5-24-2012

Alpine Village Co. v. City of McCall Appellant's Brief Dckt. 39580

IN THE SUPREME COURT OF THE STATE OF IDAHO

ALPINE VILLAGE COMPANY,
an Idaho Corporation,

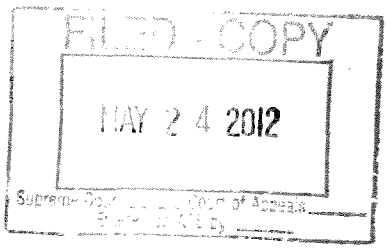
Plaintiff-Appellant,

v.

CITY OF MCCALL,
a Municipal Corporation,

Defendant-Respondent.

Supreme Court Case No. 39580



APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District
of the State of Idaho in and for Valley County

Honorable Michael R. McLaughlin, District Judge, presiding

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STATEMENT OF CASE

Appellant, Alpine Village Company (hereinafter "Alpine") filed its Complaint on December 10, 2010. Alpine's subsequently amended Complaint states three causes of action stemming from the City's requirement that Alpine comply with the City's inclusionary community housing ordinance as a mandatory precondition to Alpine's development of its property. Alpine claims that the City's actions effectuated an unlawful taking of Alpine's property in violation of the Fifth and Fourteenth Amendments to the United States Constitution, both directly and pursuant to 42 U.S.C.A. §1983, and a taking or inverse condemnation of Alpine's property in violation of Article I, Section 14 of the Idaho Constitution.

Soon after being served with the Amended Complaint, the City removed the case to federal court. The Notice of Removal was followed closely by the City's Motion to Dismiss the Complaint. Alpine filed a Motion to Remand the action from federal court to state court. That Motion was granted by U.S. Chief District Judge B. Lynn Winmill. R., Ex. II (Ex. 29).

After remand, both Alpine and the City filed Motions for Summary Judgment on all issues except the amount of compensation to which Alpine is entitled. The District Court issued its *Memorandum Decision on Plaintiff's and Defendant's Cross Motions for Summary Judgment* on December 16, 2011. R., Vol. III, p. 519. In its *Memorandum Decision,* the District Court granted the City's Motion for Summary Judgment and denied Alpine's Motion for Summary Judgment. The City subsequently moved for an award of attorneys fees. Alpine filed its Notice of Appeal from the *Memorandum Decision* on January 12, 2012. R., Vol. III, p. 538. The District Court denied the City's Motion for Attorneys Fees; and, a *Judgment* dismissing all

claims was entered by the District Court on January 12, 2012. R., Vol. III, p. 535. The District Court also certified the *Judgment* as final pursuant to I.R.C.P. 54(b). An Amended Notice of Appeal was filed by Alpine the same day, simply to confirm that the appeal was being taken from the *Judgment*, as well as the *Memorandum Decision.* R., Vol. III, p. 542.

ISSUES PRESENTED ON APPEAL

The following issues are presented by Alpine in this appeal:

1. Whether the District Court erred as a matter of Law in granting the City's Motion for Summary Judgment and denying Alpine's Motion for Summary Judgment.

2. Whether the District Court erred as a matter of law in holding that Alpine's State Constitutional Takings/Inverse Condemnation Claim is barred by I.C. §50-219.

3. Whether the District Court erred as a matter of law by holding that Alpine's Federal Constitutional Takings Claims are unripe.

4. Whether the District Court erred as a matter of law by holding that Alpine's Federal Constitutional Takings Claims are barred by I.C. §5-219(4).

5. Whether Alpine is entitled to an award of attorneys fees on appeal.

STATEMENT OF FACTS

The Alpine Village Planned Unit Development ("**Alpine Village**") is a mixed use residential and commercial condominium project located in downtown McCall. Alpine is the developer of Alpine Village.

The applications required by the McCall City Code for the development of Alpine Village were filed with the City of McCall on June 20, 2006 (the "**Applications**").

Approximately four months prior to Alpine's filing of the Applications, and based in large part upon the Housing Needs Assessment[1], the City had adopted Ordinances 819 and 820, which were companion community housing ordinances. R., Ex II (Ex. 1 and 2). Ordinance 819 was an "inclusionary housing" ordinance. It required developers of residential subdivisions to provide "community housing units" equal in number to a specified percentage of the total units in the subdivision.[2] These community housing units were required to be deed restricted units available for purchase or rent only by income qualified persons. Ordinance 820 required a "Community Housing Fee" to be paid at the time of application for a building permit for a residential unit. Ordinance 820 is not directly involved in this litigation.

Ordinance 819 was codified as McCall City Code §9.7.10. R., Ex. II (Ex. 3). It allowed an applicant who was subject to the Ordinance to comply in any one or a combination of the following four ways: (i) to build community housing units on the site of the development; (ii) to build or provide the community housing units off-site; (iii) to provide land for the construction of community housing units; and/or (iv) to pay an "in lieu fee". The Applications were subject to the mandatory requirements of Ordinance 819, as codified in McCall City Code §9.7.10.

On September 22, 2006, the Mountain Central Board of Realtors filed a lawsuit against the City, seeking a declaration that Ordinances 819 and 820 were unlawful and unconstitutional.[3] In response to the filing, the City declared a moratorium on all new land use applications and

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[1] The Housing Market and Needs Assessment for Valley and Adams County (Housing Needs Assessment) was completed July, 2005, it is attached hereto as Addendum 1.

[2] Alpine Village is considered a "subdivision" under the McCall City Code.

[3] *Mountain Central Board of Realtors v. City of McCall*, Valley County Case No. CV-2006-490C (Idaho, Fourth Judicial Dist. Feb. 19, 2008).

building permits. However, the City continued to require Alpine to comply with Ordinance 819 as a condition of proceeding with its development applications. The City required a limited release of claims to be included in a Development Agreement which was subsequently executed by Alpine and the City. The Development Agreement contained a release of claims against the City stemming from the outcome of the Mountain Central Board of Realtors litigation "...as to Community Housing Units which are sold pursuant to this [Community Housing] Plan prior to the final disposition of such litigation." (emphasis added). R., Ex. II (Ex. 16, p.4 §7.1). No release was required by the City, nor granted by Alpine, regarding any other claims. None of the condominium units which were acquired and deed restricted by Alpine in compliance with Ordinance 819 sold prior to the final disposition of the *Mountain Central* litigation.

The McCall Planning and Zoning Commission recommended approval of the Applications. In its Findings and Conclusions regarding the Application for Subdivision Preliminary Plat Approval, the Commission found that, "[t]he proposed project is subject to the requirements of the Inclusionary Housing Ordinance (No. 819)". R., Ex. II (Ex. 7, p.3, Finding No. 18 and p. 5, Conclusion No.12) and concluded that, "[t]he applicant shall obtain approval of the community housing plan when the final plat application is presented to the Commission. . . ".

On December 13, 2006, the McCall City Council conducted its public hearing on the Applications. The City Council granted preliminary approval of the Alpine Village Applications. In its Findings and Conclusions regarding the Applications, the Council found that,"[t]he proposed project is subject to the requirements of the Inclusionary Housing Ordinance (No. 819)" and concluded that,"[t]he applicant shall obtain approval of the community housing

plan when the final plat application is presented to the Commission..." R., Ex. II (Ex. 9, p.3, Finding No. 18 and p. 6, Conclusion No. 2.12).

On January 5, 2007, Alpine entered into a Purchase and Sale Agreement by which Alpine agreed to purchase a seventeen unit apartment complex in McCall known as the Timbers (hereinafter, "**Timbers**"). The purchase was contingent on Alpine receiving the City's approval of the conversion of the apartments to condominiums and the use of the condominiums as community housing units for Alpine Village. R., Ex. II, (Ex. 10 §2).

On March 12, 2007, Alpine submitted a revised Community Housing Plan, which proposed to satisfy the requirements of Ordinance 819 for Alpine Village by providing six units on site, all seventeen of the Timbers units as off-site units, and the remaining required .5 units by paying an "in lieu" fee to the City. R., Ex. II (Ex. 11).

On March 22, 2007, the McCall City Council granted Preliminary and Final Plat approval for the Timbers conversion (i.e. from apartments to condominiums) and for the use of the units as community housing units for Alpine Village. R., Ex. II (Ex. 12). The accompanying proposed Development Agreement contained language dedicating all seventeen of the Timbers Units as community housing units pursuant to McCall City Code §9.7.10. R., E. 11 (Ex. 13, p.2, §4.1).

On or about April 16, 2007, Alpine closed on its purchase of the Timbers project. The purchase price paid by Alpine for the property was $2,100,462.40, which was paid in cash at closing. R., Ex. II (Ex. 14). Alpine's sole reason for acquiring the Timbers project was to provide the Community Housing Units required by Ordinance 819 for Alpine Village.

On August 23, 2007, the City Council approved the Final Plat/Plan for Phase 1 of Alpine Village, which contained the aforesaid revised Community Housing Plan. R., Ex. II, (Ex. 15).

On December 13, 2007, the Development Agreement for Alpine Village was signed. The final Community Housing Plan, dedicating all seventeen of the Timbers units as community housing units for Alpine Village, was attached as Exhibit B to the Development Agreement.[4]

On February 19, 2008, District Court Judge Thomas Neville issued a *Memorandum Decision and Order* in *Mountain Central,* Valley County Case No. CV2006-490-C, finding Ordinances 819 and 820 to be unconstitutional, void and invalid. R., Ex. II (Ex. 17). No appeal was taken from that Decision.

On April 24, 2008, the McCall City Council adopted Resolution 08-11, which authorized refunds of fees paid pursuant to Ordinance 820 which, as is noted above, was the companion Ordinance to Ordinance 819. R., Ex. II (Ex. 18). On June 26, 2008, the City Council adopted Resolution 08-17[5], pursuant to the terms of which refunds were also authorized for those persons who "voluntarily" paid Community Housing Fees under Ordinances 827 and 833. R., Ex. II (Ex. 20, p. 3).

On August 20, 2008, the First Amendment to the Alpine Village Development was recorded. The Amendment released Alpine from any further obligation to provide Community Housing for Alpine Village. R., Ex. II (Ex. 21, p. 2§1).

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[4] R, Ex. II (Ex. 16 §7.1). The Agreement was recorded on January 28, 2008 and was subsequently re-recorded to correct typographical errors.

[5] Please note that the title to Resolution 08-17 provided for refund of community housing fees collected under Ordinance 820, 828 and 833; however, the body of the resolution provides for refunds of fees pursuant to 820, 827 and 833.

On November 4, 2009, the McCall City Council adopted Resolution 09-10[6], which established December 31, 2009 as the last date on which requests for refunds of Community Housing Fees paid pursuant to Ordinances 820, 827, or 833 could be submitted. R., Ex. II (Ex. 22). Fifty-eight refund requests, totaling $92,820, were received, approved and paid by the City for Community Housing Fees paid pursuant to Ordinances 820, 827 or 833. R., Vol. III, p. 403. *Every one* of the refund requests which was paid by the City was filed long after the expiration of the 180-day period within which such requests arguably would have been required to be filed under I.C. §50-219. In fact, the City accepted and paid refund requests which were submitted as long as forty-three months after the fees had been paid. The City did not assert I.C. §50-219 as a bar or defense to any of these refund requests.

No procedure or authorization whatsoever was provided by the City for the filing of refund requests or claims for the recovery of fees paid or monies expended pursuant to Ordinance 819.[7]

ARGUMENT

I. Introduction

In order for Alpine to proceed with its development plan for Alpine Village, it was required to comply with the mandatory provisions of the City's Ordinance 819. Alpine was not allowed to conclude the permitting process with the City until it had proposed a Community

[6] Please note that the title to Resolution 09-10 provided for refund of community housing fees collected under Ordinance 820, 828 and 833; however, the body of the resolution provides for refunds of fees pursuant to 820, 827 and 833.

[7] The chronology of events which is contained in the Statement of Facts is illustrated in a condensed Timeline, which is attached hereto as Addendum 2.

Housing Plan which was determined by the McCall City Council to be compliant with Ordinance 819. Alpine complied with the Ordinance by acquiring the Timbers, by then converting the Timbers to saleable condominium units, and lastly by dedicating the units solely as community housing units. Alpine acquired the Timbers for one and only one reason, namely to comply with Ordinance 819 and move forward with the Alpine Village project.

After the Mountain Central Board of Realtors initiated a lawsuit against the City which facially challenged Ordinance 819 and its companion Ordinance 820, with full knowledge that its Ordinance was being challenged, the City continued to impose Ordinance 819 on Alpine as a mandatory precondition of Alpine's development of Alpine Village. In addition, the City exacted from Alpine a limited release of claims which might arise from the resolution of the *Mountain Central* litigation. Thus, with full knowledge that its Ordinance was being challenged as unconstitutional and unlawful, and with only this limited release, the City continued to require Alpine to comply with the Ordinance by acquiring, converting and restricting the Timbers units.

Ordinance 819 was subsequently found to be unlawful and unconstitutional in the final decision which was rendered in the *Mountain Central* litigation. By the time the City thereafter released the Timbers units from their community housing restrictions and thereby freed Alpine to sell or rent the Timbers units without restrictions, the value of the units had severely declined and Alpine was left with no means to recover its resultant losses. This is the core of Alpine's takings claims which have been asserted in this litigation.

The District Court did not address the merits of Alpine's claims. Instead, the Court found the claims to be time barred or unripe. However, the cross motions for summary judgment

which were presented to the District Court were not limited to the timeliness or ripeness of the claims. Alpine also argued in its Motion that the merits of Alpine's claims could be resolved as a matter of law. In response, the City did not dispute that, if Alpine's claims were found to be timely, a compensable taking had in fact occurred. It is, thus, Alpine's position in this appeal not only that the District Court's holdings should be reversed, but, additionally, that this Court can and should hold that summary judgment should be granted in favor of Alpine on the merits of Alpine's claims, as requested by Alpine in its Motion for Summary Judgment. This would leave for trial only the issue of the amount of compensation to which Alpine is entitled.

II. Standard of Review

This Court applies the same standard in reviewing the appeal of an order granting summary judgment as the District Court used when originally ruling on the motion. This Court exercises free review over the record and over issues of statutory construction. *Huskinson v. Nelson,* 152 Idaho 547, 272 P.3d 519 (2012); *Ball v. City of Blackfoot,* 273 P.3d 1266 (2012). *Troupis v. Summer*, 148 Idaho 77, 79, 218 P.3d 1138, 1140 (2009); *VFP VC v. Dakota Co.,* 141 Idaho 326, 331, 109 P.3d 714, 719 (2005).

III. The City's Imposition of Ordinance 819 on Alpine constituted a Taking or an Inverse Condemnation under Article I, Section 14 of the Idaho Constitution; and, if compensation is denied under Alpine's State Constitutional Claim, then a compensable taking has occurred under the Fifth Amendment to the United States Constitution.

A. The issue of whether a taking has occurred is an issue of law.

The issue of whether a taking has occurred, as opposed to the amount of compensation which is owed, is a legal issue to be resolved by the Court. *Tibbs v. City of Sandpoint,* 100 Idaho

667, 670, 603 P.2d 1001, 1004 (1979) (citing *Rueth v. State,* 100 Idaho 203, 596 P.2d 75 (1979). See also, *Covington v. Jefferson County*, 137 Idaho 777, 780, 53 P.3d 828, 831 (2002).

This case presents a unique set of facts, not often found in inverse condemnation or takings actions. McCall City Ordinance 819, which is the basis of Alpine's takings claims, has already been held by the Court in *Mountain Central* to be void, unlawful and unconstitutional. Thus, unlike most of the takings cases which will be cited to the Court, the issue of whether the City's underlying ordinance was constitutional or whether the City had any authority at all to require Alpine to expend funds or divest itself of property rights in compliance with the Ordinance has already been fully, finally and adversely resolved against the City.

B. The application of Ordinance 819 to Alpine effectuated a *per se* taking of Alpine's protected property interests.

Both the Idaho and United States Constitutions prohibit the taking of private property for public use without just compensation.[8] "The Fifth Amendment's guarantee that private property shall not be taken for public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States,* 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554, (1960).

In *Lingle v. Chevron U.S.A. Inc.,* 544 U.S. 528, 125 S. Ct. 2074, 2076, 161 L. Ed. 2d 876 (2005), the U.S. Supreme Court identified the two types of regulatory actions which will be deemed to be *per se* takings under the Fifth Amendment:

> Regulatory actions generally will be deemed *per se* takings for Fifth Amendment purposes (1) where government requires an owner to suffer a permanent physical invasion of its property, see *Loretto v. Teleprompter Manhattan CATV Corp.* 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868, or (2) where regulations completely deprive an owner of "*all* economically beneficial us[e]" of her property, *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1019, 112 S.Ct. 2886, 120 L.Ed.2d 798.[9]

Ordinance 819 effectuated a *Loretto* type of *per se* physical taking of two constitutionally protected property interests, Alpine's money and Alpine's right to freely exclude people from and dispose of its property. Either way, the application of the Ordinance to Alpine was a *per se* violation of the aforesaid Idaho and United States Constitutional provisions for which compensation must be paid.

1. The City took a fundamental and constitutionally protected property right from Alpine, namely the right to freely exclude people from and dispose of its property.

One of the bundle of fundamental, constitutionally protected property rights which has been recognized by the courts is the right of an owner to freely exclude people from and dispose of property. This Court has recognized that, "Property in a thing consists not merely in its ownership and possession, but in the *unrestricted right* of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself." *O'Connor v. City of Moscow*, 69 Idaho 37, 42, 202 P.2d 401, 404 (1949) (*emphasis added*). This view is not unique to Idaho. The United States Supreme Court has long held that property consists of a "[G]roup of rights inhering in the citizen's relation to the physical thing, as

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[8] "[N]or shall private property be taken for public use, without just compensation." Fifth Amendment to U.S. Const. "Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor." Idaho Const. Art. I, §14.

the right to possess, use and dispose of it." *U.S. v. Gen. Motors Corp.*, 323 U.S. 373, 378, 65 S. Ct. 357, 359, 89 L. Ed. 311 (1945). See also *Kaiser Aetna v. U. S.*, 444 U.S. 164, 179, 100 S. Ct. 383, 393, 62 L. Ed. 2d 332 (1979), "[W]e hold that the 'right to exclude,' so universally held to be a fundamental element of the property right, falls within this category of interests that the Government cannot take without compensation."

The City required Alpine to permanently deed restrict its community housing units as to both purchase price and eligible purchasers. Alpine was required to place restrictions on its property which allowed Alpine to sell or lease its property only at restricted prices and only to those individuals who met certain age, income and residency requirements, as established and administered by the City of McCall. R., Ex. II (Ex. 1, p. 9, ¶7). In short, the City took from Alpine its fundamental right to dispose of its property to whomever it chose and for whatever price it could obtain. The City also took from Alpine its right to freely exclude others from the property and to determine who will occupy the property.

A *per se Loretto* taking does not require an actual physical invasion of one's property by the government. The U.S. Supreme Court has clearly held that where the character of the governmental action implicates fundamental property rights a *per se* taking could be found, even absent a literal physical invasion of the property by the governmental entity itself. *Hodel v. Irving*, 481 U.S. 704, 107 S. Ct. 2076, 95 L. Ed. 2d 668 (1987).

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[9] In *Loretto v. Teleprompter Manhattan CATV Corp.*, the Supreme Court held that a compensable taking resulted from the government's appropriation of part of a rooftop in order to provide cable TV access for apartment tenants.

This same *per se* takings analysis has been applied by various state courts in cases in which the court found that an essential property right had been infringed. In *Gregory v. City of San Juan Capistrano*, 142 Cal. App. 3d 72, 191 Cal. Rptr. 47, (Ct. App. 1983) the California Court of Appeals found that a city ordinance which required an owner who desired to sell his mobile home park first to offer it to "the residents," violated the park owner's right to control the disposition of his or her property.

