



## Legislation Text

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**File #:** 13-0332, **Version:** 1

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### **TITLE:**

CUP Minor Modification by the Legends AIS Homeowners Association to reclassify affordable units as market-rate

**PURPOSE:** The Legends AIS Homeowners Association has submitted an application requesting a modification to their Conditional Use Permit to allow the designated affordable units in the subdivision to be converted to market-rate units per specific arrangements described in this report. In order to fulfill their request, an associated text amendment to the LUO is required.

**DEPARTMENT:** Planning

**CONTACT INFORMATION:** Jeff Kleaveland (918-7332)

**INFORMATION:** On behalf of the owners' of the designated *affordable* homes of the Legends AIS subdivision, their homeowners' association has submitted a request to modify the Legends conditional use permit to allow these affordable units to be converted to market rate units via a proposal detailed in this report. These units are not managed by the Community Home Trust (or any other such agency) and several of the owners are finding that the arrangement, because of expensive HOA dues and other factors, threatens their ability to remain in their homes. See the attached letter from one of the homeowners for reference (Attachment B).

### Background:

The Legends AIS Conditional Use Permit was issued on August 22, 2006 (Attachment C). The affordable units in this development were constructed pursuant to the LUO provisions of Section 15-182.4 *Residential Density Bonuses for Affordable Housing*. This section allows the developer to build bonus market-rate units if a corresponding deed-restricted affordable unit is constructed.

At the time of Legends permitting, Section 15-182.4 did not include the current, more detailed ordinance provisions which in effect prescribe professional management of the affordable units such as is provided by the Community Home Trust (CHT). Therefore, the Legends developer was responsible only for deed restricting the units for a period of 99 years and selling the units at the price point required by the section's formula. The developer was not required to verify income eligibility of the buyers or to address the impacts of HOA dues on long term affordability. The correspondence from 2006 with the developer and CHT used to confirm the pricing for these units at Legends can be found in Attachment D.

### For comparison: Community Home Trust management, impact of subsidy

For reference, the Community Home Trust increases the affordability of their units by pre-qualifying buyers such that their mortgage will be combined with a subsidy. The subsidy lowers the county-recorded tax rate valuation of the home via the provisions of GS-105-277.17 (Attachment E). This statute allows the county tax

valuation to be based only upon the amount of money the purchaser brings to the transaction (the *initial investment basis*); it does not include any subsidy moneys also provided to purchase the home. In contrast, the Legends affordable units appraised just as would be any other residence in the county which results in a higher tax burden to the owner.

The Community Home Trust retains title to their homes while conveying ownership via a renewable 99-year ground lease. In addition, CHT charges monthly fees to its homeowners to pay for administration of the ground leases and for accruing funds to pay for major expected house costs beyond normal maintenance (i.e. HVAC, roofing, etc.); in total, these fees range from about \$70.00 to \$170.00 per month. These costs and the expected HOA dues are incorporated into the pre-qualification financing of their homeowners.

The combination of the subsidy and the property tax reduction, along with the considerations given for the actual ownership costs of the home, provides an affordability advantage to CHT homes.

### **Legends Affordable Units**

For several of the Legends Affordable Unit owners, the prospect of a poor resale price, the lack of subsidy (as used by CHT), and rises in homeowners associations dues, have made living in these units less affordable than originally expected.

#### **Resale Price**

The *allowed* selling price of the Legend's affordable units has declined since when the homes were first put on the market in 2009. This is because the home pricing calculation uses the Area Median Income (AMI) statistic, provided by HUD, to calculate the sales price has declined. Pricing is designed to be affordable for a two person family earning 80% of the AMI. All of the affordable units in Legends are townhomes.

As illustrated in the table below, the AMI dropped about 5% in 2010 when the boundaries of the Metropolitan Statistical Area (MSA) were redrawn to include Durham, Chapel Hill and Carrboro rather than Cary and Raleigh. This results in an attendant decrease in the *allowable* sales price.

<u>Year</u>	<u>AMI</u>	<u>80% Median Income for a family of 2</u>
2013	\$67,700	<b><i>\$43,350</i></b>
2012	\$68,700	<b><i>\$44,000</i></b>
2011	\$67,800	<b><i>\$43,400</i></b>
2010	\$66,500	<b><i>\$43,400 (Notice reduction from previous year.)</i></b>
2009	\$65,500	<b><i>\$45,650 (The year the Legends affordable units were marketed.)</i></b>
2008	\$62,100	<b><i>\$45,650</i></b>
2007	\$60,100	<b><i>\$45,650</i></b>
2006	\$61,700	<b><i>\$45,650</i></b>
2005**	\$69,800	<b><i>\$45,650</i></b>
2004**	\$69,800	<b><i>\$45,650</i></b>
2003**	\$69,800	<b><i>\$45,200</i></b>

\*\* Raleigh, Durham, Chapel Hill MSA

#### **Legends Affordable Units Market Rate Conversion Proposal:**

The HOA's proposal to remedy this situation involves a modification to the CUP. Staff has determine that, in

addition, a text amendment to the LUO is also necessary. The modification to the CUP involves allowing the affordable units to be converted to market-rate units in such a fashion that secures some possible appreciation for the buyer while providing to the Town a possible share of the proceeds. The modification to the LUO involves a text amendment specific to Legends that will allow the market-rate conversion and will allow the additional unit density created by the market-rate conversion. The amendment will be limited to only those developments with affordable units permitted under the old ordinance that did not seek CHT management. The Legends AIS is the only such development in Town that meets these criteria.

