

THE LAUNCH REPORT™

2Q24 NEWSLETTER

IN THIS ISSUE:

CHANGES IN CALIFORNIA IMPACT FEES,
DECLINING TAX RATES CREATE OPPORTUNITIES,
LAND ADVISORS ORGANIZATION'S MARKETS AT A GLANCE



LAUNCH

DEVELOPMENT FINANCE ADVISORS



The Stage is Set For Changes in CA Impact Fees - Sheetz v. El Dorado County, California

Background

Since I began my public finance practice in California the late 1980's with my then firm, Kenneth Leventhal & Co. (purchased by EY in the mid 1990's); I have been concerned with the level of Impact Fees charged by jurisdictions within California and the manner in which such Development Impact Fees (collectively, "Fees" or "Impact Fees") were being calculated.

With the passage of Proposition 13 in 1978 and the erosion of public jurisdiction's ability to raise funding for infrastructure through property taxes; jurisdictions in California have been relying on Fees as a means to finance public infrastructure. This has led to the highest Impact Fees in the nation, which in some instances, when combined with school fees and other state required fees can exceed \$154,000 per single family home. The biggest challenge I saw was that public jurisdictions were not fully forthcoming in the support behind their calculations, and they often did not justify, support or utilize industry standard practices for such matters (e.g., estimation of existing levels of service, supportable costs estimates, etc.). One reason for this disconnect is that Assembly Bill 1600, the Mitigation Fee Act, allows jurisdictions to include costs in their Impact Fees to "achieve an adopted level of service that is consistent with the general plan." The problem with this standard is that the "adopted standard" can be quite different than the "actual" level of service being provided and the Impact Fees are inspirational at best, requiring new growth to fund costs that are disproportional to new growth's impact on existing facilities.

This all potentially changed this year.





The Stage is Set For Changes in CA Impact Fees - Sheetz v. El Dorado County, California (Cont.)

Sheetz v. County of El Dorado, California

On April 12, 2024, the United States Supreme Court (the “Court”) ruled in Sheetz v. County of El Dorado, California (“Sheetz”), eliminating the distinction the lower courts had made between legislative and administrative actions in applying the Takings Clause, potentially subjecting a wider range of land-use regulations to heightened scrutiny under the Constitution.

In rendering its decision, the Court made the following key findings:

1. The Court held that the Takings Clause of the U.S. Constitution does not distinguish between legislative and administrative permit conditions.
2. The Court rejected the California Court of Appeal's conclusion that the Nollan/Dolan test (which requires an "essential nexus" and "rough proportionality" for permit conditions) only applies to conditions imposed on an individual and discretionary basis.
3. The Court ruled that the Takings Clause applies equally to both legislatures and administrative agencies, prohibiting both from imposing unconstitutional conditions on land-use permits.
4. The Court found no constitutional basis for affording property rights less protection when conditions are imposed by legislators rather than administrators.
5. The Court did not rule on whether the specific traffic Impact Fee imposed on Sheetz constitutes a taking. Instead, it vacated the judgment of the California Court of Appeal and remanded the case for further proceedings.
6. The decision clarified that legislatively imposed conditions on development, such as the traffic Impact Fee in this case, must undergo some form of nexus and proportionality analysis under the Nollan, Dolan, and Koontz precedents.

The Court's ruling in Sheetz is expected to have the following impacts on the County’s Traffic Impact Mitigation Fee program along with other Fees charged under Mitigation Fee Act:

1. The Court determined that legislatively enacted Impact Fees, like the County's Traffic Impact Mitigation Fee, are not exempt from the constitutional requirements established in the Nollan and Dolan cases.
2. This means that the County's Traffic Impact Mitigation Fee program must now demonstrate an "essential nexus" and "rough proportionality" between the Fee imposed and the impact of the development. This will require the County to go back and “show their work” and support their assumptions in the light of Nollan/Dolan.
3. The ruling does not prevent local governments from enacting reasonable permitting conditions, including Impact Fees, via legislation. However, it subjects these Fees to heightened scrutiny under the Takings Clause of the Fifth Amendment.



The Stage is Set For Changes in CA Impact Fees - Sheetz v. El Dorado County, California (Cont.)

4. The Court did not rule on the specific validity of the County's traffic Impact Fee. Instead, it vacated the lower court's judgment and remanded the case for further proceedings.
5. Local government will now need to ensure that their legislatively imposed Impact Fees comply with the Nollan and Dolan requirements.
6. The decision opens the door for potential challenges to Impact Fees, as property owners and developers now have an additional avenue to ensure that Impact Fees comply with the Constitution.
7. Moving forward, local governments may face more legal challenges to their Impact Fee programs and may need to conduct more thorough studies to justify the nexus and proportionality of their fees.

Impact of Sheetz

This ruling significantly impacts how impact Mitigation Fees and similar development fees are assessed and justified, potentially requiring more individualized determinations or at least more robust justifications for universally applied fee schedules.

The Sheetz case challenged the traditional view of Impact Fees by subjecting legislatively enacted Fees to the same constitutional scrutiny as administratively imposed Fees. Traditionally, Impact Fees imposed through broad legislative actions were not required to meet the "essential nexus" and "rough proportionality" tests established by the Court in the Nollan and Dolan cases. These tests ensure that there is a direct connection between the Fee and the government's land-use interest, and that the Fee is proportionate to the impact of the development. Key points from the Sheetz ruling include:

1. *Application of Nollan/Dolan Tests:* The Court ruled that even Impact Fees imposed through legislation must satisfy the Nollan/Dolan requirements, which previously applied only to Fees imposed on an individual, discretionary basis.
2. *Essential Nexus and Rough Proportionality:* The ruling emphasized that all Impact Fees, whether legislatively or administratively imposed, must have an essential nexus to the government's land-use interest and must be roughly proportional to the impact of the development.
3. *Individualized Determination:* The Court highlighted the need for an individualized determination that the Fee amount is necessary to offset the specific impact of the development, challenging the traditional practice of applying a standardized Fee without such specific analysis.
4. *Potential for Future Litigation:* The ruling leaves open questions about the degree of specificity required for legislatively imposed Fees, suggesting that future litigation will further clarify how local governments can comply with these requirements.



The Stage is Set For Changes in CA Impact Fees - Sheetz v. El Dorado County, California (Cont.)

