, quota or conditional use could be implemented. However, staff believes the concern regarding commercial mix in Aspen is more complex. Staff believes the community does not want to regulate chain retail stores across the board. i.e. the Gap or Banana Republic. Paradise Bakery is a chain that started in Aspen.

However, staff perceives a consistent concern that Aspen is over-saturated with “high-end” retail stores. While staff could find no examples of cities or towns that define retail uses based only on price, there may be an effective regulatory approach to the problem of over-saturation of certain types of high-end uses.

Two Kinds of ‘High-End’

Staff found there are two fundamentally different kinds of high-end retail store in the City of Aspen: One tended to open up shop in the 1980s and ‘90s, and are owned and operated locally; the second are national and/or international luxury designer brand chains that opened in the mid- to late-1990s and up to the present. A 2007 inventory of downtown stores showed that about 60 of all the high-end, tourist-oriented stores are locally-owned, and another 25 are national or international designer-brand chains.

City of Aspen business license records show a distinct trend toward more national/international designer/luxury brand stores since 1994. Staff found that such stores could be defined in the following way:

Retail: Exclusive designer/luxury brand merchandise. Formula retail stores with a focus on national/international designer/luxury brand management and marketing, typically catering to an exclusive clientele.

Using this definition, the City could adopt new regulations to regulate this kind of retail store. One reason why cities and towns have been able to regulate “formula” stores is that their method of operation reflects a standard and unchangeable corporate formula that can be defined. This is also true of high-end chain outlets. The terms “designer,” “luxury” and “brand” are specific terms that such stores use to describe themselves. The fundamental question is: Should this kind of store be regulated in Aspen?

Quotas: How Much is Too Much?

One challenge of implementing a quota is determining the *quota ceiling*. What is the magic number? Staff recognizes that planning is not such a scientific tool that it can determine exactly the number of stores in a certain category as the perfect amount for the most appropriate commercial mix.

Typically, cities and towns in the United States have counted the number of “chain” stores and set the quota at that level – effectively finding that the town is saturated with a certain type of use, and not allowing any more.

Quota Implementation

Implementation of the quota system would be administered by the Community Development Department. The Finance Department would refer Business License applications to Community Development, according to current practice, and the Community Development Director would make a finding as to whether an applicant meets quota requirements. Appeals could be made to City Council, but only to determine if the ComDev Director has abused his/her discretion.

Public Feedback on Prohibitions and Quotas

More than 90 people participated in a September 2007 instant voting keypad session at the Jerome Hotel, with 45% of participants in this open meeting identifying themselves as Aspen business owners.

Only 38% strongly agreed/agreed that the City should prohibit chain retail stores, and only 37% were in favor of prohibiting chain restaurants. A somewhat higher percentage (46%) strongly agreed/agreed with establishing a quota on “national/international chain stores that sell designer/luxury brand merchandise.” Forty-three percent favored a quota on jewelry stores (there were 24 such stores in the downtown at the time).

In a survey returned by 92 ACRA members in January 2008, only 33% favored a prohibition on chain restaurants, while 41% favored a cap on “national/international chain stores that sell designer/luxury brand merchandise.” Only 32% favored a cap on jewelry stores.

In May 2007, an Aspen Daily News on-line poll showed that 52% supported a “quota on high-end retail businesses downtown,” with 30% opposed and 17% choosing the “who cares?” option. A total of 448 people voted on-line.

Conditional Use Reviews

Another potential regulatory tool is conditional use, which establishes criteria that are reviewed by a local board or commission before final approval is granted. A typical conditional use might be a drive-through restaurant, so the operation meets certain criteria for traffic circulation. In Aspen, staff explored the possibility of requiring a conditional use review for new retail stores opening on the Pedestrian Malls.

One could argue that the pedestrian malls are a unique sub-area within the Commercial Core (CC) zone district, and it is important to encourage commercial uses that promote a high level of pedestrian use, activity and general vitality suited to this sub-area of the city’s central business core, and to establish the pedestrian malls as a unique destination both within the city and the region.

When staff initially reported on potential regulatory tools in 2007, the ratio of restaurants to retail on the Pedestrian Malls was lower than the rest of the Commercial Core, with the only new appearances since that time being Ruth Chris and Mustang, this summer. The

Red Onion has closed but is required to be a restaurant when it reopens, according to an agreement with the City of Aspen.

