



CREATING

INCLUSIVE COMMUNITIES IN

FLORIDA

The Florida Housing Coalition has produced this guidebook with funding from the Florida Housing Finance Corporation's Catalyst Program. The views expressed in this book do not necessarily reflect the views of the Florida Housing Finance Corporation.

Learn more about Bayside Court pictured on front on page 20.





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A guidebook for local elected officials and staff on avoiding and overcoming the
Not In My Backyard Syndrome.



ABOUT THIS BOOK:

A Message to Local Officials & Staff

The Not In My Backyard Syndrome (NIMBYism) presents a particularly pernicious obstacle to producing affordable housing. Local elected officials are regularly barraged by the outcry of constituents' concerns over siting and permitting affordable housing. Consequences of NIMBYism include: lengthy, hostile and unpleasant public proceedings, frustration of local comprehensive plan implementation, increased costs of development, property rights disputes, and inability to meet local housing needs. Local government elected officials are the linchpin in the NIMBY battle; it is essential that you get the information you need to avoid and overcome the negative impacts of NIMBYism.

In the context of this book, the Not In My Backyard Syndrome refers to the objections of community residents to siting affordable housing. The term NIMBYism, as used in this context, connotes objections made for reasons such as fear and prejudice. This is in contrast, for example, to objections over the real threat of an incompatible neighboring use, such as a hazardous waste facility near a residential area. Affordable housing NIMBYism is premised on ideas about the loss of property value and quality of life due to perceptions about the people who will be living in the affordable housing and the affordable housing itself.

Jammi A. Rose
PRESIDENT & CEO
THE FLORIDA HOUSING COALITION

Local government elected officials are the linchpin in the NIMBY battle;

it is essential that you get the information you need to avoid and overcome the negative impacts of NIMBYism.

This book was created and developed by Jaimie Ross, the president & CEO of The Florida Housing Coalition, the statewide nonprofit provider of affordable housing training and technical assistance for the Florida Housing Finance Corporation's Catalyst Program. Questions may be directed to the author at ross@flhousing.org.



TABLE OF CONTENTS

2	CHAPTER ONE	What is Affordable Housing?
9	CHAPTER TWO	Who Lives in Affordable Housing?
15	CHAPTER THREE	Why Include Affordable Housing in Your Community?
19	CHAPTER FOUR	How is Affordable Housing Developed?
28	CHAPTER FIVE	How Should Neighbors Be Included in the Process?
33	CHAPTER SIX	What Role Does Design Play?
45	CHAPTER SEVEN	What is the Connection Between Affordable Housing and Fair Housing?
50	CHAPTER EIGHT	How Can Local Government Avoid Legal Liability from NIMBYism?
57	APPENDIX ONE	William E. Sadowski Affordable Housing Act
59	APPENDIX TWO	Plans, Land Development Regulations, and Development Orders
61	APPENDIX THREE	Bibliography of Property Value Studies
65	APPENDIX FOUR	Glossary of Terms and Acronyms



More about Aqua pictured above: Over forty years ago, a teachers' association used HUD Section 236 funding to develop the Tampa-based 197 unit CTA River Apartments to house retired teachers, living on fixed incomes. With its HUD Section 236 loan maturing, it was in a real danger of being converted to a market rate development which would displace over 200 low income senior residents. Sage Partners stepped in and gutted the old, dilapidated high-rise, transforming it into Aqua - a Hillsborough Riverfront beauty. In addition to providing residents with new kitchens, bathrooms, and appliances in every apartment, common area amenities include community, fitness and yoga rooms, an arts and crafts center, computer lab, and library.



In general, the income eligible household is said to be living in affordable housing when it spends no more than 30% of its income on either rent or mortgage payments.

Learn more about the Lodges at Pinellas Park on page 6.

WHAT IS AFFORDABLE HOUSING?

Affordable housing is safe and decent housing. It differs from market rate housing in two ways:

1. The income of the family living in the housing.
2. The financing of the housing.

INCOME RESTRICTED

Affordable housing is defined in terms of the income of the people living in the home. The family must be income eligible. Income eligibility is defined in terms of area median income, adjusted for family size.

- Extremely low income describes a family at or below 30% of area median income.
- Very low income describes a family at or below 50% of area median income.
- Low income describes a family at or below 80% of area median income.
- Moderate income describes a family at or below 120% of area median income (at or below 100% of median income for federal programs).

The median income is determined by the Department of Housing and Urban Development (HUD) by county or Metropolitan Statistical Areas (MSAs). Median incomes are updated annually by HUD. You can find this information on the HUD website at www.HUD.gov or on the Florida Housing Coalition's website at www.flhousing.org. Click on SHIP, Income Limits.

Affordable housing is safe and decent housing. If the housing stock in a community is substandard it should not be counted as a unit of affordable housing. In general, the income eligible household is said to be living in affordable housing when it spends no more than 30% of its income on either rent or mortgage payments. There is an assumption



Developed by Carrfour Supportive Housing, Hampton Village pictured above is an attractive 100-unit affordable housing development in Miami that is designated for residents with incomes at or below 60% of the area's median income

The issue of whether housing meets the technical definition of “affordable” ceases to be a societal concern when the income of the occupant exceeds 80% or 120% of the area median income.

that if a very low to moderate income family is spending more than 30% of its income on housing costs, the family will be cost burdened and not have enough money left over to pay for items such as transportation, food, clothing, and healthcare.

It follows that the concept of affordable housing is not applicable to wealthy households. If a household earning \$200,000 per year chooses to spend as much as 50% of its income on housing cost, it could do so without being cost burdened.

Affordable Housing Resources Guidebook

INCLUDING, BUT NOT LIMITED TO:

SINGLE FAMILY MORTGAGE REVENUE BOND

HOUSING CHOICE VOUCHER (HCV) PROGRAM

PROJECT BASED VOUCHERS – Section 8

PREDEVELOPMENT LOAN PROGRAM (PLP)

STATE HOUSING INITIATIVES PARTNERSHIP (SHIP)

HOME INVESTMENTS PARTNERSHIP PROGRAM (HOME)

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

COMMUNITY CONTRIBUTION TAX CREDIT (CCTC)

USDA RURAL HOUSING SERVICE – Ownership

USDA RURAL HOUSING SERVICE – Rental

WEATHERIZATION ASSISTANCE PROGRAM (WAP)

NEIGHBORHOOD STABILIZATION PROGRAM (NSP)

LOW INCOME HOUSING TAX CREDITS (HC)

STATE APARTMENT INCENTIVE LOAN (SAIL) PROGRAM

MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM

HUD SECTION 202

HUD SECTION 811

The Affordable Housing Resource Guidebook can be found on Florida Housing Coalition website: <http://www.flhousing.org/wp-content/uploads/2016/03/Affordable-Housing-Funding-Sources-2015-06.pdf>

Generally, the issue of whether housing meets the technical definition of “affordable” ceases to be a societal concern when the income of the occupant exceeds 120%, or in some jurisdictions, 80% of the area median income.

FINANCING

What makes the housing affordable is a decrease in monthly rent or mortgage payments, so that the income eligible family is able to pay less for the housing than it would otherwise cost at “market rate.” Lower monthly payments or down payment assistance is a result of affordable housing financing. The financing of affordable housing is made possible through government programs such as the Low Income Housing Tax Credit Program (referred to as the Housing Credit program by the Florida Housing Finance Corporation) and the SHIP (State Housing Initiatives Partnership) program. The major financing programs for affordable housing are covered in the guidebook Affordable Housing Resource Guide, which can be downloaded from the Florida Housing Coalition’s website www.floridahousing.org. Click on Publications. You will find a summary of each program along with contact information. You can also find information about Florida’s Affordable Housing Finance Programs by going to the Florida Housing Finance Corporation website www.floridahousing.org.

There was a time, not too long ago, when affordable housing was synonymous with public housing. Historically, public housing was housing built and operated by the government. Oftentimes (especially in the Northeast part of the United States) the public



Located in Sarasota, Janie's Garden Phase I is an 86-unit complex comprising public and low-income housing along with 20 market rate apartments.

A joint project developed in 2011 by the Michaels Development Company and the Sarasota Housing Authority, Janie's Garden Phase I replaced a former distressed public housing site with a stunning development that includes a library, computer lab, exercise facility, laundry equipment, and community meeting space. Janie's Garden Phase I was Awarded the Gold Medal by the National Association of Home Builders' Best in American Living Awards for Best Community Design in 2012 and was LEED Certified upon completion.



Generally, the government is no longer in the business of building and operating affordable housing, unless it is doing so in partnership with the private sector.

The Lodges at Pinellas Park (shown on page 2 and above) was developed by Roundstone Development Group and comprises 120 one, two, three and four-bedroom apartments. The complex includes a computer center, library, fitness center, pool, playground, picnic area and conference room. It also offers residents a variety of classes including literacy tutoring, life-safety classes, swimming lessons, first-time homebuyer seminars, job training classes and health and nutrition classes. Apartments are available to residents who make 60 percent or less of the area median income.

housing of yesteryear was built in a large barrack type of style, easily distinguishable from market rate housing. The government is no longer in the business of building and operating affordable housing, unless it is doing so in partnership with the private sector.

Today's public housing uses the benefit of land owned by the public housing authority and financial subsidies specifically

available to public housing authorities or nonprofits to have private sector built and managed affordable housing. The affordable housing built this way is physically indistinguishable from the market rate housing. In summary, affordable housing is market rate housing, built by the private sector with financial subsidy from government, which allows the developer to pass on savings in the form of reduced sales prices or rents.

MOVING RESIDENTS TOWARD HOMEOWNERSHIP

While homeownership may be the ultimate goal for many low-income families, homeownership requires a continuum of housing opportunities. Affordable housing built for low-income families using the multifamily revenue bond program of Local Housing Finance Authorities, such as the Hillsborough and Jacksonville HFAs, and the Florida Housing Finance Corporation's programs, including Housing Tax Credits and SAIL, provide programs for moving residents into homeownership. These programs include financial literacy, home buyer counseling and a lease incentive which provides the family with 5% of its rental payments for down payment assistance should they purchase a home.



Bennett Creek is a 264-unit, multi-family housing community developed by the Richman Group to serve low income residents in Jacksonville. Its amenities include a pool, fitness center, laundry facility and grilling area.

Resident amenities and programs commonly found in Florida's affordable housing rental developments include on-site after school programs, computer labs, financial literacy training, and a down-payment assistance program to move residents toward homeownership.



At Janie's Garden Phase I development, the computer lab is used daily by the residents for reasons ranging from submitting job applications to completing school work.

Affordable Housing Facts

The only difference between market rate housing and affordable housing is that affordable housing uses government subsidies for construction costs in addition to its conventional financing. The facts about affordable housing in Florida are that most new developments carry a 50-year land use restriction agreement, which requires the development to have professional management, offer substantial resident amenities and services, and meet strict compliance standards as to the eligibility of the residents and the condition of the units. The state monitors each site at least once a year for compliance. Developments that have both low-income units and market rate units are identical in every way other than the income of the family living in the unit.

WHO LIVES IN AFFORDABLE HOUSING?

The Workforce...

Affordable housing is sometimes referred to as “WORKFORCE HOUSING.” This is because affordable housing serves the needs of people employed in the jobs that we rely upon to make every community viable. They are people such as teachers, teacher’s aids, nursing assistants, medical technologists, retail workers, government employees, emergency services providers and law enforcement. These are some of the low- and very low-income members of your community.