Developer / Builder / Home Buyer Benefits

The Sheetz ruling provides several potential benefits for developers, home builders and ultimately home buyers:

1. *Increased Scrutiny of Impact Fees:* The ruling subjects legislatively imposed Impact Fees to the Nollan/Dolan test, requiring governments to demonstrate an "essential nexus" and "rough proportionality" between the Fee and the development's impact. This increased scrutiny may lead to more reasonable and justifiable Fee structures.
2. *Burden of Proof Shift:* The ruling likely shifts the burden of proof from developers to municipalities when Impact Fees are challenged. Municipalities now need to justify their fee calculations, potentially giving developers more leverage in Fee disputes.
3. *Opportunity for Fee Challenges:* Developers now have a stronger legal basis to challenge Impact Fees they believe are disproportionate or lack a clear nexus to their project's impacts.
4. *Potential for Reduced Fees:* As municipalities review and adjust their Fee structures to comply with the ruling, some developers may benefit from reduced Fees in cases where previous Fee levels cannot be justified under the new scrutiny.
5. *More Individualized Assessments:* The ruling may encourage more tailored Fee assessments, potentially benefiting developers whose projects have lower impacts than assumed in broad Fee schedules.
6. *Improved Transparency:* Municipalities may need to provide more detailed justifications for their Fee calculations, giving developers better insight into how Fees are determined.
7. *Potential for Negotiation:* The increased need for municipalities to justify Fees may create more opportunities for developers to negotiate Fee amounts based on their project's specific impacts.
8. *Protection Against Arbitrary Fees:* The ruling provides developers with constitutional protection against arbitrary or excessive Fees that are not closely tied to the actual impacts of their developments.
9. *Broader Application to Other Exactions:* The decision may extend beyond just Impact Fees, potentially affecting other types of exactions or conditions placed on development approvals.
10. *Consistency Across Jurisdictions:* The ruling may lead to more consistent application of Impact Fees across different jurisdictions, as all will need to meet the same constitutional standards.

This ruling significantly impacts how Fees are assessed and justified, potentially requiring more individualized determinations or at least more robust justifications for universally applied Fee schedules.



The Stage is Set For Changes in CA Impact Fees - Sheetz v. El Dorado County, California (Cont.)

Recommended Steps for Local Governments

To ensure that Impact Fees comply with the Court's ruling in Sheetz, local governments are encouraged to consider taking the following steps when preparing their Impact Fee Studies:

1. *Conduct Detailed Nexus Studies:* Local governments should perform thorough nexus studies to establish a clear connection between the Fees imposed and the specific impacts of the development. This involves demonstrating an "essential nexus" between the Fee and the government's land-use interest, ensuring the Fee is directly related to the development's impact on public infrastructure like roads and utilities.
2. *Ensure Rough Proportionality:* Fees must be "roughly proportional" to the impact of the development. This means the amount charged should correspond to the extent of the impact the development will have on the community. Governments need to avoid arbitrary or excessive Fees that do not reflect the actual burden imposed by the development.
3. *Individualized Determinations:* While the ruling does not mandate individualized determinations for each permit, it emphasizes the need for a more specific and careful examination of the impacts. Local governments should consider making individualized assessments where feasible to better justify the Fees imposed.
4. *Review and Adjust Existing Fee Structures:* Governments should review their current Impact Fee structures and adjust them to comply with the Nollan and Dolan standards. This might involve reducing Fees that cannot be justified under the new scrutiny or restructuring them to better align with the actual impacts of developments.
5. *Legal and Policy Guidance:* Seeking legal and policy guidance to ensure compliance with the new requirements is crucial. Local governments should collaborate with legal experts to understand the implications of the ruling and to develop policies that withstand judicial scrutiny.
6. *Transparency and Documentation:* Maintaining transparency in how Fees are calculated and documenting the rationale behind them can help defend against potential legal challenges. Clear documentation showing the relationship between the Fee and the development's impact will be essential.
7. *Stakeholder Engagement:* Engaging with developers and community stakeholders early in the Fee process can help in designing Fee structures that are fair, equitable, and justifiable. Collaborative approaches can also reduce resistance and legal challenges.

By implementing these steps, local governments can better align their Impact Fee programs with constitutional requirements, potentially avoiding costly litigation and ensuring that development continues to support necessary public infrastructure improvements.



The Stage is Set For Changes in CA Impact Fees - Sheetz v. El Dorado County, California (Cont.)

Steps to Consider When Impact Fee Appear Unproportional

Developers, home builders and/or home buyers can challenge the validity of Impact Fees in court by following these steps:

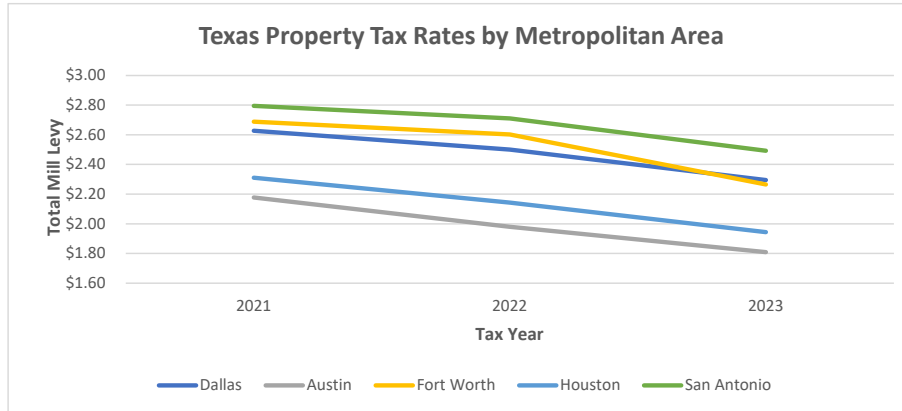
1. *Pay Fees Under Protest:* In some jurisdictions, developers must first pay the Impact Fees under protest before challenging them. This step is crucial to preserve their right to contest the Fees later.
2. *Administrative Challenge:* Some jurisdictions require developers to first challenge the Fees administratively before filing a lawsuit. This involves presenting the case to the relevant local government body or administrative agency to seek a resolution.
3. *File a Constitutional Lawsuit:* If administrative remedies are exhausted or not required, developers can file a lawsuit in court. The lawsuit should argue that the Impact Fees violate the Takings Clause of the Fifth Amendment by failing to meet the "essential nexus" and "rough proportionality" tests established in the Court cases *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*.
4. *Prove Lack of Nexus and Proportionality:* Developers must demonstrate that there is no essential nexus between the Fee and the government's land-use interest. They must also show that the Fee is not roughly proportional to the impact of their development. This often requires detailed studies and expert testimony to illustrate the lack of connection and proportionality. Launch has been providing this service to the private sector for over 35 years.
5. *Individualized Determination:* Developers can argue that the local government failed to make an individualized determination of the Fee's necessity and proportionality to their specific project. This is particularly relevant if the Fee was imposed legislatively without considering the unique impacts of the development.
6. *Seek Legal Representation:* Given the complexity of these cases, developers should seek legal representation from attorneys experienced in land-use and constitutional law. Legal experts can navigate the specific procedural requirements and build a compelling case.

Carter Froelich, CPA is the author of the National Association of Home Builder's [Impact Fee Handbook](#) and has been representing the private sector in matters surrounding Impact Fees for over 35 years. Contact Carter at carter@launch-dfa.com.



