

Addressing Community Opposition to Affordable Housing Development A Fair Housing Toolkit

FOREWORD

Increasingly housing developers are facing opposition from communities to affordable housing. Often based on myths, stereotypes and outright discrimination, the practices are largely unlawful. Yet developers are often ill-equipped to address this opposition effectively. They lack the tools to educate the broader community and municipal officials, build support for their vision and constructively, yet effectively, move ahead with worthy and responsible projects. Additionally, opposition to affordable housing is being further fueled by newer concerns about land use, density and design. As pressure increases to reduce development, affordable housing – especially multi-family – is often the first casualty.

This toolkit is provided by the Housing Alliance of Pennsylvania with funding from the Pennsylvania Housing Finance Agency (PHFA) to give developers a working knowledge of fair housing in a form they can use. It gives common sense, hands on tools to deal with public hearings, building community support, using the media, working with officials, and if need be moving to legal action. It includes an extensive list of websites, articles and books on issues relating to affordable housing development and fair housing, as well as legal resources.

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Liz Hersh
Executive Director
Housing Alliance of Pennsylvania

Authors

Sara Pratt
Michael Allen

This "toolkit" is a product of the Housing Alliance of Pennsylvania, Inclusive Communities Working Group

Beth Albert, Fair Housing Council of Montgomery County
Gray Smith, AIA, AICP, Gray Smith's Office
Graysha Harris, GKH Consulting
Howard Porter, Alliance for Better Housing
Janet Milkman, 10,000 Friends of Pennsylvania
Jim Berry, Fair Housing Council of Suburban Philadelphia
Karen Black, May 8 Consulting
Laura Siena, Fund for an Open Society
Laura Zinski, Mon Valley Initiative
Mark Mitman, Home Builders Associations of Southeastern Pennsylvania

Additional contributors and advisors to the "toolkit:"

Laura Weinbaum, Project H.O.M.E.
Mark Schwartz, Esquire, Regional Housing Legal Services
Marian Kent, Fair Housing Partnership of Greater Pittsburgh
Mary Scullion, Project H.O.M.E.
Rebecca Peace, Esquire, Pennsylvania Housing Finance Agency
Robert Bobincheck, Pennsylvania Housing Finance Agency
Stephen Gold, Esquire

Layout and Design

Jane Klein

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ADDRESSING COMMUNITY OPPOSITION TO
AFFORDABLE
HOUSING
DEVELOPMENT:
**A FAIR HOUSING
TOOLKIT**

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Housing Alliance of Pennsylvania
2 South Easton Road, Glenside, PA 19038
Phone: 215-576-7044 Fax: 215-887-8638
info@housingalliancepa.org

AT A GLANCE:

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**"Community opposition
reflects neighbors'
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Sometimes these concerns
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Confronting common NIMBY concerns

Developers have heard it many times:

"We don't oppose housing for poor people. We just think it ought to be located somewhere else." This phenomenon, often described as "NIMBYism" (deriving from the acronym, Not In My Back Yard), appears to be nearly universal, occurring with different variations in urban, suburban and rural areas from coast to coast.

Community opposition reflects neighbors' concerns that their lives will change for the worse. Sometimes these concerns are concrete and rational, focused on measurable impact on a neighborhood. More frequently, they are based on stereotype and anxiety about the new residents or the units in which they will live. Whether based in reason or emotion, however, opponents' views are generally deeply held. The rational arguments must be taken into con-

sideration by public officials and by affordable housing developers.

This chapter provides detailed information on how to respond to each of the common NIMBY concerns outlined in the box below.