The Legends HOA's proposal is attached (Attachment F). Specifically they propose the following:

1. That the affordable unit can be sold at market rate if owners choose to do so and that the proceeds from the sale are treated as follows:
  - a. Real estate commissions are deducted from the proceeds ;
  - b. Owner to retains the first \$5000 of equity appreciation;
  - c. Owner to retain eligible capital improvement costs (such as unit upgrades);
  - d. Any remaining surplus proceeds are shared 50/50 with the Town and Owner
    - i. The Town's portion is directed to the Town of Carrboro Affordable Housing Special Revenue Fund;
2. The affordable unit converts to market-rate with no restrictions;
3. A sunset clause is provided whereupon the affordable unit converts to market rate automatically after a period of 20 years;

Please review the attached letter from the Legends HOA describing the problem and detailing their proposal for repair (Attachment F). Robert Dowling from CHT has reviewed this proposal and supports its arrangements. His written response is attached (Attachment G). Staff supports the proposal but suggests the Board consider whether the sunset clause should be included as discussed in Mr. Dowling's letter.

#### Payment in Lieu

The current payment in lieu for affordable housing Town's 2013-2014 Miscellaneous Fees and Charges Schedule is \$32,167. This number is based on a three year rolling average of the *median* value of *all* the homes in the CHCCS School District. In a new development undergoing permitting, the payment-in-lieu option allows developers to obtain bonus units without having to build a corresponding affordable unit so long as the Board accepts the payment. This option in the LUO does not include considerations for the market-rate conversion of affordable units that have already been built.

#### Comparative Analysis of Market Rate and Affordable Housing units

For general reference, in the attached comparative analysis of Ballentine and Legends affordable housing units, the specific differences in stamp value (which is meant to reflect the sales price of the home) as recorded by Orange County can be reviewed. Also included in this spreadsheet is a comparative analysis of market-rate unit stamp values and the approximate per/square foot costs to provide some pricing context (Attachment H).

#### Necessary LUO Amendment

At this time only three (3) affordable units can be converted to market rate units without violating provisions of the LUO pertaining to density. For this reason, staff prepared a draft text amendment that would allow the remaining affordable units to be converted (Attachment I). In particular, this amendment would apply *only* to those subdivisions approved under the pre-June 2007 density bonus ordinance which allowed the HOA management scenario that Legends is now experiencing. Any permit modification allowing the units to be

converted to market-rate can only be done if the associated text amendment is approved in advance.

Note that the HOA and affordable unit owners assume responsibility for having their covenants, declarations, deeds and plats revised as needed. A condition would be to include language that allows *all* of the market-rate units to be converted subject to the approval of the text amendment discussed above. The following condition is written accordingly:

1. That, pursuant to a text amendment allowing for the conversion of designated affordable units into market-rate units without violating the density provisions of the LUO (applicable only for developments approved prior to June 2007 that utilized the provisions of Section 15-182.4), the Legends AIS Conditional Use Permit be amended to allow the designated affordable units to be treated as follows:
  - a. That the affordable unit can be sold at market rate if owners choose to do so and that the proceeds from the sale are treated as follows:
    - i. Real estate commissions are deducted from the proceeds ;
    - ii. Owner to retains the first \$5000 of equity appreciation;
    - iii. Owner to retain eligible capital improvement costs (such as unit upgrades);
    - iv. Any remaining surplus proceeds are shared 50/50 with the Town and Owner
    - v. The Town's portion is directed to the Town of Carrboro Affordable Housing Special Revenue Fund;
    - vi. The affordable unit converts to market-rate with no restrictions;
    - vii. A sunset clause is provided whereupon any of the affordable units automatically converts to market rate after a period of 20 years (from the date of this permit modification);
2. That the all applicable recorded documents containing references to the affordable units, including the deeds, the Homeowner Association Covenants and Declarations, and the Legends final plat, will be re-recorded accordingly to reflect the conditions of this permit modification.

A draft text amendment has been provided (Attachment I). The Board of Aldermen must receive public comment before adopting amendments to the LUO. Planning Board and Orange County review is also needed.

**FISCAL & STAFF IMPACT:** Staff time, application fee collected, potential receipt of payment in lieu moneys.

**RECOMMENDATION:** Should the Board consider the applicant's request and justifications acceptable, staff recommends that the Board adopt the attached resolution approving the permit modification to the Legends AIS Conditional Use Permit subject to the following condition (below) and the resolution setting a public hearing for the necessary text amendment to the LUO relating to the affordable housing provisions (attachments A and A-1):

1. That, pursuant to a text amendment allowing for the conversion of designated affordable units into market-rate units without violating the density provisions of the LUO (applicable only for developments approved prior to June 2007 that utilized the provisions of Section 15-182.4), the Legends AIS Conditional Use Permit be amended to allow the designated affordable units to be treated as follows:
  - a. That the affordable unit can be sold at market rate if owners choose to do so and that the proceeds from the sale are treated as follows:
    - i. Real estate commissions are deducted from the proceeds ;
    - ii. Owner to retains the first \$5000 of equity appreciation;

- iii. Owner to retain eligible capital improvement costs (such as unit upgrades);
  - iv. Any remaining surplus proceeds are shared 50/50 with the Town and Owner
  - v. The Town's portion is directed to the Town of Carrboro Affordable Housing Special Revenue Fund;
  - vi. The affordable unit converts to market-rate with no restrictions;
  - vii. A sunset clause is provided whereupon any of the affordable units automatically converts to market rate after a period of 20 years (from the date of this permit modification);
2. That the all applicable recorded documents containing references to the affordable units, including the deeds, the Homeowner Association Covenants and Declarations, and the Legends final plat, will be re-recorded accordingly to reflect the conditions of this permit modification.