A person working a minimum wage job in Florida earns approximately \$16,750 per year, assuming they work 40 hours per week, 52 weeks per year.



They are people such as teachers, teacher’s aids, nursing assistants, medical technologists, retail workers, government employees, emergency services providers and law enforcement.



WHO LIVES IN AFFORDABLE HOUSING? METRO 510 RESIDENT PROFILE

Embassy Suites - *Front Desk Clerk*

Law Firm - *Legal Assistant*

Red Lobster - *Busboy*

Hair Salon - *Hair Stylist*

Hillsborough County Schools - *Cafeteria Worker*

Fly Bar and Restaurant - *Chef*

Tampa Police Department - *Police Officer*

Alessi Bakery - *Cashier*

Moffitt Cancer Center - *Medical Assistant*

University of South Florida - *Instructor*

Publix - *Cashier & Manager*

Atlas Aviation - *Flight Instructor*

Finish Line - *Sales Associate*

Progressive Insurance - *Claims Admin Support*



Tampa-based Sage Partners, LLC purchased the St. Paul AME Church in downtown Tampa along with some related property and converted it into affordable workforce housing in 2011. The development features two floors of parking below four floors of residential units, with a total of 120 units. Metro 510's amenities include an outdoor spray park, community garden, movie theatre area and an outdoor museum devoted to the history of the church. The 15,000 sq. ft. church was converted into a community center that houses a fitness area, computer lab, library, and a learning and play area for children. The development is located near the Marion Transit Center facility and a block from a planned high-speed rail terminal.



THE ELDERLY...

Approximately 10% of all elderly households in Florida (65 years of age and older) live at or below the poverty level (American Communities Survey, 2014). According to the Shimberg Center for Affordable Housing, of the 206,869 lower income, cost-burdened, renter households (renter households at or below 80% of area median income that are paying more than 30% of their incomes on housing) aged 65 and over in Florida, 66% are paying more than 50% of their income toward housing costs.



PEOPLE WITH DISABILITIES AND THOSE WHO MIGHT OTHERWISE BE HOMELESS . . .

Affordable housing is also needed by people with physical or mental disabilities. These populations may be the very lowest income in your community. For example, a person living on Supplemental Security Income may be living on less than \$8,800 per year. There are a number of nonprofit organizations throughout the state of Florida in the business of providing housing in partnership with others for these “special needs” populations. The developers of affordable housing, whether for profit or nonprofit, will usually include a mix of units in a development to meet the needs of a continuum of extremely low- to low-income families.

Affordable housing for special needs populations may also be provided in “intentional communities” which may include the concept of co-housing.



Affordable housing is also needed by the physically or mentally disabled.



Located in Miami, the Royalton is a historic Miami hotel originally built in 1923. Now renovated and restored by Carrfour Supportive Housing into an affordable housing community, this downtown gem provides 100 furnished apartments serving formerly homeless and low-income residents, with amenities including wireless internet, a community/TV room, meeting facilities, a computer lab, and laundry facilities on each floor.



AND CHILDREN...

Children who are homeless, live in overcrowded housing, or are shuffled about as families search for decent housing, will suffer substantially in school.

WHY INCLUDE AFFORDABLE HOUSING IN YOUR COMMUNITY?

Affordable housing is a legal obligation

Every unit of local government in the state of Florida has a legal obligation to provide for the housing needs of its entire community pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (Chapter 163, Part II, Florida Statutes, commonly referred to as the Growth Management Act). The Growth Management Act sets forth certain requirements for each plan element.

The requirements for housing are found in 163.3177 (6)(f), Florida Statutes:

1. A housing element consisting of principles, guidelines, standards, and strategies to be followed in:
 - a. The provision of housing for all current and anticipated future residents of the jurisdiction.
 - b. The elimination of substandard dwelling conditions.
 - c. The structural and aesthetic improvement of existing housing.
 - d. The provision of adequate sites for future housing, including affordable workforce housing as defined in s. 380.0651(3)(h), housing for low-income, very low-income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities. The element may include provisions that specifically address affordable housing for persons 60 years of age or older. Real property that is conveyed to a local government for affordable housing under this sub-subparagraph



- Housing all current and anticipated residents
- Providing adequate sites
- Eliminating substandard housing

shall be disposed of by the local government pursuant to s. 125.379 or s. 166.0451.

- e. Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.
 - f. The formulation of housing implementation programs.
 - g. The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.
2. The principles, guidelines, standards, and strategies of the housing element must be based on data and analysis prepared on housing needs, which shall include the number and distribution of dwelling units by type, tenure, age, rent, value, monthly cost of owner-occupied units, and rent or cost to income ratio, and shall show the number of dwelling units that are substandard. The data and analysis shall also include the methodology used to estimate the condition of housing, a projection of the anticipated number of households by size, income range, and age of residents derived from the

population projections, and the minimum housing need of the current and anticipated future residents of the jurisdiction.

3. The housing element must express principles, guidelines, standards, and strategies that reflect, as needed, the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, adequate sites, and distribution of housing for a range of incomes and types, including mobile and manufactured homes. The element must provide for specific programs and actions to partner with private and nonprofit sectors to address housing needs in the jurisdiction, streamline the permitting process, and minimize costs and delays for affordable housing, establish standards to address the quality of housing, stabilization of neighborhoods, and identification and improvement of historically significant housing.
4. State and federal housing plans prepared on behalf of the local government must be consistent with the goals, objectives, and policies of the housing element. Local governments are encouraged to use job training, job

The state, through a contract with the Shimberg Center for Affordable Housing, provides every local government with data showing how many units of homeownership and rental units are needed within the jurisdiction.

creation, and economic solutions to address a portion of their affordable housing concerns.

HOUSING ELEMENT DATA AND ANALYSIS REQUIREMENTS

The housing element is to be based on data from the latest decennial United States Census or more recent estimates, including the affordable housing needs assessment that is provided by the state.

Local governments in Florida have easy access to housing needs information from the Florida Housing Data Clearinghouse at the Shimberg Center for Housing Studies at the University of Florida <http://flhousingdata.shimberg.ufl.edu/>

AFFORDABLE HOUSING IMPROVES THE ECONOMIC HEALTH OF THE COMMUNITY AND ENHANCES THE LIVABILITY OF THE COMMUNITY FOR EVERYONE

When a community has dilapidated housing stock, or people living on the streets, the entire community suffers. Those who are in the dilapidated housing or without any housing certainly suffer the most. But inadequate housing effects everyone in the community.

None of us want to explain to our children why the richest country in the world has people living in shacks or without homes at all. Some would argue that adequate housing is a moral imperative as much as a legal obligation.

Aside from the legal obligation to provide housing for the entire current and anticipated population, every local government in Florida should provide a mix of housing so that it can continue to grow economically. When new industries evaluate a prospective community, one of the factors they consider is whether adequate workforce housing is available. New industries provide jobs and a substantial ad valorem tax base. To





Hospitals... Schools...Technology/Business Parks all need housing for employees

To attract new industry and raise the ad valorem tax base of your community through the development of nonresidential properties, you must have an adequate inventory of affordable housing.

attract new industry and raise the ad valorem tax base of your community through the development of nonresidential properties, you must have an adequate inventory of affordable housing. In some communities, where housing is extremely expensive, such as the Florida Keys, Naples, and any number of other waterfront communities, there is a very real threat of losing basic services, such as teachers and police protection due to a lack of affordable housing.

Affordable housing should be located throughout the jurisdiction to provide maximum housing opportunities for all families. It is not necessary to avoid a “concentration” of affordable housing in

the way we have learned to avoid a concentration of government built housing. The premise behind avoiding a concentration of the public housing built and operated by the government is that the public housing population may suffer from social ills associated with unemployment and poverty. The concentration of extremely low-income families in poorly managed and maintained properties has in some instances led to problems with drug or other criminal activity. Affordable housing built, managed, and maintained by the private sector is typically housing for working families; families that should be located near job centers, good schools and, whenever possible, public transportation.

HOW IS AFFORDABLE HOUSING DEVELOPED?

The legal obligation to provide for the housing needs of the entire current and anticipated population, as outlined in Chapter Three, does not mean that local government is expected to develop or construct housing. Local government is expected to use its land use authority to encourage and assist the private sector to produce affordable housing. Local government has a number of tools to encourage and assist the private sector in developing affordable housing. Those tools include: (1) Planning, (2) Financing, and (3) Regulatory Reform.

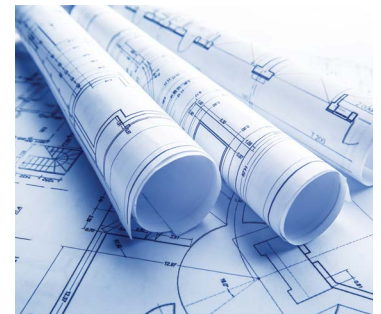
PLANNING FOR AFFORDABLE HOUSING

Planning is an essential part of producing affordable housing. In Florida, planning for affordable housing begins with comprehensive planning. Every local government is required to plan, in its housing element, for the housing needs of its entire population: existing residents, anticipated residents, and those with special needs such as farmworkers and people in need of group homes. Part of comprehensive planning for affordable housing is the designation of adequate sites for affordable housing on the future land use map. The future land use map is

a required element in the comprehensive plan. Another part of planning for affordable housing is implementation of the comprehensive plan housing element and future land use map through consistent land development regulations and development orders.

ADEQUATE SITES

Homeownership is what many favor for themselves and for others. Unfortunately, the number of persons earning wages too low to afford homeownership means that rental housing is the type of affordable housing most



Local government has a number of tools to encourage and assist the private sector in developing affordable housing.

needed in Florida. Rental housing generally takes the form of high rise apartments, garden apartments, townhouses, and quadraplexes, triplexes, or duplexes. Providing adequate sites for rental housing means that local government future land use maps and local zoning codes designate sites for multifamily housing. These sites should be within the urban service boundary, close to major employment, transportation, schools, day care, and other community and social services. To promote a mix of incomes and provide housing choice, affordable housing could be permitted in all residential areas, subject to design standards, as well as in mixed use areas where traditional neighborhood design is encouraged.

When adequate sites are not designated for multi-family housing the result is a deficit of housing for residents and employees within the jurisdiction. This is because developers are not likely to undertake the task of comprehensive plan or zoning changes to accommodate multifamily housing. If the developer does brave an application for a zoning change he or she is often subjected to abusive behavior. Police escorts from city and county commission chambers to protect developers from the NIMBY crowd are not atypical enough. In addition to the emotional stress, the developer suffers substantial

When adequate sites are not designated for multi-family housing the result is a deficit of housing for residents and employees within the jurisdiction.

Bayside Court is a great example of how well-designed affordable housing can enhance its neighborhood. The site for Bayside Court was previously the home of a 50-year-old dilapidated trailer park that had numerous code enforcement violations. The contrast of this new affordable housing community with its predecessor could not be more stark. City officials welcomed the project, saying, "This project fulfills the city's vision for creating a vibrant community." Learn more about Bayside Court on page 33.







Land development codes that permit “pocket neighborhoods” are essential for providing “tiny houses” which are becoming an increasingly popular product for serving single millennials, veterans, elders, and formerly homeless.

