

CREATING INCLUSIVE COMMUNITIES IN FLORIDA



A GUIDEBOOK FOR LOCAL ELECTED OFFICIALS
AND STAFF ON AVOIDING AND OVERCOMING THE
NOT IN MY BACKYARD SYNDROME



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.



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.

ABOUT THIS BOOK: *A Message to Local Elected Officials and Their Staff*

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.

This book was created and developed by Jaimie Ross, the Affordable Housing Director at 1000 Friends of Florida, a statewide non-profit growth management membership organization. Questions may be directed to the author, Jaimie A. Ross, Affordable Housing Director, 1000 Friends of Florida, 926 E. Park Avenue, Tallahassee, Florida 32301; 850-222-6277 or email jaimieross@aol.com.

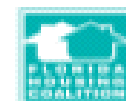
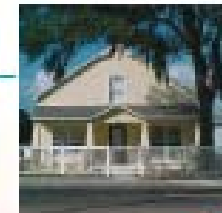


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Affordable housing is safe and decent housing. It differs from market rate housing in two ways:

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

WHAT IS 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.

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). See Appendix 1 for a list of median incomes for all counties or MSAs in Florida as of 2002. Median incomes are updated annually by HUD; the Florida Housing Coalition posts an updated median income chart on its Website www.flhousing.org. Go to SHIP FAQ, 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 that if a very low to moderate income family is spending more than 30% of its income on housing costs, it will be cost burdened and not have enough money left over to pay for items such as utilities, transportation, food, clothing, and healthcare.



The Charleston Club is a 288 unit community developed by The CED Companies with financing from multifamily bonds and a SAIL loan from the FHFC. It provides mixed income housing serving families at 50% and 60% of area median income, as well as market rate units, in Sanford.

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. 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



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.





AFFORDABLE HOUSING RESOURCES/SUBSIDIES

Found in Appendix 2 including, but not limited to:

CDBG
 FEDERAL HOME LOAN BANK - AHP
 FEDERAL HOME LOAN BANK - CIP
 GUARANTEE PROGRAM
 HOME
 HAP
 HOMELESS HOUSING ASSISTANCE
 GRANT - HHAG
 HOUSING CREDITS - HC
 HOPWA
 LEHRP
 LHEAP
 MIB, RENTAL
 PLP
 SECTION 8 - SRO
 SECTION 202
 SECTION 811
 SFMRB
 SAIL
 SHIP
 SHP
 USDA/RHS
 WAF



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



FOR INFO SEE WEBSITE BY THE MICHAELS DEVELOPMENT CO.

(Above) Belmont Heights Estates, an affordable housing development in Tampa built by the Michaels Development Company with a variety of funding sources.

(Left and Below), The Landings, developed by The CED Companies, is a 336 unit community financed with local bonds from the Orange County Housing Finance Authority and a SAIL loan from the FHFC. It serves families at 50 and 60% of area median income in Orlando. Plus with resident amenities including the "Monster Club" after school program, a computer center, and more toward homeownership program.



programs for affordable housing are covered in Appendix 2. 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 Web site www.floridahousing.org.



The Crossings is a 320 unit community in Miami, financed with \$13.5 million in tax-exempt bonds issued by the FHFC. One hundred percent of the community is set aside for residents earning less than 60% of the area median income. The oversized 5,000+/- sq.ft. clubhouse depicted here, includes a community/social room for a variety of resident programs and amenities including a kitchen in which Otis Spunkmeyer cookies are baked throughout the day.

There was a time, not too long ago, when affordable housing was synonymous with public housing. Public housing was housing built and operated by the government. Often times (especially in the Northeast part of the United States) the public housing of yesteryear was built in a large barrack type of style, easily distinguishable from market rate housing. 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.

Affordable housing is now built by the private sector, often by the very same companies who also build luxury housing. The affordable housing 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.