One possibility is to continue allowing restaurants on the pedestrian malls by right, while imposing a conditional review on new retail uses, requiring them to meet a set of review standards. Some possible standards might be:

- The retail use recognizes and complements the pedestrian nature of the Pedestrian Malls and contributes to the vitality of this unique area.
- The retail use contributes to the diversity of the pedestrian mall, thereby enhancing the pedestrian mall as a destination.
- The retail use demonstrates uniqueness and/or local/regional origination with regard to merchandise, thereby contributing to the pedestrian mall as a destination.

Another method of encouraging restaurants on the pedestrian malls is some combination of waiving City fees (building permit, liquor license, mall right of way lease) or some level of employee mitigation waiver. (The City code currently allows a commercial space to expand up to 250 square feet without mitigation.)

Public Feedback on Restaurants, Malls, Conditional Use

At the September 2007 keypad session, 64% wanted the City to “encourage more restaurants and nightclubs on the pedestrian malls,” but only 47% favored “a set of review standards for new retail stores on the pedestrian malls.”

PERFORMANCE ZONING STANDARDS

Another tool used in other communities, including Carmel, Calif., is a “performance zoning standard.” Finding its downtown dominated by art galleries, the City of Carmel adopted a performance zoning standard requiring new art galleries to provide on-site studio space for an artist during at least six (6) months of the year.

The concept was approved as an attempt to bring vitality to the local art scene, and to provide opportunities for local and regional artists to gain a foothold in the art world. Implementing Performance Zoning would be an administrative exercise, requiring applicants for a new art gallery to demonstrate their ability to meet this standard, and requiring evidence that the standard is met on an annual basis. This idea was never tested as part of public feedback sessions in Aspen.

TRADITIONAL ZONING SOLUTIONS

In the 1960s and 1970s, the heart of downtown Aspen included tourist-oriented stores such as Extraordinary Usuals and Roaring Fork Gift Shop, as well as gas stations, office supply stores, drug stores, a grocery store, a lumber yard and hardware stores. More light industrial uses were located in the Puppy Smith area and what is now Rio Grande Park and Obermeyer Place. These included everything from Porto Mix Concrete, Aspen Ski Doo and Bishop Garage.

The Morphing of Aspen

As the City of Aspen began using zoning tools in the mid-1960s and 1970s, the Lodge Zone District (L) was established at the base of Aspen Mountain and the Commercial Core Zone District (CC) in the heart of the downtown area. The Neighborhood Commercial Zone District (NC) and Service/Commercial/Industrial Zone District (SCI) were established in outlying areas in 1975 – two NC districts at the City Market block and in the area of Clark’s Market, with two (non-retail) SCI districts in the Puppy Smith Street area and what is now Obermeyer Place.

The overall intent was similar to larger metropolitan centers – locating neighborhood serving businesses somewhere between the main employment center (in our case, at the base of the mountain and the downtown core) and surrounding residential neighborhoods.

In the 1980s and ‘90s, Aspen’s downtown core became the primary location for tourist-oriented shops and restaurants, while most businesses offering basic products and services moved either to the edges of the downtown in the Mixed Use Zone District (MU), such as Monarch, Hunter, and Spring streets, or north of Main Street. Some so-called “sundries” located on Main Street between Monarch and Galena, including Carl’s Pharmacy, the Miner’s Building, a dry cleaner, gas stations and a convenience store.

Traditional Zoning Options

Perhaps the most typically used zoning approach is re-zoning from an existing zone district to a new one, with a new list of permitted and conditional uses. When staff explored the potential for re-zoning, one major underlying challenge presented itself: Exactly how do we define “local-serving business?”

The #1 action item in the Commercial Sector chapter of the 1993 Aspen Area Community Plan asked for an “enforceable, acceptable definition of local-serving business.” Aside from the functions of the NC and SCI districts, the City has never come up with such a definition.

Considering the feedback from numerous meetings with Council, ACRA members and others from 2006 to 2008, staff grew increasingly concerned about whether a locally-serving business use could be adequately defined. And for zoning solutions to work, a definition of “local-serving” would be needed – and perhaps also a specific list of uses that might be permitted in such a zone district.

Staff initially asked: Could clothing stores be a “locally-serving business?” After all, one of the phrases used in this long-running debate has been that you “can’t buy underwear in Aspen.”

If “clothing store” was listed as a permitted use in a new Locally-Serving Business Zone District, that use *could allow for ‘high-end’ clothing*. The only method of preventing this outcome would be to further define uses through “price-points” -- a tool that staff believes would result in a rash of complaints from consumers and competitors, and a bloated bureaucracy of enforcement officers checking price tags.

