



The Role of Citizen Participation in Effective Advocacy: *A housing law is enacted, now what?*

BY JAIMIE ROSS

A surprising number of housing laws or initiatives virtually die on the vine from failure to implement at the local level. Many times this is because local elected officials and local residents are either unaware of the new law or unsure of how a new initiative should best be implemented. Effective advocacy involves more than getting laws enacted, it requires dissemination of information and follow-through at the local level; work that is best done through citizen participation. The “citizen” is any community member- it could be a nonprofit or for profit developer, a business owner, housing or community activist, or simply a concerned resident.



This article will focus on a few of the newly created or enhanced initiatives in the omnibus housing bill (HB 1363), such as the creation of the surplus lands initiative, changes to the DRI statute, and ad valorem tax relief for low income elders to point out areas where information, citizen participation/local housing advocacy can have a positive impact on the efficacy of these new laws and initiatives. The changes to the SHIP statute are covered in SHIP clips on page 28.

DISPOSITION OF COUNTY AND MUNICIPAL PROPERTY FOR AFFORDABLE HOUSING

Beginning in July 2007, and every three years thereafter, each county and municipality in Florida must prepare an inventory list of all the real property it owns “appropriate” for use as affordable housing. (See respectively, Sections 125.379 and 166.0451, Florida Statutes, 2006). The inventory list must go to a public hearing and it may

be revised at the conclusion of the public hearing. Following the public hearing, the governing body must adopt a resolution that includes the inventory list.

BUT WHAT ARE PROPERTIES “APPROPRIATE” FOR AFFORDABLE HOUSING?

The compilation of a list of land owned by the government that is “appropriate” for affordable housing creates an important opportunity for citizen participation in the process. With property appraisal data so readily available on line and the large number of Realtors who are both affordable housing advocates and knowledgeable about local inventory, you may find yourself in the position to ask why a certain parcel is not on the list. The language of the statute “may be revised at the conclusion of the public hearing” evidences an expectation that the list initially submitted for review at the public hearing may not be the list that is ultimately adopted by resolution. But if no one questions the list or brings information about what properties should be added to the list, the likely outcome is that whatever is originally submitted will be what is ultimately approved.

WHEN DO THOSE APPROPRIATE PROPERTIES BECOME AVAILABLE FOR AFFORDABLE HOUSING?

And what will the resolution state? Is it going to provide that the inventory of properties will be donated or sold within 30 days, 60 days—12 months? The statute does not prescribe the time – that means the process will be determined by the county or municipality—another opportunity for citizen participation/advocacy at the local level.

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WHICH RESIDENTS WILL BENEFIT FROM THE AFFORDABLE HOUSING CREATED FROM THIS INITIATIVE?

Once the list is adopted by the county or municipality it may be:

- (1) offered for sale and the proceeds used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing, or
- (2) sold with a restriction that requires the development of the property as permanent affordable housing, or
- (3) donated to a nonprofit housing organization for the construction of permanent affordable housing.

Alternatively, the county or municipality may otherwise make the property available for use for the production and preservation of permanent affordable housing. (see sections 125.379 (2) and 166.0451(2), Florida Statutes, 2006)

The term “affordable housing” includes income groups from extremely low income through moderate income, as defined in 420.0004(3), F.S. There is no set-aside prescription such as found in the SHIP program with a 30% set aside for very low income and another 30% for low income. This provides another opportunity for housing advocates in regard to what income groups will benefit from the housing created from the surplus lands initiative.

EMPLOYER ASSISTED HOUSING FOR SCHOOL DISTRICTS AND SPECIAL DISTRICTS

Complementary provisions to the county and municipal disposition of property for affordable housing provide authorization to all special districts, created under a special act or general law, including all independent districts, community development districts, fire control districts, and water districts to provide housing and housing assistance for its employed personnel whose total annual household income

The surplus lands initiative in HB 1363 also provides statutory authority for counties and municipalities to request that state owned land within its jurisdiction be declared surplus. Surplus lands that are conveyed to a local government for affordable housing shall be disposed of by the local government under the same process used for surplus lands owned by the local government. (See section 253.0341, Florida Statutes, 2006). This presents another opportunity for local advocates to be on the look out for properties that might be used for affordable housing or sold so that the proceeds could be used for affordable housing.

does not exceed 140% of the area median income, adjusted for family size. See Sections 189.4155; 191.006; and 1001.43(12), Florida Statutes, 2006.