The RabbleHouse pictured above is a 600 sq. ft. house with one bedroom, one bathroom, a large closet, a modest kitchen and generous living area. Designed to withstand the Florida heat and wind loads up to 140 miles per hour, the building is also energy efficient, with electric utility bills estimated to run approximately \$50 per month. The cost of materials to construct the RabbleHouse is close to \$35,000. If you factor in \$15,000 for a small lot and utility connections, the homeowner’s mortgage is estimated to be less than \$300 per month. Learn more at RabbleHousers.com.

time delays, and increases in the cost of development, which may result in higher costs to the residents.

In 2004, the Florida Legislature amended Section 163.3177, Florida Statutes to encourage local governments to allow accessory dwelling units in any area zoned for single-family residential use for the purpose of providing affordable rental housing. Land development codes that permit “pocket neighborhoods” are essential for providing “tiny houses” which are becoming an increasingly popular product for serving single millennials, veterans, elders, and formerly homeless. For example, the 600 square foot RabbleHouse (on left) has been developed by Sustainable Design in Alachua County.

IMPLEMENTATION THROUGH LAND DEVELOPMENT REGULATIONS

Every local government must adopt land development regulations (ordinances), which implement the policies in the comprehensive plan within twelve months from adoption of the plan or plan amendment. These land development regulations may be as commonplace as an impact fee waiver/reduction, or as progressive as an inclusionary zoning ordinance, requiring all developments of a certain size to include some percentage of affordable housing within the development.

Even in instances of good comprehensive planning, evidenced by a housing element with measurable goals, objectives, and policies based on reliable data and analysis, an affordable housing development may be tied up in the development or permitting process by vehement opposition from the community, because of inadequate land development regulations. For example, zoning codes that are so restrictive as to necessitate a public hearing for any increase in density or deviation from a minimum threshold will result in NIMBY opportunities.

The adoption of a zoning code that implements the future land use map and the goals, objectives, and policies of the housing element is the first step in avoiding this problem. For example, a zoning code which provides a density bonus as a special exception rather than as a conditional use, or a zoning code which permits all types of residential uses within each residentially zoned area, would go a long way toward avoiding NIMBYism. Another progressive move toward averting NIMBYism is to delegate to staff those matters which are not required by local charter or code to come before the city or county commission. Eliminating unnecessary public hearings will reduce opportunities for nonproductive community opposition.

FINANCING

Most of the financing for affordable housing will come directly from the federal government or from federal and state programs administered by the Florida Housing Finance Corporation (FHFC). In many of these programs developers are competing in a process that rewards those who can leverage funds administered by the FHFC with local contributions. All counties and entitlement cities in Florida have SHIP funds. Local governments over 50,000 in population also have federal HOME and CDBG monies to award to local developers. Making these awards in a timely manner can be critical to the developer's success in securing the federal and private sector conventional financing that constitutes the majority of the funds needed to finance the development. Local government can also contribute financially through a number of other means, such as waiver, payment, or reduction in water and sewer, transportation, or other impact fees; contribution of infrastructure, and surplus land or use of general revenue to supplement the financial subsidy in the development. Developing affordable housing is only accomplished through the joint efforts of the private and public sectors.

Financing for affordable housing is available from numerous state, federal, and conventional sources. Local government can leverage these funds through a variety of contributions.

All local governments receiving SHIP funds must:

1. Expedite all permits for affordable housing; and
2. Have an on-going process of review of all land development regulations, comprehensive plan amendments, and ordinances that increase the cost of housing, prior to adoption.

REGULATORY REFORM

Reforming regulations that add to the cost of housing is an essential local government tool. But housing quality must be maintained while costs are reduced. If too many reliefs from regulation are granted simultaneously, such as reduced set-backs, combined with narrow streets, and on-street parking, the quality of the development will be reduced, giving the neighborhood a legitimate reason for opposing the development. Regulatory reforms that are balanced and provided as a matter of right will increase the delivery of affordable homes.

Regulations that have no positive effect on the health, safety, and welfare of the community, and have a detrimental effect on affordability have no legitimate place in the zoning code. An example of this would be a minimum square footage requirement or a requirement that all homes have two car garages. Such an ordinance adds to the cost of housing without providing a counter balancing public purpose. These issues are addressed in Chapter Six on the role of design and Chapter Seven on the connection between affordable housing and fair housing.

When the SHIP program was created in 1992 (see Appendix 1, William E. Sadowski Affordable Housing Act), providing millions annually in grant monies to local government for the production of affordable housing, it came with the condition that local government do its part to reduce the cost of housing by expediting permits specifically for affordable housing. “Permits” are defined in accordance with Section 163.3164 (7), (8), Florida Statutes: “A permit is a development order which means any order granting, denying, or granting with conditions an application for a development permit. A development permit includes: any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.”

Local government planners, engineers, and others in the land use permitting loop, are not in the business of administering the SHIP program, and are frequently unfamiliar with its legal

Completed in 2015, the Reed, is part of the master planned development at Encore. This seven-story building features 158 one and two bedroom apartment residences and includes park-like courtyards, a community garden, movie theater and lobby gallery. This mixed-income development offers apartments at market and subsidized rates for active senior families. The Encore project was developed by public-private partnership between Banc of America Community Development Corp. and the Tampa Housing Authority. Learn more about Encore on page 27.





parameters. But unless a preference in timing is given to affordable housing development in all aspects of land use permitting, as defined above, the local program is not conforming to the requirements of the SHIP statute. And, if corrective action is not taken to implement expedited permitting for affordable housing, the grant of SHIP funds to the local government can be terminated.

When local government submits its annual SHIP report to FHFC it must include a dollar estimate for the increase in housing costs associated with the adoption of land development regulations during the preceding year. To accomplish this, local government will need a housing economic impact assessment each time it adopts an ordinance so that an annual tally can be made. This process does not prevent local government from adopting ordinances that increase the cost of housing, but it does insist upon an awareness of the consequences for affordable housing from a variety of land development regulations.





The Tampa Housing Authority's vision for Encore:

The Encore project began more than five years ago when the aging Central Park Village public housing complex was torn down. The vision was to transform the 28-acre site into a \$450-million mixed-income village center with apartments, shops, a grocery store, bank, offices, and a black history museum.

Located in Tampa, the Trio is part of the downtown Encore Development and is made up of one 6-story, and two 4-story buildings totaling with 141 units of one, two, three and four-bedroom floor plans that are rented at market rates and subsidized rates based on the tenants' incomes. Developed by the Tampa Housing Authority, the Trio's amenities include a state-of-the-art fitness center, media theater, internet café, lobby gallery and pool. The Trio was built in what was once considered a blighted neighborhood, but today its location can't be beat. It's located close to popular destinations such as Waterfront Park, Ybor City, and the Channelside District.



Many times the developer will discover that opposition to the development is based on misinformation.

HOW SHOULD NEIGHBORS BE INCLUDED IN THE PROCESS?

Prior to the Public Hearing

Florida's Growth Management Act gives great weight to citizen participation and the rights of citizens to challenge development orders for inconsistency with the local comprehensive plan (see Appendix 2 for process). When land use changes are proposed, nearby property owners are notified and invited to participate in the public hearing. Although affordable housing is no different in land use type from luxury housing, it may evoke a highly charged reaction within the neighborhood. The legitimate concerns of neighbors to a proposed development must be addressed.

BEST PRACTICES FOR ADDRESSING COMMUNITY OPPOSITION PRIOR TO PUBLIC HEARING

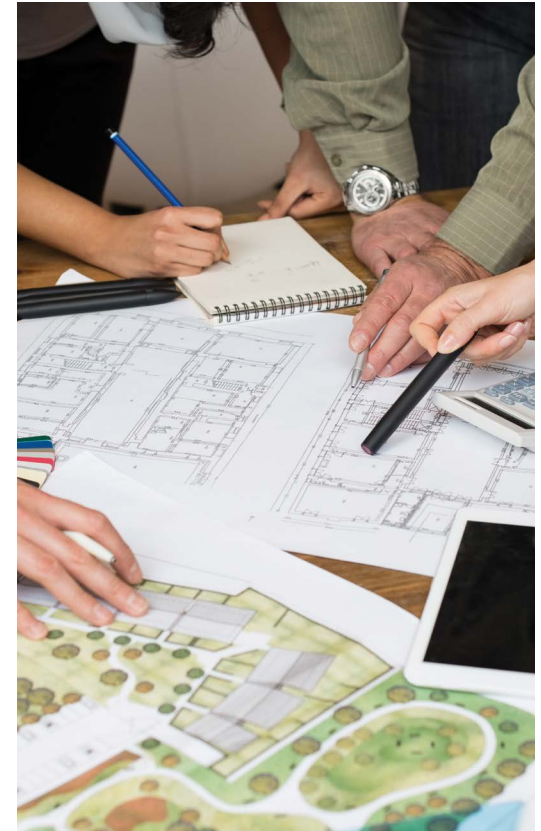
- General education about affordable housing and its place of importance in the community should ideally take place long before public hearings on a specific development. Local government is in a position to assist in this effort by taking a leadership role through the words and actions of its elected officials and staff. If the community has heard

positive messages about affordable housing, is generally aware of the need for affordable housing, and has enough evidence that there is no reason to fear affordable housing, community opposition need not emerge.

- One school of thought is that it is best for the developer to meet with neighbors before having a set plan for development to give the neighbors the opportunity to join in the planning and design of the affordable

development. In this way, neighborhood “buy-in” is the greatest. But many believe this is not the way to go, as it sends a message to the neighborhood that there is something different about affordable housing that justifies it being treated in a different manner from market rate housing. After all, it would be highly unlikely that a developer of luxury or market rate housing would ever solicit community input for the design or plan of the proposed luxury or market rate development.

- To avoid the NIMBY battle during a public hearing, it is best if the developer can meet with the neighbors ahead of time to answer any questions they may have about the proposed development. Many times the developer will discover that opposition to the development is based on misinformation. This can be rectified by explaining the plan for development or showing the development plans to the neighboring property owners. There is some difference of opinion as to whether the developer should outreach to neighbors. Some believe it is extremely productive, while others find it creates a forum for building opposition momentum.
- Neighboring property owners are often concerned that the affordable housing development will not look good. The developer could respond best to these concerns by taking the neighbors on a tour of developments similar to the proposed development and arranging for the neighbors to speak with residents who live nearby an affordable development. Oftentimes, if neighbors get a chance to see an affordable housing development they are so surprised by how attractive it is that they no longer object to the proposed development.
- A reduction in property value is usually the primary concern heard from community opposition. Dispelling the myth that affordable housing reduces property values is a must. Fortunately, a great many studies have been done nationwide to provide us with the evidence we need that affordable housing does not reduce property values, and indeed, in some instances increases neighboring property values. Appendix 3 provides a comprehensive bibliography of property value studies showing that affordable housing does not reduce neighboring real property values.



To avoid the NIMBY battle during a public hearing, it is best if the developer can meet with the neighbors ahead of time to answer any questions they may have about the proposed development.



Dispelling the myth that affordable housing reduces property values is a must.

Fortunately, a great many studies have been done nationwide to provide us with the evidence we need that affordable housing does not reduce property values, and indeed, in some instances increases neighboring property values.

- Distinguishing between legitimate concerns that may be easily addressed and opposition based on fear, ignorance, or bigotry is critical. A tip-off that community opposition is not grounded in legitimate concerns is when the developer addresses one issue, only to find another issue is raised; when that issue is addressed, yet another issue is raised, and so on.