*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.*





Green Gables is a 129 unit, 3 and 4 bedroom community developed by John M. Curtis, located in Ocala. Financed with Housing Credits from the Florida Housing Finance Corporation, Green Gables provides housing for low income and extremely low incomes families (15% of the units are set-aside for families earning less than 35% of area median income). The development of Green Gables spurred economic investment in an area that was historically depressed and has served to turn the neighborhood around. As with virtually all rental developments financed by FHFC, Green Gables provides a 5% homeownership incentive.

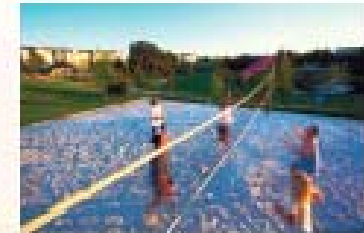
MOVING RESIDENTS TOWARD HOMEOWNERSHIP

While homeownership may be the ultimate goal for low income families, homeownership requires a continuum of housing opportunities. Almost without exception, affordable housing built for low income families using the Florida Housing Finance Corporation's programs, including Housing Tax Credits and SAIL, provides programs for moving residents into homeownership. These programs include financial literacy, homebuyer counseling and a lease incentive which provides the family with 5% of its rental payments for down payment assistance should they purchase a home.



Bridgewater Club Apartments, developed by The CED Companies, provides 192 units for low income families in Spring Hill. It was financed with multifamily bonds from the Florida Housing Finance Corporation, and as with virtually all rental developments financed by FHFC, Bridgewater Club Apartments provides a 5% homeownership incentive.





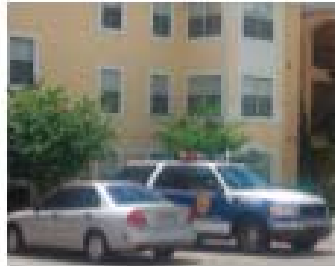
Resident amenities and programs commonly found in Florida's affordable housing rental developments include on-site after school programs, computer labs, financial literacy training, and a down-payment assistance program to move residents toward home ownership.



AFFORDABLE HOUSING FACTS

The only difference between market rate housing and affordable housing is that affordable housing uses government subsidy 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, 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.





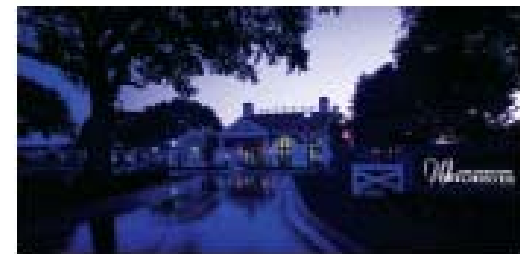
Affordable housing is sometimes referred to as “WORKFORCE HOUSING.” This is because affordable housing serves the needs of people employed in the jobs that we rely upon to make every community viable. They are people such as teachers, teachers aids, nursing assistants, medical technologists, retail workers,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

WHO LIVES IN AFFORDABLE HOUSING?

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

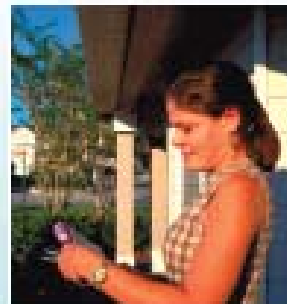


THE WORKFORCE...



Westchester entry and clubhouse.

RESIDENT PROFILE



In the Westchester Development, owned and operated by the Wilson Company, the resident profile is:

Home Depot - Sales
Hillsborough County Tax Collector - Customer Service
Capital One - Acct. Support
Quest Diagnostics - Data Entry
Rooms to Go - Quality Control
Tampa General Hospital - Nurse

Walgreens - Pharmacy Tech
Kindercare - Teacher
Southtrust Bank - Teller
Brookwood Academy - Preschool teacher
Progressive Insurance - Underwriter
Chase Manhattan - Customer Service Representative



Built in 2004, The Villas at Hampton Park is a 48 unit apartment providing homes to extremely low-income seniors, with an average income of \$9,150. Each floor of the complex contains common space such as a dayroom, library, game room, computer lab, exercise room and a non-denominational chapel. The Orlando Housing Authority supplemented its federal HOPE VI and public housing funds with nonfederal funds to provide the upgrades.