WHAT YOU ARE LIKELY TO HEAR

- **We have worked all our lives to buy this house. Now you want to come in here with this affordable housing and rob us of our life's savings.**
- **No one in his right mind would ever buy my house now that a group home is next door.**
- **My brother-in-law is a real estate agent. He says that it will take much longer to sell my house and that I won't get my investment back out of it now that there are apartments going up down the block.**
- **We have enough apartments in this town already. We ought to be encouraging single-family home ownership which will help protect the value of our homes.**

MOST COMMON OPPOSITION CONCERNS

Pick any community in which some form of affordable housing is proposed and you can predict the main arguments of opponents:

- ★ It will lower property values.
- ★ Crime rates will increase.
- ★ The character of the neighborhood will change.
- ★ It is badly designed, cheaply built and will be unattractive.
- ★ It will contribute to overcrowding of public schools and increase taxes.

While extensive research over more than 25 years has disproved these concerns, they are still raised anew in almost every conflict over affordable housing.

RESEARCH FINDINGS

Single-family home values in the neighborhood of [affordable housing projects] are not adversely affected by their proximity to those projects. Indeed, in some cases, home values are actually higher the nearer the home is to [such a project].

Paul M. Cummings and John D. Landis, Relationships between Affordable Housing Developments and Neighboring Property Values, (Univ. of California at Berkeley, Sept. 1993)

Because opposition often has a strong non-rational component, this chapter also explores new behavioral techniques for managing local opposition.

Affordable Housing and Property Values

Home ownership is thought to be the anchor for the American Dream. For most people, their home is their most important asset and they rely on it to provide for their children's education and for their own retirement. They are understandably concerned when a changing neighborhood threatens this investment.

In almost every conflict over affordable housing, the first concern expressed by opponents is that affordable housing will bring down the property values of homes in the neighborhood.

WHAT YOU ARE LIKELY TO HEAR

- ★ **You never can tell what they will do. People with mental problems are like ticking time bombs.**
- ★ **We're against the shelter because we don't want thousands of womanless, homeless men in our neighborhoods robbing our homes and raping our women.**
- ★ **We moved out here to avoid urban problems and here they come following us.**

DEVELOPERS NEED A MULTI-FACETED RESPONSE TO CONCERNS ABOUT PROPERTY VALUES

If the concern is primarily factual, a developer might consider:

- ◆ Giving opponents copies of the most relevant studies
- ◆ Getting testimony from an informed realtor or appraiser
- ◆ Showing opponents the property maintenance budget and management plan to demonstrate attention to their concerns
- ◆ Doing a new property value study tailored to your community

If the concern grows out of fear, the appropriate response may be:

- ◆ Trying to build a respectful relationship with opponents, and convincing them of the developer's good will and positive intentions
- ◆ Having someone trusted by the opponent speak on the developer's behalf. Having a member of the clergy or business community as a supporter may allow the message to be heard more effectively.
- ◆ Conducting a housing tour of other similar residences, and offering opponents a chance to talk with neighbors of those residences

If the concern is really about something else:

- ◆ Research other potential areas of concern through allies in the faith or business communities, or through other residents in the neighborhood
- ◆ End each meeting by asking opponents to put all their concerns on the table and offering to make responses to each within a short period of time
- ◆ Consider whether the real concerns amount to discrimination and assess the political and legal options

PRACTICAL ADVICE ON CRIME AND SAFETY CONCERNS

- ★ **Supply correct factual information debunking the myth that affordable housing increases crime rates**
- ★ **Recruit people trusted by the existing neighbors to interact with fearful neighbors**
- ★ **Create opportunities for existing neighbors and new residents to meet one another and dispel misconceptions**
- ★ **Reassure neighbors about the screening process and provide concrete evidence of your willingness to enforce standards of good behavior by residents**
- ★ **If the developer has similar properties that have not increased crime elsewhere, provide documentation and/or opportunities to view those properties**

It is important to sort out whether there is a factual basis for this concern, whether it is based on fear, or whether it is put forward to hide some other motivation (such as discomfort about having people of color or people with disabilities as neighbors).