Declining Texas Property Tax Rates Create PID Funding Opportunities

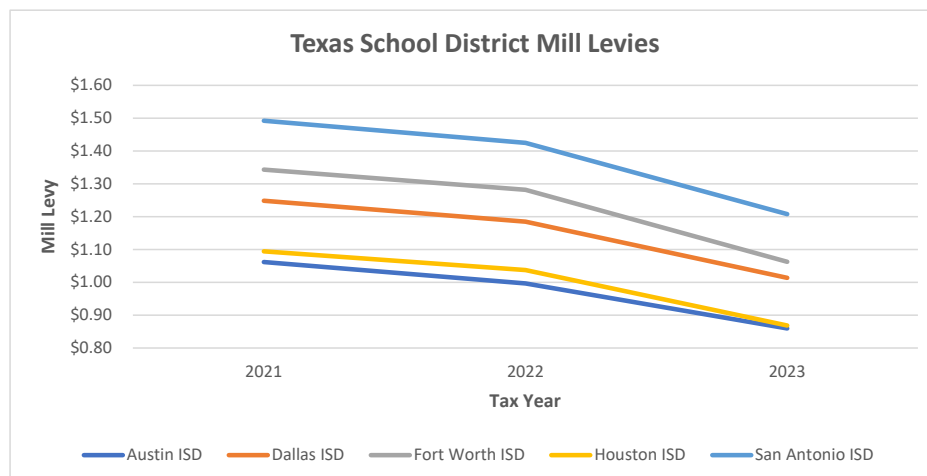
Since 2021 property tax rates in Texas have declined creating opportunities to increase the bonding capacity of Public Improvement Districts ("PID").



Reviewing the delineation of taxing jurisdictions from a sample property in the City of Austin, Texas, the largest and most impacted property tax rate is the school district tax rate.

Sample Austin Property	2021	2022	2023
City of Austin	\$ 0.5410	\$ 0.4627	\$0.4458
Austin ISD	\$ 1.0617	\$ 0.9966	\$0.8595
Travis County	\$ 0.3574	\$ 0.3182	\$0.3046
Austin Comm College	\$ 0.1048	\$ 0.1035	\$0.0986
Travis County Healthcare Dist	\$ 0.1118	\$ 0.0986	\$0.1007
Total	\$ 2.1767	\$ 1.9796	\$1.8092
Percentage Change		-9.1%	-8.6%

One of the reasons why school district tax rates have declined is due to the passage of Texas Proposition 4 in 2023. Proposition 4 increased the homestead tax exemption from \$40,000 to \$100,000, and increased state funding of schools allowing the school districts to reduce their property tax levies.





Declining Texas Property Tax Rates Create Opportunities (Cont.)

The decline in overall property tax rates opens up the opportunity to finance more public infrastructure through PID financing.

Public Improvement Districts

PIDs in Texas are created by cities or counties (“Jurisdiction”) to finance public improvements using special assessment bonds (“Bonds”) in which a special assessment lien (“Assessment”) is placed on parcels within the PID benefiting from the public infrastructure financed by the Bonds. The Assessment is a nominal dollar amount collected through the Appraisal District property tax bill. Although Assessments are levied on a nominal dollar basis (e.g., \$x per lot), when calculating the financial impact of the PID Assessment to the homeowner, the jurisdiction, the developer, and the home builder analyze the total equivalent property tax rate, inclusive of the current property tax and the annual PID Assessment payment. In the past, Jurisdictions and home builders were supportive of total equivalent property tax rates of approximately \$3.00/\$100 of assessed valuation, inclusive of annual PID Assessment payment.

The decline in property tax rates presents opportunities for developers

Net out a larger sum of bond proceeds - If the developer preserves the total equivalent property tax rate at \$3.00/\$1,000 in taxable assessed value, additional bonding capacity is created to allow more net bond proceeds to fund PID eligible infrastructure.

The high-level Bond sizings below assume a 500-unit development with an average home value of \$500,000, and illustrates the impact of the increased bonding capacity while maintaining the \$3.00 total equivalent property tax rate. The first example reflects the amount of bonding capacity under the 2021 tax rate of \$2.18 per \$100 in taxable assessed valuation. The total gross Bond amount equals the average lien amount (\$51,690) times the number of homes (500). Netting out Bond issuance costs, net Bond proceeds equal \$20.1 million to finance for PID eligible infrastructure, or approximately \$40,000 per home. With tax rates declining to \$1.81 in 2023 in the second example, the gross Bond amount, keeping the \$3.00 total equivalent property tax rate, increases 46% to \$37.7 million, netting out \$29.3 million to finance PID eligible infrastructure, but also growing the average lien per lot by the same percentage.

Description	\$0.823 in PID Capacity	\$1.192 in PID Capacity	Difference
Gross Bond Amount	\$ 25,845,000	\$ 37,704,000	\$ 11,859,000
Cost of Issuance	\$ (1,292,200)	\$ (1,885,200)	\$ (593,000)
Underwriter Discount	\$ (775,300)	\$ (1,131,100)	\$ (355,800)
Capitalized Interest (12 months)	\$ (1,679,900)	\$ (2,450,700)	\$ (770,800)
Reserve Fund	\$ (2,002,300)	\$ (2,921,100)	\$ (918,800)
PID Administrative Expense	\$ (30,000)	\$ (30,000)	\$ -
Est. Net Bond Proceeds	\$ 20,065,300	\$ 29,285,900	\$ 9,220,600
Average Lien Per Lot	\$ 51,700	\$ 75,400	\$ 23,700
Net Bond Proceeds Per Lot	\$ 40,100	\$ 58,600	\$ 18,500



Declining Texas Property Tax Rates Create Opportunities (Cont.)

Be careful when increasing your PID per lot assessments as increasing per lot assessments above what is typical of the local market, regardless of what the overall effective property tax rate may be, can potentially cause "sticker shock" on the part of the home buyer, potentially leading to decreased sales volume.

Alternatively, maintaining Market Assessment Amounts may reduce the overall equivalent property tax rate, which may potentially cause the developer to forgo construction proceeds which could be utilized to finance increasingly costly public infrastructure. One solution to this situation is to issue PID bonds at the \$3.00 total equivalent property tax rate and "pay down" the Assessment to the Market Assessment Amount at home closing. This allows the developer to finance infrastructure costs with the PID while passing on a Market Assessment Amount.

Ryan Mills is a Senior Manager at Launch Development Finance Advisors in the Dallas office and may be reached at ryanm@launch-dfa.com





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Over the last quarter we've added the following Land to Lots™ podcasts to our library. Subscribe to the Land to Lots™ Podcast wherever you get your podcasts.