It is important not to take for granted that all of these special districts know about the opportunity they now have for using their land and other financial resources for housing their employees. It is probably safe to assume that people in the business of providing these government infrastructure services have little understanding about what affordable housing is, how it is developed, and what financial programs are available to assist their employees.

DEVELOPMENTS OF REGIONAL IMPACT

The incentives to create “workforce” housing in the DRI statute (increasing DRI threshold and substantial deviation threshold in exchange for the creation of workforce housing) provide that the affordable workforce housing is less than 120% of area median income or, if located in a high cost county, less than 140% of area median income. See section 380.06 (19)(b)(10). Because the statute does not require that a certain percentage be set-aside for low, very

low income, or extremely low income populations, this raises the same issue of the need for input at the local level to ensure that the housing created in these large scale developments will reflect the housing needs of the community.

The affordable housing created pursuant to this DRI incentive “shall be subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters.” This presents another opportunity for making informed decisions about how best to implement the long term deed restriction so that the housing created pursuant to this incentive truly stays within the affordable housing stock for a minimum of twenty years; it provides the challenge of crafting resale provisions that will sustain affordability to avoid the need for future subsidies.

And most importantly, a process for administrative oversight needs to be put in place so that the land use restrictions are not circumvented.

AFFORDABLE HOUSING LAND DONATION DENSITY BONUS INCENTIVES

A local government may provide “density bonus incentives” to any landowner who voluntarily donates land to the local government for affordable housing. The donated land must be determined by the local government to be “appropriate” for use as affordable housing and must be subject to deed restrictions to ensure that the property will be used for affordable housing. In this program (see section 420.615 Florida Statutes, 2006), “affordable” includes extremely low to moderate income persons. There is no additional guidance on what should go into the deed restriction. For example, it does not require a minimum of twenty years of affordability as contained in the DRI incentive. However, it does state that “the local government may transfer all or a portion of the donated land to a nonprofit housing organization, such as a community and trust, housing authority, or community redevelopment agency, to be used for the production and preservation of permanently affordable housing.

The density bonus (the thing that drives the donation of the land) may be used for any residential land within the local government’s jurisdiction. In addition to receiving the density bonus on land the private developer wants to develop, the comprehensive plan amendment for that land can be made at any time (not subject to the two times per year limit) and is not subject to the same review as other comprehensive plan amendments (exempt from provisions of 163.3184(3)-(6), Florida Statutes). The amount of density bonus that the developer can receive? Not addressed. In other words, a substantial increase in density on land that is not going to be used for affordable housing and will be exempted from substantial growth management review processes is provided in exchange for land (of undisclosed acreage- could it be one small lot?) that is donated for affordable housing. This one cries out for close scrutiny at the local level.

AD VALOREM TAX DEFERRAL FOR LOW INCOME SENIORS

It’s probably a safe bet that almost no one has been aware of an existing provision in the Florida Statutes providing

ad valorem tax deferral for low income seniors. Basically, the local government waits until the owner dies or sells the property to collect the accrued taxes. This is a prime example of having a law on the books but little if any dissemination of that information to the end user. The changes made in the omnibus housing bill to broaden the eligibility for the tax deferral are substantial and together with dissemination of this information, the tax burden that can force seniors from their homes in gentrifying areas could be relieved.

Section 197.252, Florida Statutes, was amended to lower the age of qualification from 70 years of age to 65 years of age. The cap on income eligibility was raised from \$10,000 to that amount which qualifies for the additional \$25,000 homestead exemption for low income seniors in Section 196.075, Florida Statutes. This amount is currently \$23,452 and is adjusted annually using the cost of living index. The maximum interest owed on the deferred taxes was reduced from 9.5% to 7%. The actual interest charged on the deferred taxes is a rate based on a complicated formula outlined in the statute.

IN CONCLUSION

One clear indicator of the need to simply provide housing information to public and private sector employers is the commonly held belief that their employees would not have qualified for assistance under Florida’s existing programs for homeownership and rental housing. The fact is that the salaries paid to teachers, nurses, firefighters, and police officers in Florida falls within the income eligible range of our existing programs. See Florida’s Priced Out Report, www.pricedoutreport.org. Outreach and education about our existing program guidelines is in order. However, raising the eligibility bar to 140% of area median income does enable two income earner households to remain income eligible when they may otherwise have made too high a combined salary to qualify for housing assistance. Information and citizen participation are key for moving housing laws and initiatives into action. 

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