> The ability to sell and transfer property is a fundamental aspect of property ownership. Property consists mainly of three powers: possession, use, and *disposition*. (*U.S. v. General Motors Corp.*, *supra.*, 323 U.S. at pp. 377-378 [89 L.Ed. at p. 318].) California courts have long recognized the fundamental importance of an owner's right, absent an illegal purpose, to sell property to whomever the owner chooses. "The constitutional guaranty securing to every person the right of 'acquiring, possessing, and protecting property,'... includes the right to dispose of such property in such innocent manner as he please." (*Ex Parte Quarg* (1906) 149 Cal. 79, 80 [84 P. 766]; see *Tennant v. John Tennant Memorial Home* (1914) 167 Cal. 570, 575 [140 P. 242; *Laguna Royale Owners Assn. v. Darger* (1981) 119 Cal.App.3d 670, 681 [174 Cal.Rptr. 136.) This part of the ordinance simply appropriates an owner's right to sell his property to persons of his choice. City has thus "extinguish[ed] a fundamental attribute of ownership," in violation of federal and state constitutions. (See *Agins v. Tiburon*, *supra.*, 447 U.S. at p. 262 [65 L.Ed.2d at p. 113].)

Gregory v. San Juan, 142 Cal. App. 3d at 88, 191 Cal. Rptr. at 58.

The Washington Supreme Court has held that the forced transfer of a right of first refusal constituted a taking. "The instant case falls within the rule that would generally find a taking where a regulation deprives the owner of a fundamental attribute of property ownership. *See*

Guimont, 121 Wash.2d at 605 n. 7, 854 P.2d 1; Settle, *supra,* at 387" *Manufactured Housing Communities of Washington v. State*, 142 Wash. 2d 347, 369, 13 P.3d 183, 194 (2000).[10]

Ordinance 819, as applied to Alpine by the City, was an outright invasion of Alpine's right to freely dispose of its property, through sale or rent, to a buyer or lessee of its choosing, at a price of its choosing. The determination of price and person was controlled by the City, not Alpine. The Ordinance resulted in the forced occupation of Alpine's property by renters or buyers approved by the City, not Alpine. As such, under the authority cited above, a *per se* taking occurred. This conclusion follows directly from the findings of Judge Neville in *Mountain Central.*

> The restrictions for community housing dictate the price for which the property may be sold and to whom the property may be sold. Even if the landowner builds rental units, the restrictions that twenty percent of the units be community housing also limit how much rent a landowner may charge and to whom the units may be rented. These restrictions go much further than merely regulating the use of property; instead, they essentially regulate ownership of the property by dictating to whom a unit may be sold or rented.

R., Ex. II (Ex. 17, p.29 L.20)

2. The requirement that Alpine expend money to comply with a void and unconstitutional ordinance effectuated a taking.

Under the perceived authority of Ordinance 819, the City required Alpine to spend in excess of two million dollars to provide low income housing for a public use. With the holding in *Mountain Central,* it is undisputed that the City had no statutory authority to require Alpine to

[10] See also *Manocherian v. Lenox Hill Hosp.,* 84 N.Y.2d 385, 398, 643 N.E.2d 479 (1994), holding "Property attributes to any physical object include the rights 'to possess, use and dispose' of the asset *(United States v General Motors Corp.,* 323 US 373, 378). It is well established that even if only a single element of an owner's 'bundle of [property] rights' is extinguished, there has been a regulatory taking."

spend any money whatsoever for this purpose. Money is property in the constitutional sense. "Money is clearly property that may not be taken for public use without the payment of just compensation. *Brown v. Legal Found. of Wash.,* 538 U.S. 216, 123 S.Ct. 1406, 155 L.Ed.2d 376 (2003)." *BHA Investments, Inc. v. City of Boise*, 141 Idaho 168, 172, 108 P.3d 315, 319 (2004).

In *BHA* this Court found that the payment of money to the City of Boise pursuant to a city ordinance that the Court had earlier ruled void was an unconstitutional taking. "Since the City had no authority to charge the liquor license transfer fee, its exaction of the fee constituted a taking of property under the United States and Idaho Constitutions." *BHA Investments, Inc,* 141 Idaho at 172, 108 P.3d at 319. There is no constitutionally relevant distinction between BHA's payment of money directly to the City of Boise and Alpine's payment of money to a third party to purchase property as required by the Ordinance. It is the taking of property for a public use without compensation that constitutes the taking. In both instances, the exactions were mandated by an ordinance later declared to be invalid. Thus under *BHA, Loretto and Brown*, the requirement that Alpine expend money to provide community housing was a compensable *per se* physical taking under both Article I, Section 14 of the Idaho Constitution and the Fifth Amendment to the United States Constitution.

C. The fact that Alpine retains ownership of the Timbers and that the community housing restrictions were eventually released by the City is irrelevant to whether a taking has occurred.

State and Federal case law leave no doubt that a temporary taking, such as the one before this Court, is nonetheless a compensable taking. "If a regulation of private property that amounts to a taking is later invalidated, this action converts the taking to a "temporary" one for which the

government must pay the landowner for the value of the use of the land during that period." *McCuskey v. Canyon County Com'rs,* 128 Idaho 213, 216, 912 P.2d 100, 103 (1996) citing *First English Evangelical Lutheran Church v. Los Angeles County.,* 482 U.S. 304, 319, 107 S.Ct. 2378, 2388, 96 L.Ed.2d 250 (1987). The fact that Alpine owns the Timbers will certainly be relevant to the issue of the amount of compensation to which Alpine is entitled. It has no bearing on the issue which is before this Court, namely whether a compensable taking has occurred.

IV. The District Court erred as a matter of law in holding that Alpine's State Inverse Condemnation/Takings Claim is barred by I.C. §50-219.

A. Introduction

Alpine has acknowledged throughout this case that I.C. §50-219 applies the Idaho Tort Claims Act Notice of Claim Statute (i.e., I.C. §6-906) to non-tort claims for damages asserted against municipalities. Alpine has also consistently conceded that it did not timely file a notice of claim with City, as required by I.C. §50-219. However, Alpine's failure to file a notice of claim should be excused because the application by the City to Alpine of the Notice of Claim Statute constitutes an unconstitutional denial of Alpine's right to equal protection of the law, and because the City should be estopped from asserting the Statute as a bar to Alpine's state claim. The District Court found that Alpine's failure to comply with the Statute is a jurisdictional bar to Alpine's pursuit of its state claim. The District Court therefore declined to consider Alpine's arguments that it would be unconstitutional and inequitable to apply the Statute to Alpine.

The District Court erred as a matter of law in reaching this conclusion, for two reasons. First, even if I.C. §6-908 is found to be applicable to Alpine's claim, the District Court erred in holding that I.C. §6-908 is a jurisdictional bar which precludes consideration of Alpine's

constitutional and equitable defenses. Second, the District Court erred in holding that I.C. §50-219 applies not just I.C. §6-906 but also I.C. §6-908 to non-tort claims for damages against municipalities.

B. The District Court erred in holding that I.C. §6-908 is a jurisdictional bar which precludes consideration of Alpine's Constitutional and Equitable Defenses to the application of I.C. §50-219 to Alpine's State Constitutional Claim.

Although Alpine contends that the District Court erred as a matter of law in holding that I.C. §50-219 results in the application of I.C. §6-908 to Alpine's State Constitutional Claim (see discussion below), this error becomes moot if this Court concurs with Alpine's position that the requirements of I.C. §6-908 are not "jurisdictional". The District Court's holding that non-compliance with I.C. §6-908 is a jurisdictional bar which precludes consideration of Alpine's compelling constitutional and equitable arguments should be reversed because it is fundamentally inconsistent with well settled principles of statutory construction.

While the Court of Appeals has held in *Madsen v. Idaho Dept. of Health & Welfare*, 116 Idaho 758, 779 P.2d 433, (Ct. App. 1989), that failure to comply with the notice of claim requirements of the ITCA deprives the court of subject matter jurisdiction, this Court has never directly considered the issue. The undisputed facts of this case provide a compelling reason for this Court to do so now. I.C. §6-908, the statute at issue, reads as follows: "No claim or action shall be allowed against a governmental entity or its employee unless the claim has been presented and filed within the time limits prescribed by this act." It was not until the Court of

Appeals decision in *Madsen* that the characterization of I.C. §6-908 as jurisdictional first appeared.[11]

The *Madsen* Court's conclusion that noncompliance with the notice requirements of the ITCA divests the courts of subject matter jurisdiction was made without any analysis or citation to Supreme Court precedent. While prior decisions of this Court have held compliance with the notice requirements of the ITCA to be a "condition precedent" and "mandatory precondition", none have ever gone so far as to declare that the statute creates a jurisdictional bar. There are compelling reasons to reject the *Madsen* Court's conclusion.

The district court is a court of general jurisdiction. The Idaho Constitution provides that "The district court shall have original jurisdiction in all cases, both at law and in equity . . ." Idaho Const. Art. 5, §20. This Court held in *Troupis v. Summer*, 148 Idaho 77, 80, 218 P.3d 1138, 1141 (2009), "This Court has adopted a presumption that courts of general jurisdiction have subject matter jurisdiction unless a party can show otherwise". Citing *Borah v. McCandless,* 147 Idaho 73, 78, 205 P.3d 1209, 1214..

In addition to a presumption of jurisdiction, the *Borah* court cited with approval language from the Vermont Supreme court in *Lamell Lumber Corp. v. Newstress Intern., Inc.*, 182 Vt. 282, 938 A.2d 1215 (2007), which required that the presumption of a courts' jurisdiction could be overcome only by a showing of a "clear" legislative intent. "However, the superior court is presumed to retain jurisdiction over all civil actions unless the Legislature has clearly indicated

[11] Alpine is unable to find any subsequent Idaho cases where *Madsen* is cited or where I.C. §6-908 is held to be jurisdictional.

to the contrary. Contrary to defendant's assertion, we find nothing ... that suggests a legislative intent-implied or otherwise-to "oust" the superior court of general jurisdiction . . ." See *Borah*, 147 Idaho at 78, 205 P.3d at 1214 (2009).

This holding in *Borah* is consistent with the position taken in other jurisdictions. In *Labelle v. McKay Dee Hosp. Ctr.*, 2004 UT 15, 89 P.3d 113, 144 (2004) at n.2, the Utah Supreme Court held: "We presume that our district courts retain their grant of constitutional jurisdiction in the absence of a clearly expressed statutory intention to limit jurisdiction." The *Labelle* Court cited consistent holdings by the Supreme Courts of Arizona, Hawaii and Michigan.[12]

The language of the I.C. §6-908 simply does not meet this test. It does not rise to the required level of stating a clear and unambiguous legislative intent to divest the district court of jurisdiction. Had the Idaho Legislature intended the requirements of I.C. §6-908 to be jurisdictional it could and should have clearly so stated, as did this Court in I.R.C.P. 84(n), which provides:

> (n) Effect of Failure to Comply With Time Limits. The failure to physically file a petition for judicial review or cross-petition for judicial review with the district court within the time limits prescribed by statute and these rules shall be jurisdictional and shall cause automatic dismissal of the petition for judicial review upon motion of any party, or upon initiative of the district court. Failure of a party to timely take any other step in the process for judicial review shall not be deemed jurisdictional, but may be grounds only for such other action or sanction

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[12] See also, *Vill. of Elkhart Lake v. Borzyskowski*, 123 Wis. 2d 185, 193, 366 N.W.2d 506, 510 (Ct. App. 1985), "The normal construction of jurisdictional rules includes a presumption that once jurisdiction attaches, it cannot be ousted or lost absent a clear indication of such a purpose."

> as the district court deems appropriate, which may include dismissal of the petition for review.

Notice of claim statutes which are comparable to I.C. §6-908 have been held to be procedural in many other jurisdictions. In *Millman v. County of Butler,* 235 Neb. 915, 929, 458 N.W.2d 207, 216, (1990) the court held;

> Thus far, we have determined that compliance with the notice requirement of the Political Subdivisions Tort Claims Act is not a jurisdictional prerequisite for a negligence action brought under the act and have also reaffirmed the principle that filing or presenting a claim against a political subdivision is a condition precedent for a claimant's right to commence a tort action against a political subdivision. As we noted in *Schmid v. Malcolm Sch. Dist.,* 233 Neb. 580, 447 N.W.2d 20 (1989), filing or presenting a tort claim against a political subdivision is a procedural matter under the Political Subdivisions Tort Claims Act.[13]

In *Pritchard v. State*, 163 Ariz. 427, 430, 788 P.2d 1178, 1181 (1990), the Arizona Supreme Court also held that non-compliance with its equivalent notice of claim statute was a non-jurisdictional requirement to which defenses could be asserted:

> After examining the language of § 12–821, the legislative policy underlying the statute, and prior precedent on the matter, we conclude that filing a claim with the state pursuant to A.R.S. § 12–821 goes to the plaintiff's right to recover rather than to the power of the court to grant relief. We hold that filing a timely claim is not a jurisdictional prerequisite to bringing suit, but is a requirement more analogous to a statute of limitations. Because compliance with § 12–821 is not jurisdictional, issues of excusable neglect or incompetence under the statute are to be resolved like any other disputed issue of fact in the case.

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[13] Supporting decisions from other jurisdictions which were cited by the *Millman* Court include *Pritchard v. State, supra; Mesolella v. City of Providence,* 508 A.2d 661 (R.I.1986); *Vasys v. Metropolitan District Commission,* 387 Mass. 51, 438 N.E.2d 836 (1982); *Hill v. Middletown Bd. of Ed., supra; City of Wilmington v. Spencer,* 391 A.2d 199 (Del.1978); *Thompson v. City of Aurora,* 263 Ind. 187, 325 N.E.2d 839 (1975); *Yurechko v. Allegheny Co.,* 430 Pa. 325, 243 A.2d 372 (1968); *Kamani v. Port of Houston Authority, supra; Bryant v. Duval County Hosp. Authority,* 502 So.2d 459 (Fla.App.1986).

In holding the Arizona statute to be procedural, the *Pritchard* court cited similar holdings by other jurisdictions, including California, Florida and the District of Columbia, confirming that equitable defenses could be asserted to comparable notice of claim statutes. *Id.*[14]

Recognizing the notice requirements of the ITCA to be procedural does not compromise the basic purpose of the Act.[15] It leaves intact all of the notice components of the Act and the consequences of an unexcused failure to comply with those notice requirements. It would however, allow a court to at least consider and address a litigant's claim that it should be excused from compliance with the notice requirements on constitutional or equitable grounds. And, in those limited instances where such defenses are deemed compelling, it would allow litigants access to the courts. Until Alpine's constitutional and equitable defenses to the application of I.C. §50-219 have been considered on their merits, Alpine's State Constitutional Taking/Inverse Condemnation Claim cannot be deemed to have been resolved on its merits. Because Alpine's constitutional and equitable defenses are based on undisputed facts, this Court can and should determine the ultimate merit of those defenses.

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[14] The *Pritchard* court continued at fn4: "Several other jurisdictions have concluded that their claim statutes are not jurisdictional and, like a statute of limitations, are subject to waiver or estoppel. *See Fredrichsen v. City of Lakewood,* 6 Cal.3d 353, 99 Cal.Rptr. 13, 491 P.2d 805 (1971); *Rabinowitz v. Town of Bay Harbor Islands,* 178 So.2d 9 (Fla.1965); *Bryant v. Duval Hosp. Authority,* 502 So.2d 459 (Fla.Dist.Ct.App.1986); *Gordy Construction Co. v. KHM Development Co.,* 128 Ga.App. 648, 197 S.E.2d 426 (1973); *Dunbar v. Reiser,* 26 Ill.App.3d 708, 325 N.E.2d 440 (1975) *aff'd,* 64 Ill.2d 230, 1 Ill.Dec. 89, 356 N.E.2d 89 (1976); *LaBriola v. Southeastern Pennsylvania Transp. Authority,* 227 Pa.Super. 305, 323 A.2d 9 (1974); *Hill v. Board of Ed. of Middletown,* 183 N.J.Super. 36, 443 A.2d 225 (1982)."

[15] This court has held in *Cobbley v. City of Challis*, 138 Idaho 154, 157, 59 P.3d 959, 962 (2002), "The purpose of I.C. §6–906 is to " '(1) save needless expense and litigation by providing an opportunity for amicable resolution of the differences between parties, (2) allow authorities to conduct a full investigation into the cause of the injury in order to determine the extent of the state's liability, if any, and (3) allow the state to prepare defenses.' " *Friel v. Boise City Housing Auth.,* 126 Idaho 484, 486, 887 P.2d 29, 31 (1994) (quoting *Pounds v. Denison,* 120 Idaho 425, 426–27, 816 P.2d 982, 983–84 (1991))".

C. I.C. §50-219 does not apply I.C. §6-908 to non-tort claims for damages against municipalities.

The District Court held that the language of I.C. §50-219 incorporates not only I.C. §6-906 (the requirement that a claim must be filed against a city within 180 days of its accrual) but also I.C. §6-908 (a prohibition of filing an action against a city unless a claim was timely presented and filed with the city) to non-tort claims for damages against municipalities. This formed the foundation for the District Court's holding that it lacked subject matter jurisdiction and that, therefore, it could not entertain any defenses to a failure to comply with the notice requirements of I.C. §6-906. R., Vol. III, p. 525-527. As is noted above, if this Court concurs with Alpine's argument that I.C. §6-908 is a procedural, not jurisdictional, statute, then the District Court's holding that I.C. §50-219 incorporates not only I.C. §6-906 but also I.C. §6-908, while erroneous, does not prevent Alpine from asserting its claim that it should be excused from compliance with the notice of claim requirements on constitutional and equitable grounds. Nonetheless, Alpine contends that both rulings were legally erroneous.

I.C. §50-219 is a short and simple statute. It states; "All claims for damages against a city must be filed as prescribed by chapter 9 title 6, Idaho Code." Alpine's position is that I.C. §50-219 incorporates only the claim filing procedures of the Idaho Tort Claims Act (i.e. I.C. §6-906). The language of I.C. §50-219 requires that all claims for damages against a city must be filed as prescribed by chapter 9, title 6, Idaho Code. There are twenty-nine statutory sections in chapter 9, title 6. Only two sections prescribe when and how claims must be filed. These are I.C. §6-906- *Time for filing claims* and I.C. §6-907- *Contents of claim.*

In *Sweitzer v. Dean*, 118 Idaho 568, 798 P.2d 27 (1990), this Court had the opportunity to apply the rules of statutory construction to the meaning of the words all claims must be filed as prescribed in I.C. §50-219. Sweitzer argued that I.C. §50-219, as amended in 1983, acted to incorporated the entire ITCA. In rejecting that argument and limiting the scope of I.C. §50-219 to I.C. § 6-906 the Court held:

> Applying the plain meaning of the words "all" and "filed" in conjunction with that of the word "prescribe," may clearly be construed to mean that all damage claims are to be filed as directed by or in the manner set forth in the ITCA. Applying the plain meaning of the language contained in I.C. §50-219 clearly demonstrates that the legislature's intent was to incorporate the notice requirements contained in chapter 9, title 6 so as to make the filing procedures for all claims against a municipality uniform, standard and consistent. To construe the language to mean that the Tort Claims Act is substituted for I.C. § 50-219 would render I.C. § 50-219 meaningless and essentially null. We therefore construe the language contained in I.C. § 50-219 to require that a claimant must file a notice of claim for all damage claims, tort or otherwise, as directed by the filing procedure set forth in I.C. § 6-906 of the Idaho Tort Claims Act, chap. 9, tit. 6.

Sweitzer v. Dean, 118 Idaho at 572, 798 P.2d at 31.

The District Court expressed concern that to hold that I.C. §50-219 only encompasses I.C. §6-906 and not I.C. §6-908 would create numerous case by case exceptions for untimely notices. R., Vol. III, p. 526. This concern of course assumed that I.C. §6-908 is a jurisdictional statute. In any event, while the statutory construction advanced by Alpine may produce exceptions to the application of the Notice of Claims Statute as a bar in select cases, those exceptions would have to be based on the existence of factually and legally meritorious claims. Moreover, as this Court held in *Verska v. St' Alphonsus Regional Medical Center*, 151 Idaho 889, 265 P.3d 502, 508 (2011), "We must follow the law as written. If it is socially or economically unsound, the power to correct it is legislative, not judicial."

