



SPRING 2008

# HOUSING NEWS NETWORK

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The Journal of the Florida Housing Coalition, Inc.

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MARK HENDRICKSON AND JAIMIE ROSS

Just a few hours before the close of the 2008 session, it looked like there would be a great deal of copy for this post legislative session edition of the Journal. But there's no need to go into great detail about the omnibus housing bill because it will not become law this year. In the last few hours of the last day of session, SB 482, which included all the items from HB 699 and more, highlighted below, died when the House tacked on amendments that had either insufficient time, interest, or both to be taken up by the Senate. In short, no housing bill this year. Highlights of the omnibus housing bill that did not pass (SB 482/HB 699) included:



- the ad valorem CLT legislation, providing guidance to local property appraisers to use the resale restricted value for land and improvements

- an amendment to the accessory dwelling unit statute, exempting accessory dwelling units from local impact fees and transportation concurrency
- a tightening of the public inventory of lands statute, incorporating the process of making public lands available for affordable housing into the growth management scheme and providing penalties for failing to comply with the statute
- a variety of growth management and regulatory incentives such as increased density in exchange for donated land
- an amendment to the SHIP statute to include the CWHIP concept of permitting those with incomes up to 140 percent of area median income in high cost counties to be served

*Continued on page 3*



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The Florida Housing Coalition is a nonprofit, statewide membership organization whose mission is to act as a catalyst to bring together housing advocates and resources so that Floridians have a quality affordable home and suitable living environment.

*The Housing News Network* is published by the Florida Housing Coalition as a service to its members and for housing professionals and others interested in affordable housing issues.

**Jaimie Ross, Editor.**

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The Florida Housing Coalition would like to recognize **BANK OF AMERICA, CITIBANK, NATIONAL CITY, WACHOVIA and WASHINGTON MUTUAL,** for their partnership, leadership and support as our **PLATINUM SPONSORS.** *We are deeply appreciative.*



## 2008 AFFORDABLE HOUSING DAY AT THE CAPITOL

The Sadowski/Workforce Housing Coalition hosted a press conference and Housing Rally on March 26th to emphasize the importance of spending housing trust fund money on housing. CFO Sink, Florida lawmakers, Sadowski Coalition members and others gathered to urge the Legislature to refrain from raiding the housing trust funds to fill budget deficits and repeal the cap.



*Alex Sink, Florida's Chief Financial Officer*



*Representative Ron Saunders*



*Chuck Bonfiglio, President, Florida Association of Realtors; Alex Sink, Florida's Chief Financial Officer; Jaimie Ross, Affordable Housing Director, 1000 Friends of Florida; Frank Ortis, President, Florida League of Cities*



*Senator Steve Geller*



*Barney Bishop, President/ CEO, Associated Industries of Florida*



*Jeff Bagwell, Chair, Florida Housing Coalition*



*Charles Milsted, Associate State Director, AARP*

- an amendment to the SHIP statute to permit funds to be used for due diligence activities for housing preservation
- an amendment to the SHIP statute to permit a limited amount of funds to be used for manufactured housing
- an amendment to the SAIL statute to allow moderate rehab for preservation

### HOUSING FUNDING – HOW IT TURNED OUT

In the 2008 Appropriations Bill, \$303 million was appropriated for housing- a 22 percent cut from current funding. The Florida Legislature also swept \$250 million from funds dedicated for affordable housing to general revenue, leaving less than \$30 million in the state and local housing trust funds. A comparison of fiscal year funding from 07-08 and the appropriations passed by the legislature for fiscal year 08-09, together with a breakdown by housing program is shown on the chart on page four.

Had that \$250 million been appropriated for housing, it would have created over \$2 billion in economic stimulus. Why? Because leveraging and the multiplier effect (from the doc stamp taxes, sales taxes, and employment that attends housing construction) turns every \$1 in state housing investment into approximately \$10 in economic stimulus. But there is no sense in talking about what could have or should have been. Housing advocates, the business community, and the Sadowski Workforce Housing Coalition tried their best to persuade the 2008 Legislature to do the right thing.

### HOUSING FUNDING- WHY IT TURNED OUT THE WAY IT DID

Unfortunately, using revenues dedicated specifically for housing to pay for non-housing activities has been in the works since 2003, when monies were intentionally left unappropriated for the first time and ultimately in 2005, when the cap technically scheduled to take effect in 2007 was de facto implemented by the failure each year thereafter to fully appropriate Sadowski Act funds. Allowing the monies dedicated for housing to build up, through failure to appropriate those monies from the state and local housing trust funds, created an opportunity to fill future holes in the budget by characterizing those housing dollars as “excess” monies.

*Continued on page 4*

**ACCORDING TO THE FLORIDA CENTER FOR FISCAL AND ECONOMIC POLICY,**

“the state has failed to keep pace with the growth in its economy and has created structural deficits in its ability to pay for key state services. This is a result not only of the current economic downturn in our state's economy, accompanied by a general downturn in the country's economy, but on deliberate actions to repeal or reduce taxes taken by our state's leadership during the last decade. Many of these actions went unnoticed due to the state's “construction bubble” which followed the 2004 Hurricane Season, as well as by the state's absolute reliance on the local property taxes over the past five years.... Taken together, these actions consisted of the substantial tax cuts for corporate and wealthy interests accompanied by the failure to close corporate income tax loop-holes.... The state also opted out of investing in programs that would have a long term positive economic impact....” *(See [www.fcfe.org](http://www.fcfe.org))*

**UNDERSTANDING THE CAP ON THE HOUSING TRUST FUNDS**

Beginning this fiscal year (FY07-08), distributions of documentary tax revenue to the housing trust funds were capped at \$243

**REPEAL OF CAP BY CONSTITUTIONAL AMENDMENT**

**Tax and Budget Reform Commissioner Darryl Rouson, (now a member of the House), sponsored Constitutional Amendment #22 to place repeal of the cap on the ballot in November. In order to get a constitutional amendment on the ballot, the TBRC needs a 2/3rds vote. The repeal of the cap amendment failed to get the votes needed, most likely because the repeal of the cap also carried with it a mandate to spend all the money on affordable housing. In other words, the Legislature would by constitution (if it passed) be unable to use the money for anything other than housing regardless of other unforeseen needs.**

million. Previously, 20 cents of doc stamp collections were automatically sent to the trust funds—regardless of the amount. The 20 cents varies from year to year, but ranges from a low this year of \$430 million to over \$600 million in earlier years. Once in the trust funds the money had to be appropriated to be spent—but it forced the legislature to take the money out of the trust funds if they wanted to spend it on other items.

With the cap, any collections over \$243 million automatically go to general revenue. For FY08-09, this sweep caused by the cap is estimated at \$87.6 million, and for FY07-08, it is estimated at \$96 million. Therefore, on top of the \$250 million sweep from the housing trust funds, another \$183.6 million has been lost in just two years because of the cap.

Legislation to repeal the cap was introduced in both the House and Senate—and was not given even one committee hearing in either body. Cap repeal legislation will be introduced in 2009, where we hope that a change in House leadership will lead to a more favorable outcome.


Affordable housing is a priority for nearly every constituency in the state, it is a priority for real estate professionals, builders, bankers, and advocates for the homeless, the disabled, the elderly, local and state government, and business interests. The leadership of the Florida

**SADOWSKI WORKFORCE HOUSING COALITION**



PROGRAM	FY07-08 FUNDING LEVEL	FY08-09 FUNDING LEVEL—FINAL APPROPRIATION
Florida Housing Basic Programs (SAIL, HAP, PLP, Catalyst Training & Technical Assistance, & Guaranty Fund)	\$ 70,500,000	\$ 70,500,000
SHIP	\$166,200,000	\$166,183,500
SHIP Monitoring	\$ 400,000	\$ 416,500
Homeless	\$ 5,900,000	\$ 5,900,000
Florida Housing Additional SAIL	\$ 60,000,000	\$ 22,500,000
Florida Housing Additional Down Payment (HAP)	\$ 10,000,000	\$ 20,000,000
CWHIP	\$ 62,400,000	-0-
Extremely Low Income (ELI)	\$ 15,000,000	\$ 5,000,000
Preservation Rehab Pilot	-0-	\$ 10,000,000
DCA Planning	\$ 400,000	-0-
DCA Emergency Home Repair	-0-	-0-
Community Contribution Tax Credit	-0-	\$ 2,500,000
<b>TOTAL APPROPRIATED FOR HOUSING</b>	<b>\$390,800,000</b>	<b>\$303,000,000 -\$87,800,000 Or -22.5%</b>
Swept to General Revenue by Appropriation	-0-	\$250,000,000
Swept to General Revenue by Cap	\$ 96,000,000	\$ 87,600,000
<b>TOTAL SWEEP TO GR</b>	<b>\$ 96,000,000</b>	<b>\$337,800,000</b>
Trust Fund Monies Not Appropriated for Housing or Swept to GR	\$318,200,000	\$ 23,200,000

1. Of the \$70.5 million for Florida Housing basic programs, \$50 million must be spent on SAIL.
2. The \$20 million for additional down payment assistance money is to be used with Florida Housing single family bond programs, and may only be spent in “counties and municipalities in the state which have reduced impact fees within the 12 months prior to the effective date of this act, or reduce impact fees subsequent to the effective date of this act, by a minimum of 25% for a period not less than 18 months, or which impose no impact fees entirely for homeownership purposes”.
3. The \$10 million Preservation Rehabilitation Program is provided for Pasco, Palm Beach and Orange counties only, and targets “rental housing that received or has received funding from any federal or state housing funding program”. Further, “the moneys shall be leveraged by intermediaries at least 4:1”.

House and Senate need to know that it is Florida’s priority – the 2008 session is over – it’s time to begin work for 2009. We need to look ahead to the housing campaign for 2009 to repeal/ “scrap the cap”. The future of funding for Florida’s housing programs will be the focus of a workshop at the Florida Housing Coalition’s statewide conference in September -- Housing: The New Environment. 



*Phillip Stewart & Family, School Teacher and First Time Homeowner, speaks at the Affordable Housing Day at the Capitol.*

**MARK HENDRICKSON**, president of *The Hendrickson Company*, is a past Chair and serves as an Executive Committee member for the Florida Housing Coalition. He served as Executive Director of the Florida Housing Finance Agency from its inception in 1981 to 1994. As its first Chief Executive Officer, he led the way in creation of the Sadowski Act.

**JAIMIE ROSS** is the Affordable Housing Director at 1000 Friends of Florida and the President of the Florida Housing Coalition. She

initiated and facilitates the Sadowski Coalition. Jaimie is the Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

# The Florida Housing Coalition's 21<sup>st</sup> Statewide Annual Conference

## SAVE THE DATE



## SEPTEMBER 15-17, 2008



### FEATURING

State of the State Address by **Tom Pelham**, Secretary, Florida Department of Community Affairs



and **Steve Auger**, Executive Director, Florida Housing Finance Corporation

### GREEN HOUSING TRACK

Building green is integral to building affordable. The 2008 conference will highlight Green Housing with an entire track devoted to what it means to build green, providing practical guidance from the cost benefit analysis and financing of green housing to what strategies and products make the most sense. Workshops will feature speakers from Florida and around the nation who can model best practices from their own experience.



### PUBLIC POLICY PLENARY

National and state experts engage in a lively discussion about the new environment for affordable housing, including what effect the credit crisis has on affordable housing, new ways to build, green housing, and what our industry should be doing to move affordable housing to the forefront during this time of budget deficit.