Contrary to these widely held views, a substantial body of research, dating back to the early 1970s, has established that affordable housing has no detrimental effect on property values or on the time that homes spend on the market. Well over 100 studies, conducted by prestigious universities, state and federal government agencies, accounting firms and planning organizations, have concluded that neither conventional public housing, nor affordable private units, nor group homes for people with disabilities has a negative effect on surrounding properties.

Some studies have documented a positive impact on surrounding property values.

Just because a developer has these facts on her side does not mean that the concern about property values won't be expressed, often and loudly. Opponents use this argument because of its highly emotional nature for most homeowners. In addition to the facts, it is important to know how to respond to concerns that may appear to be irrational.

CONCERN ABOUT SAFETY GOES ALL THE WAY TO THE U.S. SUPREME COURT

City of Cuyahoga Falls v. Buckeye Community Hope Foundation

In a case challenging the City of Cuyahoga Falls' decision to submit an affordable housing site plan to the voters, the Supreme Court was asked to decide whether the discriminatory views of neighbors could be imputed to city officials. Opponents asked at public hearings:

What kind of element is going to move into those apartments? Will they be playing loud boom boxes and having their children run around after dark?

Crime and Safety and Affordable Housing

The development of affordable housing in many communities may be the first opportunity for existing residents to live near people with disabilities or those of a different race or income level. Anxiety about new neighbors sometimes gives rise to allegations that they will cause the crime rate to increase. Studies of affordable housing, group homes and emergency shelter have concluded that crime rates are no higher in proximity to those units than in comparison sites.

***NIMBYism
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appears to be nearly
universal...***

RESEARCH FINDINGS

There is no evidence of an increase in crime resulting from the introduction of affordable housing into a neighborhood. In fact, much of the affordable housing now being developed in inner cities and older neighborhoods replaces broken-down and crime-ridden buildings and can serve to reduce the neighborhood crime rate.

--Urban Institute, The Impacts of Supportive Housing on Neighborhoods and Neighbors (April 2000).

As with property values, it is essential to share research data to set the record straight about allegations that affordable housing breeds crime and insecurity.

Developers should emphasize that careful screening, proper management, and security measures will help assure that illegal activities do not take place and that, if they do, they will be dealt with swiftly and decisively. Most affordable housing residents want nothing more than to become part of the quiet, peaceful life of the surrounding community. They have sought out affordable housing so that they can live independent, self-sufficient lives.

WHAT YOU ARE LIKELY TO HEAR

We don't want our community brought down by the projects with their high cost, shoddy construction, poor administration and lack of care.

My problem with so-called 'affordable housing' is that it is cheap and ugly and does not fit within a community of market rate housing.

Affordable Housing and the Character of the Neighborhood

Opponents may also claim a general uneasiness about how the character of the neighborhood will change in a negative way. That term, which is written into many zoning ordinances as a criterion that should be considered in requests for variances, has come to have a much larger and more amorphous meaning when used by opponents of affordable housing.

A primary aim of zoning laws is to manage change and to mitigate its effect on existing uses of land, especially in residential areas. But such laws cannot be imposed in a manner that violates the Fair Housing Act. If an affordable housing project can locate by right on a particular parcel, the uneasiness of neighbors cannot be an obstacle to such a use. If variances are routinely granted for other uses but withheld for affordable housing, such practices might be **challenged on the basis of a protected classification**. Often the existing zoning code provides for sufficient flexibility to absorb new affordable units without changing the character of a neighborhood.

Affordable Housing and Design

Neighbors concerned about the development of affordable housing often fear the worst in terms of design and its impact on the navigability and aesthetics of the neighborhood. Why do people think affordable housing in the neighborhood will reduce their property values? If the answer has nothing to do with perceptions about the people who will be living in the housing, the answer, more than likely, is design.

That concern is fed by a public image of low-cost housing shaped by the massive public housing high-rise buildings constructed in the 1960s and the cheap, no frills approach of federally-subsidized housing in the 1970's and 1980's.