It is, thus, Alpine's position that I.C. §50-219 incorporates only I.C. §§6-906 and 907 and not I.C. §6-908. There is clearly no evidence in I.C. §50-219 or I.C. §§6-906 and 907 of a legislative intent to limit the courts' jurisdiction. Even if this Court were to hold that I.C. §50-219 does incorporate I.C. §6-908, this Court should hold that I.C. §6-908 is not jurisdictional. In either case, Alpine's claims that it should be excused from compliance with the notice requirements on constitutional and equitable grounds should have been considered by the District Court and should be considered by this Court. In the event that this Court finds that Alpine's equitable and constitutional defenses are well founded, then this Court is free to consider Alpine's State Takings/Inverse Condemnation Claim on its merits. In the event that this Court finds that Alpine's equitable and constitutional defenses are not persuasive and dismisses Alpine's state claim, this Court should then proceed to consider Alpine's federal claim. This is the procedure prescribed by *San Remo Hotel, L.P. v. City and County of San Francisco, et al.*, 545 U.S. 323, 125 S. Ct. 2491, 162 L. Ed. 2d 315 (2005) and followed by the this Court in *BHA Investments, Inc. v. City of Boise*, supra.

D. Application of the 180-Day Notice of Claim Statute to Alpine's State Inverse Condemnation Claim would violate Alpine's Constitutional Right to Equal Protection.

After Ordinances 819 and 820 were declared unconstitutional in the *Mountain Central* decision, the McCall City Council on April 24, 2008 adopted Resolution 08-11, which authorized refunds of fees paid pursuant to Ordinance 820. Shortly thereafter, the City Council adopted Resolution 08-17, pursuant to the terms of which, refunds were also authorized for those

persons who "voluntarily" paid Community Housing Fees under Ordinances 827 and 833. The City accepted such refund requests through December 31, 2009.

A total of $92,820 in refunds was paid to fifty-eight claimants. *Every one* of the refund requests which was paid by the City was filed long after the expiration of the 180-day period within which such requests arguably would have been required to be filed under I.C. §50-219. In fact, the City accepted and paid refund requests which were submitted as long as *forty-three months* after the fees had been paid.[16] The City did not assert I.C. §50-219 as a bar or defense to any of these refund requests. Under the very arguments made by the City in this case, the Notice of Claim Statute would have barred the refund claims asserted by each and every one of those persons who requested refunds. Yet, the City elected to waive compliance with the statute for all of the refund claimants.

Ordinance 819 and 820 were treated in all respects by the City as companion ordinances and both required the expenditure of money to support community housing, as did the voluntary provisions of Ordinances 827 and 833. Those complying with Ordinance 820 paid monies directly to the City. Those voluntarily proposing community housing plans pursuant to Ordinances 827 and 833 could have expended monies either in direct payment to the City or to third parties. Similarly, those subject to the mandatory requirements of Ordinance 819, like Alpine, could have expended monies either to construct community housing units, to purchase community housing units, to purchase land for community housing units and/or by direct payment to the City of "in lieu fees". In his Memorandum Decision and Order in *Mountain*

Central Board of Realtors v. City of McCall, Judge Neville treated Ordinances 819 and 820 jointly and as legally indistinguishable.

It follows from these undisputed facts that those who were required to expend monies pursuant to Ordinance 819 were in the same class, for equal protection purposes, as those who paid fees pursuant to Ordinances 820, 827 and 833. By excusing those who paid mandatory fees pursuant to Ordinance 820 or who voluntarily expended monies pursuant to Ordinances 827 or 833 from compliance with the Notice of Claim Statute, while now asserting the Statute as a bar to Alpine's claim for compensation, the City has violated Alpine's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution and Article I, Sections 1 and 2 of the Idaho Constitution.

There is very little distinction between the treatment of Alpine's equal protection claim under the U.S. and Idaho Constitutions. In *Rudeen v. Cenarrusa*, 136 Idaho 560, 569, 38 P.3d 598, 607 (2001) this Court explained that an equal protection analysis under both the federal and Idaho Constitutions generally involves a three-step process.

> The first step is to identify the classification that is being challenged. The second step is to determine the standard under which the classification will be judicially reviewed. The final step is to determine whether the appropriate standard has been satisfied. *(Citations omitted).*

The classification at issue in this case is that Alpine is the only one of at least fifty-nine similarly situated persons (i.e. persons subjected to the City's Community Housing Ordinances whose claims accrued more than 180 days prior to filing notices with the City) against whom the City is asserting I.C. §50-219 as a bar. While the standard of judicial review of the classification

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[16] Alpine's lawsuit was filed less than 35 months after it signed the Development Agreement.

differs somewhat for a state versus a federal equal protection claim, under either the "rational basis" test appears to be the appropriate level of scrutiny of the City's actions.[17] The determinative inquiry thus becomes whether the City's conduct survives the rational basis test.

The rational basis test requires that a statutory classification be rationally related to a legitimate government objective.[18] In *Bon Appetit Gormet Foods, Inc. v. State Dept. of Employment,* 117 Idaho 1002, 793 P.2d 675 (1990), the Court utilized a two-step analysis in applying the rational basis test. That analysis first requires a determination of whether the statute (in this case the City's refund Resolutions) reflects any reasonably conceivable public purpose, and, second, a determination of whether the classification is reasonably related to that purpose.

In its briefing and argument to the District Court, the only public purpose which was offered by the City for its refund Resolutions and conduct was fundamental fairness (i.e. it was "the right thing to do"). In the *City's Reply Brief in Support of Its Motion for Summary Judgment and Response Brief in Opposition to Alpine's Motion for Summary Judgment* the City stated:

> [T]he City went the extra mile in allowing refunds of fees paid to it by various other developers after the housing ordinances were declared unconstitutional. The City did not have to do so, because many of those claims were also barred by the statute of limitations or the 180 day rule. However, given the Court's ruling in *Mountain Central Bd. of Realtors, Inc. v. City of McCall,* Case No. CV 2006-490-C (Idaho Fourth Judicial District, February 19, 2008), the City determined that returning money received under the housing ordinances was the right thing to do.

R., Vol. III, p. 436.

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[17] See *Meisner v. Potlatch Corp.*, 131 Idaho 258, 954 P.2d 676 (1998), regarding economic and social welfare legislation, and *Bon Appetit Gourmet Foods, Inc. v. State, Dept. of Employment*, 117 Idaho 1002, 793 P.2d 675 (1990), regarding taxation legislation.

[18] *Rudeen*, 136 at 569, 38 P.2d at 607.

The singular justification which was offered below by the City for the differential treatment afforded to every other member of the class of persons who were subjected to community housing extractions is that Alpine did not pay fees or contribute property to the City and that Alpine got the equivalent of a full 'refund' by the City's release of the community housing restrictions on the Timbers property. R., Vol. II, p. 316. As is argued above, it is not only disingenuous but legally indefensible to suggest that, having required Alpine to expend over two million dollars to acquire the Timbers and having then imposed significant restrictions on Alpine's ownership rights in the Timbers, merely releasing the restrictions a year later is the equivalent of a 'full refund' or, more importantly, eliminates the City's liability for the taking.

The record herein establishes and the City itself conceded below that the City could have asserted I.C. §50-219 as a bar to every one of the refund applications which the City invited and paid. Its assertion in this action of I.C. §50-219 appears to be driven by the potential size of Alpine's claim, not by any genuine or rational basis for distinguishing Alpine from the other members of the class. The City should be constitutionally barred from asserting the Notice of Claim statute solely against Alpine.

E. The City should be estopped from asserting the 180-day Notice of Claim Statute as a bar to Alpine's State Claim

"The doctrine of quasi estoppel applies when it would be unconscionable to allow a party to assert a right which is inconsistent with a prior position". *Willig v. State Dept. of Health & Welfare,* 127 Idaho 259, 261, 899 P.2d 969, 971 (1995). The identical set of facts which form the basis for the equal protection defense discussed above support the claim that the City should

be estopped from asserting that Alpine is required to comply with the Notice of Claim Statute. After excusing some fifty-eight other similarly situated claimants from having to comply with the Notice of Claims Statute, the City now argues that the Notice of Claim Statute bars Alpine's state takings claim. This is fundamentally inconsistent with the position which was, without exception, taken by the City over a nearly two year period between April, 2008 and December 31, 2009. The advantage being gained by the City and disadvantage resulting to Alpine from this fundamental change of position is that Alpine's claim is potentially barred despite being filed within the same period of time after its accrual as was allowed for all other similarly situated claimants. The District Court found that Alpine's state claim accrued not later than December 13, 2007. Alpine made demand on the City for compensation on November 15, 2010, or approximately thirty-five months after the date of accrual, as found by the District Court. The City now asserts that the claim is time barred by I.C. §50-219. In contrast, the City accepted and paid requests for refunds on monies paid pursuant to Ordinance 820 which were submitted as long as forty-three months after the accrual date of such claims. The City should be estopped from asserting this dramatic change of position.

V. Alpine's State Constitution Claim was filed well within the four years prescribed by I.C. §5-224.

There is no dispute that Alpine's state inverse condemnation claim is subject to Idaho's residual four-year statute of limitations, I.C. §5-224. The only potential issue is when the four-year statute of limitations began to run. Idaho law has recognized that an inverse condemnation cause of action accrues "after the full extent of the impairment of the plaintiffs' use and enjoyment of [the property] becomes apparent." *Tibbs v. City of Sandpoint,* 100 Idaho 667, 671,

603 P.2d 1001, 1005 (1979) (quoting *Aaron v. United States,* 311 F.2d 798, 802, 160 Ct.Cl. 295 (1963) The *Tibbs* Court reasoned that "The actual date of taking, although not readily susceptible to exact determination, is to be fixed at the point in time at which the impairment, of such a degree and kind as to constitute a substantial interference with plaintiffs' property interest, became apparent." *Id.*

The *Tibbs* standard was reiterated by this Court in *McCuskey v. Canyon County Com'rs*, 128 Idaho 213, 217, 912 P.2d 100, 104 (1996) and more recently in *City of Coeur d'Alene v. Simpson,* 142 Idaho 839, 846, 136 P.3d 310, 317 (2006). In *Simpson*, the Supreme Court held that the landowner's inverse condemnation and takings cause of action accrued *not* when the subject Shoreline Regulations were adopted, but when those Regulations were actually applied to Simpson's property. In support of its holding that the landowner's cause of action did not accrue until the Shoreline Regulations were actually applied adversely to his property, the *Simpson* Court quoted *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001):

> In *Palazzolo,* the United States Supreme Court held that a regulatory takings claim does not become ripe upon enactment of the regulation; indeed, it remains unripe until the landowner takes the reasonable and necessary steps to allow the regulating agency to consider development plans and issue a decision, thereby determining the extent to which the regulation actually burdens the property.

Simpson, 142 Idaho at 846, 136 P.3d at 317.

The District Court held that Alpine's state constitutional cause of action accrued "no later than" December 13, 2007. R., Vol. III, p. 528. Alpine does not take issue with that holding, except for its implication that Alpine's cause of action might have accrued before December 13, 2007. Consistent with this Court's holding in *Simpson*, Alpine has consistently argued that its

state constitutional cause of action accrued *not* on the date that Ordinance 819 was adopted (i.e., February 23, 2006) and *not* on the date on which the *Mountain Central* decision was issued (i.e., February 19, 2008), but, rather, when the full extent of Alpine's loss of use and enjoyment of its constitutionally protected property rights became apparent. As the above Statement of Facts confirms, this occurred on December 13, 2007, when Alpine executed the Development Agreement for Alpine Village, committing to dedicate the Timbers units as community housing units. Under the undisputed facts of record, the *earliest* that this could be said to have occurred was on March 22, 2007 when, *for the first time,* Alpine's proposed acquisition and dedication of the Timbers units as community housing units for Alpine Village was approved by the City Council. In either case, Alpine's filing of its Complaint on December 10, 2010 was well within the allowable four-year statute of limitations.

VI. The District Court erred in holding Alpine's Federal Takings Claims were not ripe.

A. The District Court's Decision.

The District Court held that Alpine's Federal takings claims were unripe because Alpine had failed to comply with the requirements of *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City,* 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985). R, Vol. III, p. 531. In all of the prior briefing in this action, in both federal and state court, both Alpine and the City concurred that the "first prong" requirements of *Williamson County* were inapplicable to Alpine's claims. However, in its *Decision*, the District Court found to the contrary, *sua sponte*:

> In this case, Alpine failed to contest the Development Agreement. In this case, Alpine was required to raise their objections with the local government in a timely and meaningful way in order to set up their claim that the exaction was involuntary. . . . In this case, Alpine proposed, executed and carried out a development agreement. Thus, the Court will find there is no final decision as spelled out in *Williamson County*. *Williamson County* went on to hold that where a regulatory taking is alleged against the state or local government agency, the property owner must first seek compensation through the procedures the state has provided for doing so before litigating the federal claim. In this case, Alpine failed to seek judicial review of the decision by the City.

R. Vol. III, p. 530, L.25.

In reaching its decision, the District Court appears to have blended together the concepts of a "final decision", voluntariness, judicial review and exhaustion of administrative remedies with the ripeness requirements of *Williamson County.* This blending and the conclusion which it produced are improper as a matter of law.

B. The City Council reached a final decision on Alpine's Applications as required by *Williamson County.*

In *Williamson County*, the United States Supreme Court stated:

> As the Court has made clear in several recent decisions, a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.

Williamson County, 473 U.S. at 186, 105 S. Ct. at 3116.[19]

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[19] See also; *Adam Bros. Farming, Inc. v. County of Santa Barbara*, 604 F.3d 1142, 1147 (9th Cir. 2010) which further identified the components of a final decision.
"First, a final decision exists when (1) a decision has been made "about how a plaintiff's own land may be used" and (2) the local land-use board has exercised its judgment regarding a particular use of a specific parcel of land, eliminating the possibility that it may "soften[ ] the strictures of the general regulations [it] administer[s]. *Suitum,* 520 U.S. at 738-39, 117 S.Ct. 1659.

In applying the "final determination" requirement, courts have emphasized that local decision-makers must be given an opportunity to review at least one reasonable development proposal before an as-applied challenge to a land use regulation will be considered ripe. *E.g., Kinzli v. City of Santa Cruz,* 818 F.2d 1449, 1454 (9th Cir. 1987). Under the McCall City Code in place when Alpine submitted the Applications, the procedure for review of an "Inclusionary Housing Plan" was the same as for the subdivision application with which the Plan was submitted. R., Ex. II, (Ex. 1, p.11 §9.b.1). The Planning and Zoning Commission first reviewed the Plan and recommended approval or denial of the Plan to the City Council. The Council had responsibility for granting or withholding final approval. Thus, under the plain definition of "final decision", approval by the McCall City Council of the Applications, and of the associated mandated Inclusionary Housing Plan, constituted a "final decision" within the purview of *Williamson County.* Alpine's federal takings claims are based on this final decision.

C. The City was fully aware that its Inclusionary Housing Ordinance was being challenged as unconstitutional when it elected to impose the Ordinance on Alpine.

In its conclusion that Alpine had not satisfied the "final decision" component of *Williamson County*, the District Court faulted Alpine for its failure to formally object to the Development Agreement, a part of which included the required Inclusionary Housing Plan. First, it must be noted that the District Court did not cite any authority for the proposition that Alpine was required to state its "objection" to the Inclusionary Housing Ordinance, or, for that matter, to any other mandatory ordinance with which Alpine was required to comply in order to develop its property. Secondly, the only imaginable legitimate purpose to be served by such an

objection would be to place the City on notice that its Ordinance might be constitutionally or otherwise flawed. That purpose was certainly accomplished when, prior to any City Council final action on the Alpine Village Applications, the Mountain Central Board of Realtors filed a lawsuit against the City, seeking a declaration that Ordinances 819 and 820 were facially unlawful and unconstitutional. Thus, faced with the unequivocal knowledge that the Community Housing Ordinances were being challenged, the City elected to continue to impose Ordinance 819 on Alpine, requiring only that Alpine release claims stemming from the outcome of the Mountain Central Board of Realtors litigation "...as to Community Housing Units which are sold pursuant to this [Community Housing] Plan prior to the final disposition of such litigation." (emphasis added). R, Ex. II, (Ex.16, p. 4, §7.1). The City elected to not suspend the enforcement of Ordinances 819 or 820 on pending applications, or to suspend the processing of pending applications. Simply put, the City proceeded not only with eyes wide open and full awareness of the potential risks of continuing to impose Ordinance 819 on Alpine, but also with full knowledge that Alpine was acquiring the Timbers units in order to comply with the Ordinance.

D. Even if formally objecting to Ordinance 819 were otherwise deemed a requirement under *Williamson County*, it was not required in this case.

In its conclusion that Alpine had not satisfied the "final decision" component of *Williamson County*, the District Court stated: ". . . the first requirement of Williamson concerns administrative remedies for obtaining relief or compensation for a taking of property. . ." R., Vol. III, p. 530, L. 16. Thus, the District Court's ruling on the *Williamson* "final decision" prong was essentially founded on an exhaustion of administrative remedies concept. The requirement that

an aggrieved party exhaust all administrative remedies as a prerequisite to bringing a "taking" claim was, indeed, discussed in *KMST, LLC v. County of Ada,* 138 Idaho 577, 67 P.3d 56 (2003), the other case besides *Williamson County* on which the District Court relied. The *KMST* Court held that, "As a general rule, a party must exhaust administrative remedies before resorting to the courts to challenge the validity of administrative acts. *Arnzen v. State,* 123 Idaho 899, 854 P.2d 242 (1993)." *KMST* 138 Idaho at 583, 67 P.3d at 62. However, the opinion also acknowledged two well established exceptions to the exhaustion requirement. "We have recognized exceptions to that rule in two instances: (a) when the interests of justice so require, and (b) when the agency acted outside its authority." *KMST,* 138 Idaho at 583, 67 P.3d at 62.

It can certainly be argued that both exceptions are established by the record in this case. At a minimum, the second exception clearly applies. Ordinance 891 was declared invalid and unconstitutional in the *Mountain Central Decision.* It is thus the law of this case that the City had no authority to impose any of the requirements of Ordinance 819 on Alpine.

E. Alpine has complied with the second ripeness requirement of *Williamson County.*

In order to meet the second prong requirement of *Williamson County*, which requires Alpine to seek and have been denied compensation through a state proceeding, Alpine was not required to seek judicial review of the City's final approval of the Applications, as appears to have been suggested by the District Court.[20] I.C. §67-6521(2)(b) expressly provides that an affected person may seek a judicial determination of whether a final action constitutes a taking

[20] "*Williamson County* went on to hold that where a regulatory taking is alleged against the state or local government agency, the property owner must first seek compensation through the procedures the state has provided for doing so

by filing an inverse condemnation action under the provisions of Idaho Const. Art. I, §14. Further, I.C. §67-6521(2)(b) exempts an affected person in such case from complying with the provisions of section (1) of I.C. §67-6521.[21] Alpine's Second Cause of Action seeks compensation for an unlawful taking/inverse condemnation under Idaho Const. Art. I, §14 and, as such, satisfies the *Williamson County* ripeness requirement that compensation for the 'taking" must be sought through the appropriate state proceedings. As is noted above, the U.S. Supreme Court held in the *San Remo* decision that an aggrieved party not only may, but must, join the federal takings claim in that state court proceeding. That is precisely what Alpine has done.

VII. The District Court erred in holding that Alpine's Federal Takings Claims are time Barred by I.C. §5-219(4).

A. The District Court's Decision.

The District Court's holding that Alpine's federal takings claims are untimely under I.C. §5-219(4) is intertwined with its holding that Alpine's state inverse condemnation claim is barred by I.C. §50-219 and its holding that Alpine's federal claims are unripe under the *Williamson County* ripeness tests. The District Court held that: (i) If Alpine's federal takings claims survive the *Williamson County* ripeness tests , then they are subject to the two year statute

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before litigating the federal claim. In this case, Alpine failed to seek judicial review of the decision by the City." R. Vol. III, p. 531, L.6.