**NONPROFIT TRACK, MORTGAGE TRACK ... AND DOZENS OF WORKSHOP SESSIONS COVERING NUTS AND BOLTS AND CUTTING EDGE AFFORDABLE HOUSING ISSUES.**



**Community Land Trust Institute  
Networking Reception for  
Community Land Trusts**

In addition to our traditional expo showcasing a variety of financial resources for affordable housing, we will have a green expo. Contact the Florida Housing Coalition at 850/878/4219 if you are interested in reserving an exhibit space.

## THANK YOU

Our annual conference would not be possible without our Partners for Better Housing at all levels. We especially recognize our

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# Inclusionary Housing: A Challenge Worth Taking

BY JAIMIE ROSS, ESQ., AND UMA OUTKA, ESQ.

**I**nclusionary housing ordinances (often called inclusionary “zoning” ordinances) are land use regulations that require affordable housing units to be provided in conjunction with the development of market rate units. The intent of these ordinances is two-fold: (1) to increase production of affordable housing in general; and (2) to increase production in specific geographic areas that might otherwise not include affordable housing.

In the City of Tallahassee inclusionary housing was recently challenged by the Florida Home Builders Association as an unlawful taking, a violation of substantive due process, and an unlawful tax.<sup>1</sup> On November 20, 2007, the Circuit Court of the Second Judicial Circuit granted summary judgment in favor of Tallahassee on all three counts. The trial court found the inclusionary housing ordinance to be a land use regulation under the City’s police power and not a taking of any type. The court recognized that the inclusionary housing ordinance provides a number of benefits to developers. In exchange for requiring 10 percent of the units to be affordable, the Tallahassee ordinance provides a 25 percent density bonus as well as housing design flexibility, including relief from set back and minimum lot size requirements.

Having lost its challenge, the Home Builders recently appealed the decision to the First District Court of Appeal.<sup>2</sup>



In an amicus curiae brief filed in support of the City of Tallahassee, 1000 Friends of Florida<sup>3</sup> set forth the land use planning context for inclusionary housing ordinances.

## INCLUSIONARY HOUSING IMPLEMENTS PLANNING LAWS

The 1985 Growth Management Act requires every Florida jurisdiction to ensure the provision of housing for its entire current and anticipated population.<sup>4</sup> State law mandates that local governments manage growth through comprehensive land use plans that include “efficient provision of transportation, water, sewage, schools, parks, recreation facilities, housing, and other requirements and services...”<sup>5</sup>

Every comprehensive plan in the state must include a housing element consisting of “standards, plans, and principles to be followed in,” among other things, “the provision of adequate sites for future housing, including affordable workforce housing . . . for low-income, very low-income, and moderate-income families. . . .”<sup>6</sup> In addition, the housing element must address the “creation and preservation of affordable housing to minimize the need for additional services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.”<sup>7</sup> The policies, goals and objectives in the housing element are to be implemented via land



development regulations, such as zoning or other housing-related ordinances.<sup>8</sup>

Local governments are not expected to build affordable housing, but they are required to create an environment in which the private sector will do so. To that end, local governments frequently provide contributions to developers seeking state and federal funds, reduce, waive or pay impact fees, expedite permitting, and, increasingly, adopt regulatory approaches such as inclusionary zoning. Beyond financing, land use regulations and regulatory incentives are local governments' primary tools for facilitating private sector development of affordable housing. An inclusionary housing ordinance is an example of precisely the sort of land development regulation that localities can and should use to implement housing element requirements.

## LESSONS FROM CALIFORNIA

Over 170 local inclusionary housing ordinances have been adopted in California. A recent report commissioned by the Non-Profit Housing Association of Northern California found that over 80,000 Californians are now living in mixed-income neighborhoods thanks to inclusionary housing.<sup>9</sup>

Like Florida, local jurisdictions in California must have a housing element in their comprehensive plans. In fact, enforcement of the housing element requirement in California has led directly to the adoption of inclusionary housing ordinances. In 2001, the Public Interest Law Project of California brought litigation against the City of Folsom for failing to have adequate sites for affordable housing. To resolve the lawsuit, the City of Folsom entered into a settlement agreement to adopt an inclusionary housing ordinance.<sup>10</sup> Since then, the Public Interest Law Project has resolved litigation via settlement agreements requiring the adoption of inclusionary housing ordinances with the cities of Buellton, Benicia, Healdsburg, Alameda, Winters, Los Altos, and the Town of Corte Madera.<sup>11</sup>

Several lawsuits alleging an inclusionary housing ordinance to be an unconstitutional taking and violation of substantive due process have been filed by California's home builders trade association (Building Industry Association), but none have been successful.<sup>12</sup> The totality of these cases makes clear that inclusionary housing ordinances are not unlawful takings and do not violate substantive due process, provided they are well crafted.

Two key provisions for a well-crafted ordinance are (1) developer incentives to offset costs associated with requiring the development of affordable housing and (2) a process for obtaining relief from application of the ordinance based on a showing that unreasonable hardship will result, despite the incentives. To date, there are no reported cases finding that a particular development was entitled to relief from an inclusionary ordinance, but the opportunity for the local government to grant a waiver, reduction, or some relief from the operation of the ordinance is considered key to surviving an unlawful takings claim.

## OFF-SETTING DEVELOPER COSTS

The monetary value of land is in large part determined by local land use laws. When land is zoned agricultural, for example, it has far less monetary value than if it were rezoned to respond to the market demand for residential or commercial use. Whether to rezone, and how to rezone, is the province of local government. So, for example, when local government rezones a mobile home park for more intensive residential or commercial uses, it creates wealth for the owner of the property by virtue of the land use change. The same goes for any "greenfield" development in need of a land use or zoning change to be developed for profitable uses.

When the inclusionary housing requirement is tied to the land use change, the costs to the developer for delivering the affordable unit must be evaluated by first recognizing the value added from the change in land use and then deducting additional costs, if any, from including affordable units within the mix of housing which can now be developed. This analysis should make clear that when tied to a rezoning for more profitable use of the property, the inclusionary requirement creates no economic deprivation for the developer.

If, however, the inclusionary housing requirement is to apply to land that is already zoned for residential use, the local government will need to provide developer incentives to offset additional costs for providing the affordable housing. Typically, an increase in density is that economic incentive. An increase in density is of particular value when the developer is permitted to develop additional market rate units as well as the affordable units on the same land that would otherwise have not permitted the additional units, but for the density bonus. The density bonus in effect creates free land for the owner/developer.





# INCLUSIONARY HOUSING FACT SHEET



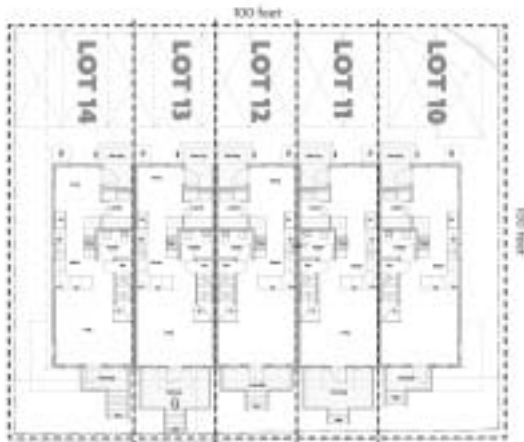
THIS EXHIBIT WAS DEVELOPED BY K2 URBANCORP  
IN SUPPORT OF 1000 FRIENDS OF FLORIDA'S AMICUS BRIEF

## INCLUSIONARY HOUSING

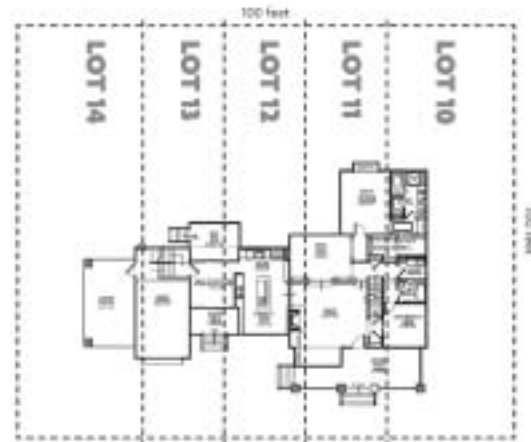
## ESTATE HOME



K2 - INCLUSIONARY HOUSING  
TALLAHASSEE, FLORIDA



5 inclusionary lots on 1/4 acre



1 estate lot on 1/4 acre

### INCLUSIONARY HOUSING

#### Lot

Land Size (1/4 acre)	5 units @ \$30,000	\$150,000.00
Net Profit	20%	\$30,000.00

#### Inclusionary House Product

Total Sq Ft	5 units @ 1100 Sq Ft Ea	5500 Sq Ft
Cost per Sq Ft	\$117.00	\$643,500.00
Net Profit	10%	\$64,350.00

Selling Price	(5 x \$159,900.00)	\$799,500.00
Land Profit	20%	\$30,000.00
House Profit	10%	\$64,350.00
<b>Total Profit*</b>		<b>\$94,350.00</b>

### ESTATE HOME

#### Lot

Land Size (1/4 acre)		\$150,000.00
Net Profit	20%	\$30,000.00

#### Estate Home

Total Sq Ft		3500 Sq Ft
Cost per Sq Ft	\$184.00	\$643,500.00
Net Profit	10%	\$64,350.00

Selling Price		\$819,000.00
Land Profit	20%	\$30,000.00
House Profit	10%	\$64,350.00
<b>Total Profit*</b>		<b>\$94,350.00</b>

\*Both scenarios yield a \$30,000 profit on the land and \$64,350 profit on the vertical construction.

Expedited permitting, flexibility in design, and relief from standard set-backs, may also off-set developer costs.

K2 Urbancorp, a market rate developer in Tallahassee, provided an example from its “Evening Rose” development to support the amicus brief filed by 1000 Friends of Florida in the Home Builders’ case against the City. Although K2 Urbancorp received its development approvals prior to the ordinance taking effect, the company voluntarily agreed to comply with the inclusionary housing ordinance. In fact, K2 Urbancorp went further to include more than the 10 percent affordable units called for by the ordinance. If the City ordinance is so detrimental to developers, why would K2 Urbancorp voluntarily participate, and at a level that exceeds what the ordinance requires?


There are two reasons: First, the ordinance provides significant benefits for developers. K2 Urbancorp realized economic benefits in the form of expedited processing, density bonuses, and other entitlements that helped it achieve its development goals. Second, with a little creativity, K2 Urbancorp was able to design the inclusionary units so that, despite the price restrictions on those units, the company will suffer no economic loss. K2 Urbancorp can build an estate home on one lot and five (5) inclusionary units on a lot of equal size for the same overall cost and maintain the same overall profit margin. K2 Urbancorp has not had to raise prices on its market-rate units in order to incorporate the inclusionary units and is able to offer an attractive and varied assortment of sizes and price points. K2 Urbancorp considers this variety, intermingling large estate designs and smaller inclusionary units, as a selling point – Evening Rose will be a more genuine “neighborhood” than the cookie-cutter housing developments that have become commonplace in Florida. K2 Urbancorp’s compliance with the inclusionary housing ordinance has been a net positive economic benefit and reinforces the trial court’s conclusion in the Tallahassee case that “the density bonuses and other incentives received by developers may increase rather than decrease the value of the developer’s property.”<sup>13</sup>

## CONCLUSION

Adequate housing for all Floridians, from those who have extremely low incomes to low paid professionals is essential for the health, safety, and welfare of Florida’s residents and its economy. Land use laws can and should

be used to encourage the development of affordable housing so that businesses are able to recruit and retain employees by boasting vibrant communities with a range of housing choices.

Adoption of inclusionary housing ordinances logically flows from the implementation of the housing element of Florida’s comprehensive plans and the authority and responsibility that lies with our local governments for regulating land use. Inclusionary housing ordinances will withstand legal challenge provided they are well crafted. A well crafted ordinance includes developer incentives to offset potential financial burden, and the opportunity to obtain a waiver from the application of the ordinance.