Confronting common NIMBY concerns

Affordable housing developers and design consultants have learned from these mistakes; many now carefully consider and use building and site design and the design process to manage local opposition while preserving the primary values and vision of their proposal. Appropriate, neighborhood-sensitive design has become an effective means of responding to community opposition. Good resources for good design are included in the Resources section in this toolkit.

The Effect of Affordable Housing on Schools

Opponents often suggest that affordable, multi-family housing contributes disproportionately to public school overcrowding. Contrary to this conventional wisdom, however, apartments contribute fewer children per household to school systems than single-family homes.

Managing Local Opposition: Anticipating and Responding to Opposition

Developers who only respond to NIMBY concerns often have the unsatisfying sensation of winning the battles but losing the war. A growing number of scholars, advocates and lawyers now counsel developers to take a more active role in anticipating and managing local opposition, rather than simply responding to it as it arises.

Tim Iglesias, a law professor at the University of San Francisco, has spent more than a decade refining a method of engaging community oppo-

nents and anticipating and responding to their concerns. He is the primary author of *Building Inclusive Communities: Tools to Create Support for Affordable Housing* (1996) a guide to help providers get housing up and running with min-

RESPONDING TO COMMUNITY CONCERNS

The most prestigious architectural award in the nation, the American Institute of Architects National Honor Award, has been won by affordable housing developments.

HomeBase, Building Inclusive Community (1996)

imal delay and cost. He counsels that developers interested in those objectives must respect the legitimate concerns of the local community, respect the rights of current and prospective residents and conduct development in a way that will advance the prospects of future affordable housing proposals in the community, rather than just concentrating on getting the current development built.

**"Whether intentionally
or unintentionally, zoning ordinances
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Exploding zoning and land use myths

Despite the Fair Housing Act and several other laws prohibiting discrimination many jurisdictions still engage in discriminatory zoning and land use practices. This chapter considers the interaction of fair housing laws and local zoning laws. It provides practical advice to local government officials and advocates about how to proceed when the two come into conflict.

The Interaction of the Fair Housing Act and Local Zoning Ordinances

For the past 75 years, local elected officials have used zoning and land use powers to define and maintain the character of urban, suburban and rural communities. Historically, local governments have had broad latitude in adopting and enforcing local zoning ordinances.

Laws themselves cannot express illegal discrimination. They cannot, on their face or in operation, discriminate because of race, color, religion, national origin, sex, familial status or disability (known collectively as the "protected classes"). In passing the Fair Housing Act, Congress said that it intended to remedy discrimination that occurred as a result of the application of local zoning laws. For that reason, local zoning ordinances may be challenged if they intentionally discriminate against people of color or people with disabilities, or if they have a harsher impact on those groups.

THE FAIR HOUSING ACT DOES NOT PREEMPT LOCAL ZONING AUTHORITY

Localities may continue to enact zoning ordinances that:

- ★ **Create single-family districts**
- ★ **Preserve open space**
- ★ **Prevent overcrowding**
- ★ **Promote adequate access to public utilities**
- ★ **Ensure adequate parking**
- ★ **Prevent congestion and mitigate the effects of automobile and other traffic**
- ★ **Enforce health and safety regulations and other non-discriminatory laws designed to protect health and safety**
- ★ **Retain historic character and attributes of the community and housing stock**

But when zoning laws and practices discriminate against a protected class, they may be successfully challenged.

Fair housing laws require localities to avoid discrimination in zoning and land use matters. For people with disabilities, they also require "reasonable accommodations" or changes in zoning laws and practices to afford equal housing opportunity. This provision has proven difficult to implement in practice, with federal and state courts being called upon to decide cases in which local government has been accused of failing to make such accommodations.