Casa Mariposa Senior Housing built by Community Housing & Resources, Inc., Sanibel.

THE ELDERLY...

Approximately 18% of all elderly households in Florida (65 years of age and older) live at or below the poverty level (U.S. Census, 2000). According to the Shimberg Center for Affordable Housing, Florida Housing Finance Corporation 2004 Rental Market Study of the 174,316 lower income, cost-burdened, renter households (renter households paying more than 30% of their income on housing with incomes at or below 60 percent of area median) aged 55 and over in Florida, 62% are paying more than 50% of their income toward housing costs.

*A person working a
minimum wage job
in Florida earns
approximately
\$12,000 per year.*





The Coalition to Assist Supported Living (CASL) in Sarasota, provides affordable housing for people with developmental disabilities, funded with assistance from local government, foundations, and the Florida Housing Finance Corporation.



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

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 \$7,700 per year. There are a number of non-profit 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.



Broward County CDC town home in Pompano Beach acquired through SHIP funds for a mental health consumer that was in the process of foreclosure. Formerly a medical doctor, a single mom with mental illness living on a fixed income now has a home for herself and her son for only \$178 per month.

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.





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.

WHY INCLUDE AFFORDABLE HOUSING IN YOUR COMMUNITY?

AFFORDABLE HOUSING IS A LEGAL OBLIGATION

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

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

A housing element consisting of standards, plans and principles to be followed in:

- 1) The provision of housing for all current and anticipated future residents of the jurisdiction.
- 2) The elimination of substandard dwelling conditions.
- 3) The structural and aesthetic improvement of existing housing.
- 4) The provision of adequate sites for future housing, including housing for low-income,

very-low income, and moderate-income families, mobile homes, and group homes and foster care facilities, with supporting infrastructure and public facilities.

- 5) Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.
- 6) The formulation of housing implementation programs.
- 7) 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.





CITY VIEW AT HUGHES SQUARE

City View at Hughes Square is a mixed-use, mixed income development in downtown Orlando. It consists of 266 rental apartments, 23,000 square feet of neighborhood shopping, and associated amenities and is anchored by the corporate headquarters of a fortune 500 Company, Hughes Supply, Inc.

The affordable residential community at City View was jointly developed by Banc of America Community Development Corporation and the nonprofit Orlando Neighborhood Improvement Corporation (ONIC). It includes 14 three bedroom units, 133 two bedroom apartments, and 119 one bedroom units. Of the total 266 units, 10% will be reserved for very low income households (50% of area median household income), 30% will be reserved for those at 60% of median income, and 10% will be held for households at 120% of median. Because the debt is tax-exempt, the remainder of the apartments must be set aside for households below 150% of median income.

The planning, funding, and development of City View at Hughes Square was certainly complex, but nonetheless a replicable model.

The Administrative Code requirements for the Housing Element are found in 9J-5, Florida Administrative Code(FAC), which states:

The purpose of this element is to provide guidance to local governments to develop appropriate plans and policies to demonstrate their commitment to meet identified or projected deficits in the supply of housing. These plans and policies address government activities as well as provide direction and assistance to the efforts of the private sector.

The administrative rule basically reiterates the statute, but clarifies that all current and anticipated future residents include those with special needs such as farmworkers; that local governments are expected to partner with the private sector; and utilize federal, state, and local subsidy programs to meet their housing goals.

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.

Pursuant to the requirement that the state provide a statewide needs assessment, the Department of Community Affairs contracts with the Shimberg Center at the University of Florida in Gainesville, to develop a methodology and perform the assessment. All local governments have been provided with the data for their jurisdiction. This has removed the burden of complying with the laundry list of data and analysis requirements in 9J-5.005(2), FAC.