[21] I.C. § 67-6521(2)(b) states: "(b) An affected person claiming 'just compensation' for a perceived 'taking,' the basis of the claim being that a final action restricting private property development is actually a regulatory action by local government deemed "necessary to complete the development of the material resources of the state," or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of section 14, article I, of the constitution of the state of Idaho relating to eminent domain. Under these circumstances, the affected person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect by local government to provide 'just compensation' under the provisions of section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code."

of limitations contained in I.C. §5-219(4); (ii) the federal takings claims accrued on December 13, 2007; and, (ii) the statute of limitations began running on the claims 180 days after the accrual date. The District Court concluded:

> As discussed above, Alpine did not file a timely notice of claim with the City within 180 days after its state inverse condemnation claim arose on December 13, 2007. That failure barred Alpine's Second Claim for Relief and, more importantly, deprived this Court of any jurisdiction to hear and grant relief for Alpine's state remedies. As a result I.C. §5-219, I.C. §6-906, and I.C. §6-908 functioned as the state's denial of compensation or made Alpine's future efforts to obtain compensation under state remedies futile. By operation of these statutes, the bar on Alpine's state claims went into effect 181 judicial days after December 13, 2007, that is, on or around June 11, 2008. Thus, the Court finds that Alpine's remaining federal claims ripened and that I.C. §219(4) began to run on or around June 11, 2008.

R., Vol. III, p. 532, L. 9.

Alpine concurs with the District Court's holding that Alpine's federal takings claims do not ripen and the applicable statute of limitations on those claims does not begin to run until a final decision has been rendered denying Alpine compensation under its state inverse condemnation claim. However, a final decision on the merits of Alpine's state inverse condemnation claim has not yet been rendered. This is because of the District Court's improper holding that Alpine's noncompliance with I.C. §50-219 deprived the Court of jurisdiction to consider Alpine's claims that, for both constitutional and equitable reasons, Alpine's noncompliance with I.C. §50-219 should be excused. Until a decision on the merits of those defenses has been rendered, Alpine's federal takings claims have not accrued for statute of limitations purposes.

B. The applicable Statutes of Limitation.

Alpine has pled two takings claims which are based on the Fifth Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment. In Alpine's First Cause of Action, Alpine pleads the takings claim "directly" under the Fifth Amendment. R., Vol. II, p. 203. Alpine is entitled to assert the takings claim directly under this Court's decision in *BHA Investments, Inc. v. City of Boise,* in which this Court held that:

> The Takings Clause is self-executing, and a takings claim may be based solely upon it, *First Lutheran Church v. Los Angeles County*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), or it may be brought as an action under *42 U.S.C. § 1983*, *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999).

BHA Investments, Inc, 141 Idaho 175 n.2, 108 P.3d 322 n.2.

In Alpine's Third Cause of Action, Alpine also pled the federal takings claim through 42 U.S.C.A. §1983. The two causes of action may or may not be subject to the same statute of limitations.

Under the U.S. Supreme Court's decision in *Wilson v. Garcia,* 471 U.S. 261 (1985), the §1983 claim is subject to I.C. §5-219(4), which is Idaho's statute of limitations for personal injury actions. Neither the U.S. Supreme Court nor this Court have ruled on the issue of whether the same statute of limitations would apply to Alpine's First Cause of Action (i.e. the direct assertion of the takings claim under the Fifth Amendment). Alpine contends that the direct claim should be found to be subject to I.C. §5-224, Idaho's four year statute of limitations.[22] However, because neither of the federal takings claims accrues for statute of limitations purposes until a

final decision has been reached denying Alpine compensation under its state inverse condemnation cause of action, Alpine's federal takings claims are timely under either statute of limitations.

C. Alpine's federal takings claims are timely, regardless of which statute of limitation is applied to them.

Under controlling Ninth Circuit precedent, Alpine's federal takings claims have not even *accrued* for statute of limitations purposes until a final decision denying Alpine compensation on Alpine's state constitutional cause of action has been rendered by the courts of Idaho. As the City conceded below, federal law governs the issue of when the statute of limitations begins to run on Alpine's federal claims. R., Vol. II, 326.

In *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 687 (9th Cir. 1993), the Ninth Circuit Court of Appeals directly addressed the issue of when a federal takings claim accrues, holding that:

> To determine when the statute of limitations period begins to run, we first must determine when the cause of action accrued. Determining when the cause of action accrues is merely the corollary to the ripeness inquiry . . . "So long as the state provides 'an adequate process for obtaining compensation,' no constitutional violation can occur" until just compensation is denied. (cite omitted). Thus, a plaintiff cannot bring a section 1983 action in federal court until the state denies just compensation. A claim under section 1983 is not ripe-*and a cause of action under section 1983 does not accrue-until that point.*(emphasis added).[23]

The holding in *Levald* is the logical extension of the fundamental principles of evolving law regarding Fifth Amendment takings claims, as developed by the U.S. Supreme Court. In its

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[22] See *City of Coeur d' Alene v. Simpson,* 142 Idaho 839, 136 P.3d 310 (2006); *C & G, Inc. v. Canyon Highway Dist. No. 4,* 139 Idaho 140, 75 P.3d 194 (2003).
[23] Accord, *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651 (2003).

Williamson County decision, the U.S. Supreme Court held that a Fifth Amendment taking has not occurred until the aggrieved party has sought and been denied compensation under the state constitution. This principle was re-affirmed and extended by the Court in *San Remo*. The Court in *San Remo* held that the aggrieved property owner was *required* to also present the Fifth Amendment takings claim to the state court as part of the *Williamson* "ripening" process, assuming that both the state and federal claims stem from the same set of facts. In *San Remo,* a hotel owner challenged an ordinance which required the payment of a fee for the conversion of residential rooms to tourist rooms. The hotel owner sought relief in state court, but purported to "reserve" its federal takings claims for assertion, if needed, in federal court. After the state courts rejected the hotel owner's state law-based takings claims, the owner filed an action in federal court, pleading the federal takings claim. The Court found that the hotel owner was precluded from raising the federal takings claim in federal court, holding that:

> With respect to those federal claims that did require ripening, we reject petitioners' contention that *Williamson County* prohibits plaintiffs from advancing their federal claims in state courts. The requirement that aggrieved property owners must seek "compensation through the procedures the State has provided for doing so," 473 U.S. at 194, 105 S.Ct. 3108, does not preclude state courts from hearing simultaneously a plaintiff's request for compensation under state law and the claim that, in the alternative, the denial of compensation would violate the Fifth Amendment of the Federal Constitution. Reading *Williamson County* to preclude plaintiffs from raising such claims in the alternative would erroneously interpret our cases as requiring property owners to "resort to piecemeal litigation or otherwise unfair procedures." *MacDonald, Sommer & Frates v. Yolo County,* 477 U.S. 340, 350, n. 7, 106 S.Ct. 2561, 91 L.Ed.2d 285 (1986).

San Remo, 545 U.S. at 346, 125 S.Ct. at 2506.

Thus, it is entirely appropriate for Alpine to bring both the State and Federal Constitutional Claims in this action; and, under the above decisions, the federal claims do not accrue until this Court has ruled on Alpine's state inverse condemnation claim. As a result, whether the two year or the four year statute of limitation is applied to Alpine's federal claims, they are timely. This conclusion was, in part, the basis for U.S. District Judge Winmill's decision to remand this action, reasoning that:

> The accrual of a federal takings claim turns on the exhaustion of state remedies: "[T]he date of accrual is either (1) the date compensation is denied in state courts, or (2) the date the ordinance is passed if resort to state courts is futile." *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651 (9th Cir. 2003) (citing *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (1993)). There is no contention that the exhaustion requirement is futile here. Therefore, Alpine Village's federal claim does not accrue until compensation is denied in state court, and it appears that the statute of limitations has not yet begun to run.

R., Ex. II, (Ex. 29, p. 6).

VIII. Alpine should be awarded its attorneys fees and costs incurred in this action.

In the event that this Court reverses the decision of the District Court and holds in favor of Alpine on either its state inverse condemnation claim or its federal takings claims, then, as the prevailing party in this action, Alpine should be awarded its attorneys fees and costs incurred. Alpine made a timely pre-litigation demand on the City for compensation for the taking which is the subject of this action. No offer of compensation has ever been made by the City. As this Court has recognized, Alpine cannot be said to have recovered the just compensation to which it is constitutionally entitled if it is not also awarded the fees and costs which it was forced to incur in order to present its claims. In *Ada County Highway Dist. By and Through Fairbanks v. Accarequi,* 105 Idaho 873, 673 P.2d 1067 (1983) this Court held that the recovery of fees by a

condemnee does not require a showing that the condemnor proceeded frivolously, unreasonably or without foundation. In so ruling, the *Accarequi Court* cited with approval a decision rendered nearly eighty years earlier:

> The constitution requires that private property shall not be taken for public use, except on the payment of just compensation, and a man who is forced into court where he owes no obligation to the party moving against him, cannot be said to have received just compensation for his property if he is put to an expense appreciably important to establish the value of his property. He does not want to sell; the property is taken from him through the exercise of the high powers of the state, and the spirit of the constitution clearly requires that he shall not be compelled to part with what belongs to him without the payment, not alone of the abstract value of the property, but of all the necessary expenses incurred in fixing that value.

Accarequi, 105 Idaho at 876; 673 P.2d at 1070.

In the event that Alpine prevails on its federal takings claims, then attorneys fees are also authorized under 42 U.S.C.A. §1988.

CONCLUSION

For the reasons stated herein. Alpine respectfully requests that this Court:

1. Reverse the District Court's Decision and Judgment granting summary judgment to the City;

2. Grant summary judgment in favor of Alpine on its inverse condemnation claim under Art. I, §14 of the Idaho Constitution;

3. If compensation is not ordered under the state inverse condemnation claim, then grant summary judgment in favor of Alpine on its takings claims under the Fifth Amendment to the U.S. Constitution, directly and through 42 U.S.C.A §1983;

4. Award Alpine its attorneys fees and costs incurred on appeal; and,

5. Remand this case to the District Court to conduct a trial on the amount of compensation to which Alpine is entitled.

DATED this 23 day of May, 2012.

MILLEMANN, PITTENGER, McMAHAN
& PEMBERTON, LLP

BY: _____
STEVEN J. MILLEMANN

BY: _____
GREGORY C. PITTENGER

CERTIFICATE OF MAILING / COMPLIANCE

The undersigned does hereby certify that the hard copy and the electronic copy of the brief submitted is in compliance with all of the requirements set out in I.A.R. 34 and I.A.R. 34.1, and that a hard copy and an electronic copy was mailed/served on each party at the following addresses:

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HOUSING MARKET AND NEEDS ASSESSMENT
VALLEY AND ADAMS COUNTY
JULY 1, 2005

PREPARED BY
MELANIE REES
REES CONSULTING

UPPER PAYETTE RIVER ECONOMIC DEVELOPMENT COUNCIL

Organization of the Report

This report has 11 sections as follows:

I. KEY FINDINGS – A brief synopsis of the key conclusions generated by this study and recommendations on how to address identified housing problems.

II. DEMOGRAPHIC OVERVIEW -- A quantitative demographic summary on the household population including number, size, composition, age and income.

III. THE ECONOMY – Information on jobs, seasonality in employment, jobs by industrial sector, wages, and employment problems related to housing.

IV. HOUSING INVENTORY – Information on the supply of housing units in the region including number, type, location, occupancy and tenure.

V. MARKET OVERVIEW – An analysis of current rental and ownership housing market conditions and change in housing costs since 2000.

VI. COMMUNITY HOUSING – A comparison of the demand for community housing relative to its supply taking into consideration housing that is now affordable for owners and renters by location and type and future development of housing for employees.

VII. SPECIAL NEEDS POPULATIONS – Information on the number of persons with special needs and the housing-related services and facilities provided by non-profit agencies.

VIII. DEVELOPMENT TRENDS AND FORECASTS -- Information on residential and commercial development.

IX. COMMUNITY HOUSING DEMAND – Quantitative estimates of the number of community housing units now needed and how that number may change in the future.

X. BARRIERS TO COMMUNITY HOUSING – An assessment of a wide variety of barriers that might be faced by those who need community housing and those that attempt to provide it for them.

XI. CONCLUSIONS AND RECOMMENDATIONS – A summary of conclusions generated by the study and recommendations to address the identified housing needs that are responsive to opportunities in the area.

This report is supplemented by profiles on each municipality and both counties with 2000 Census data on households and housing, a comparison of key indicators from 1990 and 2000, income estimates for 2005 and employment figures for 2000 through 2004. While these individual community profiles provide baseline data against which change can be measured, growth since 2003 has been so rapid compared to historical levels that trends between 1990 and 2000 do not adequately reflect current conditions. The profiles should therefore be interpreted with the information on changes since 2003 contained in the main report.

- AMI – An abbreviation for the area median income, which is estimated annually by the Department of Housing and Urban Development (HUD) for each county. HUD publishes income estimates as a percentage of the median by household size.

- Incomes will increase but the percentage of households with low incomes (approximately 40% of all households in 2000 or an estimated 2,080 households in 2005) will probably not decrease.

- The homeownership rate will likely decrease as proportionately more households are unable to purchase and therefore must rent.

Job-generating development, both residential and commercial, that started in early 2004 is fueling the demand for housing yet the private market has not responded by producing a sufficient supply of units priced to be affordable for employees.

- Building permits were issued for nearly 1,800 new residential units between 2000 and May 2005. This equates to an increase in housing units of approximately 18% since the 2000 Census was conducted.

- In 2004, permits were issued for 531 new residential units in Valley County, which is more than three times the number issued in 2000.

- The labor shortage is impacting all sectors, from restaurants and retail to education and medical care. Employers report that all types of employees at all levels are having difficulty finding housing.

- The greatest increase in employment has been in the construction industry with roughly 700 to 1,000 construction workers in the region during the peak summer season. Roughly 80% to 90% are from outside of the region and compete with lower-wage employees for housing.

- Growth and construction will not end when Tamarack is fully built out. Ample land is available in the rest of the region for development to continue into the foreseeable future. The total number of lots approved but vacant and available for development in Valley County could easily exceed 10,000 before the end of the year.

In order to address the housing shortage, construction of new units specifically targeting low- to middle-income households will be required.

- Based on development that has occurred since 2003, new permanent jobs have generated demand for approximately 210 housing units. Of these, 145 units or 69% should be affordable for low- and moderate-income households and 65 units or 31% should be target households with incomes at or above the median. These estimates do not include permanent or temporary housing needed for construction workers.

- If growth continues at the same level as in 2004 and the first five months of 2005, approximately 200 additional units will be needed in the next two years.

- Based solely on the number of applications on wait lists the number of seniors occupying low-income family apartments, 35 to 40 additional rental units for low-income seniors are needed at this time.

- Facilitate/encourage the development of entry-level homeownership opportunities in both Adams and Valley counties that is deed restricted for permanent affordability.

- Encourage non-profit housing organizations to develop housing and expand housing programs in the area.

- Provide City and County general funds for housing or establish a local source of revenue specifically for community housing since new development can not be required to address existing housing deficiencies.

- Provide publicly-owned land for community housing projects.

- Improve local record keeping systems to monitor development activity, calculate the housing demand generated by this development, assess changes in the housing supply, identify trends and evaluate progress toward meeting housing-related goals.

- Modify Comprehensive Plans to provide vision, explicit goals and quantitative objectives for community housing. Amend zoning and development codes to include incentives for community housing development.

- Address public perceptions about community housing in a proactive manner.

- Require that community housing be provided as part of all annexations.

- Provide permanent housing for construction workers and their families to more fully reap the economic benefits of the construction boom.

- Develop mobile home parks since additional residents of existing parks will likely be displaced in the future.

- Develop a homebuyer education/counseling program so that employees can qualify to purchase homes that are developed.

- Assist non-profits to provide emergency shelter and transitional housing for victims of domestic violence, and include units targeted for persons with special needs in all community housing projects.

- Develop rental housing for low-income seniors and explore other housing options for retirees that will reduce the extent to which they compete with employees for housing.

Even though it is likely that the population estimates are low since they do not take into account the very recent growth that has occurred in the region, it is still appropriate to use them for certain purposes provided that it is recognized that the resulting figures probably understate the situation. The analysis of unmet housing demand contained later in this report is not based in any way on these population figures but rather is calculated by using job generation rates applied to development since 2003..

Number of Households

Analysis of housing demand and needs is not based on individuals but rather households. While some of these households consist of only one person living alone, most have multiple members. There are at least 5,266 households in the two-county region, with 71% residing in Valley County.

Household Population Estimates

	1990 Census	2000 Census	2005 Estimate
Adams County	1251	1,421	1,511
Council	319	339	338
New Meadows	207	208	192
Valley County	2404	3,208	3,755
Cascade	353	421	469
Donnelly	52	55	58
McCall	824	902	1,151

Sources: 1990 and 2000 Census; 2005 estimates equal the population in 2005 divided by the projected 2005 household size.

Household Size

The average size of households declined throughout the two-county region between 1990 and 2000 as was generally the case throughout the nation. Households in the McCall area are smaller than in the rest of the region while Donnelly and New Meadows, the closest communities to McCall, have the largest households, on average. This suggests that singles are attracted to McCall whereas most of the households in its neighboring communities are families.

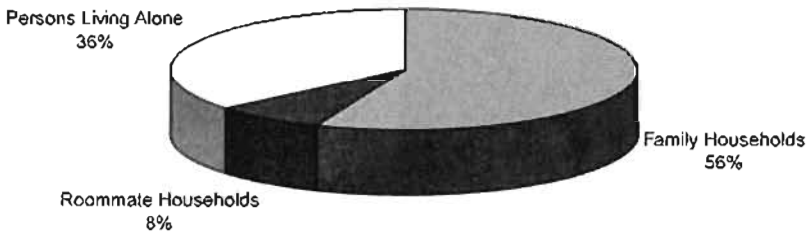
Average Household Size Estimates

	1990 (Census)	2000 (Census)	2005 Estimate
Adams County	2.59	2.42	2.34
Council	2.57	2.29	2.16
New Meadows	2.58	2.56	2.55
Valley County	2.51	2.36	2.29
Cascade	2.46	2.32	2.25
Donnelly	2.60	2.51	2.47
McCall	2.37	2.25	2.19

Sources: 1990 and 2000 Census; 2005 estimates assume that the average household size changed at the same yearly rate between 2000 and 2005 as between 1990 and 2000.

There are relatively few roommate households in the region – 4% in Adams County and 5% in Valley County. The percentage is only slightly higher among renter households (8% in 2000) even though most roommate households rent. This will change, however, as limited housing availability and rising costs force unrelated individuals to live together. The percentage of persons who live alone should decrease over time.

Household Composition, Renter Households



Source: 2000 Census

Race/Ethnicity

There were few racial/ethnic minorities living in the region in 2000. Less than 2% of households had a Hispanic or Latino householder. The percentage was slightly higher in Valley County than in Adams County. The remodeling of the Whitetail Lodge in the late 1990's was the first large project to import Hispanic workers from outside of the region. Since then, the number of jobs held by Hispanics has been increasing according to the Job Service Office but is still probably under 5%. Obtaining accurate estimates in the future on the Hispanic population will be difficult due to the immigration status of some workers.

Households by Race/Ethnicity

	Adams County	Council	New Meadows	Valley County	Cascade	Donnelly	McCall
White	96.7%	97.6%	96.2%	97.3%	96.7%	96.4%	97.6%
Black or African Amer.	0.1%	0.0%	0.5%	0.0%	0.0%	0.0%	0.0%
Am. Indian/Alaska Native	1.4%	1.5%	1.4%	0.7%	0.5%	1.8%	0.4%
Asian	0.0%	0.0%	0.0%	0.2%	0.5%	0.0%	0.0%
Hawaiian/ Pacific Islander	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Some other race	0.6%	0.3%	0.5%	0.6%	0.7%	1.8%	1.0%
Two or more races	1.2%	0.6%	1.4%	1.2%	1.7%	0.0%	1.0%
Hispanic or Latino	1.0%	0.6%	1.4%	1.2%	1.2%	1.8%	1.9%

Source: 2000 Census

The percentage of households with a Hispanic/Latino householder will likely continue to increase based on trends in other western mountain resort counties. For example, the

Age Distribution by Location

Age of Householder	Adams County	Council	New Meadows	Valley County	Cascade	Donnelly	McCall
15 to 24 years	2.1%	3.8%	3.8%	2.3%	2.4%	3.6%	4.2%
25 to 34 years	8.3%	9.4%	16.3%	9.5%	9.5%	18.2%	11.8%
35 to 44 years	19.4%	19.5%	27.9%	21.2%	22.6%	23.6%	20.1%
45 to 54 years	23.4%	21.2%	19.7%	25.9%	22.6%	20.0%	26.9%
55 to 64 years	21.0%	16.2%	14.9%	18.5%	16.4%	14.5%	16.5%
65 to 74 years	15.6%	15.6%	8.2%	13.8%	15.4%	7.3%	11.1%
75 to 84 years	7.4%	9.7%	5.3%	7.0%	7.1%	12.7%	7.6%
85+ years	2.8%	4.4%	3.8%	1.7%	4.0%	0.0%	1.8%

Source: 2000 Census

Income

The 2000 Census measured household incomes in 1999. At that time, the median household income ranged from around $24,000 in Council to nearly $37,000 per year in McCall and Valley County as a whole.