New

- Episode 57 – [Interview w/David Oliver on the Challenges & Opportunities of Financing Texas Infrastructure](#)
- Episode 56 – [Delivering lots on scale to builders with Tim Johnson of Land Tejas \(2 of 2\)](#)
- Episode 55 – [Delivering Lots on Scale to Builders with Tim Johnson of Land Tejas](#)
- Episode 54 – [Discussion with Uri Man, CEO of The Lagoon Development Company](#)
- Episode 53 – [Understanding and Impacting Internal Rates of Return \(2 of 2\)](#)
- Episode 52 – [Understanding and Impacting Internal Rates of Return \(1 of 2\)](#)
- Episode 51 – [Interview with Paul Johnson and Teri Slavik-Tsuyuki - Creating an MPC \(4 of 4\)](#)
- Episode 50 – [Interview with Paul Johnson and Teri Slavik-Tsuyuki - Creating an MPC \(3 of 4\)](#)
- Episode 49 – [Interview with Paul Johnson and Teri Slavik-Tsuyuki - Creating an MPC \(2 of 4\)](#)
- Episode 48 – [Interview with Paul Johnson and Teri Slavik-Tsuyuki - Creating an MPC \(1 of 4\)](#)
- Episode 47 – [The Launch Sequence - Managing A Special District Financing \(4 of 4\)](#)
- Episode 46 – [The Launch Sequence - Managing A Special District Financing \(3 of 4\)](#)
- Episode 45 – [The Launch Sequence - Managing A Special District Financing \(2 of 4\)](#)
- Episode 44 – [The Launch Sequence - Managing A Special District Financing \(1 of 4\)](#)
- Episode 43 – [The Launch Sequence - Implementing A Special District Financing \(2 of 2\)](#)

Land to Lots™ Fields to Fortune - Planning Your Bigger Future

In Launch's continued effort to share information and strategies with the development industry, we are proud to announce the newest release of Land To Lots™ – [Fields to Fortune: Planning Your Bigger Future \(The Land to Lots™ Trilogy, Book 1\)](#) which will be available for purchase on August 20, 2024.

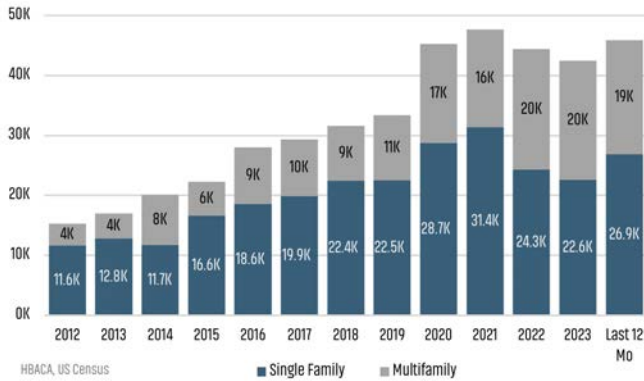
To get your copy click on [Amazon Book Offering](#)



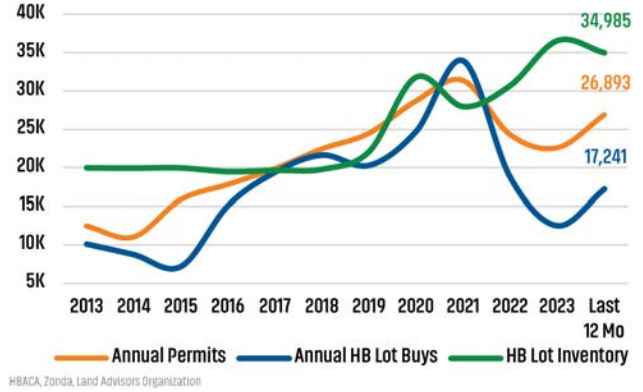


MARKETS AT A GLANCE - PHOENIX, PINAL, NORTHERN AZ, TUCSON (2Q24)

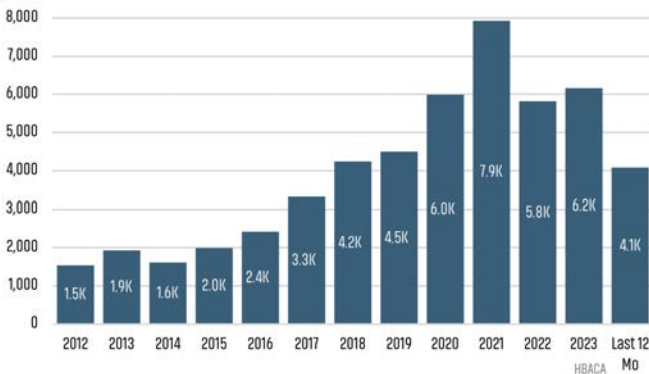
Phoenix Single Family & Multi-Family Permits



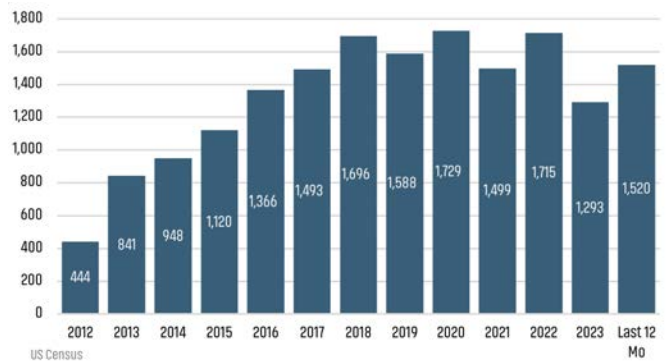
Phoenix Finished Lot Inventory vs. Permits



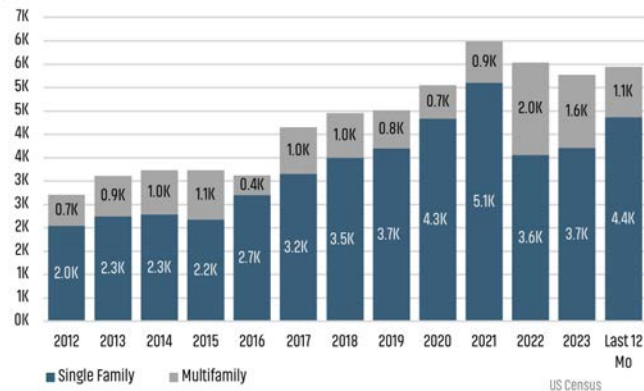
Pinal Single Family & Multi-Family Permits



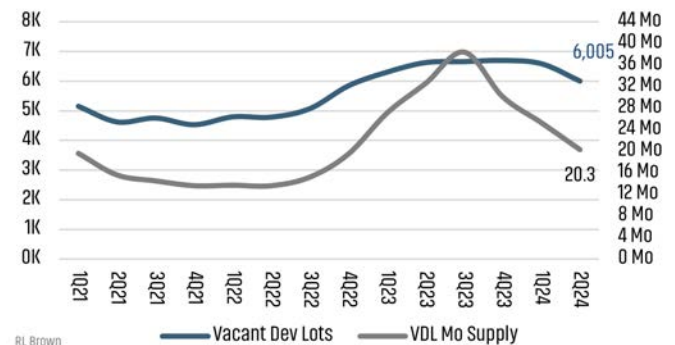
Northern AZ Family & Multi-Family Permits