DURING THE PUBLIC HEARING

Nearly every hearing in regard to a particular development approval will be quasi-judicial in nature. This means the county or city commission must conduct the hearing in a courtroom-like manner to ensure the due process rights of the citizen requesting a land use permit. The quasi-judicial

Each development pictured above was developed by the Boley Centers. Photo 1: Sunset Point: Sunset Point is a 14-unit complex that offers one-bedroom apartments for individuals who are disabled by mental illness and have low income in Clearwater. Photos 2 and 4: Duval Park provides 88 units of permanent supported housing for Veterans with service connected disabilities, along with their families. Residents have access to supportive services such as job placement, education opportunities, temporary financial assistance, family support, transportation and links to other essential services within the community. Photo 3: Opened in 2016, Mastery Apartments provides eight units of housing for homeless, disabled Veteran and their families. The development is comprised of two and three bedroom units with supported housing services available on site.



nature of the proceeding requires that the comments made to the commissioners be treated as testimony and that decision-makers base their decisions on substantial competent evidence.

For example:

The crowd opposing the development makes vehement claims of traffic concerns, but does not produce a traffic study to support

its position. The developer submits a credible traffic study which shows the traffic impacts to be negligible. In this case, the local government would not have substantial competent evidence upon which to deny the development due to traffic impacts. It is important to encourage community participation while defusing affordable housing NIMBYs.

MORATORIUMS

A moratorium is to be used in cases of emergency to stop construction or development for a temporary period of time so that local government can adequately plan. In the case of affordable housing, every local government is legally compelled to have a local comprehensive plan and future land use map that has adequately planned for affordable housing (see Chapter Three, *Why Include Affordable Housing in Your Community*). It would therefore be unlikely that a moratorium on affordable housing could ever fall within legal parameters.

BEST PRACTICES FOR ADDRESSING COMMUNITY OPPOSITION DURING THE PUBLIC HEARING

- Affordable housing should be treated exactly as any other housing. There are two exceptions to this rule:
 - (1) Affordable housing permits must be expedited. Delaying or continuing a land use or permitting hearing based on neighborhood opposition undermines the legal requirement for expediting affordable housing permits. The most extreme example of delaying an affordable housing development based on neighborhood opposition would be the adoption of a moratorium which has the effect of stopping the development.
 - (2) Affordable housing should be treated as “infrastructure like” for purposes of fiscal impact analysis, and like schools, roads, or hospitals, should not be subject to a fiscal impact analysis for purposes of permitting decisions.
- Treating affordable housing as you would treat any other housing means there should be no consideration given to the “type” of people who will be living in the housing when making a land use decision. If a permitting decision is made based on the fact that the development is affordable, the local government will be violating Section 760.26, Florida Statutes (see Chapter Seven, *The Connection between Affordable Housing and Fair Housing*).
- Everyone who speaks about the development at the public hearing should be treated as a witness. They should state their name and address for the record and speak into a microphone as the hearing is taped. This means it is inappropriate to allow anyone to yell out comments from their seats or the back of the room. After the testimony from the community opposition is heard, the party requesting the development permit should have an opportunity for response or rebuttal to that testimony. If, for example, a public hearing is held in a manner that allows the petitioner to make a five or ten minute presentation and that presentation is followed by five minutes of community opposition testimony from 75 people, the hearing has taken on a decidedly lopsided flavor, where decisions appear to be made by majority (or some might say “mob”) rule rather than a fair evaluation of the facts.

WHAT ROLE DOES DESIGN PLAY?

Affordable housing can and should fit aesthetically within market rate communities

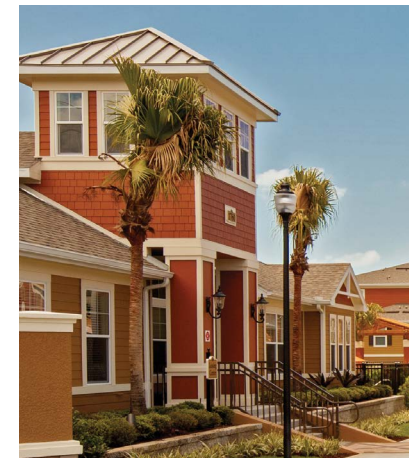
Before the community at large will embrace affordable housing, it must know that affordable housing can be as attractive as market rate housing. The education process begins with design. If neighborhood opposition has nothing to do with perceptions about the people who will be living in the housing, the concern over property values is more than likely a concern over design. The opposition is bottomed on the belief that affordable housing is somehow cheap or ugly and does not fit within a community of market rate housing.

WHY IS THERE A PERCEPTION THAT AFFORDABLE HOUSING IS CHEAP OR UGLY?

A number of Floridians moved here from the Northeast, where they may have had personal experience with large government housing projects causing a deleterious effect in their area. They have moved to Florida for its beauty and want to make absolutely sure that what they experienced “up north” is not going to happen here.

Another reason for the perception of affordable housing as cheap or ugly is the assumption that all cheap and ugly housing in the community

is affordable housing. If you were to drive around a given town and ask your passenger to point to which developments are affordable housing, he or she would most likely point to the unattractive and run down housing and say “that’s affordable housing.” But in fact, the housing which is pointed to as “affordable” is actually market rate housing (housing that is built without financial subsidy) that is rented or sold to low-income people. All low cost housing is not affordable housing. Affordable housing is safe and decent housing (not



Developed in 2012 by the Richman Group, Bayside Court is located in Clearwater and offers two and three bedroom floor plans, gourmet kitchens, a fitness center, business center, and a beautiful sparkling pool. Bayside Court developers leveraged federal, local and private funding to create a unique community which includes 58 low income units.



One of the unique aspects of Stirrup Plaza is a beautiful courtyard designed and painted by artist Xavier Cortada. “Wading Birds,” invites people to walk into the art piece.

substandard), which is made affordable to low income persons through financial subsidies in the construction or down payment and closing cost assistance to the homeowner and generally requires the resident or homeowner to spend no more than 30% of its income on housing costs.

WE MUST DISPEL THE MYTH THAT AFFORDABLE HOUSING IS CHEAP OR UGLY

The National Low Income Housing Coalition dedicated the Fall 2001 issue of the National NIMBY Report to design. You can read that article online at www.nlihc.org or order a copy

**“Affordable housing has acquired
an important niche in the
architectural community...”**

**Often the architecture of affordable
housing is better than the architecture of
the market-rate production housing.”**

— Michael Pyatok,
National Housing Conference, New York City, 2016

Completed in 2014, Stirrup Plaza is a 100-unit affordable housing community that sits atop 1.5 acres in Miami. This preservation project was completed by the Related Group and features one bedroom/one bath units for elderly low-income residents.



Pinnacle Housing Group, uses “Art in Public Places” to reduce NIMBY opposition and provide a more lovely environment for the residents of their affordable communities. Rayos Del Sol stands out for its design beauty, topped off by vibrant colored metal butterflies and a fiber optics lighting sculpture depicting the rays of the sun atop this 13 story Spanish-flavored building in East Little Havana. Pinnacle View boasts a 40 foot mural while providing apartments for 186 low-income families in downtown Miami. The Pinnacle Housing Group commissions world renowned local artists to design artwork for each of its affordable developments.



Narrow lots where the garage is concealed generate the same perceived value as wider lots with garages dominating the street front. If lot depths can be varied, the smaller lots can have a measurable impact on development cost in areas with high land prices.

of the report from the National Low Income Housing Coalition. You will find articles and illustrations from architects, developers, and affordable housing advocates to assist you in allaying the negative perceptions about what affordable housing looks like.

DISPELLING THE MYTH BEGINS WITH EDUCATION

Tackling NIMBYism in general, and NIMBY design issues in particular, is fairly new territory and as yet unsettled among housing professionals. For example, a common dilemma for the

Habitat for Humanity of South Palm Beach County (SPBC) provides affordable homeownership opportunities for hardworking and deserving families in the cities of Boynton Beach, Delray Beach, and Boca Raton, Florida. Working in partnership with families who demonstrate a need for housing and a willingness to work with the Habitat affiliate to purchase a home of their own, supporters and volunteers, Habitat for Humanity SPBC has empowered over 120 families to achieve their dream of owning a safe, decent and affordable home like those pictured above.



“People who know contemporary affordable housing are aware that developers have incorporated valuable lessons from the overly publicized failed public housing ‘projects’ and no frills apartment complexes...a new cohort of architects has created attractive, well-functioning buildings that are often more attractive than market-rate developments. Yet, the broader public and most decision-makers are unaware of this well-kept affordable housing secret”

— Tim Iglesias
Expert in Housing and Property Law

Located in Miami’s Liberty City neighborhood, Parkview Gardens is a Carrfour Supportive Housing development comprised of 60 apartments designated for low-income families/individuals earning at or below 60% of the area’s median income (AMI), with six units set aside for those earning less than 33% of the AMI. With units ranging in size from one to three bedroom apartments, the development includes six three-story residential buildings, a community center, parking garage, playground, gym, computer lab, library, and picnic area.

affordable housing developer is whether to proceed stealthily in an attempt to avoid neighborhood opposition, or to boldly bring the development to the attention of the neighborhood early on, in an effort to enlist neighborhood support. Both strategies have been used successfully. Nationally known architect Michael Pyatok, recommends participatory design workshops with the neighborhood to garner support for the development. He recommends that the developer meet with the neighbors before a plan is developed, so the neighbors have the opportunity to participate in the development plans.

One thing upon which everyone can agree is that it is never too early to educate public officials and the public at large about affordable housing design. Minds are loathe to change once a neighborhood opposition effort has been launched. If the prospect of a multifamily affordable development conjures images of the mammoth government built and mismanaged public housing apartments of yesteryear and the prospect of an affordable single family home conjures images of a bare bones house that sticks out like a sore thumb as the “affordable house,”

the private sector affordable housing developer will be in for a difficult time from the market rate neighborhood.

THE USE OF LANDSCAPING

An example of a land development regulation that adds to the cost of construction, but is good for affordable housing is a landscaping and tree protection ordinance. Curb appeal is most significantly impacted by trees and landscaping. Trees and landscaping enhance pride in the home, provide a sense of community, and reduce NIMBY complaints. Trees can also provide a buffer between uses. For example, multi-family affordable housing can be nestled in a cluster development adjacent to large lot single-family neighborhood without any break in the scenic flow, provided adequate landscaping is used. The use of landscaping and natural buffers will allow the development to go forward and thrive as a community asset. Moreover, trees which provide shade and reduce the need for air conditioning may render a home more affordable due to lower utility costs. But no ordinances can apply only to affordable housing without running afoul of fair housing laws. See Chapter Seven on the connection between affordable housing and fair housing.

**Trees and landscaping enhance pride in the home,
provide a sense of community,
and reduce neighborhood opposition.**

**The use of landscaping and natural buffers
will allow the development to go forward
and thrive as a community asset.**

The Related Group sets the bar with landscaping in each of their developments. Learn more about Stirrup Plaza pictured here on page 34.



AFFORDABLE HOUSING DESIGN ADVISOR

The seminal online resource for affordable housing design is the Affordable Housing Design Advisor. At this website you will find a gallery of photos from around the country illustrating good design with a step-by-step tutorial for developing and delivering affordable housing that will be embraced by affordable housing residents and the community at large, www.designadvisor.org.

The Affordable Housing Design Advisor was the repository for the Campaign for Excellence in Affordable Housing Design, a national initiative to:

- Increase the availability of affordable housing;
- Decrease resistance to affordable housing;
- Increase neighborhood stability; and
- Improve the quality of life for residents of affordable housing.