So as we try to define a local-serving business, we are left with retail uses offering products that are inherently affordable by their nature.

How about *a record, or music store*? The last store selling music in Aspen (in the form of CDs) was the Great Divide, and it was recently converted into a nostalgia clothing store. There was no great uproar at this transformation. People may simply assume that the advent of Internet downloads and I-Pods are largely responsible for this nationwide trend of disappearing “record stores.”

What about *a bookstore*? When Explore Booksellers was threatened with closing in 2007, there were letters to the editor, but not enough pressure for the city to step in the way it did to preserve the Isis Theatre just a year before. Ultimately, a philanthropic buyer bought the property and continues to operate it as a bookstore.

What does “local-serving” mean?

Judging from public feedback staff has experienced since 2006, it appears that the phrase “locally-serving business” may be less about the ability to buy underwear and socks than it is about the loss of beloved restaurants, bars and other businesses – businesses that have often been replaced by new stores that, as one volunteer firefighter said, “I have no business being in.”

At a meeting of the Commercial Core and Lodging Commission (CCLC) in the summer of 2009, the group reached consensus that the debate over “local-serving business” is “probably largely driven by nostalgia rather than by a real need.” So how do we define “local-serving business?” The CCLC consensus was that, “everyone has something different in their heart that they want to protect.”

In a city of 6,000 year-round residents, about 8,000 commuters, perhaps 6,000 short-term visitors and 9,000 people staying in 2nd homes at peak season, what is an example of a locally-serving business that is not also frequented by visitors? Ute Mountaineer, Aspen Velo, Cleaner Express, The Gap, The Cantina, Polar Revolution, Explore Booksellers, Jour de Fete, The Aspen Store, Butcher’s Block, Paradise Bakery, Little Annies – it seems that all of these businesses serve both locals and visitors.

Unintended Consequences

There are other concerns about creating some kind of locally-serving zone district: Does anyone know how much aggregate demand there is for certain basic products? What if we have one pet supply store in town, and a new zone district allows for pet stores. Isn’t it possible that there’s only enough demand for one pet store, and all we have done is encouraged a new one to open, resulting in the existing pet store that was owned locally for 40 years being driven out of business?

In addition, there is a zoning enforcement issue that should be considered. When a zone district such as the Commercial Core includes a generalized list of uses, such as

“retail/restaurant,” an individual business profile may change over time without the need for zoning enforcement oversight.

However, in a zone district with a list of specifically-permitted uses – such as the S/C/I Zone District – a business may open with a profile that meets requirements, but then might change its profile and suddenly be out of compliance. Staff has experienced a great deal of pressure for businesses to fit into the specific list of uses in the S/C/I Zone District. For example in the 1980s, a local architect convinced the City Council he qualified as an “artist’s studio,” and architects subsequently proliferated in the S/C/I Zone District. Staff would expect even more pressure for a new zone district that is located closer to, or inside, the downtown area.

What if the city re-zoned the two blocks of Main Street between Monarch and Galena to Local-Serving Business, or Community Commercial? After all, this is where the last pharmacy is located, the last electronics outlet (Radio Shack in the Miner’s Building) one of two hardware stores, our only two gas stations, our only true convenience store and our only dry cleaning business are located.

The list of uses for this block would have to include lodging, restaurants and newspaper office – or we would make the Hotel Jerome, The Aspen Times, the Cantina, Matsuhisa and several other restaurants into non-conforming uses. Thus, our last pharmacy could turn into a restaurant, as could the dry cleaning business.

If the list of uses simply included “retail,” then the pharmacy could become a clothing store or the gas station could become a jewelry store. The list of uses would have to be fairly specific -- something like: pharmacy, dry cleaning, hardware, electronics, kitchenware (upstairs at the Miners Building), gas station, convenience store, lodging, restaurant, carpet sales (Jill’s Carpets) and media office. This approach would effectively limit the uses to the uses now existing in this two-block area.

But again, it would not prevent the city’s last pharmacy, or the Miner’s Building etc. from turning into something other than what they are now. Staff’s conclusion is that zoning is too blunt a tool when it comes to preserving essential businesses.

Public feedback on New Zone District

At the September 2007 “clicker” session, 45% agreed or strongly agreed that the City should “establish a Community Commercial Zone District limited to locally-serving uses, along with a specific list of permitted uses.”

Asked the exact same question in the ACRA survey, 47% either agreed or strongly agreed.