Median Incomes in 1999

Median in 1999	Adams County	Council	New Meadows	Valley County	Cascade	Donnelly	McCall
Household Income	$28,423	$24,375	$28,500	$36,927	$32,411	$29,583	$36,250
Owner Households	$31,996	$28,333	$34,167	$39,287	$35,769	$41,250	$43,088
Renter Households	$20,395	$15,568	$20,625	$27,582	$22,917	$18,125	$25,588
Family Income	$32,335	$30,000	$31,042	$42,283	$37,813	$31,500	$46,420
Per Capita Income	$14,908	$15,170	$11,884	$19,246	$17,330	$11,142	$18,479

Source: 2000 Census

Every year, the US Department of Housing and Urban Development (HUD) publishes county level median income estimates for four-person families. These estimates are then used to adjust the income levels that can be served by Federal housing subsidy programs. According to HUD, the median family income in Valley County increased nearly 40% between 1999 and 2005. It increased at a higher rate in Adams County – over 42%.

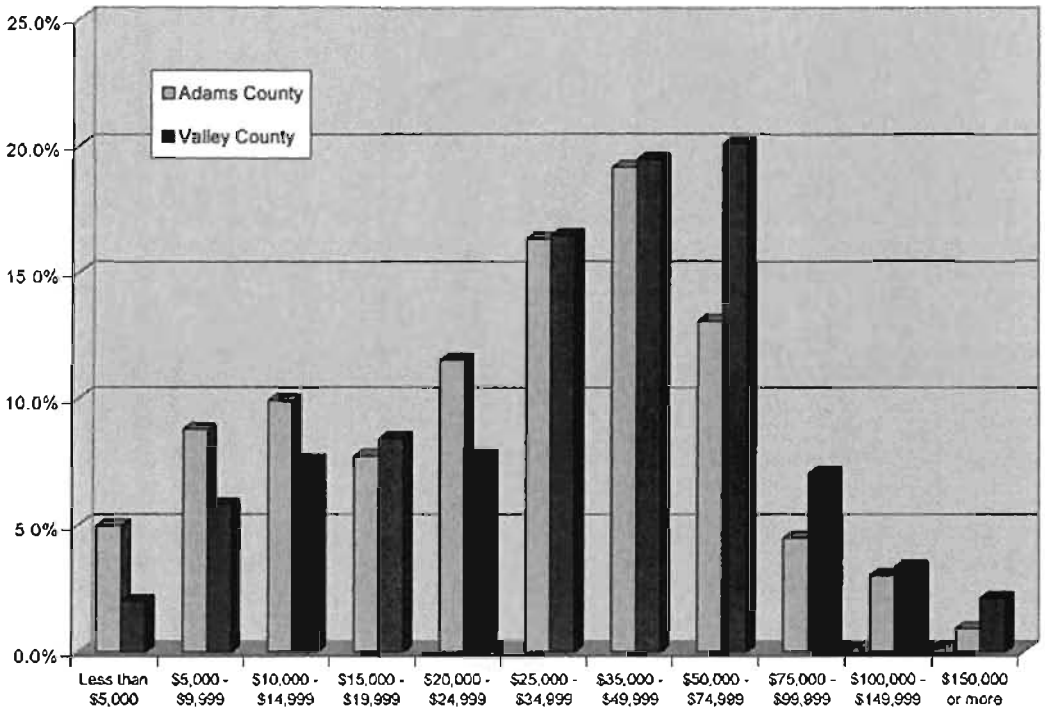
Change in Median Family Income, 1999 – 2005

	1999	2005	% Change
Adams County	$33,500	$47,700	42.40%
Valley County	$35,800	$49,900	39.40%

Source: 2000 Census and HUD

class should decline relative to both lower-income and higher-income households. With the creation of new low-wage retail and service positions, there will be proportionately more low-income households. Although wages will rise at all levels due to the labor shortage causing the median income to increase, the percentage of households with incomes below 80% AMI will probably also increase. The percentage of upper-income households is also likely to increase with wealthy retirees and investors attracted to the region for the resort lifestyle, and increased business opportunities in the area, particularly in real estate investment and development.

Income Distribution, 2000



Source: 2000 Census

Homeowners have considerably higher incomes than renters. In 1999, approximately one-third of renter households had annual gross incomes of $15,000 or less. Nearly 30%, however, had incomes of $35,000 or more. This indicates that mixed income rental housing would be more appropriate than rentals serving only very low income households.

The AMI estimates published each year by the Department of Housing and Urban Development (HUD) are adjusted for household size. For example, the low income maximums (≤80% AMI) in Valley County equal $31,950 for two-person households and $39,900 for a household with four members.

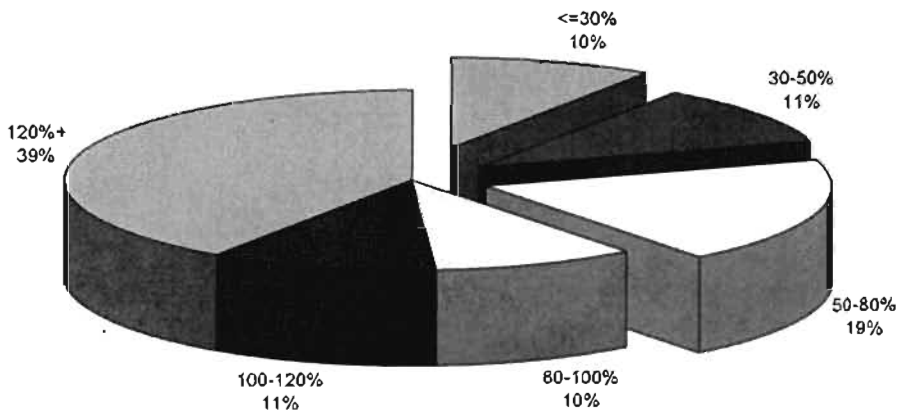
Income Amounts by Percentage of Area Median Income

Adams County	50%	80%	100%
1 person	$16,700	$26,700	$33,400
2 person	$19,100	$30,550	$38,200
3 person	$21,450	$34,350	$42,900
4 person	$23,850	$38,150	$47,700
5 person	$25,750	$41,200	$51,500
6 person	$27,650	$44,250	$55,300
Valley County	**50%**	**80%**	**100%**
1 person	$17,450	$27,950	$34,900
2 person	$19,950	$31,950	$39,900
3 person	$22,450	$35,950	$44,900
4 person	$24,950	$39,900	$49,900
5 person	$26,950	$43,100	$53,900
6 person	$28,950	$46,300	$57,900

Source: HUD

In the two counties combined, approximately 40% of all households have low incomes. This equates to a 2005 estimate of 2,080 households with incomes equal to or less than 80% AMI. Just over half of these households have very low or extremely low incomes.

Income by AMI, Valley and Adams Counties Combined



Source: 2000 Census

Adams County has proportionately more low-income households than Valley County (48% compared to 36%) although in absolute terms, there are more low-income households in Valley County (1,359) than in Adams County (719).

Income figures can be translated into affordable rents and purchase prices. First, the amount that is affordable for each income category is determined based on 30% of gross income equaling the monthly affordable housing payment. For example, in Valley County, a low-income family of three can afford a housing payment of up to $899 per month.

Affordable Housing Payment

Adams County	50% AMI Very Low Income	80% AMI Low Income	100% AMI Moderate Income
1 person	$418	$668	$835
2 person	$478	$764	$955
3 person	$536	$859	$1,073
4 person	$596	$954	$1,193
5 person	$644	$1,030	$1,288
6 person	$691	$1,106	$1,383
Valley County	**50%**	**80%**	**100%**
1 person	$436	$699	$873
2 person	$499	$799	$998
3 person	$561	$899	$1,123
4 person	$624	$998	$1,248
5 person	$674	$1,078	$1,348
6 person	$724	$1,158	$1,448

These housing payments are then translated into affordable purchase prices. The maximum that low-income households can afford to pay for homes ranges from $89,500 for a one-person household in Adams County to $155,100 for a six-person household in Valley County. Since most households in the region have two or three members, the targeted range for affordable homeownership for low-income households should primarily be in the $100,000 to $120,000 range. Note that these are the maximum amounts affordable for households with incomes at 80% AMI. To serve households with incomes lower than this, purchase prices would have to be lower. Households with incomes at 100% AMI can generally afford homes priced up to $150,000.

Affordable Purchase Prices for Low-Income Households

Household Size	Adams County	Valley County
1 person	$89,500	$93,600
2 person	$102,300	$107,000
3 person	$115,000	$120,400
4 person	$127,800	$133,700
5 person	$138,000	$144,400
6 person	$148,200	$155,100

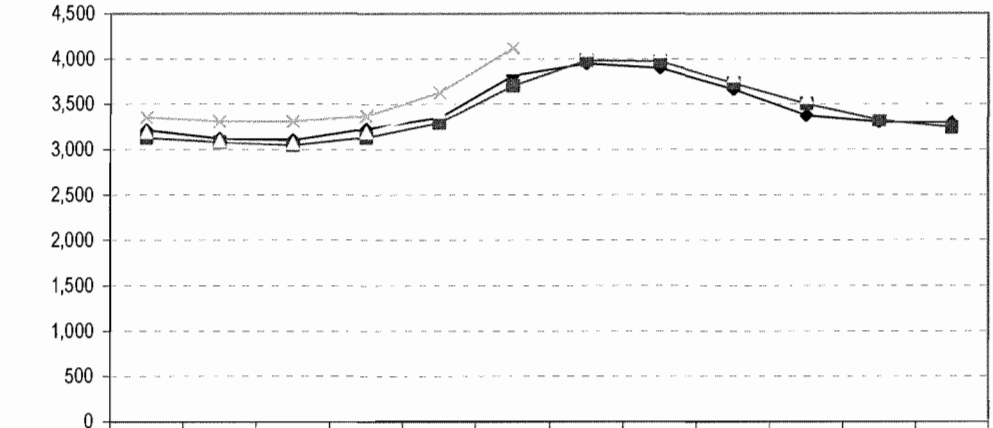
Assumes 20% of payment goes toward taxes, insurance and fees with 80% covering principal and interest on a 30 year fixed-rate mortgage at 6.5% and down payments equaling 5% of the purchase price.

The Idaho Department of Commerce and Labor projects modest gains in employment through 2010 of about 100 jobs in Valley County each year and 20 new jobs annually in Adams County. These projections seem low, particularly for Valley County, given the amount of development that is now occurring (see DEVELOPMENT TRENDS AND FORECASTS section of this report).

Seasonality in Employment

The summer months have historically been the peak employment season with approximately 1,000 more jobs during July and August than during February and March. The McCall office of the Idaho Department of Labor and Employment reports that there have been labor shortages during the summer months for many years. Note that these estimates are for positions covered by the Quarterly Census of Employment and Wages (QCEW, formerly referred to as ES 202 data) and do not include sole proprietors and jobs exempt from mandatory unemployment insurance.

Valley County QCEW Employment by Month:
2001-2004 (2nd quarter)



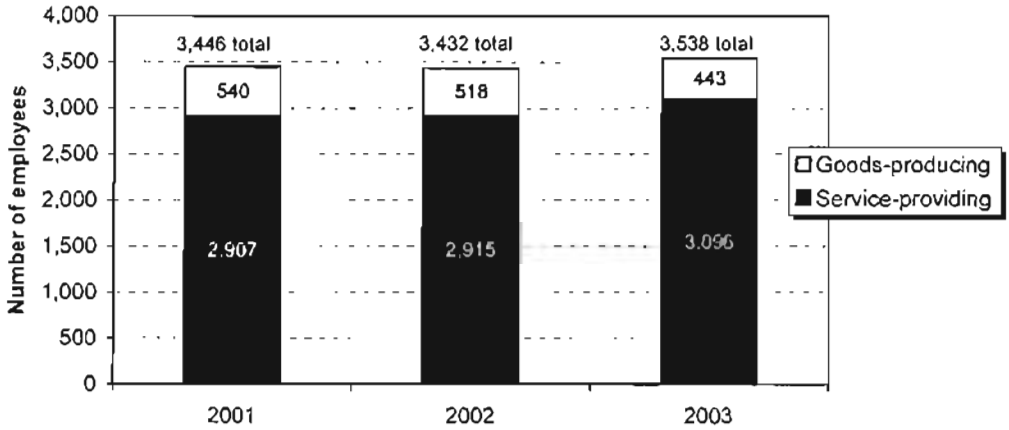
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2001	3,217	3,123	3,107	3,231	3,352	3,821	3,949	3,902	3,668	3,379	3,306	3,302
2002	3,133	3,087	3,048	3,134	3,298	3,708	3,988	3,975	3,736	3,508	3,329	3,245
2003	3,196	3,097	3,074	3,192	3,421	3,910	4,094	4,082	3,815	3,577	3,460	3,543
2004	3,358	3,314	3,309	3,371	3,631	4,121						

Source: Bureau of Economic Analysis. Note: all 2004 figures are "preliminary".

The seasonal employment pattern in Adams County is similar to that in Valley County. There are approximately 275 more employees working during the summer months, the peak employment season, than during the winter.

While service-producing jobs have been on the increase, goods-producing jobs declined between 2001 and 2003. This trend is likely to continue at least into the near term based on the type of commercial growth now occurring in Valley County. Efforts to promote a diversified economy and create more manufacturing jobs, which are less subject to the consequences of drought, national recessions and declines in tourism, will be made difficult by the competition for employees that service businesses will pose.

Valley County QCEW Employment:
2001 to 2003



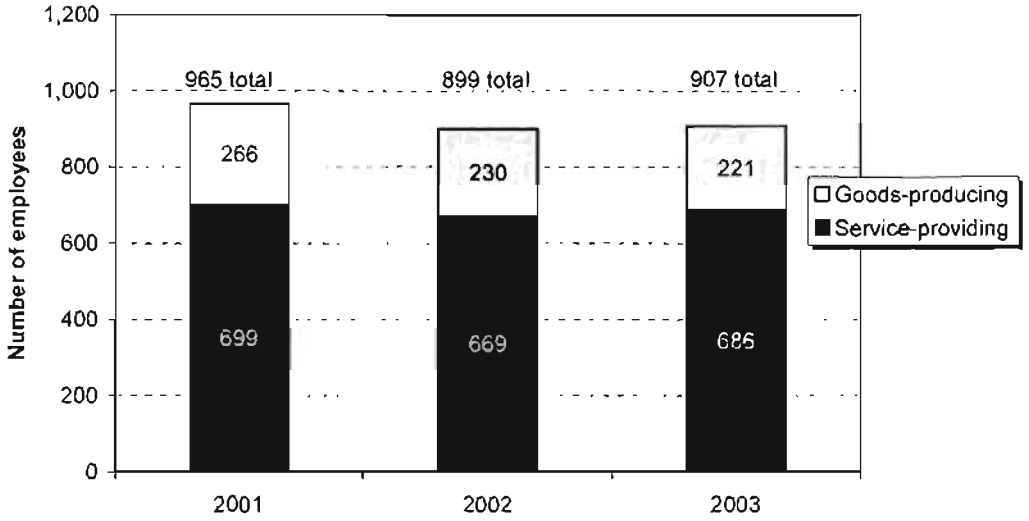
*Goods-producing includes agriculture/forestry/fishing, mining, construction and manufacturing; service-providing includes all other NAICS-defined trades.

Source: Bureau of Economic Analysis

In Valley County:

- Most job growth has been in the construction, accommodation and food services, and arts/entertainment/recreation.
- Manufacturing had a steep decline between 2002 and 2003 with the closure of the lumber mill in Cascade.
- The number of retail jobs has been holding steady as a percentage of total employment. This should change in the coming years as stores open to serve both an increase in visitors and an increase in the population that is spurred by job growth.

**Adams County QCEW Employment:
2001 to 2003**



*Goods-producing includes agriculture/forestry/fishing, mining, construction and manufacturing; service-providing includes all other NAICS-defined trades.

Source: Bureau of Economic Analysis

Many of the employers In Adams County have not been disclosing their industrial classifications when filing their quarterly reports. Because of this, it is difficult to analyze how the economy of the county might be changing. It appears that the number of retail jobs is holding about steady. The greatest job gains between 2001 and 2003 were in the health care and social assistance sector.

- The amount of construction activity has attracted contractors from Boise, Oregon and other areas who bring crews with them and who may report employment through their home office; and,

- Contractors and sub-contractors often pay cash for laborers and do not report them as employees.

As of 2003, the Idaho Department of Labor and Employment estimated that 8.9% of the jobs held in Valley County were in construction. This would equate to about 530 jobs based on estimated 2005 total employment levels. This estimate is low. The Tamarack Resort reports that 525 construction workers were on site during the 2004 summer season not including those building custom estate homes. They anticipate that construction employment will increase this year as work begins on a conference center and employee housing, and continues on the Members Lodge and residential units. It is likely that between 700 and 1,000 employers are working in construction in the region.

Construction activity should remain at high levels for many years to come. Although Tamarack should be largely built out in less than 10 years, development in the nearby communities and on lots in the unincorporated areas of both counties should continue well beyond on-site construction at Tamarack. There is ample land available for residential and commercial development in the region. Even if new construction is curtailed at some point in the future due to limited land or infrastructure availability, remodeling should generate many jobs. In other western mountain communities, ownership of large luxury homes changes frequently with new owners often undertaking extensive remodeling.

Wages

While wages increased overall between 2001 and 2003, increases in service providing jobs were responsible for the gain in the average annual pay. With the loss of the Boise Cascade mill, the average annual pay for employees holding goods-producing jobs dropped sharply – down 13.2% from 2001 to 2003. The McCall office of the Idaho Department of Commerce and Labor reports that wages have been noticeably increasing since 2003 although data have not yet been published quantifying these gains.

Average Annual Pay per Worker – Valley County

	2001	2002	2003	% change (2001-2003)
Total	$21,866	$22,335	$22,262	1.8%
Service-providing	$21,387	$21,809	$22,412	4.8%
Goods-producing	$24,421	$25,255	$21,206	-13.2%

Wages have also been increasing in Adams County; the increase has been greater than in Valley County. While wages for goods producing jobs remained flat or declined slightly between 2002 and 2003, they were up from 2001 levels.

There have been multiple reports of new employees unable to find housing in Valley County who have moved to New Meadows. Builders estimate that 80% to 90% of their workers are from the Boise area, Oregon, California or other areas outside of the region. They commute back and forth to their permanent homes every week or two.

Where Residents Work and Where Workers Live: Adams County

Year 2000	Where Residents of Adams County Work		Where Workers in Adams County Live	
	#	%	#	%
Adams County	1,027	74.7%	1,027	84.9%
Adams County	175	12.7%	110	9.1%
Other	172	12.5%	72	6.0%
TOTAL	1,374		1,209	

Source: 2000 Census

There are numerous negative consequences associated with dependency on a labor force that commutes including:

Leakage

Employees who have homes elsewhere leave the county with their paychecks. Wages are not spent locally, sales tax is not generated and local governments do not receive the revenue required to provide public services and infrastructure for which there is increasing need. Retaining wealth and maximizing the circulation of dollars that come into an area are key principals of economic sustainability. The more that wages are earned in the county but spent elsewhere, the less the local economy and communities will benefit from the development and job growth that is occurring. The loss of much of the construction payroll to areas where workers are retaining their primary homes reduces the economic benefit the region could be receiving from the current construction boom.

Employment Problems

As commuting increases, employers will experience increases in the frequency that employees are late or do not show up for work often due to inclement weather, car problems and child care issues. Turnover also increases as commuters tire of the time and expense involved in commuting and seek employment closer to home. Tardiness, absenteeism and turnover are direct costs to employers. Encouraging or requiring employers to contribute to the provision of employee housing close to work would improve economic sustainability.