Why Quality Design Matters for Affordable Housing

By: Deane Evans



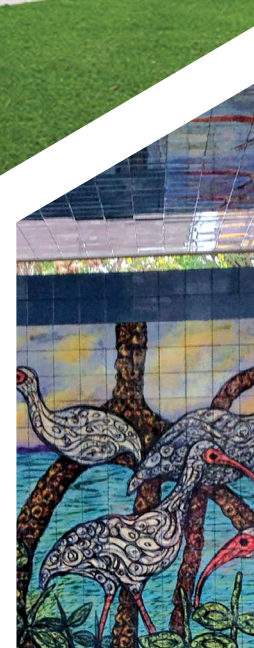
Well-Designed Affordable Housing adds assets to a community, improves quality of life, integrates communities, and creates long-term value.

Quality design encompasses a wide range of issues (access to light, air and views; pleasant circulation patterns; spaces that are safe and easy to maintain; etc.) that go well beyond what a building “looks like” and deal directly with how well a building works for its residents and the community where it is located. Equally important, quality design is also a process that needs to be managed effectively in order to generate successful affordable housing developments.

The Affordable Housing Design Advisor (www.designadvisor.org) is an online tool specifically created to help community development organizations understand and manage the design process in order to achieve higher quality affordable housing. Developed for the US Department of Housing and Development with input from the American Institute of Architects, Enterprise Community Partners, Federal Home Loan Bank of Boston, Local Initiatives Support Corporation, and the Neighborhood Reinvestment Corporation - the Design Advisor has established four key objectives for the design of any affordable housing development.

1. MEETS THE NEEDS OF ITS OCCUPANTS.

Well-designed affordable housing projects understand the needs of their occupants and how these needs impact physical design. Families with children may need larger homes with more bedrooms, larger kitchens and more storage. Elderly



people living alone, on the other hand, may need less space, but will require more of that space to be designed with accessibility issues in mind. Social services may be more important to the elderly, daycare services may be critical to families.

Occupant needs such as these can be cost-effectively met by design, but only if they are identified early on in the process and not forgotten along the way. It is important to remember that, while occupant needs are a critical consideration, some design flexibility must also be maintained to allow for changes in use over time. As a general rule, a design should avoid elements that actively interfere with the specific use patterns of target occupants, but not be so specific that every detail is driven by occupant needs.

2. UNDERSTANDS AND RESPONDS TO ITS PHYSICAL CONTEXT.

Although the “context” in which an affordable housing development is brought to life includes socioeconomic, legal and regulatory issues, the Design Advisor focuses on the physical context in which the project will be located. This context is made up of the key physical elements - streets, sidewalks, homes, yards, parks, playgrounds, etc. - that are present in the neighborhood surrounding the site of an affordable housing development. How wide are the sidewalks? Are they completely paved or is there a grassy strip? What do the roofs of neighboring houses look like? Are they pitched or flat, gabled or hipped? What are the primary exterior materials? What are the main colors? Do most of the surrounding houses have porches? Patios? Decks? How is open space handled? Questions such as these can help define the physical context in which a new development will be located.



Section 163.3177, Florida Statutes, encourages local governments to permit Accessory Dwelling Units (ADUs) in all areas zoned for single-family residential use. ADUs provide affordable rental housing without public subsidy required from the local government. Local government can require that the ADU fit aesthetically on the existing site, matching style, roof lines, and exterior trimming, as shown above. ADUs have the dual benefit of making the primary home more affordable by creating rental income for the homeowner, while providing much needed rental housing.



The Keystone Challenge Fund, a Florida nonprofit, used a craftsman style, single-family home design to seamlessly fit within a subdivision.

Rental housing can fit seamlessly within a single-family neighborhood through architectural design and scale. Well-designed rental housing can overcome concerns about incompatibility.

Multifamily rentals (like the one pictured in the photo on the right) can be built in the style and to the scale of the single-family homes in the neighborhood. You have to look closely to discern that the former single-family residence (pictured in the photo on the far right) now provides several rental apartments.



When sites are poorly planned, landscaping is minimal or non-existent, and simple amenities like front porches or bay windows are missing, the result is housing that has missed a golden opportunity.

It may provide a home for people in need, but it doesn't go the extra step and positively impact the neighborhood where they live.

3. ENHANCES ITS NEIGHBORHOOD.

All projects, no matter how small, have a responsibility to add to and enhance the neighborhoods in which they are built. This is why design is so critical.

Projects which meet minimal code requirements may provide better shelter than their occupants previously enjoyed, but they do little to improve the communities in which they find themselves. When sites are poorly planned, landscaping is minimal or non-existent, and simple amenities like front porches or bay windows are missing, the result is housing that has missed a golden opportunity. It may provide a home for people in need, but it doesn't go the extra step and positively impact the neighborhood where they live. Such positive impacts are critical to a project's long term success - and better design is the key to creating them.

Deane Evans, FAIA, manages the Affordable Housing Design Advisor. He is the Executive Director of the New Jersey Institute of Technology, Center for Architecture and Building Science Research, and has provided training on design for Florida's nonprofits and local governments through the Florida Housing Coalition's workshops.

Any project that merely meets the needs of its users - no matter how well - and does nothing to improve the neighborhood where it is built is not considered by the Design Advisor to be well designed.

4. IS BUILT TO LAST.

Inexpensive materials can make any project look "cheap." Quality materials and finishes contribute to the longevity of a development and makes a project easier to maintain, potentially reducing operating costs. "Building in" energy and environmental efficiency - through better windows, insulation and equipment - reduces operating costs over the life of the building. Due to cost constraints, not every product or system can be top of the line. In these circumstances, developers should consider favoring exterior materials and finishes over interior ones when making tradeoffs.

WHAT IS THE CONNECTION BETWEEN AFFORDABLE HOUSING AND FAIR HOUSING?

When a governmental entity is pressured by opponents of affordable housing to make a land use decision which treats one person or group of persons differently from another person or group without a legitimate rationale, the issue of prohibited discrimination is flagged. A decision is actionable whether it is an act of intentional discrimination against a protected class or whether it is an act taken without an intent to discriminate, but which has a disproportional impact on a protected class.

Both the Federal Fair Housing Act, 42 U.S.C. §§3601-3631, and the Florida Fair Housing Act, Chapter 760, Part II, §§760.20-760.37, Florida Statutes, prohibit discrimination in housing based on race, color, national origin, religion, sex, handicap, and familial status. These are the “protected classes.” Each provides for sanctions, including damages, penalties, injunctive relief, and attorney’s fees, which can be imposed for violation of fair housing law by governmental bodies, organizations, and individuals. A person injured by the violation may seek administrative or judicial review. Administrative complaints filed

with HUD raising land use issues are handled by the Federal Department of Justice, a formidable adversary. Litigation of a fair housing claim in a losing cause can be very expensive: it is not uncommon for settlements and verdicts to run as high as several hundred thousand dollars.

The Florida Fair Housing Act, in Section 760.26, Florida Statutes, makes it unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by



It is not uncommon for settlements and verdicts to run as high as several hundred thousand dollars.

If the only reason the land use or permitting request is denied is because the housing is affordable, the decision will be in violation of Section 760.26, Florida Statutes.

law, the source of financing of a development or proposed development.*

The genesis for the “source of financing” amendment to the Florida Fair Housing Act was the experience of affordable housing advocates in securing appropriate zoning for Pueblo Bonito, a proposed farm worker housing development intended to draw residents primarily if not exclusively from the Hispanic population. In this instance, the power of the Florida and the Federal fair housing laws protecting against discriminatory acts based on race, national origin, and color was more than sufficient to force a rethinking of the denial and the resultant reversal allowing the change in zoning and the project to proceed.

But in many instances it is not possible to know for certain whether the prospective

residents of the affordable development will be members of the protected classes. Prior to the enactment of Section 760.26 in 2000, Florida fair housing laws may not have protected the prospective low-income residents of the development if the developer could not show that members of a protected class would be living in the development.

With this statutory change, all affordable housing is now covered by the Florida Fair Housing Act. Action taken on the basis of the financing of the development is in violation of the Florida Fair Housing Act. If the only reason the land use or permitting request is denied is because the housing is affordable, the decision will be in violation of Section 760.26, Florida Statutes. Low-income persons have effectively become a protected class for the purposes of land use decisions which impact affordable housing.

*That portion of the statute which states, “it is unlawful to discriminate in land use decisions...except as otherwise provided by law” recognizes that there are some laws that discriminate in favor of affordable housing, such as the requirement that all development permits be expedited for affordable housing. The language “as otherwise provided by law,” makes clear that this type of “discrimination” in expediting permits is lawful.



When NIMBY Pressure Overtakes Sound Land Use Decisions PUEBLO BONITO - A CASE STUDY

A faith-based nonprofit sought a rezoning in Bonita Springs, Lee County, for a 26 acre site that it had under contract for the purpose of developing farm worker housing. The site was zoned to allow mobile homes; the nonprofit, Partnership in Housing Inc., wanted to build duplexes. The local government comprehensive plan detailed the need for farm worker housing, and the rezoning was consistent with the future land use map.

Partnership in Housing held a number of community meetings to discuss its development plans with the residents of the neighboring mobile home park and anyone else in the area who might be interested. The meetings brought together a vocal group of opponents. Before the matter was heard by the county commission, the planning department had been deluged with letters from Bonita Springs residents



Pueblo Bonito is a thriving community.

Neighbors who at one time vigorously opposed the development now have an entirely new attitude. Neighbors have volunteered their time and money to create a wonderful playground for the children of Pueblo Bonito.

decrying the horrors which they associated with the type of people who would be living in the development. Substantial pressure was brought to bear on the county commission by the opposition; protests were held with signs promising to oust in the next election those commissioners who would permit the development to go forward. The county commission gave way

under the NIMBY pressure and denied the rezoning request. Through its land use attorney, Partnership in Housing filed a petition for relief under the Bert J. Harris, Jr. Private Property Rights Protection Act, §70.001, Florida Statutes, explaining that the denial of the rezoning request was unreasonable and unfairly burdened the use of the property. At the same

BERT HARRIS ACT

Chapter 70, Florida Statutes, “Relief From Burdens On Real Property Rights,” includes in Section 70.001 the “Bert J. Harris, Jr., Private Property Rights Protection Act” which creates a separate and distinct cause of action from the law of takings to provide for relief, or payment of compensation, when a new law, rule, regulation, or ordinance unfairly affects real property. Section 70.51, known as the “Florida Land Use and Environmental Dispute Resolution Act” provides for a special master process when an owner of real property believes that a development order is unreasonable or unfairly burdens the use of the owner’s real property.

“Development order’ is defined as any order, or notice of proposed action which is or will have the effect of granting, denying, or granting with conditions an application for a development permit, and includes the rezoning of a specific parcel.

‘Development permit’ is defined as any building permit, zoning permit, subdivision approval, certification, special exception, variance, or any other similar action of local government...”

time, Florida Legal Services, Inc. filed a housing discrimination administrative complaint with the federal government on behalf of the farmworkers. While the special master process was underway in the property rights case, the Department of Justice began laying the ground work for judicial intervention through a fair housing law suit by investigatory fact finding; of particular focus in the document review was the three inch stack of NIMBY letters and on site interviews with the Lee County government staff and officials.

The special master report came in with findings that the denial of the rezoning request was unreasonable and did unfairly burden the use of the property at issue. The Lee County Commission then wisely settled with Partnership in Housing permitting the development to proceed. In consideration of the settlement, the Department of Justice closed its fair housing file thereby alleviating the very real danger to the county that it would be on the losing end of a judgment for substantial damages, penalties, and attorneys’ fees.