COMMERCIAL RENT CONTROL

There is no precedent for imposing commercial rent control on private property in the State of Colorado, and the city's consultant could not find an example of commercial rent control in the United States. The City Attorney advised that property owners would certainly take legal action, noting that there is no case law on the subject in the State of Colorado.

It's important to consider that even if the city imposed rent control in some downtown zone districts, it would still be the property owner's decision regarding what business would locate in their building. In other words, there would still be no guarantee that the commercial mix would change – especially in an environment where property owners would be in a highly polarized relationship with the city. There would also be a need for new bureaucracy to implement rent control, and additional space to house this bureaucracy.

COMMERCIAL MITIGATION

This planning tool would require any net increase in commercial space -- as part of new development or redevelopment -- to provide a certain percentage of space for some kind of local-serving business. The 1993 AACP included an action item to explore “deed-restricted commercial space.” There was no appreciable follow up conducted at the time.

As staff explored various tools in recent years, the City Attorney advised that this planning tool could be legally defensible. The general argument would be that trends in commercial uses are tending to erode the unique character, commercial diversity and vitality of downtown Aspen, thus damaging its position in a competitive resort industry.

Some entity would have to determine what businesses can move into the space that is provided for mitigation. If the city could adopt either a definition of “local-serving,” and/or a list of permitted uses, the property owner could presumably find a tenant that met the requirements. Or some entity could take managerial control of the space and decide what business could move in, much as APCHA manages affordable housing. A set of criteria would still be required to determine what business would move into the space, presumably at a below-market lease rate.

Under this scenario, we would be inviting a debate over whether the city is giving a certain store an unfair advantage over its competitors. Regardless, this would result in the need for more local government staff in one form or another.

A comprehensive build-out study of the commercial zone districts in Aspen in 2008 showed the potential for only 61,000 square feet of new commercial space in the Commercial Core Zone District, and 23,000 square feet in the adjacent Commercial-1 Zone District. Assuming that 25% of new commercial space could be required as local-serving space, a commercial mitigation program would deliver about 21,000 square feet. That's equal to just over three Gap stores in terms of size.

Considering the required supporting studies, potential legal challenges, the difficult task of establishing criteria and/or a list of permitted uses, the need for additional bureaucracy and the potential for creating unfair competitive advantages – staff advised Council that the amount of space gained would probably not be worth the effort.

GROWTH MANAGEMENT INCENTIVES

One method of encouraging a more balanced and diverse commercial sector is to incentivize the commercial use of space that typically leases for substantially less than prime, ground-floor commercial space.

There is a reason why many of Aspen’s important local entertainment businesses are underground, from the Belly Up to Club Chelsea, the Caribou Club, Fly Lounge, Parallel 15, Double Dog, the Big Wrap, Su Casa, the Cigar Bar, Campo de Fiore, the Regal and Aspen Billiards etc.

Growth Management incentives could be established to encourage additional commercial space on basement levels. The combination of lower mitigation requirements and lower lease rates should make such commercial spaces more attainable.

An initial investigation of the potential for using basement space was conducted in 2008 with the assistance of the Pitkin County Assessor’s Office. The initial results indicate a substantial potential for the future use of basement space in the downtown area, as indicated by Table 2.

Table 2: Basement Areas in the Downtown

Finished Basement	135,106 s.f.
Unfinished Basement	70,287 s.f.
Walk-Out-to-Grade	36,832 s.f.
Undeveloped basement	151,577 s.f.

Although there is a great deal of entirely undeveloped basement space, it is typically beneath existing buildings. There is a high cost to excavating under an existing building, and the relatively low lease rates may not be worth it. The only example of this occurring was under the historically designated Ute City building at the corner of Galena and Hyman.

The opportunity for creating basement space typically occurs when a building is redeveloped, and the option for creating underground parking is usually most attractive to developers. Some type of growth management incentive could help steer developers toward providing commercial space instead.

Finally, a study on the potential use of alley space in 2008 indicate that using basement space for retail-related office and storage rather than locating these functions in the 1st floor “back of house” could open up 1st floor alley commercial uses. A growth management incentive could be devised for partial use of basements in addition to alley space.

Public feedback on Growth Management Incentives

At the September 2007 “clicker” session, 66% either agreed or strongly agreed that the “City should use Growth Management to establish incentives so that redevelopment could create commercial space in basements, alleys and/or the 2nd floor.”

PUBLIC-PRIVATE PARTNERSHIPS

In recent years, the City has been part of several public-private partnerships. After the Stage III Cinema announced it was closing and the Isis Theatre owners started talking about a redevelopment, there was considerable public pressure to save the Isis.