Parking

Employees who commute in from homes outside of the county generally do so by car thus necessitating that parking be provided for their vehicles. Over time, parking will become more limited as it is not the economically highest and best use for increasingly expensive land. Building parking spaces for employees can get very expensive, particularly as surface options disappear and multi-level parking structures are required. The subsidy needed to develop nearby employee housing can be less than the cost of building parking for employees who commute.

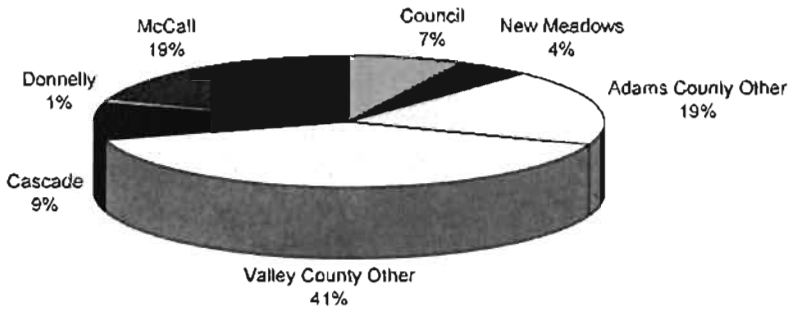
Most of the employers reported that their employees live near where they work. Long-distance commuting has not yet become common. While they are not yet experiencing the types of employment problems typically associated with commuting (absenteeism, tardiness) they are finding that they must fill jobs with candidates who are less qualified than desired.

Location of Units

Nearly 70% of the region's occupied housing units are in Valley County. McCall has the most primary homes of any community; however, the majority of occupied housing units are in the unincorporated areas. Nearly 60% of all occupied units in the region are in rural unincorporated areas. Over 40% of the occupied units in the two-county region are rural Valley County.

In both Valley and Adams counties, there are far more units located in the rural areas than in all of the municipalities combined. This rural development pattern has implications on the desirability and acceptance of community housing. Medium- to high-densities are required to make housing affordable for low- and moderate-income households. Achieving these densities will require central water and sewer treatment generally available only in or near towns. The rural lifestyle with single-family homes on acreage will not be affordable as the price of land continues to rise, even for middle-income families. Households moving to the area will not be able to have the lifestyle that longer-term residents have been able to obtain. Many of the children growing up in the region will not be able to afford the size and quality of home on acreage that their parents could afford. This change will be difficult to accept.

Occupied Housing Units by Location



Source: 2000 Census

Seasonal Units

Over half of the residential units in Valley County (54%) and almost 40% in Adams County were occupied only occasionally or seasonally. These residential units do not function as housing but are rather second homes and vacation accommodations, which generate demand for housing through direct jobs on site (housekeeping, yard maintenance, etc.) and indirectly by jobs in the retail and service sectors. If the relationship between primary homes and seasonal units shifts with a disproportionate increase in the number of seasonal units relative to primary homes, the lack of employee housing will be compounded.

Unit Type

Nearly three-fourths of the residential units in both Valley and Adams counties are single-family homes. The percentages are lower in all of the incorporated communities but still in excess of 60%.

Multi-family units (condominiums, apartments, duplexes, etc.) comprise a small percentage of total residential units relative to the unit mix in most mountain resort communities where land prices are high. McCall, the most resort-oriented of the communities in the two-county region, has the highest concentration of multi-family units (34%). As land prices in the region rise and the demand for vacation accommodations increases, it is likely that proportionately more multi-family units will be built. Most of the renter-occupied units in the two-county region are scattered single-family houses, mobile homes and condominiums. There are few apartments, which are typically one of the most affordable types of housing.

The change will be most noticeable in communities like Donnelly where less than 3% of the units are now multi-family. The increased urbanization associated with multi-family development may be considered unattractive by residents who want to preserve their rural lifestyles. The developments most likely to be impacted by negative reaction to increased densities and urbanization are the lower cost, more affordable projects that provide community housing since they typically offer less open space and lower-quality exterior finishes compared to high-end resort condominiums.

Residential Units by Type

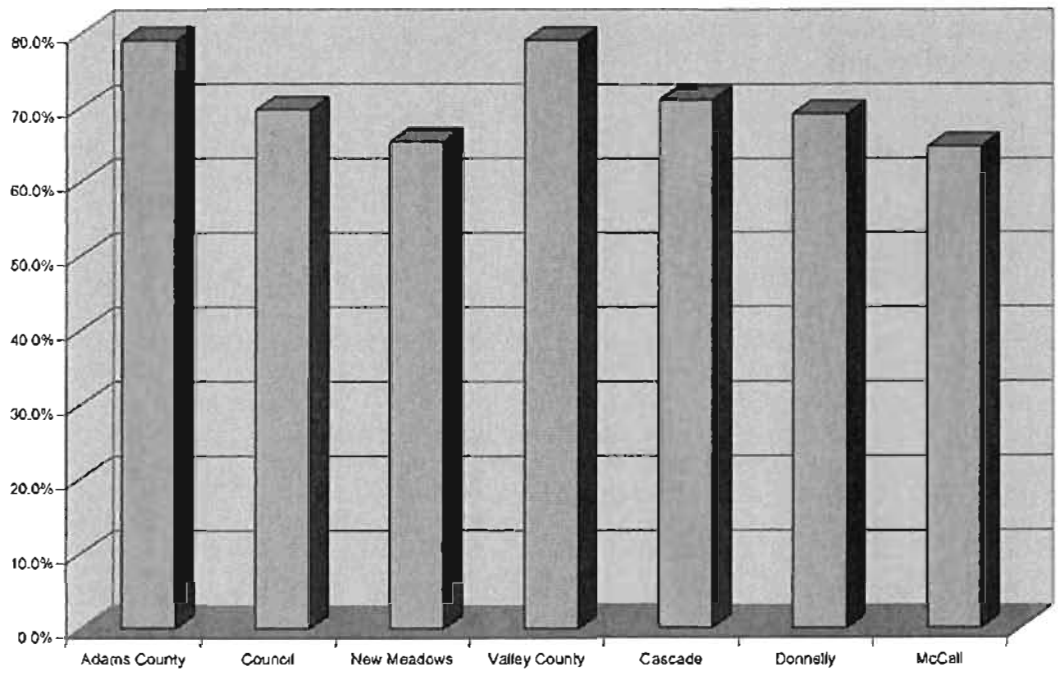
	Single-Family		Multi-Family		Mobile Homes	
Adams County	1,476	74.5%	107	5.4%	344	17.4%
Council	276	65.6%	63	15.0%	57	13.5%
New Meadows	166	64.1%	29	11.2%	64	24.7%
Valley County	5,958	73.7%	955	11.8%	917	11.3%
Cascade	390	67.0%	82	14.1%	105	18.0%
Donnelly	62	78.5%	2	2.5%	13	16.5%
McCall	1,378	60.8%	776	34.3%	106	4.7%

Source: 2000 Census

A relatively large percentage of residential units in the region are mobile homes – 11% in Valley County and 17% in Adams County. In New Meadows, nearly one-quarter of all residential units are mobile homes. McCall has the lowest concentration (under 5%) yet still has over 100 mobile homes. Mobile homes typically cost less than any other type of housing, both to rent and to own.

In other western mountain resort communities, mobile home parks have often been redeveloped and replaced with higher-priced, more profitable homes. The escalating price of land and housing demand have made the parks financially less attractive than other types of housing. Commercial revitalization/redevelopment has also taken its toll on mobile home parks since many have been located near downtown areas.

Homeownership Rate



Source: 2000 Census

The other communities in the region are likely to become more like McCall in terms of owner/renter mix as they shift more from a historical dependence on the lumber industry and summer tourism to become more year-round resorts. Having proportionately more renters relative to owners may not be considered desirable by many but is likely to be the situation in the future.

Rents have increased roughly 35% to 50% since 2000. The greatest increases have been in Valley County, particularly in the McCall and Donnelly areas.

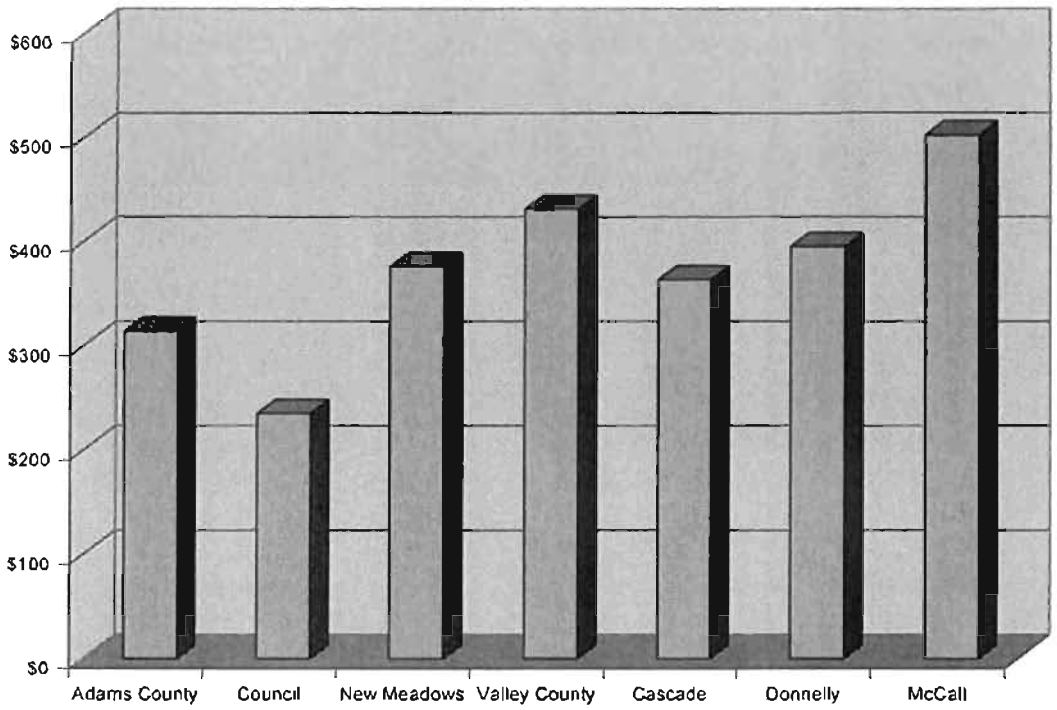
Median Rents in 2000

2000	Adams County	Council	New Meadows	Valley County	Cascade	Donnelly	McCall
Gross Rent	$395	$319	$506	$505	$446	$483	$548
Contract Rent	$314	$235	$376	$431	$363	$395	$502

Source: 2000 Census

Although rents have increased substantially since 2000, the variation in rates by location appears to be comparable to the situation in 2000. Rates are highest in McCall and lowest in Council. Rents in New Meadows are similar to those in Donnelly and Cascade, and significantly higher than in the southern portion of Adams County

Contract Rent in 2000 by Location

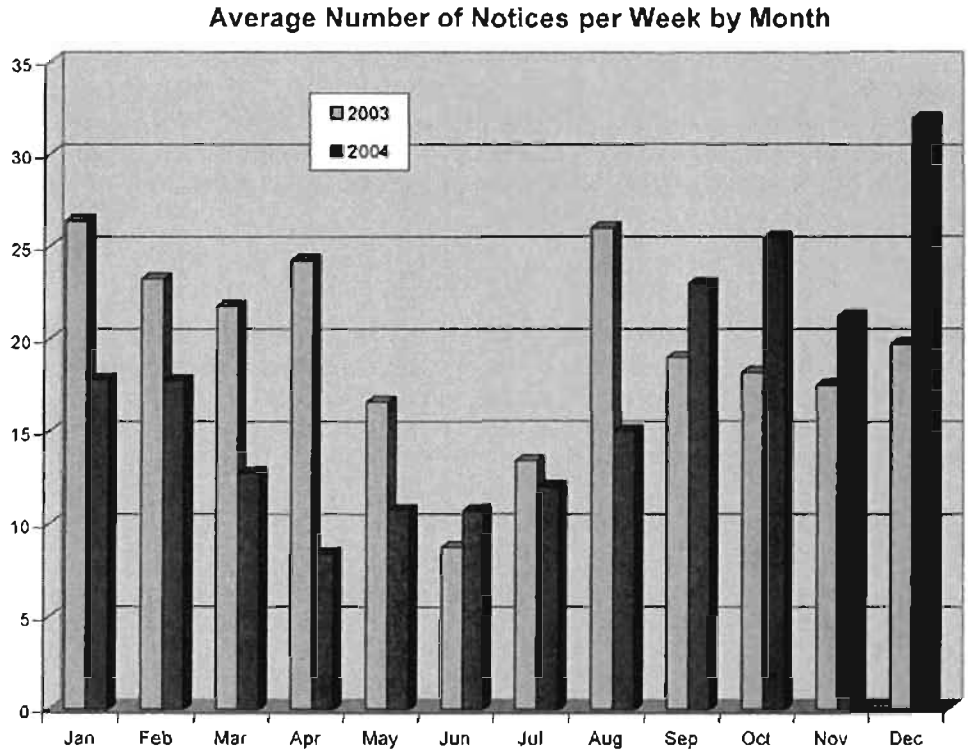


Source: 2000 Census

Rental Availability

Property managers, leasing agents and landlords report very few, if any vacancies. They indicate that occupancy levels have always been high during the summer months but have increased significantly in the last two years during the winter.

For-rent newspaper notices in the Star News in McCall provide indications about rental availability. The notices from the Star News were utilized for this analysis since it has

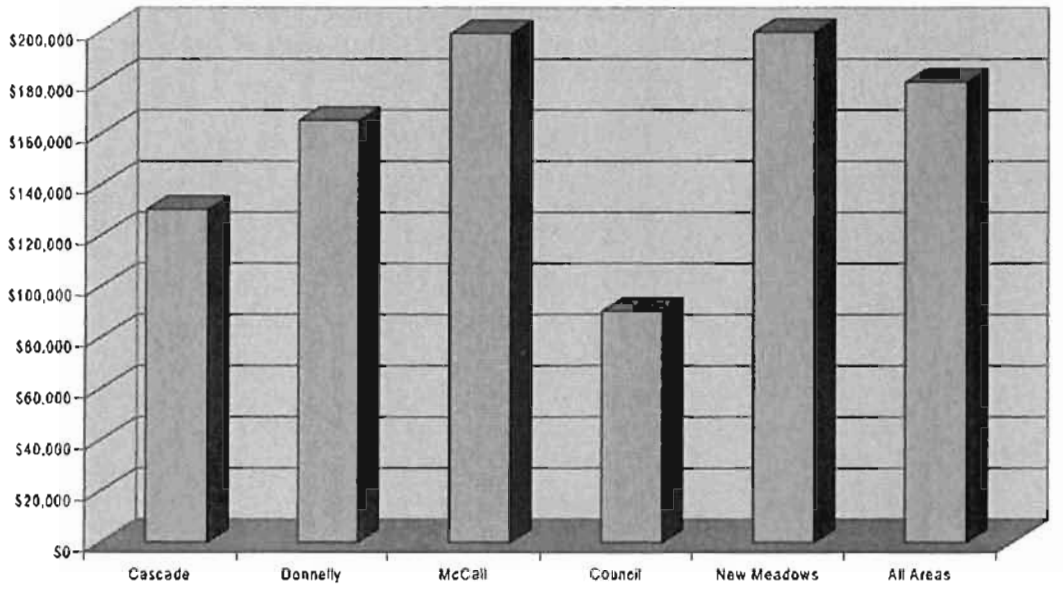


Source: The Star-News in McCall

In the first eight months of 2004, the number of notices published was significantly lower (52%) than the number published in 2003, indicating that availability of rentals had declined. This changed, however, starting in September 2004. The reason for the jump in for-rent notices during the final four months of 2004 may be attributed to an increase in the number of units placed on the long-term rental market. This is supported by comments from property managers that the number of units they manage has recently increased. This increase is most likely due to recognition by property owners/investors that rents are rising and that winter seasonal vacancies are decreasing as a result of the opening of Tamarack, which improves the financial attractiveness of long-term rentals.

This situation is not likely to continue, however. Assuming current trends continue, the price of new homes will increase to the extent that investors can not afford to purchase them for rentals. At the same time, owners of single-family homes and condominiums that have been rented long term will be tempted to sell for gains far above what they receive in rents. Since such a small percentage of the rental supply consists of apartment units that will remain as rentals over time, in all probability, the supply of long-term rentals will decrease in the next few years. The possible removal of mobile home parks would contribute further to a reduction in rental availability.

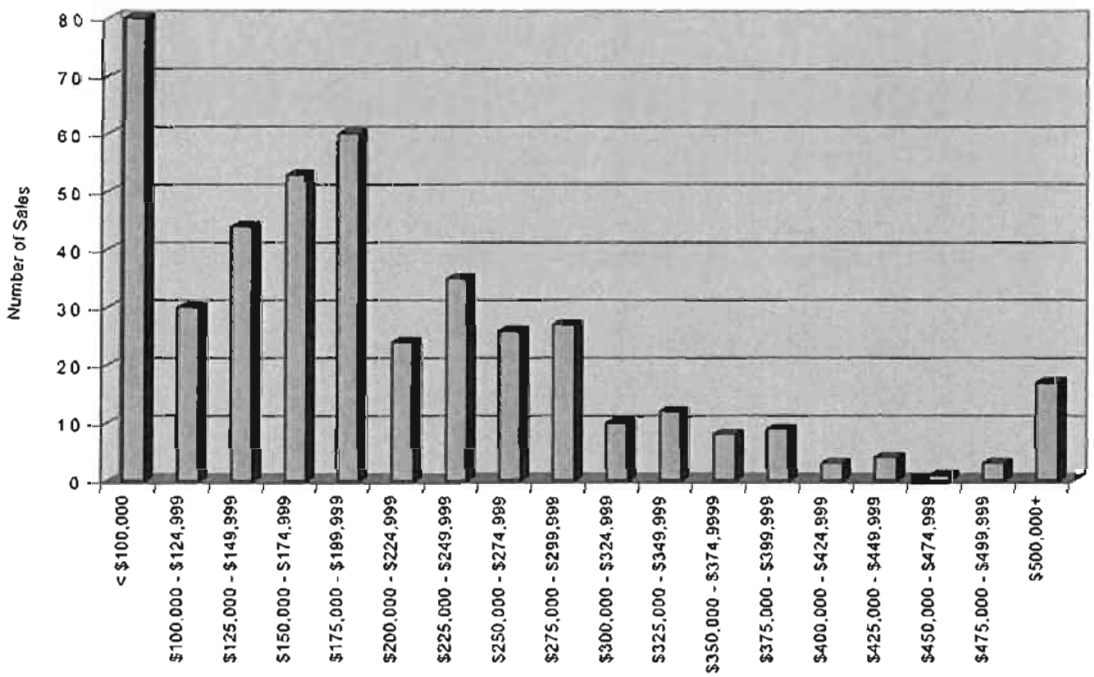
2004 Median Prices by Location



Source: Mountain Central MLS

In 2004, approximately 34% of homes sold in the region cost less than $150,000. Of these 154 homes, 10 were in New Meadows, 30 in Council, 61 in McCall, 34 in Cascade and 19 in Donnelly. At the other end of the price spectrum, 17 homes were sold for prices at or above $500,000. Most of these (13 of the 17) were in the McCall area.