Before the matter was heard by the county commission, the planning department had been deluged with letters from Bonita Springs residents decrying the horrors which they associated with the type of people who would be living in the development.



Plan amendments, land development regulations, and development orders that are exclusionary are likely to run afoul of the comprehensive plan.

HOW CAN LOCAL GOVERNMENT AVOID LEGAL LIABILITY FROM NIMBYISM?

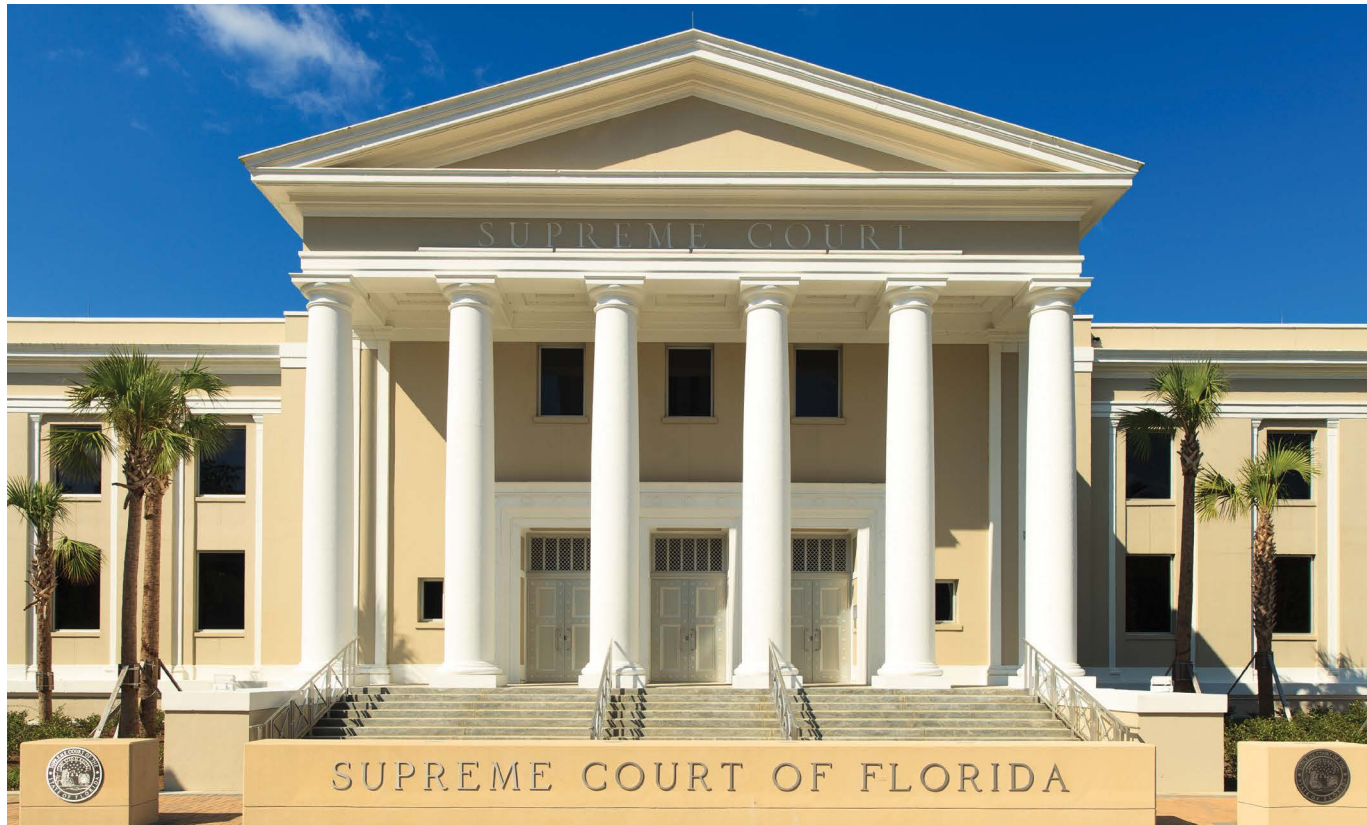
NIMBYISM AND THE LAW

Before denying a land use or permitting request, government planners and elected officials should consider the following questions: 1. Is this action consistent with the adopted local comprehensive plan? 2. Will this action be prohibited under the Federal or Florida Fair Housing Acts? 3. Will this action be unreasonable or will it unfairly burden the use of the property? 4. Is this action supported by substantial, competent evidence made in accordance with the landowner's due process rights to a fair hearing? 5. Is this action in compliance with the requirements of the State Housing Initiatives Partnership (SHIP) program?

1. IS THIS LAND USE OR PERMITTING DECISION CONSISTENT WITH THE ADOPTED LOCAL COMPREHENSIVE PLAN?

The Local Government Comprehensive Planning and Land Development Regulation Act, §§163.3161-163.3217, Florida Statutes, requires local governments to provide for the housing

needs of all current and anticipated populations, including special needs populations, such as farmworkers and the disabled. The requirements of the housing element include the provision of adequate sites for housing, including housing for very low-income families, group homes, and foster care facilities.



Both the Federal and Florida Fair Housing Acts prohibit discrimination in housing based on race, color, national origin, religion, sex, handicap, and familial status. The Florida Fair Housing Act also prohibits discrimination based on the financing of the development or proposed development.

HOW COULD NIMBYISM AFFECT COMPREHENSIVE PLANNING DECISIONS?

Plan amendments, land development regulations, and development orders that are exclusionary are most likely inconsistent with the adopted local comprehensive plan. An example of exclusionary practices is the adoption of an ordinance that sets a minimum residential square footage, making affordable homes economically infeasible. Such

an ordinance is likely to be inconsistent with the adopted comprehensive plan, and would be grist for consideration as a fair housing violation.

2. WILL THIS ACTION BE PROHIBITED UNDER THE FEDERAL OR FLORIDA FAIR HOUSING ACTS?

Both the Federal Fair Housing Act, 42 U.S.C. §§3601-3631, and the Florida Fair Housing Act, Chapter 760, Part II, §§760.20-760.37, Florida



Too often overlooked is that the most egregious cause of segregation in the housing market is the result of land use planning and permitting laws.

Statutes, prohibit discrimination in housing based on race, color, national origin, religion, sex, handicap, and familial status. Florida law specifically protects “source of financing” from discriminatory land use or permitting decisions. Each Act provides for sanctions, including damages, penalties, injunctive relief, and attorneys’ fees, which can be imposed for violation of fair housing law by government action. A decision is actionable whether it is an act of intentional discrimination against a protected class or whether it is an act taken without intent to discriminate but which has a disproportional impact on a protected class.

In a momentous decision, the Supreme Court, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* 576 U.S. __, No. 13-1371 (June 25, 2015), held that policies and practices that have the effect of discrimination, even if not intentional, violate the civil right to housing opportunity guaranteed by the Federal Fair Housing Act. The Court affirmed what is commonly known as the “disparate impact” theory of liability. On the heels of that Supreme Court decision, HUD adopted its final rule on affirmatively furthering fair housing. The combination of the Supreme Court decision and adoption of the final rule to implement a long

standing, but rarely enforced, Fair Housing civil rights law should be viewed as a clarion call for local governments to make meaningful progress in creating housing choice in areas of opportunity.

Fair Housing Act violations are most commonly thought of in the context of refusing to rent or to sell property to a person or a family based on the color of their skin. Too often overlooked is that the most egregious cause of segregation in the housing market is the result of land use planning and permitting laws. A prime example, is when local governments permit large swaths of land to be developed through master plans that create mini towns or villages without creating housing opportunity for low income households; some have their own community schools and all the infrastructure associated with a municipality, but no requirement that affordable housing be part of the mix. This exclusionary land use can easily be seen to have a disparate impact on protected classes as it makes unavailable the areas of high opportunity (newer schools, better infrastructure, parks, and services) that come with the new development.

MIXED INCOME AND MIXED USE DEVELOPMENTS
New Urbanism uses Traditional Neighborhood Design (TND) to produce developments often



BALDWIN PARK



CITY PLACE



SOUTHWOOD



SEASIDE

New Urbanism ostensibly offers a continuum of housing choices.

Examples in Florida include Baldwin Park in Orlando, City Place in West Palm Beach, Southwood in Tallahassee, and of course, the nationally acclaimed and first New Urbanism Community in Florida, Seaside, in the Florida Panhandle.

rising to the level of small unincorporated towns. New Urbanism ostensibly offers a continuum of housing choices. Examples in Florida include Baldwin Park in Orlando, City Place in West Palm Beach, Southwood in Tallahassee, and of course, the nationally acclaimed and first New Urbanism Community in Florida,

Seaside, in the Florida Panhandle. There are approximately 60 New Urbanism communities throughout Florida. These large developments, which often feel like a small town complete with supermarkets, restaurants, town centers, and schools, have virtually no housing options for low-income individuals.



Located in Sarasota, Janie's Garden Phase II is a mixed-use property offering 68 affordable housing apartments along with 10,500 sq. ft. of retail space. Developed by Michaels Development Company and the Sarasota Housing Authority, this property was completed in 2011.

HOPE VI developments were required by federal law to use TND, and were required by law to include low-income families in these mixed income developments. Florida developers have embraced New Urbanism or TND because it creates desirable and profitable development. Local land use planning laws have permitted these developments most commonly under the local Planned Unit Development laws or pursuant to Development

of Regional Impact (DRI) state planning law. But, by and large, those TND communities that were not HOPE VI developments, failed to include any legal requirement for affordability.

Was it local government's intent to close off housing choice in these desirable communities? Under the disparate impact theory of liability affirmed by the Supreme Court in *Texas Department of Housing and Community Affairs v. The*

Inclusive Communities Project, discriminatory intent is not required. Local government may have believed that housing choice would be available because of the variety of housing types and tenures included in the developer's plan to provide a continuum of housing prices. For example, the attached rental housing would provide a type and tenure that low-income families could afford. But that has not been the experience on the ground. With the exception of the falling prices from the housing recession of 2007-2010, the desirability of the TND communities increased the prices of even the attached rental housing beyond the reach for Florida's lower-income households.

HOW COULD FAIR HOUSING LAW BE IMPLICATED IN LAND USE OR PERMITTING DECISIONS?

The unsubstantiated testimony from opponents of affordable housing coupled with the inability of the government to demonstrate a valid land use rationale for the land use or permitting decision is strong evidence that the challenged decision was made for reasons of prejudice and fear, rather than for the health, safety, and welfare of the community.

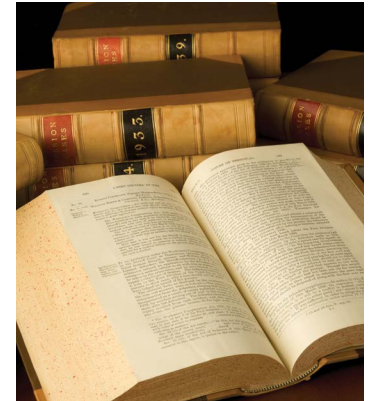
If the decision would have been different had the development been market rate, rather

than affordable, the decision runs afoul of the prohibition on discrimination against developments based on the financing found in Section 760.26, Florida Statutes, of the Florida Fair Housing Act.