Tucson Single Family & Multi-Family Permits



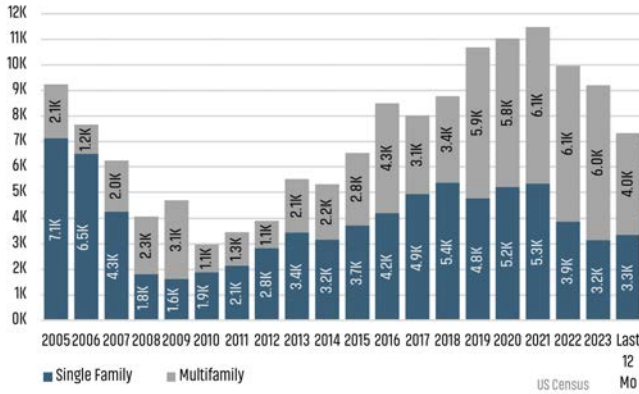
Tucson Vacant Development Lot Supply



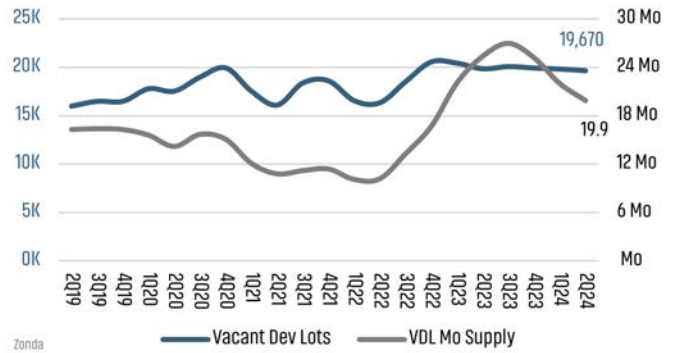


MARKETS AT A GLANCE - UTAH, BOISE, LAS VEGAS (2Q24)

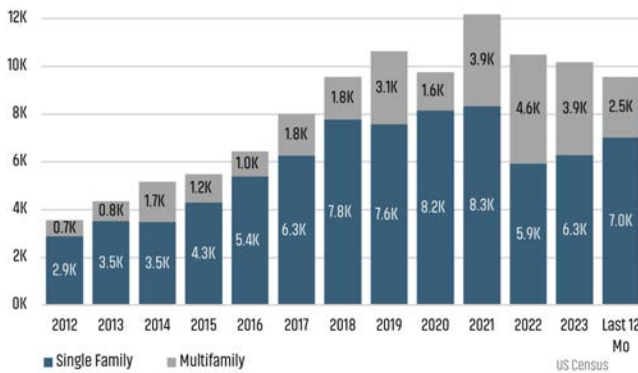
Utah Single Family & Multi-Family Permits



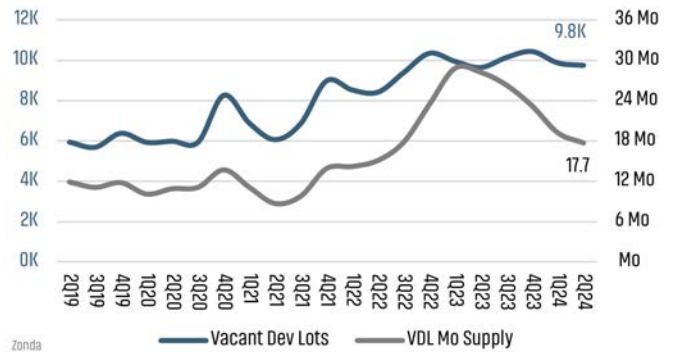
Utah Vacant Development Lot Supply



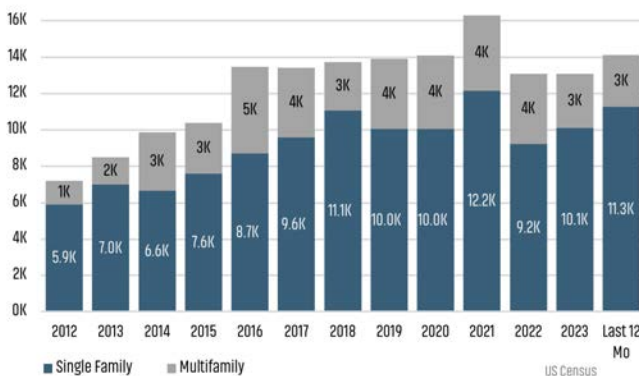
Boise Single Family & Multi-Family Permits



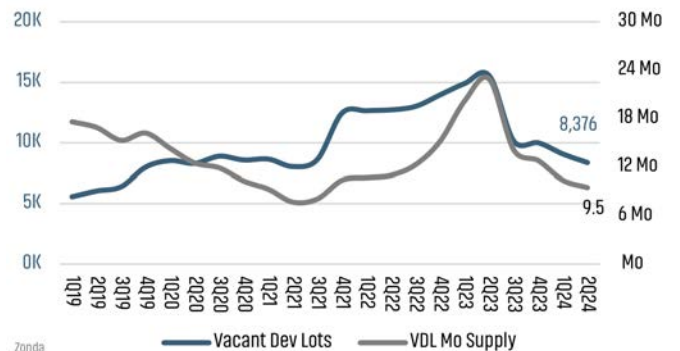
Boise Vacant Development Lot Supply



Las Vegas Single Family & Multi-Family Permits



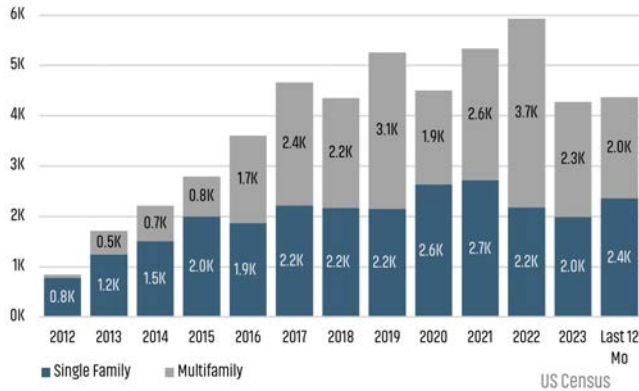
Las Vegas Vacant Development Lot Supply



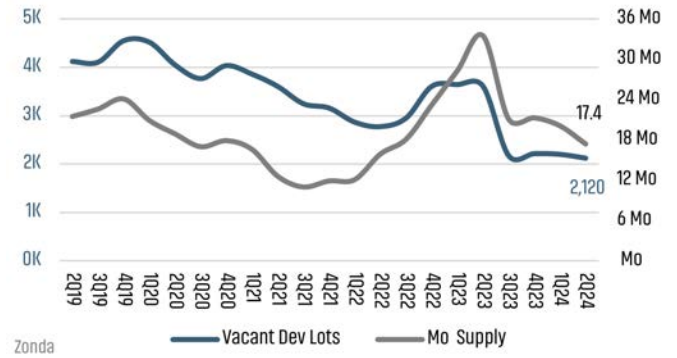


MARKETS AT A GLANCE - RENO, KANSAS CITY, HUNTSVILLE (2Q24)