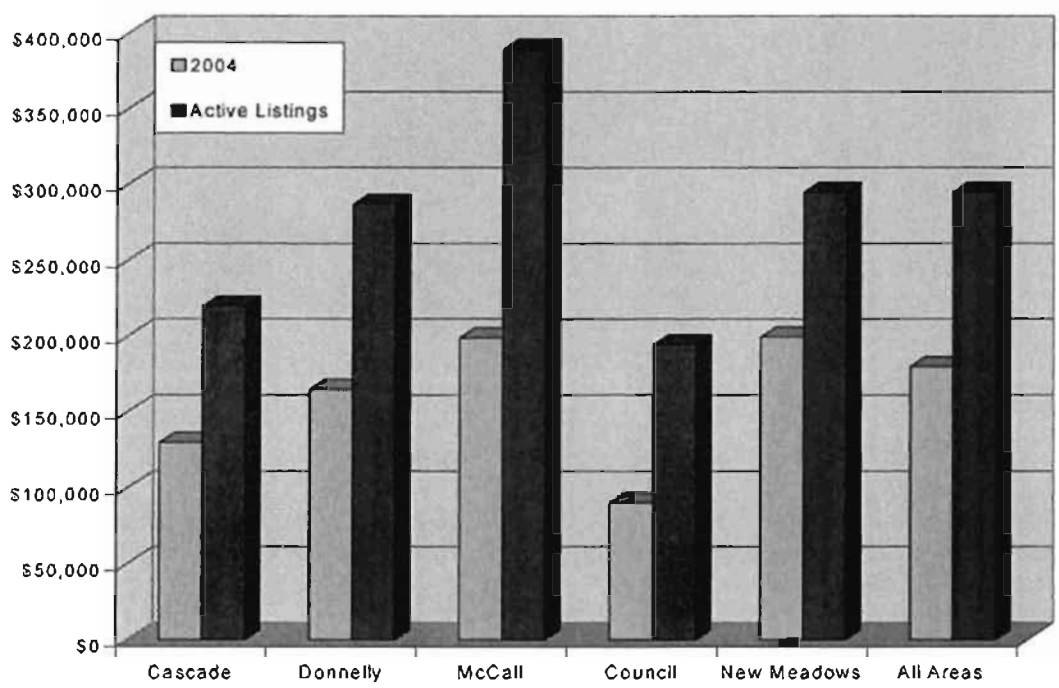
2004 Sales by Price Range



Source: Mountain Central MLS

The following chart illustrates the rapid escalation in median prices. It should be noted that these increases do not reflect the rate of appreciation in individual homes. The increase in the median is due to a combination of property appreciation and the development of new high-priced homes.

Median Prices Compared, 2004 Sales and Active Listings



Source: Mountain Central MLS

A comparison of 2005 list prices to home values in 2000 shows increases in the median price ranging from 152% in Cascade to 315% in Donnelly.

Price Change, 2000 - 2005

	Adams County	Council	New Meadows	Valley County	Cascade	Donnelly	McCall
Median Value 2000 Single Family Homes	$88,800	$69,500	$84,600	$141,200	$95,300	$70,000	$151,300
Median Value 2000 All Units	$99,500	$61,500	$77,900	$134,200	$87,400	$69,100	$147,500
Active Listings, 2005 All Units	N/A	$194,500	$295,000	N/A	$219,900	$287,000	$389,500
% Increase	N/A	216%	279%	N/A	152%	315%	164%

Sales Volume and Activity

The MLS tracked 446 sales in 2004. Real estate activity was dominated by activity in the McCall area where 57% of the homes sold in 2004 were located. It is interesting to

sales. As many as one-fourth to one-third of sales to year-round residents are to retired persons and others who are not employed in the area. As the demand for housing by non-employees continues to increase (see SPECIAL NEEDS section of this report on the growth in senior population) it will drive the demand for employee housing upward. Seniors and financially independent residents are high-rate consumers of goods and services, which generates jobs. At the same time, they compete with employees for housing thus limiting the supply of housing available to employees.

Realtors also report that most of the year-round residents who are buying homes are new to the area. Most have recently-created jobs at Tamarack or with other businesses, especially those that are construction-related Very few of their clients are individuals or families that have been working and renting in the area for very long.

Availability

Realtors report the inventory of units listed for sale has declined sharply since 2003. As of April 21st, a total of 195 residential units were listed for sale in the two counties combined. This represents a 5.3 month inventory based on the number of sales in 2004. In other words, 37 homes were sold on average each month in 2004. At this same rate, the 195 active listings will be sold in 5.3 months. An inventory of less than six months is generally considered to be a sellers market where buyers have few choices and limited ability to negotiate price. McCall has the smallest inventory relative to historical sales activity whereas the Cascade area has the largest.

Active Listings at of April 21, 2005

	2004 Sales	Active Listings	Months Inventory
Cascade	54	40	8.9
Donnelly	61	48	9.4
McCall	253	66	3.1
Council	41	23	6.8
New Meadows	37	18	5.8
All Areas	446	195	5.3

Source: Mountain Central MLS

Approximately 57% of the homes listed for sale were single-family houses on lots and another 26% were homes on acreage.

Active Listings by Price and Location
(Shading denotes affordable for 100% AMI)

	Total	Cascade	Donnelly	McCall	Council	New Meadows
< $100,000	13	5	0	2	5	1
$100,000 - $124,999	3	2	0	1	0	0
$125,000 - $149,999	6	3	0	1	1	1
$150,000 - $174,999	8	5	1	0	2	0
$175,000 - $199,999	19	5	5	1	6	2
$200,000 - $224,999	6	2	3	1	0	0
$225,000 - $249,999	18	6	8	3	1	0
$250,000 - $274,999	14	1	6	6	0	1
$275,000 - $299,999	18	3	5	3	2	5
$300,000 - $324,999	7	1	3	0	3	0
$325,000 - $349,999	12	0	1	7	1	3
$350,000 - $374,9999	7	1	1	4	1	0
$375,000 - $399,999	13	1	2	9	0	1
$400,000 - $424,999	5	0	1	2	1	1
$425,000 - $449,999	8	1	4	3	0	0
$450,000 - $474,999	3	0	0	3	0	0
$475,000 - $499,999	7	2	1	3	0	1
$500,000+	28	2	7	17	0	2
Total	195	40	48	66	23	18
Total < $150,000	22	10	0	4	6	2
Percent < $150,000	11.3%	25.0%	0.0%	6.1%	26.1%	11.1%

Source: Mountain Central MLS

other hand are faced with rents that usually escalate every year, often at rates that exceed wage increases.

Overcrowded Housing Units

Approximately 127 of the region's housing units are overcrowded with more than one person per room. In most areas, overcrowding is not a widespread problem. In Donnelly, however, 20% of the occupied housing units in 2000 were overcrowded. The percentage was also higher in New Meadows (4.8%) than elsewhere in the region since small homes that once served as mill worker housing were moved there and are now occupied even though they are substandard.

Overcrowding is likely becoming more prevalent as housing availability decreases and housing costs rise.

Overcrowded Housing Units

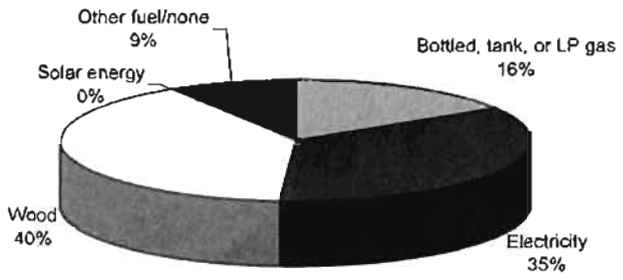
	% Overcrowded	Estimated 2005 # of Housing Units
Adams County	2.0%	31
Council	0.9%	3
New Meadows	4.8%	9
Valley County	2.6%	96
Cascade	1.9%	9
Donnelly	20.0%	12
McCall	1.5%	17

Source: 2000 Census and Rees Consulting, Inc. estimate for 2005

Home Heating

It is important to consider the cost of utilities when considering housing affordability, especially in a mountain climate. The region is not served by natural gas. As such, most homes are heated with electricity or wood. These are generally inefficient and costly ways to heat residential units. All of the apartments that were researched as part of this study have electric heat. Landlords estimate that it typically costs about $250 per month to heat a two-bedroom apartment in the winter. Using more efficient heating systems in any community housing that is constructed in the future would make the homes more affordable over time.

Type of Heat Used



Source: 2000 Census with Rees Consulting, Inc. adjustment

None offer garages, covered parking, clubrooms, athletic facilities, business centers or amenities typically found in larger, newer apartment properties.

- Design and size options are limited. None of the two-bedroom apartments have two bathrooms. None of the properties offer studios, which are the most affordable option for persons to live alone, and only Valley I has townhome-style apartments with two floors, which are desirable for families.

- All of the apartment complexes are operating at or very near full occupancy. While a total of six units were reported vacant in early April, it was the result of turnover. Former tenants had just moved out and paperwork was being finalized for new residents to move in. There were 31 applicants on wait lists, which is more than six times the number of units that were empty.

The Timbers is the only free-market apartment complex in the region where rents range from $550 to $675 per month. Rents were increased approximately $50 in the last year. They remain affordable for households with incomes at 80% of the median but are higher than what very low income households with incomes at or below 50% of the median can afford. While The Timbers now functions as community housing, it could become too expensive in the future for low-income households at or below 80% AMI.

Valley I

These 8 units are owned and operated by Western Idaho Community Action Partnership (WICAP). It is located at 210 Colorado behind the Woodman's Lodge in a residential area on site served by public transit and near the center of McCall. The property was constructed more than 10 years ago. It is the only project in the two-county area financed with tax credits and a HOME grant. It is generally well maintained and attractive. Units have in-unit washers and dryers. WICAP owns adjacent land suitable for apartment development.

The Timbers

This17-unit project in McCall was formerly named Ponderosa Arms. It is the only free-market apartment project in the two-county area. Most of the project's tenants are roommate households and couples with children. Single-parent families have generally been unable to afford market rents. The project does not have any Section 8 voucher holders.

Osprey Court

This 17-unit project was funded by Rural Development and primarily serves very low income households. Most are single parents with children although several are rented to single individuals, seniors and disabled persons. The project's amenities include a playground, central laundry and exterior storage lockers.

The Claremont

The 16-unit Claremont apartment project is located in Cascade. It was funded by USDA's Rural Development and is managed by Syringa Property Management. The project primarily serves low-income single-parent families and elderly. Management reports that they have more children living in the units than previously and that they

There are still a few homeownership opportunities for low- and moderate-income households. As of April 21st, 22 units (single-family homes, condominiums and mobile homes on land) were listed for sale at or under $150,000 and therefore were affordable for households with incomes at 100% of the median. Of there, three were in the $100,000 to $125,000 range, which is the affordable target for households at 80% AMI. The remaining 13 were listed for sale at prices under $100,000.

Cascade had the largest concentration of homes available for purchase by low- and moderate-income households – 10 out of 22. Six were in Council, four in McCall, two in New Meadows and none in Donnelly. Very few homes are now being built that will be affordable for low and moderate income buyers.

The success of Jacob's Manor, a subdivision where recently constructed homes have been priced to be affordable for low-income buyers, is evidence of the strong demand for entry-level homeownership. The 32 new homes sold at a rate of over 3.5 units per month. Prices started at $132,500 but escalated to over $182,000.

Mortgage Financing

The availability of home mortgages appears adequate for most types of housing. Mortgage brokers and lenders offer a full array of Fannie Mae and Freddie Mac loan products in addition to portfolio financing for purchasers with credit problems or unique circumstances. They have 100% financing for first-time buyers provided that a homebuyer education course is completed. They offer stated-income loans for buyers who have undocumented income and can work with buyers who have a seasonal employment history. They face several obstacles, however including:

- Difficulty financing manufactured housing.
- Inability to provide loans for condominium projects that include time share units.
- Difficulty financing multi-family units because there are so few comparable properties.

Rural Development has a homebuyer program for low-income buyers (incomes at or below 80% AMI) through which below market rate mortgages with effective interest rates of 1% are offered. The program has sufficient funding to serve increased demand from Valley and Adams counties.

Boise-based Neighborhood Housing Services, a non profit Community Housing Development Organization, operates in all but two counties in Idaho and has the ability to serve Valley and Adams counties. The organization has budgeted to provide four second mortgages in the two counties in conjunction with Rural Development's below market home loan program for income-qualified entry-level home buyers.

Temporary Housing

RV parks are becoming increasingly used for employee housing. In the Cascade area, one park owner reports that about 20% of sites are occupied on a long-term basis during the summer. In Donnelly, one park has been master leased by a large contractor for

Construction contractors are master leasing houses and condominiums for their employees to live in while they work in the area. One has also master leased an RV park.

While employer assistance can be one component of a comprehensive housing strategy aimed at providing a sufficient workforce to support a sustainable economy, opportunities are limited and can have negative consequences. Most employers do not have any land for the construction of housing and do not have residential development expertise. With escalating housing prices, they can not afford to purchase homes for their workers. Even if they could afford to purchase or master lease housing, this removes housing from the market that would be otherwise available for employees who work for employers that can not afford to provide housing assistance, and further drives up housing prices. Tamarack is an example of this. Master leasing of six homes in the Donnelly area has made it more difficult for other employees in the area to find rental housing. Tamarack leases three four-bedroom homes for $1,700 per month each, which is considerably higher than what the prevailing market rates have been. Landlords will typically not rent their units for less if they can get major employers to pay above market-rates.

Another consequence of employers leasing homes for employees is disruption to neighborhoods. When single-family homes are occupied by a large number of unrelated workers, nearby homeowners are concerned about their children's safety and general disruption from parking, late hours and noise.

Households with Householder Age 65+

	1990		2000	
	#	%	#	%
Adams County	312	24.9%	366	25.8%
Council	99	31.0%	101	29.8%
New Meadows	36	17.4%	36	17.3%
Valley County	485	20.2%	722	22.5%
Cascade	95	26.9%	112	26.6%
Donnelly	10	19.2%	11	20.0%
McCall	145	17.6%	185	20.5%

Source: 2000 Census

Seniors drive up the demand for employee housing. Seniors are high-rate consumers of goods and services, which generates jobs. At the same time, they compete with employees for lower-end housing thus limiting the supply of housing available for the workforce.

The senior population will increase in coming years as persons born between 1946 and 1970 reach retirement age. The first wave of "baby boomers" will be 60 years of age in 2006. The number of persons reaching retirement age will continue to increase every year through 2022 when the "baby boomer bubble" will reach its peak.

Growth in the senior population will also be fueled by migration to the mountain west. As the region evolves into a year-round resort area, seniors may increasingly find it an attractive place to live. Steamboat Springs, Colorado recently found that the city's retirement age population is increasing at a rate six times the national average. Between 1990 and 2000, the biggest jump in proportionate population growth rates in several Colorado mountain resort communities was in the 60-plus age category.

Three age-restricted apartment projects in the region provide 64 rental units for low-income seniors. All are owned by non-profit organizations and operate near or at full occupancy with wait lists.

Senior Housing Projects

Project	Housing SW #3	Housing SW #4	Council Senior Housing
Location	430 Floyd St. McCall	212 E. Spring St. Cascade	201 N. Hornet Creek Rd. Council
Owner	SICHA	SICHA	Elderly Opportunities Agency
Unit #	28	12	24
Unit Type	1 BR	1 BR	18 – 1 BR 6 – 2 BR
Rent	30% of income	30% of income	30% of income
Wait List	15	2 - 10	2

emergency stays in rooms donated by area motels. The agency received 238 crisis line calls in 2004 and the first 3.5 months of 2005, most of which (approximately 200) were from persons living in Valley County. The agency anticipates an increase in clients as more employees move into the area to fill jobs. About half of the persons that Long Valley assists are renters and about half are owners. While Long Valley reports that displacement of renters by escalating costs has not yet become a significant problem, clients are finding it increasingly difficult to find rental housing when they must move from their current home.

Long Valley plans to acquire or develop a facility that can provide emergency shelter and transitional housing up to 90 days for three to five families. There are times, like during the Winter Carnival, that all motel rooms in Valley County are booked.

There are no agencies providing services at this time specifically for persons with chronic mental illness, developmental disabilities, substance addictions, HIV/AIDS, or physical disabilities.

Rose Advocates

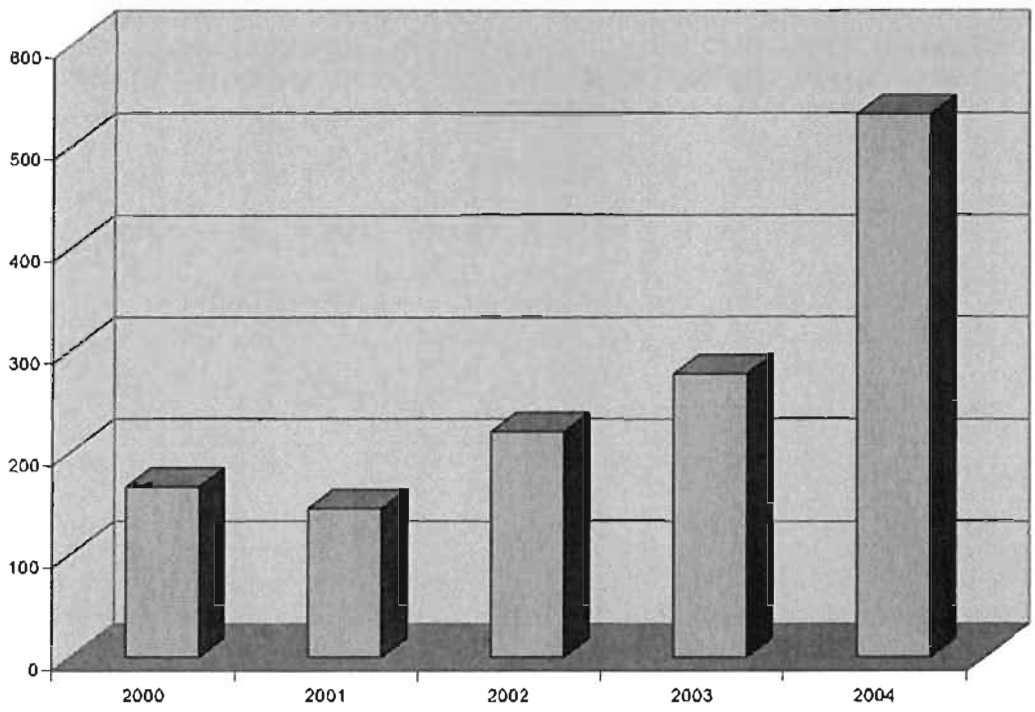
Rose Advocates has been providing services in Adams County for 10 years like those provided by Long Valley in Valley County – emergency shelter, support groups, court escorts, and referrals for counseling and legal services for victims of domestic violence. The non-profit handles about 100 to 150 calls per year. They now provide motel vouchers when emergency shelter is needed but own a cabin donated by the County which they hope to convert to a shelter.

They report that their clients are having a "real problem" finding housing. Women with children are having the greatest difficulty. Finding anywhere to rent is a problem and having funds for security deposits in addition to rent is beyond the financial means of many. They estimate that about 25 clients per year are having difficulty finding housing.

Rose Advocates reports that they very much need transitional housing where women can live with their children for up to one year. They estimate that 10 units of transitional housing could be filled almost immediately.

issued for new units, which is about the same number as issued during the same period in 2004.

Valley County Residential Building Permits, 2000 – 2004



Source: Valley County Building Department

Nearly half of the residential units under construction are located in unincorporated areas of the county. Most of the others are in McCall, where the number of permits issued in 2004 was nearly seven times the number issued in 2000. The housing proposed in the last three years of subdivision activity is the equivalent of 40% of the total housing that existed in McCall in 2000. There has been little new residential construction within Cascade and Donnelly compared to the rest of the county but it has dramatically increased. In Donnelly, only one permit was issued in the four-year period from 2000 through 2003. In 2004, six permits were issued. In Cascade, 3.5 permits were issued on average during the first four years of this decade. In 2004, 10 permits were issued, an increase of approximately 185%.

Residential Building Permits, 2000 – May 13, 2005

	2000	2001	2002	2003	2004	2005 YTD
Unincorporated Co.	100	90	113	138	252	30
Cascade	8	1	2	3	10	0
Donnelly	0	0	1	0	6	1
McCall	33	36	75	103	220	38
Manufactured/MH	25	18	29	33	43	5
Total	166	145	220	277	531	74

Source: Valley County Building Department

Platted Residential Lots, Valley County

	Vacant	Improved	Total
Rural	5,852	5,849	11,701
Urban	1,692	3,199	4,891
Total	7,544	9,048	16,592

Source: County Assessor

Development potential is greatest in the rural unincorporated areas. Of the over 7,500 approved but vacant lots in the county, 78% are in unincorporated areas. Only 50% of the approved residential lots in the rural areas of Valley County include a home. With applications submitted but not yet approved for over 2,000 residential lots in unincorporated Valley County will bring the total number of lots available for development in just the parts of the county outside cities to over 7,850 lots (5,852 approved vacant plus approximately 2000 lots in 2005). This means that the number of residential units in the rural areas could increase by 134% (from 5,849 improved lots now to approximately 13,670) based solely on subdivisions that have been approved or submitted for consideration.