It is time for blanket opposition to inclusionary housing to end and for the public and private sectors to come together on this important issue. Characterization of these policies as “takings” obscures the fact that inclusionary housing ordinances can balance competing interests and in fact allow for compliance by a developer without economic deprivation of any kind. Local governments should have no fear of a takings challenge. On the contrary, adoption of an inclusionary housing ordinance may be a challenge, but it is one worth taking. 

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<sup>1</sup> Fla. Home Builders Ass’n v. City of Tallahassee, No. 37 2006 CA 000579 (Fla. 2d Cir. Ct. Nov. 20, 2007).

<sup>2</sup> Fla. Home Builders Ass’n v. City of Tallahassee, No. 37 2006 CA 000579 (Fla. 2d Cir. Ct. Nov. 20, 2007), appeal docketed, No. 1D07-6413 (Fla. 1st DCA Dec. 12, 2007).

<sup>3</sup> 1000 Friends of Florida is a Tallahassee-based not-for-profit corporation created in 1986 whose purposes include monitoring and ensuring proper implementation of the State’s growth management laws; advocating for sustainable development, affordable housing, and protection of natural resources; and providing education and support for public participation in growth management.

<sup>4</sup> § 163.3177(3)(f), Fla. Stat. (2007).

<sup>5</sup> § 163.3161(3), Fla. Stat. (2007) (emphasis added); see generally Ch. 163, Part II, Fla. Stat. (2007).

<sup>6</sup> § 163.3177(3)(f), Fla. Stat. (2007).

<sup>7</sup> § 163.3177(3)(g), Fla. Stat. (2007).

<sup>8</sup> § 163.3202, Fla. Stat. (2007).

<sup>9</sup> Non-Profit Housing Association of Northern California, “Affordable By Choice: Trends in California Inclusionary Housing Programs” (2007).

<sup>10</sup> Hallfeldt v. City of Folsom, Cal. App. Dep’t Super. Ct., Sacramento, Case No. 01CS01149 (2001).

<sup>11</sup> Interview with Michael Rawson, Co-Director of the California Affordable Housing Law Project (which conducts housing litigation for the Public Interest Law Project of California).

<sup>12</sup> See Homebuilders Ass’n of N. Cal. v. City of Napa, 90 Cal. App. 4th 188 (2001); N. State Building Industry Ass’n v. County of Sacramento (Sacramento County Super. Ct., No. C052814); Building Industry Ass’n v. City of San Diego (San Diego Super. Ct., No. GIC 817064).

<sup>13</sup> Fla. Home Builders Ass’n v. City of Tallahassee, No. 37 2006 CA 000579 at 7 (Fla. 2d Cir. Ct. Nov. 20, 2007).



# Staying Dry During a Wave of Foreclosures

BY MICHAEL CHANEY  
FLORIDA HOUSING COALITION

**T**he news of a foreclosure crisis has captured the public spotlight in recent months. Yet while Florida is among the states with the highest rates of foreclosure, it does not appear that foreclosures among assisted buyers—those receiving purchase assistance and other forms of affordable housing subsidy—mimic the national trend. This article provides evidence in support of this premise while exploring the policies and tools that help “Assisted Buyers” stay on dry land during the current wave of foreclosures.



- Florida homeowners hold over 10 percent of all subprime mortgages—a popularly referenced cause of the current foreclosure crisis.
- Nearly 4,500 homeowners in Palm Beach and Broward Counties are at least 90 days behind on their house payments.

However, those participating in homebuyer programs funded by SHIP, HOME and other funding appear largely unaffected. During the Coalition’s April workshop on Foreclosure Prevention, many participants reported that the buyers they work with are not in default or facing foreclosure. Consider the case of Lee County—home to Cape Coral and its infamous foreclosure rate. The number of foreclosures is certainly large—4,294 households faced foreclosure filings in the first two months of the year, and three quarters of these homeowners have mortgage balances over \$151,000. Yet most appear to be investor-owned properties; homesteaded properties represent only 31 percent of the foreclosure filings. Only eight percent of the properties had sales prices below \$150,000. The Lee County Planning

## THE STATUS OF ASSISTED BUYERS

Florida is currently ranked second in the number of its foreclosures, *with a rate that has more than doubled since 2006*. One out of every 273 households is facing foreclosure, as compared with the U.S. rate of one in every 555 households. At the beginning of 2008, Florida’s papers reported startling headlines:

- The City of Cape Coral posted the highest foreclosure rate of any metropolitan statistical area in the nation.



Over 65 housing professionals participated in the Coalition's Foreclosure Prevention workshop in early April.

Department recently updated its foreclosure research on those assisted with SHIP funds since the beginning of the program in the early 1990s. Of all the households assisted from the four most recent close out SHIP distributions, only one quarter of one percent of households have lost their homes to foreclosure.

## HOUSING COUNSELING AND EDUCATION

Consider the policies and education that help assisted buyers stay clear of foreclosure. Most importantly, almost every assisted homebuyer in Florida must attend a pre-purchase class to be eligible for purchase subsidy. Beyond this classroom education, many buyers also receive one-on-one housing counseling to repair their credit, reduce their debt and prepare them for mortgage and home shopping.

Housing counseling and education equip buyers early on with the knowledge and conscientious attitude they need to shop wisely, ask questions and consider their options. Counselors emphasize the importance of personal accountability and responsible budget management. Buyers receive support as they save up for purchase and to reduce their debt. They prepare for mortgage prequalification and learn about the several types of professionals involved throughout the stages of the purchase process.

Research by Freddie Mac has concluded that one-on-one counseling lowers 90-day delinquency rates by 34 percent,



WHILE FLORIDA IS AMONG THE STATES WITH THE HIGHEST RATES OF FORECLOSURE, IT DOES NOT APPEAR THAT FORECLOSURES AMONG ASSISTED BUYERS—THOSE RECEIVING PURCHASE ASSISTANCE AND OTHER FORMS OF AFFORDABLE HOUSING SUBSIDY—MIMIC THE NATIONAL TREND.

while classes lower the rate by 26 percent. A study by Fannie Mae noted that lenders also benefit from the more efficient transaction that results when borrowers can realistically measure their ‘ability to pay’ and can select appropriate loan products.

Fortunately, many affordable housing programs can pay to provide potential buyers with this value education. The SHIP program, for example, includes ‘housing counseling’ as an eligible expense. Funding for this expense may come from SHIP program dollars, instead of the five to ten percent of the SHIP distribution dedicated to administrative expenses. SHIP administrators may hire housing counselors with their program—rather than administrative—funds.

## ADDITIONAL HELPFUL POLICIES

Other policies also help assisted buyers avoid foreclosure. First, purchase assistance programs across the state contain a myriad of “**affordability tests**” to help identify those applicants most likely to achieve success with homeownership. In many communities, the affordability test is related to the maximum purchase assistance award available. A buyer must demonstrate an ability to purchase based on the

combined funding from a first mortgage and the combination of one or more sources of subsidy. Conversely, other communities may require an assisted buyer to earn above a certain “minimum income”—a threshold amount established with consideration of current home prices and mortgage terms.



## HOUSING COUNSELING CERTIFICATION PROGRAM



**H**ousing counseling is an important defense against foreclosure. The Coalition teaches a 5 day class to become a certified Housing Counselor, and plans to offer this course again in the fall. The training, developed by Neighborworks America, and underwritten in part by Bank of America, is titled “Housing Counseling Certification: Principles, Practices and Techniques.” There is an \$875 registration fee to attend. It offers guidance on how to address barriers to homeownership through an interactive curriculum, complete with games, case studies, and engaging group projects.

Participants with a diversity of skills and backgrounds have completed our training. It has benefited Realtors, SHIP staff, Lenders, Legal Aid staff, and many others. For some participants, providing one-on-one housing counseling to buyers is a significant part of their jobs. Many other participants have less contact with buyers, but still do provide them with assistance. The training has provided them with a comprehensive overview of many key topics faced by lower income buyers in Florida.

Once a counselor completes this course, passes the final on-line exam, and attends a separate class on Foreclosure Prevention, he or she will be awarded a full certification in Housing Counseling from Neighborworks America and the Florida Housing Coalition. Sign up for the waiting list for the course by sending an email request to Pam Davis at [pamiam@flhousing.org](mailto:pamiam@flhousing.org).

Furthermore, many communities with purchase programs have established “**lenders guidelines**” to further help assisted buyers avoid foreclosure. These guidelines broadly define the acceptable parameters and terms on a first mortgage provided to an assisted buyer. Guidelines may dictate the maximum interest rate and maximum amounts that can be charged for specific fees, including the origination fee, application fee and more. Some lenders guidelines also set maximum lender ratios (the housing ratio and debt-to-income ratio). Most guidelines restrict lenders to only offering fixed rate mortgages.

These guidelines may contain requirements that essentially block subprime lenders from providing first mortgages to assisted buyer. The guidelines also help eliminate those with predatory lending terms and practices. If the lenders guidelines “set the bar high”, only those buyers who can qualify for prime loans may be eligible for assistance.

Sample lenders guidelines are available from the Florida Housing Coalition, but it is important to consider on a local level the lenders guidelines right for your own community. If you decide to adopt these standards, meet with the lenders you most commonly work with. Get the group of lenders to reach some consensus about exactly what guidelines are acceptable for your community. The guidelines could also be reviewed by your affordable housing advisory committee, and be presented to your local government commission.

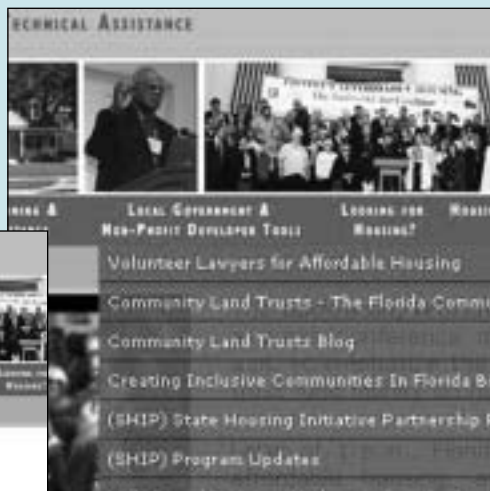
Finally, assisted buyers may benefit from strong **subordination policies** associated with purchase assistance programs. A subordination policy outlines the circumstances in which a local government will subordinate its second or third position lien on a property (a lien for the amount of subsidy provided) to permit a change or re-financing of the first mortgage. Such a policy helps prevent an assisted homebuyer from re-financing the

# FLORIDA HOUSING COALITION RESOURCES TO HELP

Several audio and video recordings from the Coalition's April 2008 Foreclosure Prevention workshop are available on the Coalition's website, [www.flhousing.org](http://www.flhousing.org). They are located in the pull-down menu for "Local Government & Nonprofit Developer Tools" under "(SHIP) Program Updates". The recordings highlight key workshop topics, including a review of the policies and assistance provided to Assisted

Buyers to help them avoid foreclosure even before purchase, a summary of key elements of a SHIP Foreclosure Prevention strategy to help those currently facing foreclosure, and a review some factors that have caused the current foreclosure crisis.

The Coalition plans to offer this free one-day Foreclosure Prevention workshop again in the second half of 2008. Sign up for the waiting list for the event by sending an email request to Pam Davis at [pamiam@flhousing.org](mailto:pamiam@flhousing.org).



first mortgage on a recently purchased home to replace it with a subprime mortgage or with financing containing predatory terms. It also prevents a recent buyer from refinancing in a fashion to "cash out" on the equity in a house. During the early years of homeownership, the majority of the equity in the assisted homebuyer's house is often the down payment subsidy provided at purchase. This subsidy was provided to offer housing assistance, and it should not be cashed out by the buyer.