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



The family pictured to the right had been living in this substandard housing. The SHIP program in Gadsden County assisted in the construction of their new home, pictured above.



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 attract new industry and raise the ad valorem tax base of your com-



COMMUNITY INFRASTRUCTURE...

HOSPITALS...

SCHOOLS...

TECHNOLOGY/
BUSINESS
PARKS...



munity 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 to 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 lead 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.

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.





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 authority and expertise to encourage and assist the private sector to produce affordable housing. Affordable housing is developed by the private sector with the help of construction subsidy. But oftentimes financial subsidy for construction is not enough. 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.

HOW IS AFFORDABLE HOUSING DEVELOPED?

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

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.





Railroad Avenue Apartments: The City of Winter Park provided over one million dollars from a combination of local government funds generated from a linkage fee ordinance and other local government initiatives to leverage Federal HOME funds and provide 30 units of new construction rental for low income families developed by Orlando Neighborhood Improvement Corporation. Partners included the Winter Park Housing Authority (which is leasing the land from the city) the nonprofit developer, Orlando Neighborhood Development Corporation, the Orange County Housing Finance Authority, Florida Community Partners, and Florida Community Capital Corporation. 12 units house very low income families; 10 units house low income families; and 8 units are market rate, no income restrictions.

ADEQUATE SITES

Home ownership is what many favor for themselves and for others. Unfortunately, the number of persons earning wages too low to afford home ownership means that rental housing is the type of affordable housing most needed in Florida. Rental housing generally takes the form of high rise apartments, garden apartments, townhouses, and quadplexes, triplexes, or duplexes. Providing adequate sites for such housing means that local government future land use maps and local zoning codes designate sites for multi-family 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 to avoid the concentration of low income housing, multi-family housing could be permitted in all residential areas, subject to design standards, as well as in mixed use areas where neo-traditional 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 the multi-family housing.



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





TOM KAPLAN/PHOTO PRESS

Planning for affordable housing includes adequate sites zoned for multi-family housing and a zoning code that creates a friendly environment for the development of affordable housing.



The Villas at Hampton Park is a 48 unit apartment providing homes to extremely low-income seniors, with an average income of \$9,150. The Orlando Housing Authority supplemented its federal HOPE VI and public housing funds with nonfederal funds to provide the upgrades.

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 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. The Department of Community Affairs will make a report to the Legislature by January 1, 2007 specifying the number of accessory dwelling units that were created pursuant to ordinances that permit accessory dwelling units in single family areas.

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 bylaws 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. Those programs are covered in Appendix 2. But in many of these programs developers are competing in a process that rewards those who can leverage state dollars 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



Financing for affordable housing is available from numerous state, federal, and conventional sources.

Local governments can leverage these funds through a variety of contributions.



Regulatory reform should reduce costs while maintaining quality. Regulatory reforms provided as a matter of right will increase the delivery of affordable homes.



Torti Gallas and Partners for the Michaels Development Co.



"Airplane" and "Camel Back" style duplexes are two of the designs The Michaels Development Co. (Torti Gallas and Partners, used in Belmont Heights Estates, an affordable housing development in Tampa built with a variety of funds including multi-family bond financing from the Hillsborough County HFA.

manner can be critical to the developer's success in securing the private sector conventional financing that often constitutes over half 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 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.

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. But 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 counterbalancing 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.



James Landing- providing first time home ownership to seven families in this townhouse development built by Weststar Homes, Inc. with construction financing and down payment assistance from SHIP and HOME programs administered from the City of Orlando Housing Department. Each unit is resale restricted for 15 years; only low and very low income buyers qualify. Families paid as little as \$60,000 to live in these 1,500 square foot, two car garage townhomes in downtown Orlando.

When the SHIP program was created in 1992 (see Appendix 3, 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 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.



