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A NEW WINDOW IS OPENING

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The City Council appears to be intent upon opening a regulatory window that may benefit some property owners. It will also benefit individuals and families who want to buy a home in Berkeley but can't afford Berkeley's housing prices.

The window in question is rental unit to condominium conversion, a route that has been closed for many years except for Tenants-In-Common projects created before 8/20/92 and a few other exempt categories. The window has been closed for two decades because of the pro-tenant, anti-ownership bias of many of Berkeley's progressive visionaries who fail to understand that condominiums are the logical choice for low and moderate income households. The window is now opening not because these visionaries have come to see that condominiums make sense, helping many and hurting no one, but because of their fear that, in the wake of a recent lawsuit that reopened the door to Tenants-In-Common conversions, property owners will in massive numbers evict their tenants and then invite owner-occupants to buy TIC shares in the property.

Personally, I don't believe that many property owners would evict tenants to create TIC projects, but I could be wrong. Some owners surely will. The pressure is high in the owner-occupant housing market. The City's pro-tenant, anti-owner policies (condo conversion prohibition, rent control, TIC prohibition, inclusionary zoning, and so forth) have contributed to excess demand in the owner-occupant market, driving house prices ever higher. No doubt it is true, as the visionaries believe, that allowing condominium conversions will persuade some owners not to evict tenants in order to sell TIC shares to owner-occupant buyers. The condo conversion rules include a prohibition against evictions, and grant to sitting tenants a two-year right of first refusal to buy their unit at the price the owner expects to receive when he puts the unit on the market.

All of this, in my economist's view, is pure foolishness. There is no need to regulate the housing market in these ways. The demand for rental housing and for homes to buy, for TIC shares and for condominiums, will express itself naturally in the absence of regulation, and housing providers will respond appropriately to produce precisely the mix of for-sale and for-rent housing that best serves the needs of Berkeley's citizens, given available land to buy and other environmental constraints.

This free-market viewpoint may not be true in some markets – it certainly doesn't work well in health care, for example – but it works well in housing, which matches the economist's ideal conditions for a perfectly competitive market better than any other commodity I can think of. There are thousands of housing providers in Berkeley. They will produce homes for sale, apartments for rent, co-housing projects, upper income housing, moderate income housing, low income housing, condominiums, and live-work housing in precisely the numbers and proportions that best suit the needs of citizens. The only inhibition to this favorable outcome – other than space – is government. As to space, there is really plenty of space in the Bay Area. As to government, I wish it would get out of the way and allow housing providers to provide housing.

The free-market viewpoint will also not work when the City Council is trying to use housing regulations to redistribute income. This is the crux of the problem. The visionaries want to do a Robin Hood move. They want to take from the rich and give to the poor. What they don't understand is that markets will weave around their regulations to create outcomes not expected. The visionaries created rent control, the ultimate take-from-the-rich / give-to-the-poor program. What happened? It turned out that the rich are a lot better at securing low-cost, rent controlled housing than the poor. Thus Berkeley was fast turning into a yuppie ghetto under restrictive rent control. Berkeley was losing its single-parent households, its welfare-dependent population, its working poor, while in surrounding Alameda County the numbers of these groups was increasing steadily. Bottom line, rent control doesn't work. It hurts – by exclusion - those it is supposedly designed to help.

The regulatory change that the City Council is considering is actually not that radical. It is proposed that 100 units of rental housing be allowed to convert to condominiums each year. That means that – at most - roughly a half of one percent of the rental housing stock will be converted to condominiums each year. Considering that at least that many rental units have been created each year for the past several years, there will be no net loss to the stock of rental housing because of condominium conversion.

The proposal includes an exaction – 12 ½ % of the sale price would be due the City of Berkeley upon the sale of each converted condominium. These funds would go into the Housing Trust Fund, which funds housing for low and moderate income households. This is a worthy goal and, in my view, not altogether inappropriate. Funding permanently affordable low income housing makes a lot better sense than relying on rent control to assist citizens with their rent payments. For one thing, rent control is completely indiscriminate, giving the rent control subsidy to anyone who comes along, irrespective of need. That policy is enormously wasteful. This foolish policy has divided our community for years, and actually lulled the City Council into thinking for two decades that they didn't have to do anything to encourage the production of low income housing. The City of Oakland, which didn't rely on rent control for this purpose, produced a lot more low income housing in the years of restrictive rent control than Berkeley did, Berkeley's progressive politics notwithstanding.

The new rules are still under examination. There will no doubt be protracted wrangling about the number of units allowed to convert each year, about the fees, and about exemptions for long-

standing owner-occupants. The matter probably won't settle out to a policy we can count on for several months, perhaps several years. But in the meantime, there is an opportunity that some owners will want to consider. Waiting for the rules to gel is probably not the best strategy.

So how will the new conversion rules affect BPOA members? Those of us who own properties with what I call "owner-occupant appeal" may want to consider conversion. Depending on the level of current rents and other factors, conversion may increase the value of appropriate properties by 20 to 30 percent, possibly more. Paying 12 ½ % to the City for the Affordable Housing Fund is steep and may be legally challengeable, but considering the increase in value, it may be worth it. There are a host of considerations, including tax and estate planning considerations. Owners interested in exploring the conversion alternative may wish to give me a call so that I can explain how condominium conversion, TIC sales, and other transformations might become a part of your long term investment planning for your Berkeley property.

Michael St. John is a property management consultant who has specialized in rent control for 25 years. He owns and manages rental property here in Berkeley. He has helped hundreds of Berkeley property owners with all sorts of issues involving rent control, tenant relations, purchase/sale, and the like. He can be reached at 510-845-8928 x 101 or at info@stjohnandassociates.net.