Each SHIP jurisdiction has the responsibility of forming a written subordination policy. Such a policy provides protection for buyers. Consider, however, that there are some instances when subordinating the subsidy lien is advantageous. Design a flexible set of guidelines that will allow for subordination in instances that will lower the homeowner's interest rate, lower the home owner's monthly housing cost, or increase the affordability of the housing.

## CONCLUSION

It is important to recognize that some measure of foreclosure has been consistently present over the history of lending. Long-time common reasons for foreclosure include the loss of income that accompanies the loss of a job, or the death or illness of a family member. These unpredictable circumstances have consistently plagued a small minority of borrowers. But the recent news about foreclosures is alarming because of the marked increase in the rate of foreclosures—currently twice as high as the average rate reported during the past 30 years.

The success of purchase assistance programs for low income buyers is grounded in their ability to control factors beyond these unpredictable circumstances of job loss, illness and death. They require buyers who receive assistance to arm themselves with knowledge, money management skills and responsibility. They also establish policies to identify buyers with the most potential and require them to obtain financing with the best terms. These key policy factors help explain the growing evidence that assisted homebuyers are remaining clear of the foreclosure crisis currently facing the country and Florida.





# Foreclosure Crisis Increases the Need for Affordable Rental Housing

BY STAN FITTERMAN, FLORIDA HOUSING COALITION

**T**he foreclosure crisis is damaging the already shaky affordable rental market, according to a recently released study by Harvard's Joint Center for Housing Studies. The study, "America's Rental Housing: The Key to a Balanced National Policy" examines recent mortgage market events in the context of long-standing affordability problems that plague millions of renters. The study concludes that the current housing debacle not only adds to the number of households competing for low-cost rentals but the run up in foreclosures is not increasing the supply of affordable rental units.



improve prior to putting the units back on the market. But, you might argue, shouldn't the weak homebuyer market result in owners opting to rent units they can't sell? Wouldn't the over-supply of housing units result in lower rents? Again, the data do not support this. Last year in the U.S. monthly rents reached a record high of \$775. The weak home buying market is helping to expand the supply of mostly higher priced rental units.

Given the monthly carrying cost of the units, owners are unable or unwilling to lower the rent. Most renters do not have the income to take advantage of these opportunities, resulting in the market having limited ability to absorb the excess capacity.

## POLICY IMPLICATIONS FOR FLORIDA

In February 2008 Florida had one foreclosure filing for every 254 households, a rate that trailed only Nevada and California. In February 2008, over 32,000 foreclosures were initiated in Florida, second only to California<sup>1</sup>. There are two distinct policy responses to foreclosures – one focuses on efforts to keep people who are facing foreclosure in their home, the other focuses on what to do with vacant homes after foreclosure. A lot of attention has been focused on efforts to assist homeowners facing foreclosure. What to do with vacant units after foreclosure is just now starting to get attention.

Local governments and their nonprofit partners, should begin discussions with local lenders about the disposition of their REO properties. This could include buying the properties at a negotiated discount from the lender and maintaining them as affordable rental units.

As the foreclosure crisis deepens, the need for affordable rental units will continue to rise. This is coming at a time when the number of rental units produced in the nation is dropping and rents are rising. It also comes at a time when large segments of the assisted inventory are at risk from Section 8 and Year 15 expiring use agreements. As we develop a response to rising foreclosures, the need for affordable rental units cannot be overlooked.



<sup>1</sup>Source: *America's Rental Housing: The Key to a Balanced National Policy*, [www.jchs.harvard.edu/](http://www.jchs.harvard.edu/).

# SUCCESS STORIES



*Homeowners in Group 10 work through the painting process on their new homes in Bayou Pass Village.*

## Self-Help Housing

BY EARL PFEIFFER, EXECUTIVE DIRECTOR,  
FLORIDA HOME PARTNERSHIP

The United States Department of Agriculture's (USDA) Rural Development office created the mutual self help housing program in 1963 to provide housing for rural Americans. The program was modeled after construction processes utilized by the early Quakers, with neighbors helping neighbors build barns, homes and out-buildings. In the forty plus years that have passed since the program's inception, over 40,000 homes across America have been built by 125 self-help grantees like Hillsborough County's non-profit partner, Florida Home Partnership. Nationwide last year, these same grantees built over 1500 homes, of which more 10% were built in Florida.

On November 8, 1993, the late Dorothy Duke, a retired housing advocate from Sun City Center Florida formed Homes for Hillsborough which later became Florida Home Partnership. It was not until four years later in 1997 that the not-for-profit agency finally began building their first eight homes. Duke spent those first four years embattled



with Hillsborough County and Rural Development officials trying to obtain program funding. As a retiree with nothing but time on her hands, Duke finally succeeded in wearing these housing officials down and obtaining the needed funding to commence construction.

Those early partnerships forged by Dorothy in the mid-90's are still the cornerstone of our success today. Dorothy's foresight, vision and selfless determination has changed the face of affordable housing in Central Florida.

Low-income program participants are qualified and approved for residential mortgages through the Department of Agriculture at below market rates. Once approved, construction-perm loans are closed in groups of 10-12 families at a time. During the construction process, all families in "the group" work on all homes in the group doing semi-skilled and unskilled labor tasks. When all homes in





*Neighborhood children enjoy the beach-entry pool at Bayou Pass Village.*

*Dorothy Duke Community Center at BayouPass Village.*



a group are completed, USDA conducts a final inspection and authorizes all families to move in on the same day.

FHP has a staff of 16 employees that operate the program, and nine of those employees are former program participants, so that this program is truly administered by those it serves. The enthusiasm from these participants/employees is contagious to the remainder of the team, and that makes our job a great deal of fun.

Homeowners contribute approximately 600 hours of sweat equity labor and their equity is the difference between the actual construction costs and the appraised value, which can be as great as \$60,000. In addition to USDA, Hillsborough County's Affordable Housing Office contributes down payment assistance through the SHIP program, and Florida Housing Finance Corporation contributes HOP funding. Hillsborough County also

provides zero interest loans of SHIP and HOME funds for site acquisition and infrastructure improvements.

FHP is currently completing its widely acclaimed community, Bayou Pass Village in Ruskin that features 207 homes with amenities and home styles that make it indistinguishable from market rate communities. Next up is Hidden Creek in Wimauma with 141 homes and Sunset Hills in Pasco County with 40 more homes. 🏠

**EARL PFEIFFER** has served as Executive Director of Homes for Hillsborough since 1997. Earl, a state-licensed Residential Homebuilder and a Realtor, has been very active in affordable housing in the Tampa Bay area since 1988. As general manager of Pfeiffer Affordable Homes, he was a private-sector partner with The City of Tampa's Challenge Fund housing program for nine years before coming to Homes for Hillsborough. Earl's vision is to build 100 affordable homes every year; and further, that each home built should not look like affordable housing, but be indistinguishable from market rate homes.



The Florida Housing Coalition will feature Florida Home Partnership as a Success Story at the conference on September 15<sup>th</sup> with Keryl Whetstone, daughter of FHP's founder Dorothy Duke; Earl Pfeiffer, FHP's Executive Director; and Jesse Ornelas, FHP's Assistant-to-the-Director.

# SUCCESS STORIES



## Show Us the Green!

BY LYDIA BELTRÁN AND MICHELLE BRAUN

The Florida Housing Coalition will feature a collection of green affordable housing from around Florida, highlighting homeownership and green rental housing as our second success story at the statewide annual conference on September 15. North Point at Ironwood, Operation



New Hope, and Jamestown Apartments and Townhomes are a few from the collection. These success stories will complement the workshops on the green track, the Green Expo, and the Florida Housing Coalition green affordable housing work funded by Wachovia.

### OPERATION NEW HOPE

Operation New Hope Community Development Corporation is a 501(c)(3) not-for-profit organization committed to the re-development of struggling communities. Their mission is to provide social and economic assistance through homeownership and jobs. Its new homeownership project: Operation New Hope, a five unit homeownership project is the first Leadership in Energy and Environmental Design (LEED) for Homes certified homeownership project located in Jacksonville's eastside.

The five homes consisting of a one story design (1,870 square feet) and a two story design (2,082 square feet) have been pre-sold. The homes cost approximately \$165,000 to construct with a purchase price of \$135,000. Cost saving alternatives were used to keep the homes affordable including the installation light-reflecting windows to cool the rooms.

*Fiberglass insulation blown into the wall cavities helps cut down on heating and cooling costs over standard insulation.*



The Green Features also include fiberglass insulation blown into the wall cavities which helps cut down on heating and cooling costs over standard insulation; drought-tolerant landscaping, so owners don't have to constantly water them, low-odor paint reducing toxins, toilet flushing options to conserve water use, Energy Star appliances, equating to a 30 to 50 percent decrease in energy needed to power the home. The home's foundational slab was made partially from recycled concrete and the job site's waste was separated, categorized, and recycled during the five-month construction period.

The project financing does not include any specific Green funding, rather it is subsidized through a variety of sources including U.S. HUD, SHIP, HOP, and the Head Start to Home Ownership (H2H) programs.

Operation New Hope is responsible for doing numerous walkthroughs with the homeowner to educate them on the "Green" features of their home. "The homeowners are all very excited about their new homes because I think they know they are getting a superior house" reports Robert Ownby, Property Specialist.

David Reed, Conservation Coordinator for the Jacksonville Electric Authority states, "While LEED-certified commer-



*The foundational slab was made partially from recycled concrete.*



*One story home.*

cial projects have picked up speed in the Jacksonville area in the past two years, notably at the University of North Florida, residential development is just beginning to bloom and LEED for homes is growing extremely rapidly. Building green is only half the battle. Policy only goes so far. It has to be a community-wide effort."

## JAMESTOWN APARTMENTS AND TOWNHOMES

The Jamestown Apartments and Townhomes, is owned and managed by the City of St. Petersburg. A combination of rehabilitation and new construction activity is resulting in 76 units including 21 units which are newly constructed. The \$4.8 million project expansion is being funded with federal, state, and local funding. The funding consists of \$2,860,000 in HOME, \$1,260,000 in SHIP, \$450,151 in CDBG, and \$250,000 in local funds. Rents for the one, two, and three bedroom units range from \$450 to \$975 for families of 60 percent of the area median income.

The project's history is profound in that it was a product of organized efforts by the Black Brothers and Sisters Association lobbying the City Commission to provide new and affordable housing in the neighborhood. The efforts



*Mayor Goliath Davis III, at the Ribbon Cutting for Jamestown Apartments and Townhomes.*

were strengthened through the involvement of James Chester Sr., a community activist, resulting in the project being dedicated and named in his honor in 1976. The Jamestown Apartments and Townhomes project was part of the 1974 Redevelopment Plan and is considered to be the cornerstone of the earliest established African American neighborhoods in St. Petersburg. Mayor Goliath Davis III, and former member of the Black Brothers and Sisters Association, takes pride in the new project and overall contributions in further stabilizing the neighborhood.

The project is unique in that it is constructed with metal roofing, large covered roof overhangs that reduce solar gain, energy efficient inate glass operable windows and provides a reduction of environmental impacts by specifying the use of highly durable building materials manufactured



*Over 30 percent of surfaces are shaded. Large covered roof overhangs that reduce solar gain. Energy efficient inate glass operable windows.*

regionally, formaldehyde-free insulation and Energy Star appliances. The project is designed with a green space including pedestrian walkways, lighting, and bicycle paths. Its sustainable site features include access to public transportation (within 1/2 mile), over 30 percent of impervious shaded surfaces, and utilization of reclaimed water for irrigation.