The cities are also growing. At the time of the 2000 census, the City of McCall contained approximately 2,250 homes. In 2001, the City processed one 65-lot subdivision and one planned unit development (PUD) for a 240-site RV park. Since January 2002, the City has approved 17 subdivisions, adding over 290 potential homes to the City. There are currently active applications for 22 subdivisions containing 956 proposed homes.

Development Trends

Based on recent activity and potential for growth, it appears that development will continue at a brisk pace far above historical growth levels into the foreseeable future. All of the communities in the region with the exception of Council have recently annexed lands into their boundaries, are currently considering requests or have been approached by developers with preliminary plans for annexation. Demand for vacation properties and resort real estate is booming in most of the mountain west with demand spurred in part by mediocre stock market performance. Variables other than land availability and market demand will however impact the location and rate growth.

McCall

Three annexations have been recently approved by the City including 600 to 700 acres for expansion of the Whitetail Resort, a 57-acre parcel planned for development at approximately four units per acre and approximately 20 acres that will also be developed at four units per acre. None include parcels zoned appropriately for community housing other than plans for 13 employee housing dorm rooms and a couple of employee units at Whitetail.

McCall is, to a great degree, the region's center for commercial services, shopping and entertainment. It has the largest inventory of housing now occupied by year-round residents. Many employees will likely prefer to live in McCall in the future even if they are employed elsewhere making the community a receiving community of housing demand. Even if the development moratorium temporarily curtails new demand for

community known as Morgantown has substandard, dilapidated housing units that could be replaced with community housing that is both higher density and better quality. Construction of a mobile home park might also be viable in New Meadows, providing homeownership opportunities that are more affordably priced than in Valley County.

Council

Of the communities in the region, Council has been impacted the least thus far by the current development boom. There is, however, economic growth in the community and opportunities for additional development. Improvements are being made to the downtown area and the industrial park has room for new businesses. The possible construction of a highway that would lead from Emmett to Indian Valley then onto Donnelly could significantly change Council in the future. Though there has been little new construction as of late, interviewees report that land speculation is now widespread. While most of the growth now occurring stems east and north from Tamarack, Council could become a resort community serving as a bed base and retail/commercial center for Tamarack.

Rural Valley County

The Tamarack Resort is undeniably the most significant engine driving development in the region. The Resort is now in its second year of a planned 10- to 15-year sellout. Tamarack plans to become a year-round destination resort with Alpine and Nordic skiing, 18 holes of golf, 300,000 square feet of commercial space and 2,043 residential units. Sales of lots have been brisk. The rate at which development and employment generation will occur is difficult to project at this time, however, since 2004/05 was its first ski season. The Resort will open with six holes of golf this summer. Thus far, 40,000 square feet of commercial space has been placed in service. The Members Lodge, an 86,000 square-foot lodge, is scheduled for completion by December 2005. Plans for a 16,500 square-foot conference center are in the works. Tamarack's employment growth will parallel development with an increase of up to 10% in the next year. This would equate to approximately 30 additional employees during the peak winter season.

Tamarack is by no means the only development in rural Valley County that will generate jobs and fuel the demand for community housing. Other major developments include Jug Mountain, Meadows at West Mountain, Gold Fork Bay Village, Fir Grove, Arrowhead and commercial buildings in Lake Fork.

Rural Adams County

A volunteer committee is now looking at land use and rezoning of the county to implement the 2000 Comprehensive Plan. This effort could limit development of agricultural, timber and grazing lands and allow for greater densities in the municipal impact zones around Council and New Meadows. This would have a positive impact on community housing by making it possible to develop land near towns at prices that might be affordable for employees while limiting the high-end construction on acreage, which stimulates demand for employee housing.

Overall, 2.9 employees work in every 1,000 square feet of commercial space. The ratios are considerably higher than the overall average for restaurants and bars (8.0 per 1,000 SF), recreation-related establishments (5.8 per 1,000 SF) and real estate/property management offices (6.0 per 1,000 SF). Research has shown that these job generation ratios change very little over time.

The rates for lodging and professionally managed vacation properties are unique in that they are expressed on a per room or unit basis rather than per 1,000 square feet. The rate for lodging is .7 employees per room.

In the two-county region, permits were issued for 77,244 new square feet of commercial space. This total does not reflect all commercial construction that is occurring in the region. It only includes one floor of the lodge now being built at Tamarack and only 5,000 square feet in 2005 in Donnelly where 36,000 square feet of commercial space is planned for construction this summer.

Based solely on permits issued as of the end of May, demand was generated for 217 employee housing units. Additional demand for approximately 200 units will be generated by roughly 125,000 square feet of commercial space that is planned for construction by the end of the year.

Jobs and Housing Demand Generated by New Commercial Space

	New Sq. Ft	Jobs/!,000 SF	Jobs Generated	Employees/ Housing Unit	Housing Demand Generated
Adams County	2,160	2.9	6.26	1.8	3.5
Council	1,800	2.9	5.22	1.8	2.9
New Meadows	360	2.9	1.04	1.8	0.6
Unincorporated	0	2.9	0.00	1.8	0.0
Valley County	132,775	2.9	385.05	1.8	213.9
Cascade	1,667	2.9	4.83	1.8	2.7
Donnelly	26,868	2.9	77.92	1.8	43.3
McCall	26,896	2.9	78.00	1.8	43.3
Unincorporated	77,344	2.9	224.30	1.8	124.6
Total	134,935	2.9	391.31	1.8	217.4

Residential

Residential growth has added to both the supply of and demand for housing. Residential dwelling units generate demand for housing through their operation and maintenance. Activities including exterior and interior maintenance and upkeep, house cleaning, meal preparation, child care, personal services and home office support generate jobs, many of which are relatively low paying. The employees that fill these jobs generate demand for modestly-priced housing.

demanded minus 250 units supplied). This estimate should be considered conservative. It is likely that the relationship between second homes/vacation accommodations and primary residences is shifting, and that employees are occupying fewer than 210 of the 725 new residential units.

It should also be noted that the estimate of net demand for 210 additional employee housing units considers only the demand generated by permanent employment in commercial space and residential units, and does not include the impact on demand from construction workers. It also does not take into demand that is arising from retirees, disabled person, others who are not employed and those who work at home.

Demand by Income

Given housing prices, it is likely that most of the units built since 2003 that accommodate employees were purchased by those with middle and upper incomes. Only 34% of homes sold in 2004 were affordable for households with incomes at or below 100% of the median. If it is assumed that 34% of the estimated 250 housing units occupied by employees since 2003 serve low- and moderate-income households with income equal to or less than 100% AMI, there is then net demand for 145 units priced to be affordable for households with incomes equal to or less than the median. The remaining 65 units that are needed to meet the existing deficient should be priced to target households with incomes at or above 100% AMI.

Net Demand Estimates by Income

	Total	≤ 100% AMI	≥100% AMI
Gross Demand for Employee Units	460		
% Income ≤100% AMI		50%	50%
# Units Demanded by AMI		230	230
Increase in Local Resident Housing Supply	250		
% Affordable by AMI		34%	66%
# New Units Affordable		85	165
Net Demand for Additional Units		145	65

Donnelly/Tamarack

The North Lake Recreation Sewer and Water District, which was originally developed to serve the Tamarack development and which is now acquiring the City of Donnelly system, was sized to serve 1,550 units at Tamarack and 46 to 69 units not associated with Tamarack. The estimates of growth between Donnelly and Tamarack were very underestimated. The District estimates that between $10 and $12 million is needed for expansion of the treatment plant or the Idaho Department of Environmental Quality may impose a moratorium on will service permits.

Cascade

With the recent bond approval, the City of Cascade should have ample water and sewage treatment capacity for the near future.

Council

Storm drainage is now exhausting the capacity of the City's sewage treatment system. Improvements to Council's downtown area should reduce this problem and allow for development to occur on the south side of the community. Expansion of the system will likely be required, however, to accommodate additional growth at some point in the future depending upon the rate of development.

New Meadows

The sewer treatment system has capacity for approximately 250 additional taps. The City is currently considering subdivision applications and annexation requests that could exceed this capacity.

Financing

Financing for community housing is limited. There are no local sources of revenue, like an impact fee, real estate transfer tax or sales tax, that generate funds earmarked specifically for community housing. Budget appropriations for Federal housing programs are being cut. USDA's Office of Rural Development, the agency that has provided financing for several low-income rental projects in the area, will be less likely to fund projects in the future as incomes increase. Other sources of project financing, like Low Income Housing Tax Credits (LIHTC or Section 42), can be utilized for some projects but are not usually used for seasonal employee housing and are not ideal for small-scale projects.

Regulatory Barriers

Development fees for application review, building permits, and water/sewer taps are relatively low compared to many resort communities and other areas with high housing costs and, as such, should not be a significant impediment to the development of housing for low and moderate income households. Fees may increase however as infrastructure improvements are required. If fees escalate, providing means for waiving or deferring fees for units that serve lower-income households may be needed.

Seasonality

Seasonality in employment and housing occupancy levels should not be a significant barrier to community housing development. As described in THE ECONOMY section of this report, employment levels have varied by season with approximately 1,275 more employees during the peak summer months in the region than during the winter. This pattern is changing, however with the opening of the Tamarack Resort and the continuation of construction activity throughout the winter. This change is positive in terms of the feasibility of developing community housing. It is difficult to finance and achieve sustaining occupancies on units where seasonal fluctuations are as significant as they have been in the region.

Language

The number of employees of Hispanic/Latino origin working in the region is increasing. Although up-to-date data are not available, this is a predictable trend given the experience of other region in the mountain west. Housing providers are not prepared to deal with language barriers. Few property managers and leasing agents speak Spanish, and most documents including applications and leases are only in English. Language could become a significant obstacle in the future.

demand for employee housing while they will compete with employees for both rental and ownership opportunities.

Approximately 40% of all households in the two counties have low incomes. This equates to a 2005 estimate of at least 2,080 households with incomes equal to or less than 80% AMI. Just over half of these households have very low or extremely low incomes.

Incomes are higher in Valley County than in Adams County but the difference between the two is decreasing. A household earning 100% of the median income can afford to purchase homes priced up to $150,000. The maximum affordable price for low-income households at 80% AMI is in the $100,000 to $120,000 range.

The Economy

Employment is increasing with an increase of 217 jobs in Valley County and 50 jobs in Adams County since 2003. Again, the estimates appear very low for Valley County but still are reflective of the change that is occurring. Seasonality is decreasing. The reduction in seasonality will increase the feasibility of community housing projects by improving occupancy levels.

Employers are being negatively impacted by the lack of affordable housing for their employees. Most of the employers interviewed reported that they have been unable to fill jobs and attribute that difficulty directly to housing. Though the sample was not large or statistically valid, about 4% of the jobs offered by employers interviewed were unfilled. While there has historically been a labor shortage during the summer months, it now extends throughout the year.

Most of the employers interviewed report that they plan to increase the number of jobs they offer within the next couple of years. Other businesses are moving into the area and will need employees to operate. The lack of housing will be an impediment to employment growth, however, unless development of affordable units catches up and keeps up with job-generating growth.

Commuting has not been widespread in the region – employers report that most of their employees reside nearby, and the Census found that the vast majority of residents work in the county in which they reside. If additional housing is not provided where jobs are being created, however, commuting will increase. The negative consequences of this increase include retail leakage, traffic congestion, employment problems like tardiness and absenteeism, inflationary impacts on housing prices, and losses to the communities and their families resulting from members spending long hours getting between work and home.

Though published estimates do not represent it, the greatest increase in employment has been in the construction industry with roughly 700 to 1,000 construction workers during the peak summer season. Approximately 80% to 90% of these workers are brought in from outside of the region. Construction workers are competing with lower-wage employees for housing forcing up rental prices and decreasing availability. Growth and construction will not end when Tamarack is fully built out. The level of activity will vary with highs and lows fluctuating with the national economy but it will not stop. The permanent construction work force will be larger than historical levels. In

Rents have increased roughly 35% to 50% since 2000. The greatest increases have been in Valley County, particularly in the McCall and Donnelly areas. Mobile homes are the least expensive units to rent. Apartments are next followed closely by condominiums. Single-family homes typically rent for more than double the cost of mobile homes. Rates are now generally affordable for households with incomes at or below 80% AMI but above the level that households at 50% AMI can afford to pay.

While the number of rental units has recently increased due to a small amount of new construction and conversion of vacation cabins and condos into rentals, vacancies are negligible. The number of existing rentals will decline as demand for vacation accommodations rise, owners cash out taking advantage of market appreciation and mobile home parks are lost to redevelopment.

Home prices are generally far above the affordable level for most households in the two-county region and are increasing. Households earning 100% of the median income in the region can afford to purchase homes costing around $150,000. Cascade and Council were the only communities in the region where the median price of homes sold in 2004 (single-family homes, condominiums and mobile homes on land) was less than $150,000. In McCall and New Meadows, the median price in 2004 was close to $200,000.

Homes currently listed for sale are priced higher than the homes sold in 2004. In all areas except New Meadows, the median price of homes listed for sale is more than twice the median price of homes sold last year. In New Meadows, the increase is still significant at close to 50%. While approximately 34% of homes sold in the region in 2004 cost less than $150,000, only 11% of the homes listed for sale in early 2005 (22 units) are in this price range. Donnelly has been the hardest hit with a 315% increase between the median value in 2000 and the 2005 median price of homes listed for sale.

The inventory of homes available for purchase is small. With an inventory of less than six months, it is a sellers market where purchase prices are close to, equal or even exceed list prices. With little inventory for sale and negligible rental vacancies, housing demand must be addressed by development of new units.

Community Housing

At least 1,467 households in the two-county region (approximately 28% of all households) spend more than 30% of their gross income on their housing payment, which is the amount they can afford. Overcrowding has not been a significant problem except in Donnelly but it is likely increasing as employees move into the area, rents rise and availability decreases.

The five largest apartment complexes in the two counties combined have a total of only 70 units but represent the bulk of the apartment inventory in the region. Four of the projects (53 units) are publicly subsidized with restrictions that make them affordable for low-income households. These properties are all small (less than 20 units each), aging and have few amenities. All are operating near or at full occupancy with only temporary vacancies resulting from turnover and applications on file.

None of the homes owned by their occupants are permanently affordable. All are free-market units that will likely appreciate in value beyond what is affordable for moderate-

According to the 2000 Census, 20% of the persons living in Adams County and 16% of Valley County's population have a disability, which is a long-lasting physical, mental, or emotional condition. Although the subsidized apartment projects in the region have handicapped accessible units and residents who are disabled, housing specifically designed for persons with other types of disabilities, such as chronic mental illness, is not provided in the region. Provision for incorporating units for persons with special needs in all community housing projects should be considered.

Non-profit and public social service providers report increases in the demand for their services and changes in their clientele. They report that finding housing is one of the greatest difficulties faced by the populations they serve. Transitional and emergency shelter housing is needed for victims of domestic violence and temporary rent subsidies are needed for others who are displaced.

Development Trends and Forecasts

Valley County is in the midst of a development boom. As of May this year, rural subdivision applications had been approved or were being processed for 1,778 lots, which is eight times the number approved in 2004 and more than 20 times the average number approved between 1992 and 2003. In addition, 12 subdivision applications had just been submitted with over 300 lots. In 2004, permits were issued for 531 new residential units in Valley County's rural areas and cities, which is more than three times the number issued in 2000.

There is no end in sight. Ample land is available for development to continue into the foreseeable future. In Valley County, over 7,500 lots are platted but vacant not including the subdivision applications that are pending for approximately 1,700 lots in unincorporated parts of the county. The pending subdivisions in the cities are also not in this figure. The total number of lots available for development in Valley County could easily exceed 10,000 before the end of the year.

The rate and location of future development will be determined by multiple variables including the stock market, demand for resort real estate, the availability of water and sewage treatment, the potential construction of a highway between Emmett and the Indian Valley then over to Donnelly, and possible efforts to manage growth.

Barriers to Community Housing

Barriers to the development of community housing include:

- Zoning which does not allow densities greater than four units per acre on most land served by central water and sewer systems;
- Public perceptions that government should not be involved in housing and that community housing will have negative impacts on property values and neighborhoods;
- Limited sewage treatment capacity; and,

continues. The Low Income Housing Tax Credit program (also referred to as Section 42 financing) is one of the most frequently used ways by which private developers are able to construct apartments where at least a portion of the units are for low-income households below free-market rents. The projects should be located near places of employment. While this program is not appropriate for construction workers and has not been used with success for seasonal employees, there are many year-round renters living in the region who could income qualify.

- Work with Tamarack and construction contractors to provide housing that is designed specifically for seasonal employees including resort and construction workers.

- Encourage non-profit housing organizations to develop housing and expand housing programs in the area. Non-profit groups like Habitat for Humanity, Neighborhood Housing Services and Mercy Housing can supplement the efforts of a local housing authority and private developers. They have experience and access to funding, and they typically target population groups that others have difficulty serving. The Southwestern Idaho Cooperative Housing Authority should be encouraged through the provision of technical assistance and financing to expand services in the area such as the Section 8 rent subsidy voucher program and senior housing.

- Provide City and County general funds for housing or establish a local source of revenue specifically for community housing. Federal funds can only be used for low-income households yet moderate- and middle-income residents are being priced out of homeownership opportunities and may find rents beyond their reach in the future. Even if inclusionary zoning and linkage requirements are adopted, private development will not serve all populations and needs.

- Provide publicly-owned land for community housing projects either by sale or lease to developers.

- Improve local record keeping systems to monitor development activity, calculate the housing demand generated by this development, assess changes in the housing supply, identify trends and evaluate progress toward meeting agreed upon housing-related goals.

- Modify Comprehensive Plans to provide vision, explicit goals and quantitative objectives for community housing. Amend zoning and development codes to include incentives for employee and other affordable housing development. Consideration should be given to allowing density bonuses, set back reductions, reductions in minimum lot size and open space requirements. Implement priority review systems that move development applications containing community housing to the front of the review and action queue. When taps or permits are limited, give priority to projects with community housing projects as being done in McCall.

- Address public perceptions about community housing in a proactive manner. Identify and mobilize residents who have unmet housing needs to serve as advocates for community housing. Educate the public about the need for and

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Addendum 2 - Timeline

Date	Author or Actor	Document or Event
2/23/2006	City Council	Ordinance No. 819 and 820 adopted
6/20/2006	Alpine Village	Applications for Preliminary Plat; PUD Preliminary Plan, CUP, Scenic Route and Amendment of Zoning Map filed ("Preliminary Applications")
6/4/2006	Alpine Village	Community Housing Plan submitted with Applications
7/26/2006	Planning & Zoning	Staff Report
9/22/2006	Mountain Central Board of Realtors	Lawsuit filed challenging Ordinance Nos. 819, 820
10/3/2006	Planning & Zoning	P&Z recommends approval of Alpine Village Applications
12/13/2006	City Council	City Council approves Preliminary Applications for Alpine Village
1/5/2007	Alpine Village	Purchase and Sale Agreement entered into to acquire "The Timbers"
3/12/2007	Alpine Village	Revised Community Housing Plan submitted
3/22/2007	City Council	City Council approved Preliminary and Final Plat Applications for the conversion of the Timbers
4/16/2007	Alpine Village	Alpine Village closed on the purchase of the Timbers project
8/23/2007	City Council	City Council approved Final Plat for Phase 1 of Alpine Village
12/13/2007	Alpine Village / City Council	Alpine Village Development Agreement signed
1/28/2008	Alpine Village	Alpine Village Development Agreement recorded
2/11/2008	Alpine Village	Alpine Village Development Agreement re-recorded to attach exhibits
2/19/2008	District Court	Memorandum Decision and Order entered in Mountain Central Board of Realtors v. City of McCall
4/7/2008	Alpine Village	Alpine Village Development Agreement re-recorded to correct error in legal description
4/24/2008	City Council	Ordinance No. 856 adopted repealing Ordinance Nos. 819 and 820; Adopted Resolution 08-11
6/26/2008	City Council	Ordinance No. 08-17 adopted
8/20/2008	Alpine Village / City Council	First Amendment to Alpine Village Development Agreement signed by Alpine Village
11/4/2009	City Council	Resolution 09-10 adopted repealing Ordinance No. 08-17