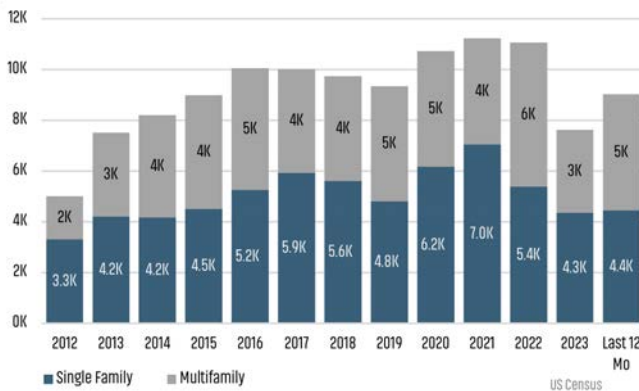
Reno Single Family & Multi-Family Permits



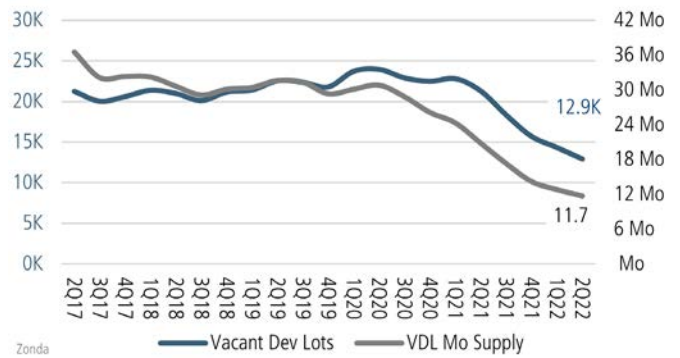
Reno Finished Lot Inventory vs. Permits



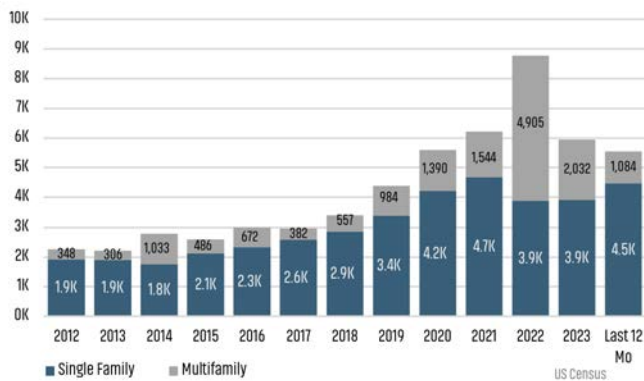
Kansas City Single Family & Multi-Family Permits



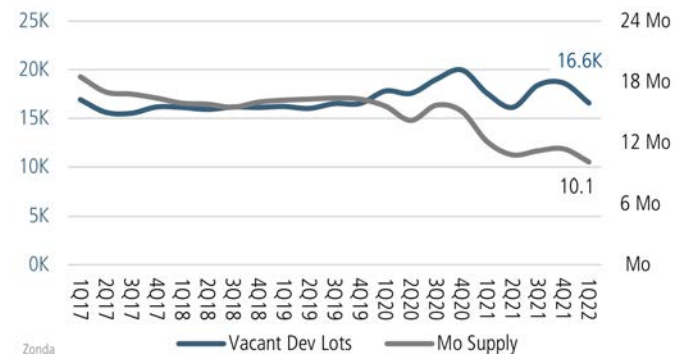
Kansas City New Vacant Developed Lot Supply



Huntsville Single Family & Multi-Family Permits



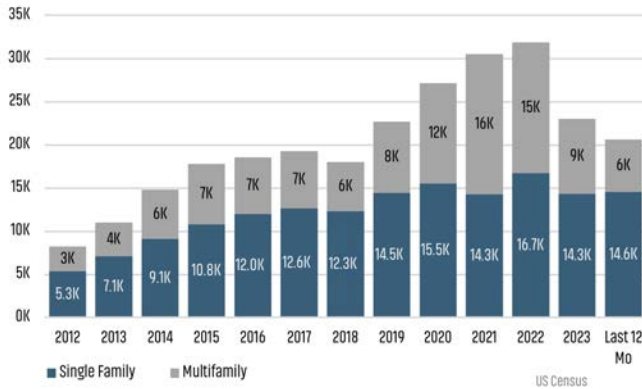
Huntsville Vacant Development Lot Supply



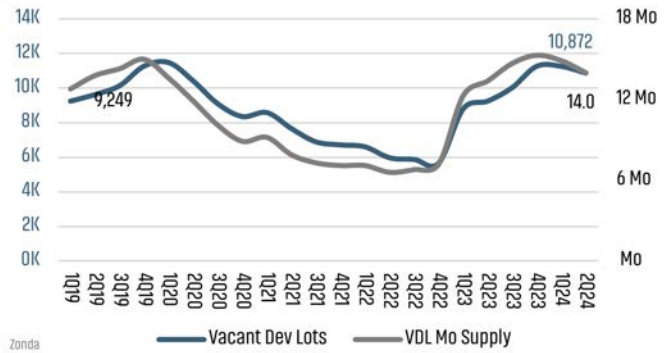


MARKETS AT A GLANCE - NASHVILLE, ATLANTA, CHARLOTTE (2Q24)

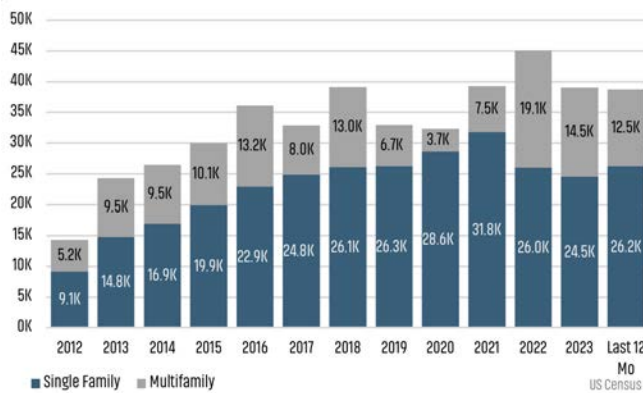
Nashville Single Family & Multi-Family Permits