## NORTH POINT AT IRONWOOD

North Point at Ironwood is a new project developed by Neighborhood Housing and Development Corporation (NHDC) combining affordable and market rate homeownership opportunities in Gainesville. The project is Florida Green Building Coalition designated featuring Energy Star, Water Efficiency, Lot Choice, Health Materials, and provides Homebuyer Education.

The units are single family detached homes consisting of two, three and four bedrooms. The project includes approximately \$423,000 in HOME funds and also received \$57,949 in Pre Development Loan funds through the Florida Housing Finance Corporation. The project consists of 63 units, 15 of which have been sold to low income persons with the assistance of HOME, SHIP, and Bond funds. Homes are sold for approximately \$160,000 - \$180,000. The project development is near completion with approximately 8 - 10 homes to be completed.


Homeowners report that they are surprised with the low energy bills of \$80 - 90 per month compared to bills of \$120 or more in their previous homes. Additionally, they find that the landscaping requires low maintenance due to the incorporation of native plants in the overall landscaping design.



*Single family affordable home in North Point at Ironwood, a Florida Green Building Coalition designated development.*



*The Campbell family at home in North Point.*

NHDC strives to build healthy homes and safe environments using sustainable, efficient low maintenance materials minimizing pollution to the air, water, soil and preserving natural resources that are not easily renewable. 

**LYDIA BELTRÁN** is a Technical Advisor with the Florida Housing Coalition, with 17 years in community development. Lydia has a master's in urban planning from the University of California, Los Angeles. Lydia provides technical assistance for the Demonstration Loan Program, Predevelopment Loan Program, overall SHIP technical assistance, and she has particular expertise in green housing.

**MICHELLE BRAUN** is Wachovia's Community Relations Executive for Florida and the Carolinas. In this position, Michelle directs Wachovia's philanthropic and employee volunteerism programs, community development, Community Reinvestment Act compliance and statewide and local community partnerships. Michelle received a bachelor's degree in business administration/philosophy from Notre Dame and a master's degree in nonprofit management from The Weatherhead School of Management, Case Western Reserve University.

*Boley Centers' Safe Haven, 25 beds (SRO), with on-site staff 24/7.*



# How to Make Homeless Deals Work in Florida

The value of a housing summit, meeting, or roundtable can span from a waste of time to a watershed event. The Florida Housing Finance Corporation recently convened a roundtable in Tallahassee to address the housing needs of the homeless. This is one such meeting which can and should be a watershed event for housing the homeless in Florida.

**SHANNON NAZWORTH**  
PRESIDENT  
FLORIDA SUPPORTIVE  
HOUSING COALITION

**RAYME NUCKLES**  
PRESIDENT  
FLORIDA COALITION FOR  
THE HOMELESS

**JAIMIE ROSS**  
PRESIDENT  
FLORIDA HOUSING  
COALITION

**F**HFC is to be commended for bringing together a roundtable of representatives from state, regional, and local homeless housing providers, top staff at the FHFC, including Executive Director Steve Auger (who facilitated the meeting), the most experienced developers of housing for the homeless from around the state, one of the state's foremost credit underwriters, a national tax credit investor and syndicator, The Florida Coalition for the Homeless, the Florida Supportive Housing Coalition, and the Florida Housing Coalition. In short, FHFC seated the stakeholders and a representative from each facet of the housing industry that impacts the development of housing for the homeless to address what Florida needs to do to make homeless deals work.

The main consensus of the Roundtable was that Florida Housing needs to recognize the critical differences between the traditional real estate deal and the homeless deal. And this recognition needs to result in direction to the credit underwriters of homeless deals, so that homeless deals are not treated as conventional tax credit deals.

While seeking additional federal and local subsidies, most homeless deals in Florida need to access Florida Housing Finance Corporation's homeless SAIL set-aside, along with the accompanying 9 percent Housing Credits. Because homeless deals serve a much lower income population with related needs for services, both of these factors impact operating income and expenses, almost always leading to the need for the funding of an operating deficit reserve fund. In order to allow adequate subsidy for homeless deals, and to reflect the difference between homeless deals and traditional tax credit transactions, Florida Housing needs to direct its credit underwriters to:

1. Permit tax credits, SAIL, and/or any other subsidy to be used for operating reserves.
2. Recognize that requiring deals to cash flow after Year 15 is not realistic, and that additional subsidies will be required if the development will continue to serve a homeless population. FHFC already recognizes this concept with ELI units, which are discussed in more detail later in this article.

*Continued on page 22*

3. Focus less on potential repayment of the SAIL loan, and more on using the SAIL funds to provide the needed gap financing that makes homeless deals work.
4. Permit higher developer fees—but only for mission based developers of homeless housing that agree to return the fee to the development.
5. Sharply analyze proposed capital and operating costs, particularly when traditional tax credit developers propose to enter the homeless arena, to make sure that these relaxed credit underwriting standards are not a vehicle for subsidizing over-priced housing.<sup>1</sup>

## OPERATING RESERVES

FHFC should not limit the use of tax credits to fund operating reserves. To the contrary, FHFC should encourage the use of tax credits to fund operating reserves because tax credits are one of the only funding sources available for funding operating reserves.

At the same time, FHFC must instruct its underwriters to evaluate the proposed costs for development to ensure that neither capital nor operating expenses have been inflated. And if they see that capital and operating expenses are excessive, the underwriter must be authorized to cut those costs in underwriting.

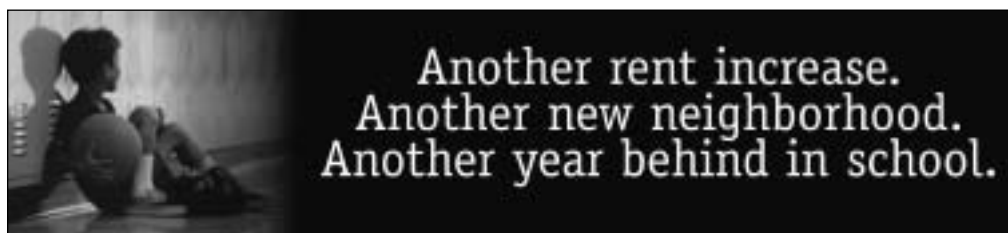
Steve Smith, Director of Enterprise Community Investment, emphasized that tax credit equity is probably the best resource for operating reserves, as it is one of the few funding sources that allows operating reserves as an allowable expense. While it is possible to misuse operating reserves as a method of covering unnecessarily high capital or operating costs, Florida Housing's credit underwriters are capable of delineating between homeless deals with reasonable costs and those that are attempting to abuse the system.

The response must not be to outlaw operating reserves; instead, it should be increased diligence to prevent abuse of reserves. The specific transaction that became a focus for this issue (Andy's Place)<sup>2</sup> had purported costs massively beyond any homeless transaction (over \$235,000 per unit for 65 efficiency units) that has been funded—even before the reserve fund of over \$50,000 per unit was factored in. The answer was to cut those costs in credit underwriting.

Therefore, Florida Housing should accept that operating reserves are necessary to support homeless developments and FHFC should not limit what is a permitted use under Housing Credit regulations.

## POST 15-YEAR FEASIBILITY

While the operating reserves can provide the necessary funds to keep a homeless deal above water for 10-15 years, no credit underwriting will show feasibility after that period. FHFC has recognized this for Extremely Low Income (ELI)



units—by removing the income targeting requirement after 15 years for those units that received extra subsidy to make them feasible. Homeless deals must be treated in a similar manner. The fairest way to handle this is to acknowledge that if other operating subsidies are not identified and the operating reserve cannot be re-capitalized, the project will revert to the tax credit rents. This is the assumption made in underwriting by syndicators in the event that any of the sources of operating subsidy or rental assistance are not available in the future. The fact is that organizations developing Homeless projects will do all they can to maintain the low rents of the projects, as that is their mission. These developers will do all they can to continue the targeting past Year 15.

## ADDITIONAL CONSIDERATIONS

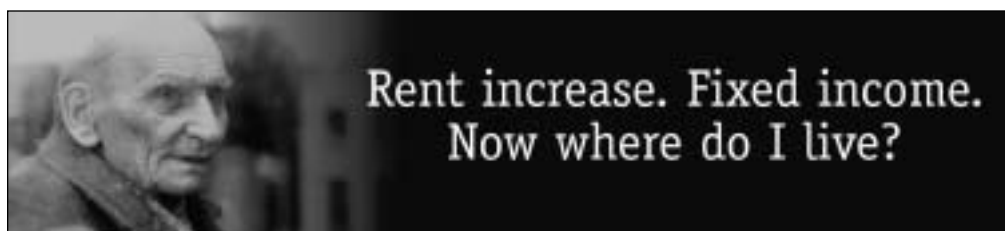
### COMPARISON OF ELI SUBSIDY TO HOMELESS SUBSIDY

Despite the fact that ELI units may serve a higher income group than homeless development, and that homeless developments also have significant additional operating costs related to services to the target population, the amount of subsidy provided for a homeless unit in Florida is less than the subsidy provided for an extremely low income unit.

It should be noted that Florida Housing pays \$85,000 per unit to “buy” ELI units for 15 years—but provides a much lower subsidy per unit for homeless transactions and requires those to serve the homeless for a much longer

period. This is despite the fact that homeless residents have lower incomes and pay lower rents than the typical ELI household.

The point? Florida Housing routinely gives for-profit developers \$85,000 per unit of additional subsidy (on top of whatever SAIL and/or Housing Credit has already been given for a unit)—simply to “pay” for the cost of reducing the operating income of that unit to a rent level affordable to residents at 25 - 40 percent of area median income for 15



years. There is no credit underwriting of this need, and the funds are converted to a grant if the developer complies with the set-aside for 15 years.

However, homeless deals undergo rigorous credit underwriting, so that FHFC can make sure that there is sufficient revenue to pay loan interest and/or fees, and repay the loan—all while serving a much lower income group than the grant given for serving ELI residents.

### HOMELESS DEALS THAT DON'T USE TAX CREDITS

If Florida Housing would make any monies set-aside for the homeless in the universal cycle, but not accessed, as a set-aside in the Special Needs RFP, these monies could be used by developers of smaller homeless projects. For the population of homeless people who have special needs, such as those with mental health needs, a homeless project may be as small as a four unit project. The developer of a small special needs homeless project is unlikely to compete in the universal cycle. Putting unused homeless set-aside monies from the universal cycle into special needs RFP would also eliminate the incentive for the larger for-profit developers to try to knock out the homeless projects from the Universal Cycle. Currently, when homeless deals fail in the Universal Cycle, those set-aside monies become available for non-Homeless developments. Having the un-used set-aside monies in the Universal Cycle flow to a Special Needs RFP will fix that problem.

## RENTAL ASSISTANCE FOR THE TEMPORARILY HOMELESS

A point made at the meeting, is that most homeless persons fall within one of two general groups. One is the chronically homeless, often those with substance abuse and mental health issues. This group must receive substantial non-housing related social services. The second group is those that are homeless because of temporary housing issues—the loss of a job, divorce, or other events has moved an individual or a family into homeless status.

This group does not need the full array of social services, and can be served as part of a rental community that is targeted to tax credit eligible residents. However, these people need some sort of rental assistance over a 1-2 year period while they reestablish themselves financially. As HOME

funds can be used for rental assistance, this would be an ideal source for this subsidy. Florida Housing should use HOME funds to provide two year rent subsidies for homeless people living in mainstream tax credit or bond developments.