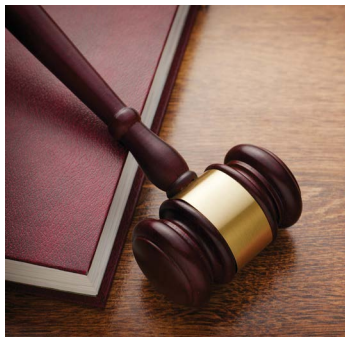
3. IS THIS LAND USE OR PERMITTING DECISION UNREASONABLE OR DOES IT UNFAIRLY BURDEN THE USE OF THE PROPERTY?

The Bert J. Harris, Jr., Private Property Rights Protection Act, §70.001, Florida Statutes, provides a cause of action to all landowners and buyers under a purchase and sale contract for relief from government action that inordinately burdens the use of real property. This is a much easier standard for the landowner or buyer to meet than that found in traditional takings law. How could the Bert Harris property rights act apply in the NIMBY situation?

A typical example is a rezoning request that is consistent with the comprehensive plan, but is opposed by the adjoining landowners. Denial of the rezoning request may result in the inability to build the affordable housing development or the inability to build at the density desired. Denying the rezoning request may be found to be unreasonable or to have unfairly burdened the use of the real property. A refusal to rezone must pass the Section



If the decision would have been different had the development been market rate, rather than affordable, the decision runs afoul of the Florida Fair Housing Act, Section 760.26, and Florida Statutes.



Land use decisions affecting a specific development must be supported by substantial, competent evidence. If local government denies land use approval for development of affordable housing, the local government is opening itself to a suit based on a violation of the Florida Fair Housing Act.

70.001, Florida Statutes, standard: does it create an inordinate, unfair, or undue burden on the use of the property?

4. IS THIS LAND USE OR PERMITTING DECISION SUPPORTED BY SUBSTANTIAL, COMPETENT EVIDENCE MADE IN ACCORDANCE WITH THE LANDOWNER'S DUE PROCESS RIGHTS TO A FAIR HEARING?

The Florida Supreme Court in *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993) held that local land use decisions affecting a small area of the community, such as rezoning, are quasi-judicial in nature. Therefore, these decisions must be supported by substantial, competent evidence rather than the deferential “fairly debatable rule.” Snyder made clear that the landowner has constitutional due process rights to a fair hearing. Among the elements of that fair hearing is the prohibition of ex parte communication with the decision-makers. *Jennings v. Dade County*, 589 So. 2d 75 (Fla. 1992).

HOW COULD SNYDER APPLY TO NIMBYISM?

One response to vehement and vocal opposition might be to deny a land use or permit request based on the magnitude of the opposition. Without substantial, competent evidence supported by

expert witnesses introduced by the opposition at the hearing showing that the land use or permit request was inconsistent with the comprehensive plan, the local government denial is subject to reversal upon appeal as arbitrary and capricious.

5. IS THIS LAND USE OR PERMITTING DECISION IN COMPLIANCE WITH THE REQUIREMENTS OF THE STATE HOUSING INITIATIVES PARTNERSHIP ACT (SHIP) PROGRAM?

The SHIP program, in effect in all counties and entitlement cities within Florida, requires that permits are to be expedited for affordable housing to a greater degree than other projects. The definition of permits, adopted from Section 163.3164 (7),(8), Florida Statutes, is broad, and includes all development orders, building permits, zoning permits, subdivision approvals, rezoning, certifications, special exceptions, variances, or any other official action of local government having the effect of permitting the development of land.

HOW COULD SHIP RULES APPLY TO NIMBYISM?

One response to large neighborhood turnout in opposition to a request from an affordable housing developer, might be to postpone or delay the land use/permitting decision. This would undermine the SHIP rule for expedition of affordable housing permits.

APPENDIX ONE

THE WILLIAM E. SADOWSKI AFFORDABLE HOUSING ACT

THE WILLIAM E. SADOWSKI AFFORDABLE HOUSING ACT

The Florida Legislature enacted the William E. Sadowski Affordable Housing Act in 1992, creating a dedicated revenue source by increasing the documentary stamp tax paid on the purchase price of all residential and commercial deeds. A strong coalition of diverse interest groups including the Florida Home Builders Association, the Florida Association of Realtors, the Florida League of Cities, the Florida Association of Counties, The former Department of Community Affairs, the Florida Housing Finance Corporation, 1000 Friends of Florida, the Florida Housing Coalition, Florida Impact, Florida Catholic Conference, and Florida Legal Services banded together to support this legislation. The Sadowski Coalition has grown to more than 30 statewide organizations as shown on the next page, now including a greater number of business groups, including the Florida Chamber of Commerce, and more special needs, veterans, and elderly advocates, including The Arc of Florida, the Florida Veterans Foundation, and Florida AARP.

The monies from the doc stamp are split between all counties and entitlement municipalities and the Florida Housing Finance Corporation. The monies are split approximately 70/30 between local government and the state, respectively.

The Sadowski Act created the State Housing Initiatives Partnership Program (SHIP), Section 420.9067, Florida Statutes. Local governments receive annual allocations based on population, distributed periodically throughout the year. These monies are to be used to implement the housing element of the local comprehensive plan consistent with the

SHIP plan adopted by the local government. Certain legal parameters apply to SHIP plans, including that 65% of the monies are to be used for home ownership related activities; 75% of the monies are to be used for construction related activities. Local government is required to implement regulatory reform in the form of expedited permitting for affordable housing and an ongoing process of review of all land development regulations, comprehensive plan amendments, and ordinances that increase the cost of housing, prior to adoption.

The Catalyst Program was also created by the Sadowski Act. This program is administered by the Florida Housing Finance Corporation and is used to provide free technical assistance and training to local governments and non-profit organizations. The Florida Housing Finance Corporation uses the Florida Housing Coalition to provide workshops and on-site technical assistance throughout the state on a broad range of housing issues.

The portion of the Sadowski Act monies that are distributed to the state are used by the Florida Housing Finance Corporation to fund its programs, which are largely low-interest loan programs for the development of rental housing for low-and very low-income families. The Florida Housing Finance Corporation operates like a public interest bank. It makes loans based on a highly competitive process which generally requires an experienced development team with immediate ability to proceed on a project that uses the least amount of government subsidy and offers maximum resident services and amenities, with units set aside for 50 years of affordability.

SADOWSKI HOUSING COALITION MEMBERS

BUSINESS/ INDUSTRY GROUPS

- Associated Industries of Florida
- Coalition of Affordable Housing Providers
- Florida Apartment Assoc.
- Florida Bankers Association
- Florida Chamber of Commerce

ADVOCATES FOR THE ELDERLY/ VETS/ HOMELESS/ SPECIAL NEEDS

- AARP of Florida
- Florida Association of Housing and Redevelopment Officials
- Florida Coalition for the Homeless
- Florida Housing Coalition
- Florida Legal Services

GOVERNMENT/ PLANNING ORGANIZATIONS

- American Planning Assoc., Fla. Ch.
- Florida Association of Counties
- Florida Association of Local Housing Finance Authorities
- Florida League of Cities
- Florida Redevelopment Assoc.
- Florida Regional Councils Assoc.

BUSINESS/ INDUSTRY GROUPS

- Florida Green Building Coalition
- Florida Home Builders Association
- Florida Manufactured Housing Association
- Florida Realtors
- Florida Retail Federation

ADVOCATES FOR THE ELDERLY/ VETS/ HOMELESS/ SPECIAL NEEDS

- Florida Supportive Housing Coalition
- Florida Veterans Foundation
- Florida Weatherization Network
- LeadingAge Florida
- The Arc of Florida
- United Way of Florida

FAITH BASED ORGANIZATIONS

- Florida Conference of Catholic Bishops
- Florida Impact
- Habitat for Humanity of Florida
- Volunteers of America

APPENDIX TWO

PLANS, LAND DEVELOPMENT REGULATIONS, AND DEVELOPMENT ORDERS

PLANS, LAND DEVELOPMENT REGULATIONS, AND DEVELOPMENT ORDERS

PROCESS AND PROCEDURE for the three types of land use proceedings dealing with:

(1) Comprehensive plan amendments; (2) Land development regulations; and (3) Development orders.

(1) COMPREHENSIVE PLAN AMENDMENTS

Chapter 163, Florida Statutes (2015), lays out the statutory processes by which proposed amendments to comprehensive plans become an adopted amendment with an effective date. The affected local government and the Department of Economic Opportunity (DEO or Department) together with certain other listed state agencies and other entities have a role in the processes. See Sections 163.3184 and 163.3187.

Section 163.3184

For those amendments considered under the processes and procedures outlined in Section 163.3184, the local government must hold no fewer than two public hearings prior to adoption. The purpose of the first is to determine whether to transmit the proposed amendment (within 10 days of the hearing) to the DEO and appropriate other agencies and other entities upon their requests.

The initial responsibilities of the DEO, the agencies, and those others involved are limited to review of and comment or state report (issued under a State Coordinated Review) on an amendment transmitted by the local government. Primarily, the comments and report address issues of completeness and compliance with Chapter 163. Most transmitted amendments are processed under Section 163.3184(3) which provides for an Expedited State Review. See Section 163.3184(2)(a). The shorter time line between the first hearing and an effective date provided by an expedited review is significant to the success of an affordable housing development.

A State Coordinated Review at Section 163.3184(4) is reserved for specified circumstances such as those amendments dealing with a critical state concern (unless the amendment fits the description of a small scale affordable housing development as detailed below), a development of regional impact, and other instances set out at Section 163.3184(2)(c). The process and procedure under this Section involves more steps than does an expedited review; and consequently, an expanded processing time frame is provided.

The local government will hold its second public hearing on the issue of adoption of the amendment after review by the entities to whom the amendment was first transmitted and within 180 days of receipt of and in consideration of the comments or state report presented. Upon adoption, the amendment is reviewed a second time for completeness and compliance. Unless timely challenged at the Division of Administrative Hearing (DOAH) by an affected person, the amendment becomes effective 31 days after the state determination of completeness for proceedings under Expedited State Review or as provided by the DEO Notice of Intent under State Coordinated Review.

Section 163.3187

The Growth Management Act at Section 163.3184(2)(b) makes an abbreviated process available for proposed small scale development amendments. Section 163.3187(1) provides the parameters of “small scale” proposed amendments which: involve 10 or fewer acres (unless otherwise noted); does not exceed the annual cumulative area of 120 acres addressed by all small scale amendments in the jurisdiction of the applicable local government; involve a change to the future land use map for a site-specific development activity (amendment to the substance of the comprehensive plan goals, policies, and objectives is prohibited under this Section); and it entails a location within an area of critical state concern, the development must be for construction of affordable housing, among other things.

A small scale development amendment process requires only one public hearing the subject of which is adoption of the proposed amendment. Section 163.3187(2). The effective date of the amendment is 31 days after the date of adoption IF there are no challenges to it based on compliance with Chapter 163. However, if such a challenge is filed by petition to the DOAH within 30 days of the adoption date, the effective date of the amendment is delayed until a hearing is held by an administrative law judge who will determine by recommended order whether the adopted amendment is in compliance.

The “fairly debatable” standard is applicable to this issue, that is, if the determination of compliance by the local government is “fairly debatable”, it is in compliance. Only when a final order is issued determining that the adopted amendment is in compliance with Chapter 163, will the amendment become effective.