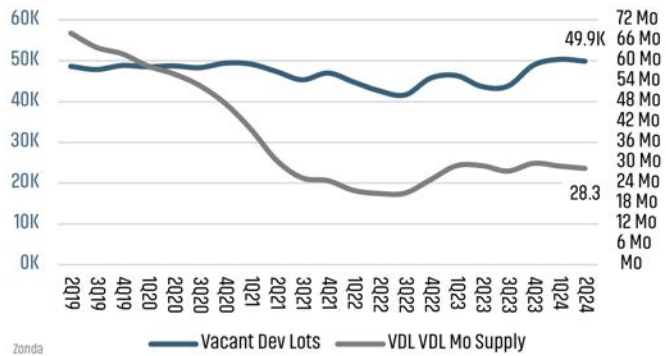
Nashville Vacant Development Lot Supply



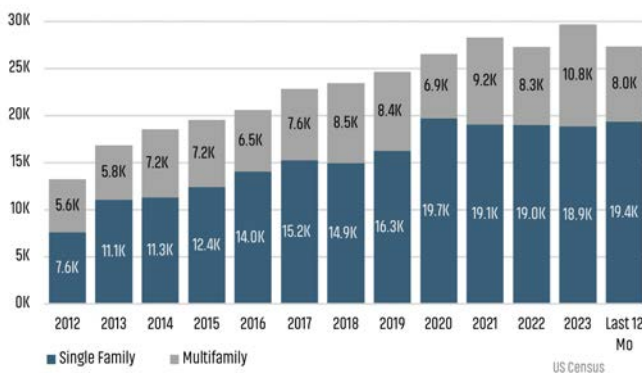
Atlanta Single Family & Multi-Family Permits



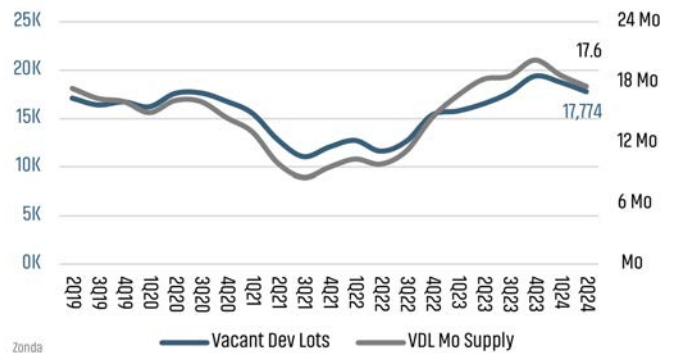
Atlanta Vacant Development Lot Supply



Charlotte Single Family & Multi-Family Permits



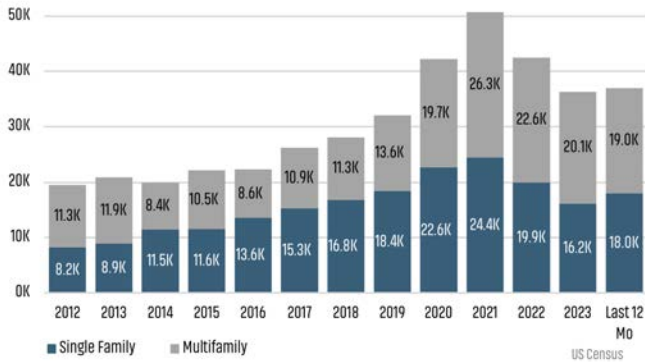
Charlotte Vacant Development Lot Supply



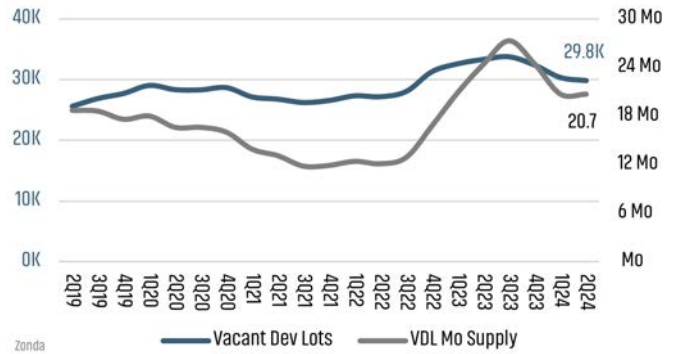


MARKETS AT A GLANCE - AUSTIN, HOUSTON, DALLAS (2Q24)

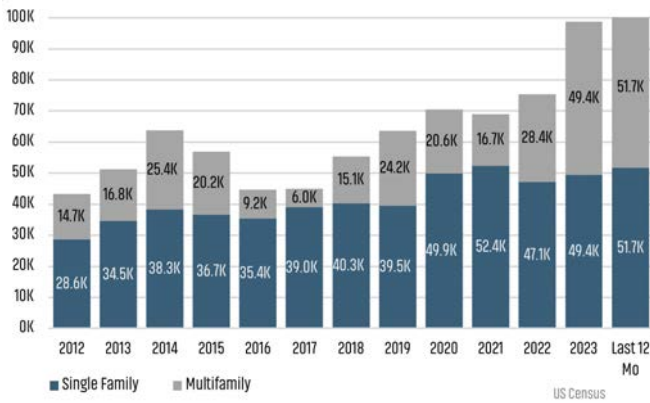
Austin Single Family & Multi-Family Permits



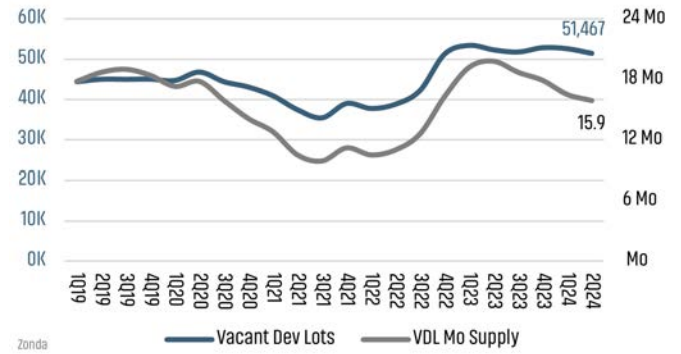
Austin Vacant Developed Lot Supply



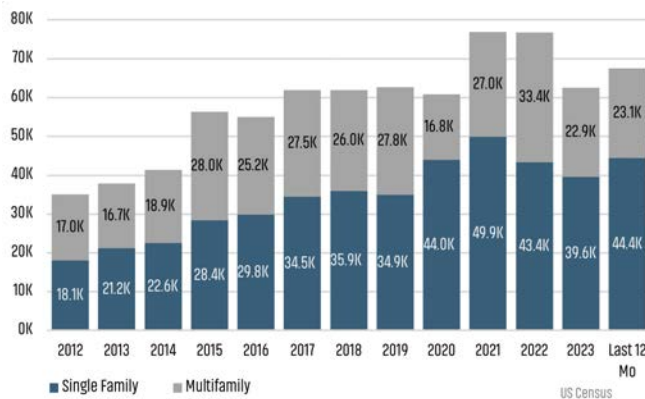
Houston Single Family & Multi-Family Permits