### NEXT STEPS

In addition to implementing the changes outlined above, the consensus of the roundtable was that better coordination with services for residents provided by other state agencies is needed. State agencies that fund the services provided to the chronically homeless need to be part of the conversation, most especially the Department of Children and Families, and the Department of Health. Coordination of resources between various state agencies touching the lives of those served is required. This has been done in other localities. For example, in Minneapolis developers of projects for the homeless enter agreements with the equivalent of DCF that refer qualifying families to their projects and they will also ensure appropriate services are provided to those projects. This partnership ensures that each agency's resources are being utilized to the greatest benefit of the family served as well as the State's budget.



<sup>1</sup> Steve Smith from Enterprise Community Investment commented that other states permit a higher Developer Fee for homeless projects with the understanding that the increased fee will be contractually reserved to support the long-term operation of the project.

<sup>2</sup> Andy's place was a tax credit deal in Jacksonville submitted by a homeless social services provider with no experience in the development of affordable housing, and a for-profit affordable housing developer.

# Brownfield Development: An Opportunity for Affordable Housing

BY SUZI RUHL AND MARY YEARGAN

**T**he Brownfields Redevelopment Program empowers communities, local governments and other stakeholders in economic development to work together to prevent, assess, clean up and reuse Brownfields. A Brownfield site is property which may be complicated by actual or perceived environmental contamination during the expansion, redevelopment or reuse of the property. The reuse of property is an important component of sound land use policy. Productive reuse of urban land helps prevent the premature development of farmland, open space and natural areas, and reduces the public cost for installing new water, sewer and highway infrastructure. The redevelopment of Brownfield sites continues to gain momentum in Florida and across the nation.

## FINANCIAL INCENTIVES

The state financial incentives to develop Brownfield sites include the Loan Guarantee Program (up to 75 percent of loan through the Governor's Office of Tourism Trade and Economic Development for affordable housing), the Redevelopment Bonus Refund for job creation (up to \$2,500 per job through Enterprise Florida), the Sales and Use Tax Exemption on building materials for affordable housing (through the Florida Department of Revenue), and the Voluntary Cleanup Tax Credit Program (up to 75 percent of cleanup costs to a maximum of \$500,000/year for affordable housing, with an additional 25 percent available for the year when the project receives a "No Further Action" through the Florida Department of Environmental Protection). There is also FDEP funding available for site specific activities related to Phase I/II assessments and



Suzi Ruhl



Mary Yeargan

*A Brownfields designation can provide liability protection for the owner, developer, and lenders who have only a fiduciary interest in the property, and for governments, charities and non-profits.*

source removals (up to \$400,000/site). The loan guarantee and the voluntary cleanup tax credit programs both have increased benefits for affordable housing. Additionally, other incentives can be leveraged through the Brownfields program, such as TIF, DOT, EDA, EDI, and CDBG.

There are also federal grant programs for assessment and cleanup through the US Environmental Protection Agency. An example of an affordable housing project utilizing both the state and federal Brownfield incentives is in the Dansville community of Pinellas County. The total Brownfield funding for the project is estimated to be as much as \$1.6 million. This project and others, such as the Westshore Alliance CWHIP project, will provide case studies for a panel of experts to explain the benefits and challenges of using Brownfield sites for Affordable Housing at the Florida Housing Coalition Statewide Affordable Housing Conference workshop on September 16<sup>th</sup> in Orlando.

For additional information visit the following websites: Florida Dept of Environmental Protection ([www.dep.state.fl.us/mainpage/programs/brownfields.htm](http://www.dep.state.fl.us/mainpage/programs/brownfields.htm))

US EPA

([www.epa.gov/brownfields/index.html](http://www.epa.gov/brownfields/index.html))

Florida Brownfields Association

([www.floridabrownfields.org](http://www.floridabrownfields.org))



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**MARY E. YEARGAN, PG,** is the Brownfields Coordinator for the Environmental Protection Commission of Hillsborough County.





# Leveling the Playing Field for Small Scale Developers and Non-Profits

BY MARK HENDRICKSON

**H**aving a dedicated revenue source for affordable housing has drawn market rate developers to expand their businesses to include and even be dominated by the development of affordable product. Having large scale experienced developers in the business of delivering affordable housing is an important asset for Florida. But when the open door for large scale, profit-motivated developers slams shut in the face of smaller scale developers and mission-based nonprofits, Florida is placed in a vulnerable position—one that compromises the interests of the public.



paper, including (1) effective elimination of the lottery by creating scoring items (including leveraging) which will eliminate ties, and (2) by elimination of shell applications.

## EVOLUTION OF SYSTEM: BEST OF OLD AND NEW SYSTEMS

This article is not trying to present an argument that the system in place prior to the series of changes that lead to the current crisis was perfect. It was not. It was flawed in that it encouraged cross appeals related to irrelevant or minor issues that had no bearing on the public purpose of a proposed development. The lack of cures for any issue also did not serve any valid public purpose.

**The solution is a new system that combines the best of the old and new approaches. Restoration of meaningful scoring items, elimination of wholesale cures without penalty, but retention of cures for minor or irrelevant errors will create a truly level playing field that funds applicants—regardless of their size or type—based upon valid public purpose criteria, without a return to wholesale abuse of cross appeals.**

**WHY?** Because when profit-motivated housing developers find better ways to make a profit, they logically leave the affordable housing industry. And if the system continues to provide little welcome for the small developers and the mission-based nonprofit developers they are unable to find within affordable housing a viable line of business. The human infrastructure needed to run an effective nonprofit will justifiably find other work. Ultimately, the delivery system fails, but not before public funds are wasted in an effort to keep the for-profit sector engaged. Florida is on the road to that failure now.

## EXECUTIVE SUMMARY

The current system of allocating Housing Credits and SAIL by the Florida Housing Finance Corporation is broken. This is not because of FHFC Board or staff intent—instead it is the result of a series of seemingly rational decisions that, taken in their entirety, have resulted in a system that is skewed in favor of a few large developers. The system can be fixed by adopting the series of changes detailed in this

## BACKGROUND

A decade ago, the allocation system had a wide variety of point driven criteria, and ties between applicants were rare. An applicant could control their own destiny in the process by turning in a complete application that achieved the public policy goals of the state as reflected in the scoring system.

*Continued on page 26*

Important scoring factors that drove the system were leveraging of public funds, local government contributions, and turning in a complete application. Applicants that used the least amount of public subsidy per set-aside unit produced and received significant support from the local government where the development was located were most often winners. A small for-profit or not-for-profit developer could thrive within the system because they could focus upon their single (or few) applications and achieve a score high enough to win. Applicants could not flood the system with mediocre applications and win because of the volume of applications submitted.

An important part of scoring was to minimize the amount of items classified as “threshold” (requiring rejection if an error was made), and instead have most items as point scoring (where a minor mistake on one part of an application would lead only to a slight point reduction which could be offset by high scores on items such as leveraging).

With the best of intentions, certain items were reclassified as “threshold”—setting off a plethora of cross appeals designed to eliminate otherwise good applications. The aversion to the overwhelming number of cross appeals lead FHFC to attempt to change the system to make cross appeals less appealing (unlimited cures without penalty). Unfortunately, this well intentioned goal actually generated a system that tipped the playing field advantage to large scale for-profit developers who could overwhelm the system with massive amounts of applications.

## THE PROBLEMS AND THEIR GENESIS

The most significant changes to the application process were the “dumbing down” of the application so that virtually every applicant would end up with the same score and the introduction of virtually unlimited cures.


FHFC was lobbied with the concept that rewarding leveraging caused a “race to the bottom”, wherein applications with unrealistically low amounts of subsidies became winners—later causing a return of the Housing Credits or SAIL because the deal would not work. While a few developments did turn back their allocations (primarily

during the period where land prices rapidly escalated earlier this decade), this can be more likely traced to a period where developers were able to flip the land for a significant profit (why go through the headache and financial risk of building and operating a rent restricted property for an extended period when a developer could make \$1-2 million by simply selling the land?). This is not to say that no developer ever underestimated their needed subsidy and returned an allocation—but it was not a major problem.


FHFC eliminated leveraging either altogether or as a meaningful scoring item. This resulted in a loss of any competitive controls on subsidy requests—meaning that there was no longer any self-regulation by developers. To the contrary, many deals seemed to be inflating costs to justify excess subsidy. Where leveraging had been the ultimate tie-breaker, it became a meaningless or non-existent scoring item. This in itself was the key to creating the “everyone ties” system that now prevails.

Simultaneously, an argument was made that the contribution levels needed for maximizing a score on local government contributions were too high, and drove deals away from areas that needed housing but where the local government did not want affordable housing. While the argument related to contribution levels was legitimate, with the a few isolated locations, the argument related to local

governments utilizing this item to keep affordable housing out of their jurisdiction was not the case. The system was changed so that minimal local contributions that virtually every applicant could receive resulted in maximum points. Additionally, local contribution was eliminated entirely as a scoring item for Bond-SAIL applications. More importantly, the application eliminated the requirement for applicants to provide documentation of the contribution other than a signed form from a local government. As local governments are not experts on the system, this opened up the system to abuse, wherein the claimed contribution is not what is really being given. This was adopted because local contributions were the source of many cross appeals—and they often should have been.



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At the same time, the aversion to cross appeals made an argument that unlimited cures were needed—to avoid litigation and allow “the best” applicants to prevail. The argument was made and sold that minor application errors were driving who won rather than rational public purpose scoring. This was only true because the two most meaningful scoring items—leveraging and local government contribution—were effectively eliminated from the process. It is ironic that the advantage gained from cross appeals was only possible because of the “everyone ties” system and the large number of threshold scoring items.

Most ironic was the argument that an application driven system was unfair to small and non-profit developers—who it was argued could not afford the assistance necessary to fill out an application correctly. The irony was that the changes made to “fix” this problem directly resulted in a new system that made it almost impossible for the small developer to win in the general competition for allocation.

The final change made to the system was the addition of a lottery, wherein ties were broken by the random drawing of numbers. With meaningful scoring items, a lottery would rarely (if ever) determine who receives allocation. However, with the combination of changes noted above, it became the main determinant of who receives FHFC funding.

Of course, the more applications submitted by a developer, the more lottery numbers that developer receives. With virtually unlimited cures, a large developer can submit “shell” applications, where much of the application is not even completed, but can later be cured. This allows the large developers to overwhelm the system with shell applications, pull a lottery number, and then cure only the applications with potential winning numbers. The “real” application deadline became the cure date—and developers had full knowledge of everyone else’s application and where they stood in the funding process before that time.

Therefore, a large developer might pull 20-40 lottery numbers, and a small developer 1-3. Some non-profits only

do one deal every few years, putting them at an even more extreme disadvantage.

An ancillary problem that developed with this system was the push for an increase in various set-asides, which became the only way small developers could compete. When you face a 50-1 competitive disadvantage in the general competition, the only solution within the flawed system is to carve out a small piece of the pie that only a few developers wanted.

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TO BE  
SUBMITTED.**

### THE BROKEN SYSTEM

By 2008, the system had become irretrievably broken. Developers that turn in massive amounts of shell applications are given great competitive advantage, and the small developer is left with little chance of winning an allocation unless they literally hit the lottery against great odds. Turning in complete applications has no meaning, and developers cannot control their own destiny by planning efficient transactions that produce more units for less public money.

In 2008 an additional abuse of the system began—“carpet-bombing” the system with applications designed to give one developer effective control of the SAUL system. Combined with the ability to withdraw applications before scoring is complete, this can give a developer de facto control over the process—wherein they determine what will be funded rather than FHFC public policy. Like the other problems, this gaming of the system is only possible because the unlimited cure available to applicants allows shell

applications to be submitted.