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.*





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





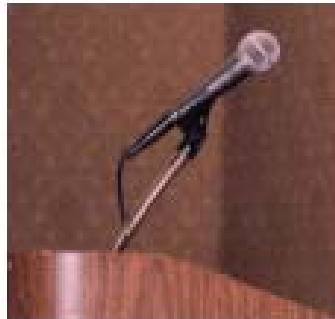
THE USE OF LANDSCAPING

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, including landscaping and tree 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.

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





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 4 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 than luxury housing, it may evoke a highly charged reaction within the neighborhood. **The legitimate concerns of neighbors to a proposed development must be addressed.**

HOW SHOULD NEIGHBORS BE INCLUDED IN THE PROCESS?

Prior to the public hearing

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

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 mes-



sage to the neighborhood that there is something different about affordable housing that justifies it being treated in a different manner than 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

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.



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 5 provides a comprehensive bibliography of property value studies showing that affordable housing does not reduce neighboring real 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 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.



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.

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.





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.

WHAT ROLE DOES DESIGN PLAY?

Affordable housing can and should fit aesthetically within market rate communities.

All low cost housing is not affordable 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 substandard), which is made affordable to low income persons





Pinnacle View



Parker Place has five bungalow style homes located in the City of Lakeland. Developed by Keystone Challenge Fund with assistance from the City of Lakeland SHIP program, these homes have provided low and moderate income families with first time home ownership.

through financial subsidies in the construction or downpayment 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 on line at www.nlihc.org or order a copy of the report from the National Low Income Housing Coalition using the contact information provided in Appendix 6.

"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." Interview

with Michael Pyatok,

Design and Public

Opinion,

The NIMBY Report,

NLIHC, Fall, 2001.





*Minds are loathe
to change once a
neighborhood
opposition effort
has been launched.*



Titus Miami Corporation developed "Bradenton Village", 160 townhomes in Bradenton, financed with a combination of funding including FHFC 9% Housing Credits. Approximately 85% serve families at or below 60% of area median income; 5% of the homes serve families at or below 30% of area median income.

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 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, one of the authors of *Good Neighbors: Affordable Family Housing*, Rand Publishing, 1996, 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. But others vehemently disagree with this tact.

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



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.

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 Florida Housing Coalition and the Department of Community Affairs have received a great deal of positive feedback from the design workshops we have provided using the expertise of Florida architect Robert Koch, of Fugleberg Koch Architects. Mr. Koch contributes the following guidelines for designing affordable homes to fit aesthetically within Florida's market rate neighborhoods.

"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,
The Promise and
Limits of Design,
The NIMBY Report,
NLIHC, Fall, 2001.*

Four different designs for affordable single family housing used in the Hampton Park Development, Orlando



*Robert Koch, AIA
Fugleberg Koch
Architects*

I am convinced of the need to introduce affordable choices into areas where higher values prevail.

HOW TRADITIONAL NEIGHBORHOOD DESIGN CAN SUPPORT DIVERSITY

By Robert A. Koch

If families with limited incomes are to have choices in where they live, housing they can afford must be built in many neighborhoods. In a perfect world, neighborhoods, developments, and communities would have a blend of housing at various price levels. But this approach is too inefficient for many developers. Mass production,

with little variety and customization, permits greater economy. Heterogeneous developments are more expensive, regardless of size and quality.

Nonetheless, I am convinced of the need to introduce affordable choices into areas where higher values prevail. Here are some of the tools I recommend

for those interested in developing what I call “inclusionary housing.” These tools come from the school of Traditional Neighborhood Design, or TND, an urban design movement whose popularity continues to grow. TND, rooted in American neighborhoods of the early 20th century, emphasizes mixed-use development, pedestrian-friendliness, and opposition to sprawl. Front porches are a hallmark of TND design, but the movement extends to land use planning and balanced development principles.

1. VARY THE LOT SIZE

Since the 1950s, lot arrangements for residential neighborhoods have relied on the street for all automobile and pedestrian access. Lot widths have been diminishing, and consequently the amount of the lot frontage dedicated to the automobile has grown significantly. In this day of 50-foot-wide (and sometimes narrower) lots with two-car garages and nominal setbacks, street faces are dominated by the car population. The hidden human spaces behind the cars and garages often face away from the street.