The City responded by entering into a public-private partnership that resulted in a reduction of theatre space, but the retention of most of the Isis Theatre. The partnership also resulted in the creation of new commercial space. The City hired a broker to find tenants, but provided relatively vague criteria as part of this process.

In recent years, the City partnered with Klaus Obermeyer regarding the redevelopment of Obermeyer Place – the city’s role was to include several slivers of public land in the development in exchange for 20 underground parking spaces. Some have criticized the outcome, but it is indisputable that the redevelopment resulted in local service commercial businesses being able to buy their space for the first time. A range of businesses now operate at Obermeyer Place, including ski repair, glass repair, a primary care medical office, a dog groomer, a gym and many others.

Regarding Cooper Street Pier, a lawsuit challenging the city’s initial denial of the redevelopment proposal resulted in a settlement that requires the property owner to lease the basement to a restaurant/bar in the future. This was by no means a public-private partnership, but it does demonstrate that negotiations regarding redevelopment can result in specific community benefits. By the way, one element of this agreement is that the food sold at this future restaurant/bar must be sold in the bottom-third of the price range compared to other restaurants in town.

The recent partnership to preserve the use of the Isis Theatre may be the most instructive. The City might adopt a policy that if an “Essential Public Service” is threatened, the City could evaluate whether an Isis-like partnership is appropriate. This might apply if the last pharmacy in town were going to close, or some other commercial use deemed essential by Council were going to depart the area.

On a case-by-case basis, the Council could determine whether the City might enter into a financial arrangement with a business operator to continue the use in question. These could include public financing, tax breaks or some other model. No formal code amendment would be required to maintain such a policy.

Public feedback on Public-Private Partnerships

The tool that attracted the most support in all public feedback sessions since 2006, and from groups like ACRA and CCLC, was public private partnerships.

An overwhelming 82% percent of respondents at the September 2007 “clicker” session strongly agreed/agreed that the “City should explore public-private partnerships to preserve essential commercial uses that are threatened in the future, to be determined on a case-by-case basis.”

In the 2008 ACRA survey, 56% strongly agreed/agreed that the “City explore public-private partnerships to preserve essential commercial uses.” Twenty-six percent were “neutral” on this question.

When ACRA asked if “the City should play a role to preserve and maintain some essential businesses, i.e., grocery stores, drug stores, Laundromat, shoe repair, movie theatre, dry cleaner, that serve year-round residents,” 72% agreed or strongly agreed.

At the July 2006 “Core Beliefs” clicker session, 63% either agreed or strongly agreed that “government should have a role in helping preserve and maintain some essential businesses that serve year-round residents.” Asked the exact same question at the 2007 “clicker” session, 63% again agreed or strongly agreed.

USE OF PUBLICLY-OWNED SPACE

Adopted in December 2006, the Civic Master Plan recommended developing the parking lots next to Rio Grande Park in the future, with Neighborhood Commercial zoning on the first floor and affordable housing above. Some type of decision-making process would need to be adopted to determine what businesses would locate there.

Where the city currently leases commercial space, to Bentleys and the adjacent art gallery, the city offers lease rates that are comparable to the market.

SUCCESSION PLANNING / COMMUNITY COOPERATIVES

During 2008, city staff and consultant Mark White began to focus more closely on businesses that provide sundries, or “necessities,” such as pharmacies, dry cleaning, hardware, gas etc. The overriding concern became avoiding the scenario in which the downtown could lose its last gas station, as almost occurred in Snowmass Village several years ago.

The new focus built on the apparent community support for public-private partnerships and was termed “the three-legged stool,” made up of:

- Identifying stores that provide necessities;
- Exploring “succession planning” with such business owners, exploring options to ensure their continuation;
- Exploring options for creating space or raising revenues to ensure the continuation of such businesses needed by the local community.

One concept for continuing needed commercial uses is a community-owned store, if it comes to that. This widely-used model can bring the community to a decision point regarding what it really wants and needs. In order to get such a cooperative off the

ground, a *show of proof* is required – a demonstration of financial commitment via community “shareholders.”

Council was receptive to these concepts. Towards the end of commercial mix discussions in 2008, Council appeared to shift its perspective away from regulatory tools and appeared more interested in public-private partnerships and some version of the “three-legged stool” as described above.

SUMMARY

This overview is not intended to be an official recommendation of city staff, but is intended to describe the work that was done on this subject in recent years.