Some of the large developers still argue that leveraging will discourage “hard to do” deals, or deals from higher cost counties. The argument related to county location is spurious, as allocation is distributed by a per county unit system (SAUL), where the competition is really between deals within any given county. The hard to do deal argument can best be addressed by the legitimate use of set-asides, such as the homeless set-aside, the requirement for funding of a high-rise every year, or some type of urban redevelopment set-aside—not by eliminating leveraging as the basic method of breaking ties.

*Continued on page 28*

THE NEEDED REFORMS

1. Add leveraging as a meaningful scoring item. This was already done for SAIL in the 2008 cycle, and preliminary analysis shows that more than twice as many set-aside units will be produced per SAIL dollar as compared to 2007. Leveraging scoring, where the allocation per set-aside unit is the measurement, will break ties in virtually all circumstances. This works simply by giving the application with the best leveraging full points, the applicant with the worst no points, and everyone else in between pro rata points. Additionally, only like-developments (new construction, rehabilitation) should be compared for leveraging purposes). To avoid gaming of this system, subsidy requests that are outside of a mathematically calculated range should be eliminated from this calculation—to keep a developer from submitting a request solely designed to compress the difference in scores between the “real” applications.

2. Eliminate shell applications by removing the penalty free ability for unlimited cures. Cures of minor errors such as numerical transpositions, failure to put a zip code on a form that is signed and otherwise identifies a property, and other such errors can and should still be permitted without penalty. However, curing substantive errors such as missing forms, unsigned forms, and meaningful mistakes (leaving exhibits to a document out of the submission, for example) should only be allowed with point penalties.



THE LOTTERY WILL EFFECTIVELY BE ELIMINATED AS THE DRIVING FACTOR IN ALLOCATION SIMPLY BY ADDING BACK SCORING ITEMS THAT PREVENT TIES AND ELIMINATION OF SHELL APPLICATIONS.

- 3. Threshold items should be highly limited—so that errors do not lead to rejection of applications.
- 4. The lottery will effectively be eliminated as the driving factor in allocation simply by adding back scoring items that prevent ties and elimination of shell applications. As an aside, if all other factors between two deals are equal, what is better public policy—giving the allocation to the applicant who fills out their application completely or the one who gains a competitive advantage by “buying” lottery numbers?
- 5. Backup material “proving up” the local contribution should be added back to the application. At present, contribution points are given solely based upon a local government official signing a form, without really showing any documentation to prove that the contribution is real. While the contribution level required for receiving maximum points may remain low, the application system should make sure that the contribution is real.

With these reforms, small developers, both for-profit, and not-for-profit, can control their own destiny within a fair system with a truly level playing field.



**MARK HENDRICKSON**, president of *The Hendrickson Company*, is the immediate past Chair and serves as an Executive Committee member for the Florida Housing Coalition. He served as Executive Director of the Florida Housing Finance Agency from its inception in 1981 to 1994. As its first Chief Executive Officer, he led the way in creation of the Sadowski Act.

The vision of the Florida Housing Coalition includes that “at least one active, viable community-based organization plays an important role in delivering affordable housing and related services in each community”. To that end, the Florida Housing Coalition Board of Directors has been undertaking a study of policy changes needed to increase the capacity of



nonprofit developers throughout the state. The Coalition will have a workshop on September 16<sup>th</sup> “Designing a New Environment for Nonprofit Developers” at the statewide annual conference which addresses these issues as well as models that work in other states to support the development of small and large scale nonprofits.



*Lil' Abner mobile home park in Miami Dade provides housing for approximately 900 extremely low income families, living under the threat of losing their homes.*

# Preservation Strategies for Mobile Home Parks: Lessons from Miami-Dade County

BY CHUCK ELSESSER

**T**he Shimberg Center at the University of Florida calculated that in 2000 there were over 42,000 mobile homes in parks in Miami-Dade and Broward Counties. While the hyperinflation of real estate prices in South Florida during the past five years took its toll on all forms of affordable housing, perhaps no type of housing has been as threatened as these mobile homes.

A recent study by the Planning Department in Miami-Dade County found that since 2000 the number of mobile home residents in Miami-Dade County has decreased by more than 3,000 people. The number of occupied mobile homes had decreased by over 7 percent. Virtually all of these “lost” mobile homes represented unsubsidized affordable housing for some of the County’s most vulnerable residents. The average income for all mobile home owners and renters was just slightly over 50 percent of the area median income. Mobile home renters’ income was significantly lower. Perhaps the most important finding was that the average rent paid by mobile home renters was approximately \$630 a month. This is significantly less than the \$801 rent



charged in a highly subsidized two bedroom Low Income Housing Tax Credit apartment targeted to the same income level.

The Miami-Dade planning study goes on to paint a grim picture for the future of these mobile home parks.

The challenge we are facing is the *elimination* of these housing units that are the only shelter many of the County residents can afford...Existing supply of affordable and workforce units are not adequate to meet the needs of the county residents...Depleting this limited short supply of housing affordable to them would only exacerbate our existing affordable housing crisis.

This is the prediction for all high cost counties. The current reality is that, without intervention counties like Miami-Dade will have no lower income mobile home parks in the not too distant future. This will result in the loss of housing for literally tens of thousands of families that are unable to afford replacement housing and for which replacement housing does not exist.

*Continued on page 30*

However, despite this impending affordable housing catastrophe, there has been very little consideration of programs to preserve this housing. Rather local governments, at best, are considering various proposals to mitigate the harm to the individual families, e.g., providing relocation expenses, first and last months rent or several months of subsidy. Unfortunately, this mitigation is simply pushing off the tragedy of homelessness into the future. Ultimately, these families, who cannot afford even highly subsidized “affordable” rents, will expend their limited relocation subsidies and be evicted.



*The Florida Housing Coalition facilitated a training for the residents of Lil' Abner, bringing together, community organizer, Serena Pérez (pictured above) and FMO cooperative conversion services (Jen Tobin, pictured above) to explain the benefits of resident owned communities and the mechanics of converting an investor owned community into a resident owned community.*

Given the significant cost of replacing even one of these affordable mobile home units with an equally affordable subsidized unit, one would expect that state and local governments would be developing aggressive preservation strategies. But what would a real preservation strategy - a no net loss strategy - look like. Here might be some of the elements:

**1. Local governments must ensure that adequate sites are zoned exclusively for mobile homes, and, at a minimum, that includes those parks that are currently in use as mobile home parks.** Miami-Dade County, for example, has absolutely no land zoned such that a mobile home park can be built without a special use permit. Two thirds of the existing mobile home parks can redevelop without any change in zoning.

**2. Local governments must not approve zoning changes which will result in the closing of mobile home parks.** There is nothing that prevents a local

government from considering the true costs to the community in deciding on a discretionary land use change. In addition to the comprehensive planning requirements, Florida law demands that any local government action which results in the closing of a mobile home park must document that there is adequate relocation resources - not first and last months rent but adequate replacement housing. Such a docu-

mentation is impossible. Indeed, the needy families simply add to the tens of thousands on local government waiting lists for vacant subsidized housing.

**3. Resident or Nonprofit ownership.** Ultimately, the only true preservation model is to transfer ownership into the hands of either the mobile home owners themselves or a nonprofit entity in a limited equity cooperative or community land trust model - preserving the parks and their affordability. - there must be a comprehensive and realistic calculation of the cost of purchase versus the cost of replacement. Ultimately, it is state and local government that bear the cost of homeless or near homeless families. 🏠

*Charles Elsesser is an attorney with Florida Legal Services, specializing in affordable housing litigation and policy advocacy. Chuck serves on the board of the National Low-Income Housing Coalition and the Board of Directors for the Florida Housing Coalition, he is also Vice-Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.*



**A workshop focused on the preservation of mobile home parks for the residents who live there will be held at the Florida Housing Coalition’s Annual Statewide Conference on September 16<sup>th</sup>. We will address land use and legal issues specific to Florida as well as nonprofit ownership and options for resident owned communities. Attorney Mitchell Chester, and Paul Bradley, President of ROC USA are two of the featured presenters.**



# HOP Update: Non-profit Input Made Meaningful Improvement

BY AIDA ANDUJAR, FLORIDA HOUSING COALITION



The Homeownership Pool Program more commonly known as HOP, provides a pool of funds where members, including non-profit organizations, for profits, cities, counties and USDA rural development can make reservations for individual homeownership projects. One of the biggest challenges being faced by non profit organizations' participating in the HOP program was the fact that funds were depleted from the pool before any reservation could be made. In an effort to quantify this problem and other challenges faced by non profit organizations participating this program, the Florida Housing Coalition surveyed non profit organizations participating in the HOP program.

The biggest concern for non profit developers under this program was the requirement that the foundation on a home must be poured before funds can be reserved. One non-profit organization stated that in order to pick up a building permit they must invest \$16,000 to \$20,000. It will cost an additional \$20,000 to \$30,000 to put the foundation in place. That is a huge initial investment for many non-profit organizations.

Once this investment is made there was no guarantee that the project would be funded. Those organizations with large financial resources could reserve up to 10 projects in one day. Funds were wiped out of the pool within days. Smaller non-profits with fewer resources would make the initial investment only to find out that there were no funds left in the pool when they were ready to make a reservation.

## SURVEY RESULTS

The survey had a list of seven questions directed to non profit HOP members. The survey was mailed to 24 non-profits, of which 58 percent or 14 members responded. Of the 14 respondents 10 are Community Housing Development Organizations (CHDOs). For the funds that became available in October 2007, 8 of the 14 agencies were able to make 42 reservations of HOP funds. Twenty three of these reservations were made by one organization reserving funds from the Self-Help set aside.

Of the 14 respondents, eight had begun construction on a total of 43 units when HOP funds were depleted. None of the units that had started construction under the HOP program will be purchased by income eligible buyers, with the exception of one non-profit organization that had received local funds to build additional non-HOP units. In order to complete the HOP units, this organization moved funds targeted for purchase assistance to the HOP program. This in turn reduced the overall number of units they could produce.

The opportunity for CHDOs to reserve HOP funds is a meaningful improvement to the HOP program. Now the FHFC and housing advocates around the state need success in lifting the cap off Sadowski funding so that this oversubscribed program can be funded at a level that responds to the need.

## CHANGES TO HOP MADE BY FHFC

The results of the survey and the comments provided by the nonprofit organizations were made available to the Florida Housing Finance Corporation. In response to the concerns voiced by these organizations, FHFC recently amended the HOP rule, chapter 67-57 of the Florida Administrative Code and will now allow members that have been certified as a CHDO to make reservations in the name of the homebuyer prior to starting construction on a new home. This one change will have a huge impact on the ability of non profits to compete and complete affordable housing projects

under the HOP program.

For additional information on the most recent changes to the rule please visit [www.floridahousing.org/FH-ImageWebDocs/HOP/RuleHearing\\_5-7-08.pdf](http://www.floridahousing.org/FH-ImageWebDocs/HOP/RuleHearing_5-7-08.pdf).





# SHIP CLIPS

STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM

## Sub Recipient and Sponsor Distinction

A recent revision to SHIP Rule 67-37 requires SHIP Administrators to list all sub-recipients or consultants and report the administrative expenditures of these sub-recipients separately from the local government's administration. The rule defines a "Sub Recipient" as a person or non-state organization contracted by a SHIP eligible local government to provide administration of any portion of the SHIP program. The process of awarding funds therefore, requires housing administrators to understand the difference between a SHIP Sponsor and a Sub Recipient.