Affected Person

For purposes of Chapter 163, specifically for determining whether a person is qualified to challenge an adopted amendment found to be complete and in compliance with Chapter 163 as an “affected person”, Section 163.3184(1)(a) provides that an affected person includes:

the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

(2) LAND DEVELOPMENT REGULATIONS

State law requires that local governments implement comprehensive plans through the adoption of appropriate land development regulations (LDRs). Zoning and subdivision regulations are types of LDRs, and other more innovative ordinances may also constitute LDRs. Section 163.3213 sets forth the procedures by which a “substantially affected person” may challenge an LDR as inconsistent with the adopted comprehensive plan. Standing to initiate these types of proceedings was liberalized in the Growth Management Act, which requires that the petitioner be a “substantially affected person” as provided by Section 120.57. This means the party must prove it comes within the zone of interest protected by the comprehensive plan or LDR, which is a broader grant of standing than that afforded the average citizen in the courts. See *Florida Home Builders Association v. Department of Labor*, 412 So.2d 351 (Fla. 1982).

Procedure for Challenging a LDR

Any challenge to an LDR must be brought within one year of its adoption. To initiate a challenge, the citizen must file a petition with the local government setting forth the inconsistency of the LDR with the comprehensive plan. The local government has 30

days to respond to the petition, after which time the petition may be filed with the DEO within 30 days. Upon receipt of a petition challenging an LDR, the DEO will notify the local government of its receipt, and then initiate an informal fact-gathering process to determine if the LDR is consistent with the plan. Within 60 days of receipt of the petition the DEO will issue a written decision on the issue. If the DEO finds that the LDR is inconsistent with the plan, it will initiate a formal administrative proceeding at DOAH, in which proceeding the citizen and the local government are parties. If the department determines that the LDR is consistent with the plan, it will issue such an order and the substantially affected person who filed the initial petition with the local government has 21 days to file a petition for formal administrative proceedings with DOAH. In both proceedings, the burden of proof is on the petitioner to prove that the LDR’s consistency with the plan is not fairly debatable, and in both cases the hearing officer issues a final order.

(3) DEVELOPMENT ORDERS

The effective implementation of comprehensive plans is furthered through the requirement that all actions taken by local governments that affect the development of land be consistent with the plan. Section 163.3215 sets forth the procedures to challenge development orders as inconsistent with the plan. A development order is defined as an order issued by the local government which grants, denies, or grants with conditions an application for a development permit. Examples include site plan approvals, planned unit development approvals, special exceptions, rezonings, building permits, or variances. In practice, a development order is any action of local government which has the effect of permitting the development of land, and can include preliminary or final approvals. After a development order is issued, any aggrieved or adversely affected person may challenge the order as inconsistent with the plan. To establish standing under this provision, the person bringing the challenge must allege and prove they will suffer an injury to an interest that is protected or furthered by the plan, which is different from that suffered by the public such as an adjacent property owner.

The petition must be filed within 30 days from the date of the rendition of the development order or after exhausting local remedies, whichever is later, in the circuit court. Local governments are authorized by recent amendments to Chapter 163 to adopt their own local special master processes which would substitute for the circuit court trial. In such cases review is based on the record prepared in the special master proceeding. However, few local governments have adopted these special master procedures, so most development order challenges involve a full circuit court trial. The challenge to a development order directly involves the developer who typically has a substantial monetary interest in the success of the subject development order. Consequently, this process can become adversarial and expensive.



APPENDIX THREE

BIBLIOGRAPHY OF PROPERTY VALUE STUDIES

BIBLIOGRAPHY OF PROPERTY VALUE STUDIES

Our homes are usually our most important financial investment. Homeowners' concern over property values is a constant. The following is a bibliography of property value studies based on statistical and empirical analysis and covering dozens of case studies from throughout the nation. Virtually without exception, well-designed and well-managed affordable housing developments have been found to have no effect on neighboring market rate property values, and in some instances have increased the values of neighboring properties. Local government elected officials and their staff can use these studies as evidence to counteract homeowner fears about loss of property value.

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APPENDIX FOUR

GLOSSARY OF TERMS AND ACRONYMS

GLOSSARY OF TERMS

Affordable Housing: The rule of thumb used by the federal government is that housing should cost no more than 30 percent of a household's gross income. Housing costs include rent or mortgage payments, property taxes (for homeowners), renter's or homeowner's insurance, and utility costs. Many, though not all, federal, state, and local funding programs require affordable housing providers to use this standard when setting rents or purchase prices for their units. Depending on the program, the rent or purchase price of a unit may be set at 30 percent of a specific income level (e.g. 50 percent of Area Median Income), or at 30 percent of the applicant household's income.

One example of a program that does not have a specific definition of affordability is the Community Development Block Grant (CDBG). In practice, many CDBG grantees use the 30-percent standard.

Affordability Period: The period during which a subsidized owner-occupied or rental unit must be kept affordable to households at designated income levels. Affordability periods vary widely among subsidy programs, generally ranging from 15 to 50 years. This period is sometimes also referred to as a "compliance period".

Area Median Income (AMI): The median household or family income in a designated geographic area, usually a metropolitan area or a county, adjusted for household size. Every year, the U.S. Department of Housing and Urban Development (HUD) calculates "Median Family Incomes" for designated geographic areas around the country, using data from the U.S. Census Bureau and the Consumer Price Index. State and local housing

programs generally use HUD's Median Family Income calculations for their own definitions of Area Median Income.

Note that in any given year, HUD's Median Family Incomes are different than median family incomes and median household incomes calculated by the Census Bureau, due to differences in calculation methods.

Deferred-Payment Loan: A loan to a home buyer or affordable housing developer that does not have to be repaid until a later date, when or if certain conditions are met. For example, if a home buyer receives a deferred-payment loan for down payment assistance or mortgage principal reduction, he or she may have to pay back all or part of the loan if he or she sells the home during the affordability period (see Recapture). Depending on the program, deferred-payment loans may be forgivable under certain circumstances.

Extremely Low-Income (ELI) Household: A household with an income up to 30 percent of the Area Median Income (AMI).

Forgivable Loan: A loan to a home buyer or affordable housing developer for which repayment is not required if certain conditions are met. For example, in some home buyer subsidy programs, the home buyer is assisted with a loan that is forgiven if he or she lives in the home for a certain minimum amount of time.

Gap Financing: Gap financing generally refers to a grant or loan that covers the difference between the cost of developing and operating an

affordable housing project, and the funding sources that the developer has already obtained or is likely to obtain.

Guarantee: In the affordable housing field, a guarantee usually refers to a pledge from a funding agency to repay a mortgage or other loan if the borrower (an income-qualified home buyer or affordable housing developer) defaults. Loan guarantees encourage private lenders, such as banks, to make loans to individuals and organizations who would otherwise be considered too risky.

Joint Venture: A legal entity created by two or more organizations to undertake a specific project, sharing the benefits and risks according to a specified agreement. In affordable housing, a joint venture generally refers to a development project undertaken by two or more organizations working in partnership. The parties of a joint venture may be an inexperienced and experienced housing developer, a housing developer and a social service agency, or other configuration. A joint venture may consist of nonprofit organizations, for-profits, or both.

Loan-to-Value (LTV) Ratio: The ratio of a mortgage loan for a home buyer or rental housing developer to the total value of the property. Some funding programs have a maximum loan-to-value ratio used to determine the maximum amount of subsidy to award to an applicant.

Low-Income (LI) Household: The most commonly used definition of a low-income household is one whose annual income is no more than 80 percent of Area Median Income (AMI). The entries in this Guide use this definition of low-income unless otherwise stated. One program that uses a different definition is the Community Development Block Grant. Under CDBG regulations, a low-income household is one whose income is up to 50 percent of AMI.

Moderate-Income Household: Under Florida Statutes, a moderate-income household does not exceed 120 percent of the Area Median Income (AMI). Under the CDBG and Neighborhood Stabilization Programs (NSP), a moderate-income household has an income greater than 50 percent of AMI but no more than 80 percent of AMI. Some programs, such as those administered by the United States Department of Agriculture's Rural Housing Service (USDA RHS), have their own definitions of moderate-income.

Recapture: A recapture provision is one way to ensure that a subsidy for an owner-occupied home remains available for future low-income home buyers. A recapture provision is triggered if a low-income homeowner who benefited from a subsidy chooses to sell the house during the affordability period. Depending on the specific program guidelines, the homeowner may have to pay back all or part of the original subsidy using proceeds from selling the house. The entity that administers the program can reinvest these recaptured funds to help future home buyers.

The term "recapture" can also refer to a funding agency requiring a beneficiary (a public or private entity or an individual) to pay back funds, if the beneficiary used them for inappropriate activities, failed to spend them by an agreed-upon deadline, or otherwise failed to comply with the program.

Resale Requirement: If an affordable home sold to an income-qualified homebuyer has a resale requirement, the homeowner is legally required by a deed restriction or land covenant to sell the home to another income-qualified household at an affordable price (when/if the first homeowner chooses to sell.)

ACRONYMS

Very Low-Income (VLI) Household: A household with an income up to 50 percent of the (Area Median Income).

AHP: Affordable Housing Program (Federal Home Loan Bank of Atlanta)

ALF: Assisted Living Facility

AMI: Area Median Income

CCTC(P): Community Contribution Tax Credit (Program)

CDBG: Community Development Block Grant

CHDO: Community Housing Development Organization

DEO: Department of Economic Opportunity

FCLF: Florida Community Loan Fund

FHFC: Florida Housing Finance Corporation (or “Florida Housing”)

FSS: Family Self-Sufficiency Program

FTHB: First-Time Homebuyer Program

FY: Fiscal Year

HCV: Housing Choice Voucher (also known as a “Section 8 Voucher”)

HFA: Housing Finance Agency

HOME: HOME Investment Partnerships Program

HUD: U.S. Department of Housing and Urban Development

IDA: Individual Development Account

LHAP: Local Housing Assistance Plan

LIHTC: Low Income Housing Tax Credits (or “Housing Credits”)

LTV: Loan-to-Value Ratio

MMRB: Multifamily Mortgage Revenue Bond Program

NOFA: Notice of Funding Availability

NSP: Neighborhood Stabilization Program

PBRA: Project-Based Rental Assistance (acronym generally used for HOME and Section 8)

PBV: Project-Based Voucher

PHA: Public Housing Authority

PJ: Participating Jurisdiction

PLP: Predevelopment Loan Program

PRA: Project-based Rental Assistance (acronym generally used for Section 202 and Section 811)

RA: Rental Assistance

RFA: Request for Applications

SAIL: State Apartment Incentive Loan Program

SHIP: State Housing Initiatives Partnership Program

SPRAC: Senior Preservation Rental Assistance Contract

TA: Technical Assistance

TBRA: Tenant-Based Rental Assistance

TBV: Tenant-Based Voucher

USDA: U.S. Department of Agriculture

WAP: Weatherization Assistance Program

WITH APPRECIATION FROM THE AUTHOR

To the elected officials, local government planners, developers, and civically involved persons who stand in support of affordable housing.

The photographs in this book are a sampling of single-family and multi-family affordable housing from around the state. Special thanks to the following for-profit and non-profit Florida developers for providing photographs of the affordable housing and the people who live there.

Boley Centers

Carrfour Supportive Housing

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The Richman Group Development Corporation

Roundstone Development

Sage Partners, LLC

Sarasota Housing Authority

Sustainable Design Group

Tampa Housing Authority

The Related Group



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The Florida Housing Coalition Inc. is a nonprofit, statewide membership organization, whose mission is to bring together housing advocates and resources so that everyone has a quality affordable home and suitable living environment. The Coalition has seven offices throughout Florida and has been providing training and technical assistance since 1982, both in Florida and nationally.

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