The rediscovery of traditional patterns with service drives and garages at the rear has prompted a surprising discovery: Narrow lots where the garage is concealed generate the same perceived value as wider lots with garages dominating the street front. With this new-

found awareness we now can consider neighborhood patterns that can offer different lot dimensions without measurably altering street perception.

The most common lot pattern in “traditional neighborhood development” designs employs the service drive. This allows the garage to displace to the rear increasing the “friendly face” of the dwelling on the street. It also allows the garage to be an option for initial buyers, one that can be added in the future.

The perception of value follows the amount of “friendly face” oriented toward the street. When garages are rear accessed, the whole face of the building can be used to express dwelling size. Rear garage massing can be as expensive-looking as larger homes with front-facing garages, as shown in Illustration A.

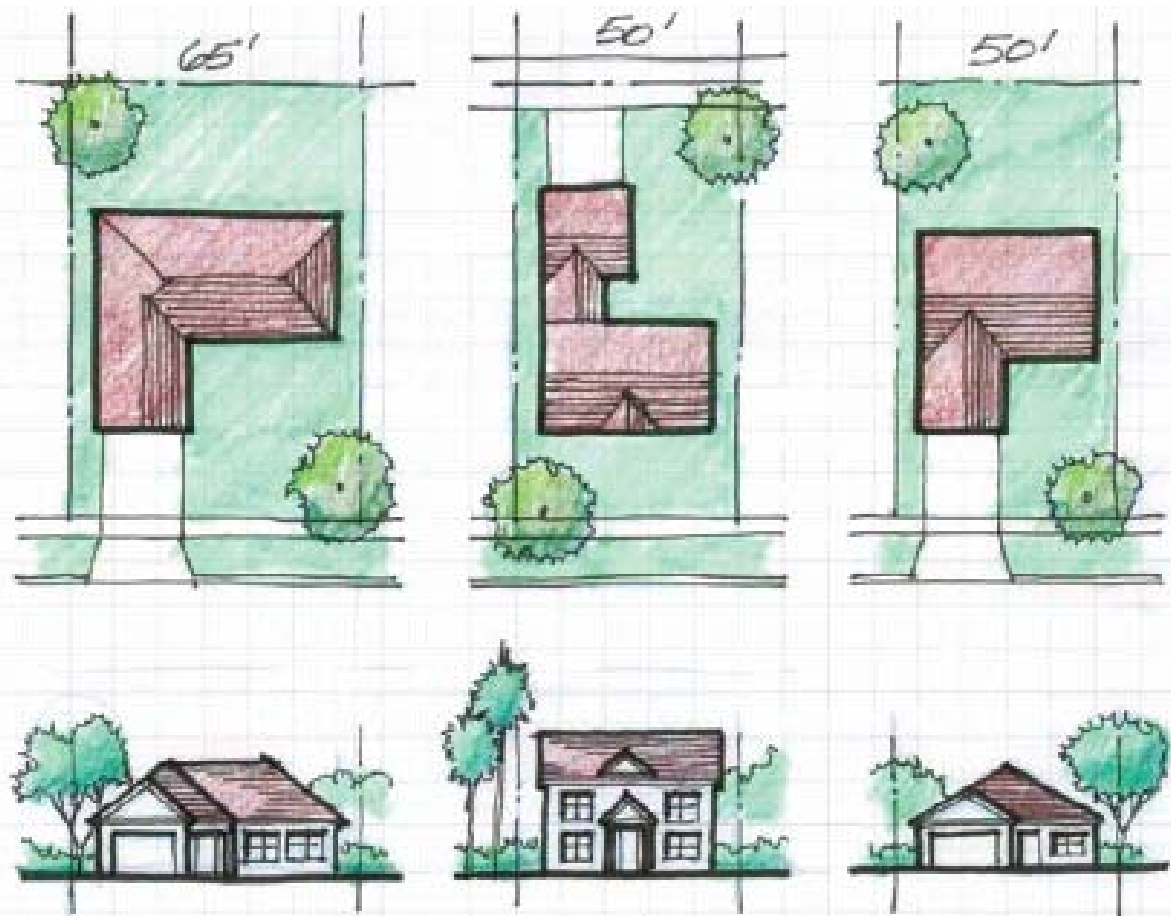
PUTTING THE GARAGE IN THE REAR RESULTS IN A MORE APPEALING FACADE FACING THE STREET.