- A Sponsor receives a SHIP award under a specific strategy to produce affordable units. The Sponsor is developing affordable units whether they are newly constructed or rehabilitated single family homes or rental units. For example, a nonprofit developer may apply for funding from a Rental Development Strategy in the SHIP local housing assistance plan. The Strategy describes the sponsor selection method used by the local government to award funds. If this Sponsor receives a SHIP award, they agree to build several SHIP-funded rental units possibly in conjunction with Tax Credits or other Florida Housing Finance Corporation programs.
- By contrast, a Sub-recipient administers some portion of the local SHIP program and is paid a SHIP service delivery fee for this activity. The Sub Recipient negotiates a contract with the local jurisdiction to administer some part of the local SHIP program; such as Purchase Assistance or Housing Counseling. For this example, a nonprofit organization may fully implement a SHIP Purchase Assistance Strategy. The sub-recipient's staff may locate

buyers, determine their SHIP eligibility and work with them through the day of purchase.

Florida Housing Finance Corporation has developed some additions to the 2008 Annual Report Form that will assist SHIP Administrators with reporting their Sub Recipient information, foreclosure rates, and recaptured and program income events as required by 67-37.008.

- (3) *In addition to the Annual Report requirements outlined in Section 420.9075(10), F.S., local governments shall submit information as required on the annual report for:*
- (a) Foreclosure rates on SHIP loans.*
  - (b) Administrative expenditures separately stated for the costs of the local government and any Sub Recipients administering the program.*
  - (c) Total recaptured funds and program income separately stated for event type (foreclosure, sale of property, refinance).*
  - (d) A list of Sub Recipients and consultants that will administer any portion of the SHIP program. The list shall include name of person or organization, business type, a description of the strategies and responsibilities for each sub-recipient or consultant.*

The above report requirements are found on Form 4, Tabs 9, 10, 11a and 11b at the following FHFC site:

**[www.floridahousing.org/Home/HousingPartners/LocalGovernments/FormsAndDisburse.htm](http://www.floridahousing.org/Home/HousingPartners/LocalGovernments/FormsAndDisburse.htm)**

Anyone having additional questions regarding this or any other SHIP topic may contact the Florida Housing Coalition at 1-800-677-4548.

## Frequently Asked SHIP Questions

**Q:** *Our County has a small amount of HHRP funds remaining and the expenditure deadline is June 30, 2008; what should we do with these funds?*

**A:** Determine if the funds remaining are Program Income or Recaptured funds

rather than the HHRP Allocation you received from Florida Housing Finance Corporation. If you decide that the remaining funds are Program Income or Recaptured Funds, then according to Emergency Rule 67ER06-45 (10), you may transfer them into your Local Housing Assistance Trust Fund at the termination of the HHR Program.

However, if you find that the remaining funds are from the initial HHR program allocation, then 67ER06-45 (2) allows for a one year extension which requires approval by Florida Housing Finance Corporation HHR Program Administrator as set forth in subparagraph 67-37.005(6)(f)2, F.A.C. which states: Exceptions to this time



*Have you got a question about the SHIP program? Free telephone technical assistance is available to help you successfully implement your SHIP funded work. Call the Florida Housing Coalition's SHIP telephone line at (800) 677-4548.*



BY EVELYN RUSCIOLELLI

frame must be approved by Florida Housing Finance Corporation SHIP Program Administrator or a majority vote of the Review Committee on a case-by-case basis. Exceptions will only be granted for good cause. Examples of good cause are natural disasters, requirements of other State agencies, adverse market conditions, and unavoidable development delay.

When requesting an extension there are several questions you should consider and include within your request –

- Why were these funds not expended within the three year deadline (good cause)? Was there a lack of contractors, materials, flooding or other hurricane related delays?
- Have changes been made to the program or strategies to address these issues? If a strategy has not been working, have you redesigned it, replaced it, or reallocated funds to a strategy known to be successful?
- What is the likelihood that these funds will be expended within the one year extension? If you are granted an extension, do you believe the funds will be completely expended and the units occupied within the one year?

The Florida Housing Coalition Technical Advisors may be able to assist by reviewing the program and offer insight, ideas or solutions to meet your set-aside requirements and expenditure deadline. If we can be of assistance, please call our toll free number at **1-800-677-4548**.

**Q:** *There are times when I need to add a Doctor's letter to a SHIP file. For instance, our*

*SHIP Rehabilitation strategy gives priority assistance to applicants that have a disabled household member so we obtain a letter from the applicant's doctor for certification. Also, when a woman in the applicant's household is pregnant, I obtain a letter from her doctor to document the unborn child as a household member. Is maintaining this information in a SHIP file, which is covered under Florida's open record law, a violation of the privacy requirements of HIPAA?*

**A:** HIPAA is the Health Insurance Portability and Accountability Act of 1996. The HIPAA Privacy Rule creates national standards to protect individuals' medical records and other personal health information. HIPAA includes provisions designed to encourage electronic transactions and also requires new safeguards to protect the security and confidentiality of health information. Health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions (e.g., enrollment, billing and eligibility verification) electronically are considered covered entities and are required to comply with the provisions of the Privacy Rule. See [www.hhs.gov/news/facts/privacy2007.html](http://www.hhs.gov/news/facts/privacy2007.html) for more information.

HIPAA does not prohibit housing administrators from requesting and receiving an applicant's medical information, provided proper authorization is given by the applicant. According to the health and human services' web site ([www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa)),

*A covered entity is permitted to use or disclose protected health information pursuant to any Authorization that meets the Privacy Rule's requirements at 45 CFR 164.508. The Privacy Rule requires that an Authorization contain certain core elements and statements, but does not specify who may draft an Authorization (i.e., it could be drafted by any entity) or dictate any particular format for an Authorization. Thus, a covered entity may disclose protected health information as specified in a valid Authorization that has been created by another covered entity or a third party, such as an insurance company or researcher.*

Florida has a very broad open records law. Although SHIP housing files are not exempt from this law it does provide an exemption for medical history records and other certain information that may be included in your housing assistance files. Section (3)(bb)1 of Chapter 119 of the Florida Statutes reads: "Medical history records, bank account numbers, credit card numbers, telephone numbers, and information related to health or property insurance furnished by an individual to any agency pursuant to federal, state, or local housing assistance programs are confidential and exempt."

Prior to requesting medical history records, housing administrators need to ensure that their Authorization for Release of Information and their file maintenance procedures meet all HIPAA requirements. The HIPAA rules are extremely complex. We strongly recommended that you check with your legal counsel to ensure compliance.





## Board Member Chuck Elsesser to receive National Award

National Legal Aid and Defender Organization (NLADO) has chosen Charles (Chuck) Elsesser to receive one of the two 2008 Kutak-Dodds Prizes. This prestigious award annually honors the accomplishments of civil legal aid attorneys, public defenders, assigned counsel or public interest lawyers who, through the practice of law, are contributing in a significant way to the enhancement of human dignity and quality of life of those persons unable to afford legal representation. The Prizes are intended to spotlight the work of practicing attorneys who are engaged for most, if not all, of their time in the actual practice of civil or criminal law that reinforces the principle and reality of justice for all under the law. Each prize carries a cash award of \$10,000.



## LISA HOFFMEYER JOINS FLORIDA HOUSING COALITION STAFF

**Lisa Hoffmeyer** began her affordable housing career originating mortgage loans for low income first time buyers and providing homebuyer education. Since then, she has worked for both city and county government administering HOME and SHIP contracts for down payment assistance, multifamily rental development and single family construction. Most recently she served as Chief Operating Officer for Broward Housing



Solutions, a non profit where she successfully leveraged public and private funds to develop scattered site special needs housing for the mentally ill and youth aging out of foster care. Lisa has served on the Boards of BAND (Broward Alliance for Neighborhood Development), the Broward Housing and Community Development Task Force and also assisted in the creation of the local 10 year Plan to End Homelessness. She has a bachelor's degree from Florida Atlantic University.

## Board Member Bob Ansley elected to the AICP College of Fellows



Bob Ansley, AICP, is one of 49 distinguished planners that were elected to the College of Fellows of the American Institute of Certified Planners, Class of 2008. Election to the College of Fellows is one of the highest honors that AICP bestows upon a member. It recognizes the Fellow as a model planner who has achieved professional excellence and significantly contributed to planning and society. Bob was inducted into the College of Fellows at the APA National Planning Conference in Las Vegas.

## Board Chair and Vice Chair appointed to The Affordable Housing Study Commission

**Jeff Bagwell**, Chair of the Coalition, and **Annetta Jenkins**, Vice Chair, have been appointed to The Affordable Housing Study Commission. Each year the Commission makes public policy recommendations to the Governor



and Legislature to stimulate community development and revitalization to promote the production, preservation,



and maintenance of safe, decent affordable housing for all Floridians. The Commission annually chooses an affordable housing related topic and prepares a report to the Governor and Legislature as a means of fulfilling its mission.

Florida Housing Coalition Executive Director, Michael Davis, also serves on the AHSC.

## Steve Kropp joins Florida Housing Coalition Board

**Steve Kropp** was born in Bradenton, Fla., and has remained a life long resident of the state. After obtaining a degree in finance at Florida State University, he spent time with Barnett Bank as a Real Estate Lending Officer. In 1990, Steve became the first person to receive concurrent master's degrees in finance and real estate valuation from the University of Florida.

In the early 1990's he founded Kropp Real Estate Advisory after obtaining his MAI and CCIM designations. For the past 10 years, Steve has served as the President of LCA Development, which provided approximately 4,000 affordable units to Central Florida.



The FLORIDA HOUSING COALITION, a statewide non-profit, is the State of Florida's affordable housing training and technical assistance provider. The Florida Housing Coalition is commonly acknowledged as the foremost authority in Florida on affordable housing, community development and related issues, as a clearinghouse for information, a provider of training and technical assistance, and an advocate at the state and national levels for people in need of affordable housing.

**For more information contact us at [info@flhousing.org](mailto:info@flhousing.org) or 850/878/4219.**

**For free technical assistance please call 1/800/677/4548.**



# MEMBERSHIP APPLICATION

## PARTNERS FOR BETTER HOUSING MEMBERSHIP

Partners for Better Housing Membership is for those who wish to support the work of the Florida Housing Coalition by making a tax deductible donation of \$500 or more. Partners for Better Housing members receive subscriptions to *Housing News Network*, free job vacancy posting service on the Coalition's Web site and unlimited membership rates for registration at the conference. Partners at the Patron Level or higher receive complimentary conference registrations (as indicated below). Partners also receive recognition at the conference, in all conference-related publications, the Coalition's Web site and in each triennial issue of *Housing News Network*.

- |                                   |                             |                                  |                      |
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| <input type="checkbox"/> \$20,000 | Platinum Sponsor (20 comps) | <input type="checkbox"/> \$2,500 | Co-Sponsor (3 comps) |
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## BASIC MEMBERSHIP

Basic membership is for those who wish to subscribe to *Housing News Network*, post job vacancy announcements free of charge on the Coalition's Web site and receive membership rate registrations at the annual conference. An individual member receives one subscription and one member rate registration. Organizational members receive up to five subscriptions and five member rate registrations. All memberships are on a unified membership cycle, memberships are due on August 1<sup>st</sup> and expire on July 31<sup>st</sup> of each year. (Please indicate additional names, addresses and phone numbers on an attached sheet.) Each membership is entitled to be represented by one voting member at the coalition's annual meeting as designated below.

- |                         |  |
|-------------------------|--|
| Student                 | <input type="checkbox"/> \$25                                  |
| Individual              | <input type="checkbox"/> \$75 (payment by personal check only) |
| Nonprofit Organizations | <input type="checkbox"/> \$150                                 |
| Government Agencies     | <input type="checkbox"/> \$200                                 |
| Private Organizations   | <input type="checkbox"/> \$250                                 |

Authorized Representative (please print or type):

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Organization: \_\_\_\_\_

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Make check payable to:

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