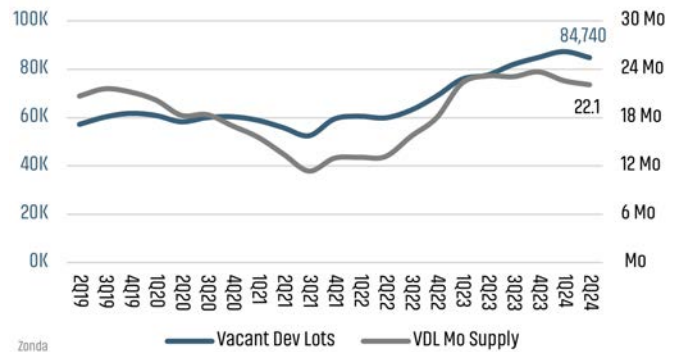
Houston Vacant Developed Lot Supply



Dallas Single Family & Multi-Family Permits



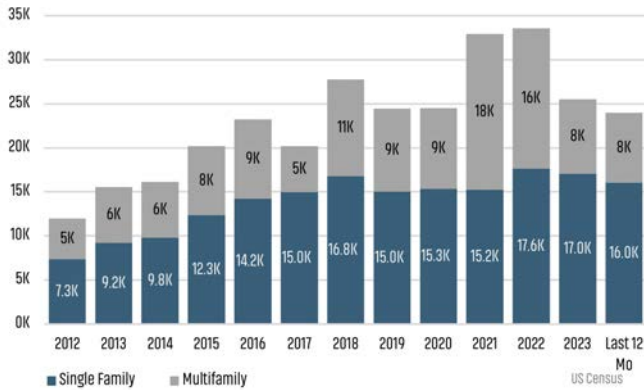
Dallas Vacant Developed Lot Supply



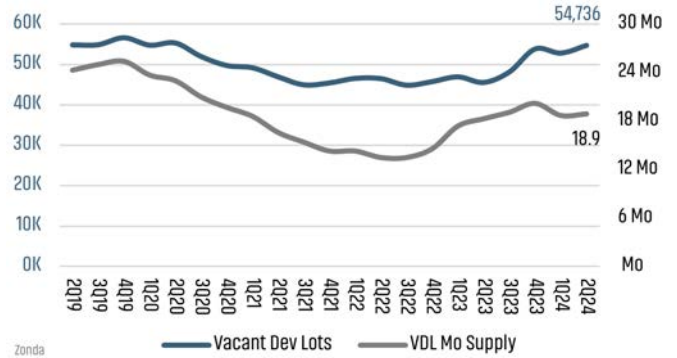


MARKETS AT A GLANCE - ORLANDO, TAMPA, JACKSONVILLE (2Q24)

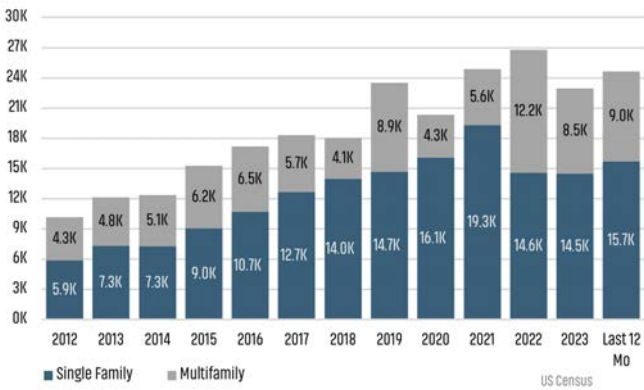
Orlando Single Family & Multi-Family Permits



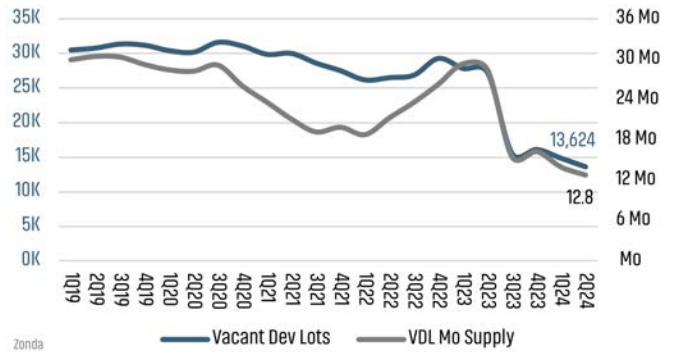
Orlando Vacant Developed Lot Supply



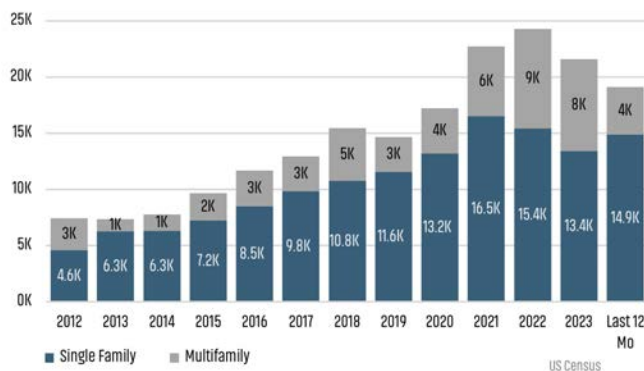
Tampa Single Family & Multi-Family Permits



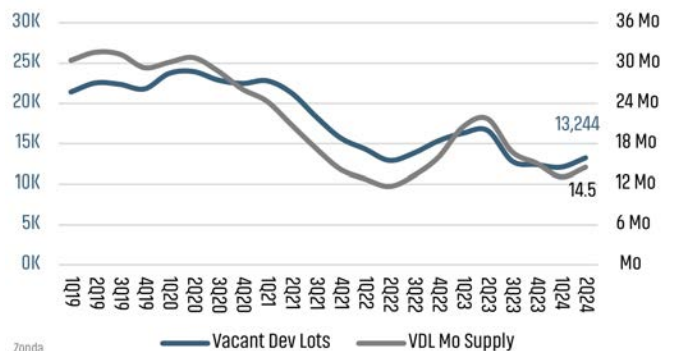
Tampa Vacant Developed Lot Supply



Jacksonville Single Family & Multi-Family Permits



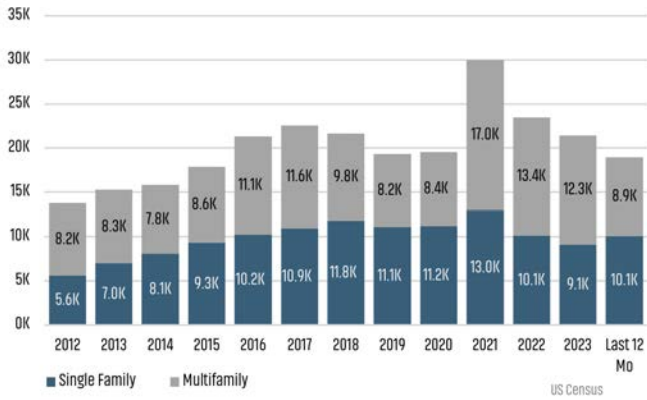
Jacksonville Vacant Developed Lot Supply





MARKETS AT A GLANCE - DENVER (2Q24)

Denver Single Family & Multi-Family Permits



Denver Vacant Developed Lot Supply