Since lots with rear service drives are most efficiently organized on interior blocks in larger developments, and lots with front access streets more efficiently address boundary and rear view-oriented locations, we now have a basic pattern that



Narrow lots where the garage is concealed generate the same perceived value as wider lots with garages dominating the street front.

Varying lot types with rear entry and front entry arrangements permit smaller lots to co-exist with wider lots while not reducing the perceived value as seen from the public way.



CONSIDERING THE "FRIENDLY FACE"

Illustration A

permits land and infrastructure adjustments within a community without producing disturbing results.

Varying lot types with rear entry and front entry arrangements permit smaller lots to co-exist with wider lots while not reducing the perceived value

as seen from the public way. Some customers prefer the service drive lots to the front access lots for personal reasons unrelated to price. This blend of taste and opinion helps to mask the allocation of affordable occupancies within the neighborhood.





Illustration B

TND design also positions the garage and utility to the blind side of the street face. These amenities may be less essential to the low income family than the extra bedroom or enlarged living area. In such patterns the selective elimination of the garage initially does not alter the street face or the resulting neighborhood values. The garage is easily added later when the home fulfills its completed design intent.

Also, land costs can be reduced by making lots less deep. The width of a site is often proportionate to the home value that occupies it, so noticeably narrow lots will single out the affordable housing from the others in a neighborhood. Lot depth, however, is not as apparent. If lot depths can be varied, the smaller lots can have a measurable impact on development cost in areas with high land prices.



If lot depths can be varied, the smaller lots can have a measurable impact on development cost in areas with high land prices.

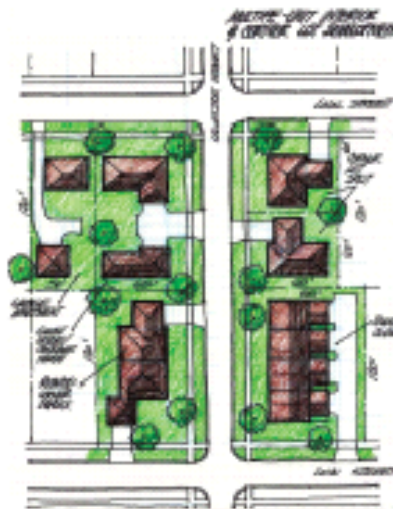


Illustration C

The classic neighborhood often saw garage apartments, twin homes (duplexes), and even estate-imagined multi-family housing as products intermarried with single-family product.



2. FOLLOW TRADITIONAL STYLES.

TND neighborhoods also invite traditional design executions. Exterior stylings reflective of classic and historic themes bring an added cost benefit. Historic building types are generally simpler designs that optimized enclosure with construction-efficient boxes. Their popularity permits this simplicity to exist without value erosion. The result is that simple historic building patterns can coexist with more animated contemporary building types without making simplicity the result of cost control but of accepted design preference.

Illustration B shows how the design of the classic bungalow is centered around simple massing. With traditional design themes, busy massing and expensive detailing can be avoided without appearing cheap.

TRADITIONAL DESIGN THEMES OFTEN ARE LESS EXPENSIVE TO EXECUTE THAN CONTEMPORARY ONES.

3. VARY BUILDING TYPES.

In our older neighborhoods, development often emerged without the controls of zoning or land use constraint. The classic neighborhood often saw garage apartments, twin homes (duplexes), and even estate-imagined multi-family housing as products intermarried with single-family product. These building types remain available choices for designers and planners alike:

- Tandem homes
- Twin homes (in-line duplex)
- The garage apartment
- Mother-in-law suites/carriage house
- Split lot
- Corner duplex
- The big home apartment block

Erecting multiple homes on a single lot can work in both interior and corner locations. Interior lots generally are best employed for tandem dwelling configurations, both attached and detached. Corner lot executions can take the more expensive lot conditions and increase their dwelling utility by using a variety of building types, thus lowering the individual lot allocation per dwelling without violating the neighborhood value system, as shown in Illustration C.

ART IN ARCHITECTURE



Florida can boast a design initiative that is serving as a national model: **Art in Architecture**. Created by Realtor® Steve Chitwood, the program involves a cooperative community service effort between architects, builders, and Realtors® to produce well designed single family affordable homes. The homes pictured here are from the first phase of the Art in Architecture program in the Holden Heights area of Orlando. In a second phase to the Art in Architecture program, the City of Orlando will follow the lead of its neighbor,

the City of Winter Park, to provide vacant lots acquired through foreclosure or negotiation of tax and code liens to a be held in a community land trust. The City of Winter Park facilitated the development of Hannibal Square Community Land Trust, the first community land trust in Central Florida. The community land trust vehicle will ensure that these well designed homes remain permanently affordable. Visit the Orlando Regional Realtors Association Website www.orirealtor.com to get more information on Art in Architecture.



AFFORDABLE HOUSING DESIGN ADVISOR

The seminal on-line resource for affordable housing design is the **Affordable Housing Design Advisor**.

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.

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.

The Affordable Housing Design Advisor is 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.



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 discriminations 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.

WHAT IS THE CONNECTION BETWEEN AFFORDABLE HOUSING AND FAIR HOUSING?

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



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 attorneys fees, which can be imposed for violation of fair housing law by governmental bodies, organizations, and

individuals for fair housing violations. 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.



Effective July, 2000, the Florida Fair Housing Act was amended to create section 760.26, Florida Statutes, as follows:

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

*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 "except as otherwise provided by law," makes clear that this type of "discrimination" in expediting permits is lawful.

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 farmworker 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, fair housing laws may not

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.





If the only reason the land use or permitting request is denied is because the housing is subsidized, the decision will be in violation of the Florida Fair Housing Act.



(Above), An historic property in Miami Beach known as Riviera was restored by Boston Capital Properties as an affordable housing development providing apartments for low and very low income residents using historic tax credits, FHFC Housing Credits, and SAIL. (Above Left), A partnership between Operation Hope, a nonprofit corporation, the City of Jacksonville, and Bank of America, constructed this for-sale home for a low income family to fit architecturally within the Springfield Historic District in Jacksonville using SHIP and HOME funds.

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 subsidized, the decision will be in violation of the Florida Fair Housing Act. Low income persons have effectively become a protected class for purposes of land use decisions which impact affordable housing.





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 farmworker 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 farmworker 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



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.





TOM RAY/STAFF PHOTO



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.



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 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



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..."



Statutes, explaining that the denial of the rezoning request was unreasonable and unfairly burdened the use of the property. At the same 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.



Adelina Cardenas (age 75), (blind widow now in wheel chair) gives thanks to God for her "palace" in Pueblo Bonito.

Pueblo Bonito now built and occupied has been a tremendous success.





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?

HOW CAN LOCAL GOVERNMENT AVOID LEGAL LIABILITY FROM NIMBYISM?

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



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.

HOW COULD NIMBYISM EFFECT 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. IS THIS LAND USE OR PERMITTING DECISION 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 Statutes, prohibit discrimination in housing based on race, color, national origin, religion, sex, handicap, and familial status. The Florida law was recently amended to protect "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.

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.





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, Florida Statutes.



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 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 rezonings, 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, rezonings, 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.



Land use decisions affecting a specific development must be supported by substantial, competent evidence.