Zoning Ordinances That Violate the Fair Housing Act

Whether intentionally or unintentionally, zoning ordinances may contain provisions that treat affordable housing, supportive housing or group

ILLEGAL DISCRIMINATION

EXAMPLE

MORE STRINGENT REQUIREMENTS IMPOSED ON TRANSITIONAL HOUSING

A transitional shelter program seeks a special use permit to expand its transitional housing program to 25 residents, all of whom were formerly homeless and many of whom have disabilities. The city granted the permit, but requires that it be reviewed annually, contrary to its practice with respect to other special use permits not involving people with disabilities.

homes for people with disabilities differently. When such different treatment is based on race, national origin, disability or other protected class membership, it violates the Fair Housing Act.

The following are three examples of how zoning provisions can be discriminatory in singling out specific kinds of housing for different treatment.

In each of these examples, provisions of the zoning ordinance interfere with equal housing opportunities for people in protected classes. In such a case, even if the ordinance was adopted according to state law and complied with procedural requirements, it can be struck down because it violates the Fair Housing Act.

Zoning and Land Use Practices Can Also Violate the Fair Housing Act

Even when zoning ordinances themselves do not provide for different treatment on the basis of race, national origin or other protected

Any state or local law that discriminates on the basis of protected class may be invalid under the Fair Housing Act if there is no compelling basis

class, discrimination can occur in zoning practices, particularly those concerning enforcement matters.

Most land use plans establish authorized uses in distinct "zones" so that incompatible uses (such as residential and industrial uses)

are separated geographically. In some communities, because affordable housing is seen as a "locally unwanted land use"—or "LULU"—there may be pressure on zoning and planning staff to impose more stringent obligations on providers seeking variances or other zoning relief.

ILLEGAL DISCRIMINATION

EXAMPLE

SUPPORTIVE HOUSING REQUIRED TO COMPLY WITH DIFFERENT RULES

A city defines "supportive housing" very broadly to include any housing development that provides services to assist residents with improving daily living skills or obtaining permanent housing. It requires that new supportive housing may not be located within one quarter mile from existing supportive housing.

If this different treatment is because of race, disability or other protected class, it violates the Fair Housing Act and may be invalidated.

Public Input in the Zoning Process

One of the most popular tactics for discouraging affordable housing is requiring public input before local government approves zoning or funding for affordable housing. Doing so effectively

shifts responsibility for making the decision from government officials to members of the community who feel strongly enough about the proposed housing to become active participants in the zoning and land use process.

Knowing that delay can mean the demise of developments, opponents often insist on extensive zoning and land use review of proposals

these goals—education and community participation—are appropriate and important. But when it comes to siting a particular affordable housing development, mandatory notification and public hearing requirements may violate the Fair Housing Act and undermine public officials' attempt to make appropriate, fact-based assessments concerning the impact of the new units.

ILLEGAL DISCRIMINATION

EXAMPLE

DISCRIMINATION AGAINST MULTIFAMILY AFFORDABLE HOUSING

An overwhelmingly white suburb has a zoning regulation which restricts private multi-family housing projects to a largely minority “urban renewal area” and requires multi-family zoning. The urban renewal area contains few parcels that can be developed and anything built in that area may lead to further concentration based on race.

for affordable housing. As a result, many needed developments never get off the drawing board. Whether such action by neighbors or public officials is a violation of the Fair Housing Act will depend on whether the action was taken because of race, national origin or disability, and whether the decision to seek public input is consistent with the board's practices with respect to other applicants.

In virtually every jurisdiction, public hearings have been used to inform residents of proposed changes in their neighborhoods and to give them an opportunity to articulate and share their concerns with local authorities about affordable housing. Both of

Reasonable Accommodations to Permit Housing for People with Disabilities

In addition to prohibiting discrimination, the Fair Housing Act also requires local governments to waive or modify zoning and land use rules when necessary to afford equal housing opportunity for people with disabilities. These changes, known “reasonable accommodations,” may be requested by a person with a disability herself or by a developer or by a human services agency whose clients are people with disabilities. Accommodations may be sought either to the zoning ordinance itself or to some regulation or practice by which the ordinance is applied.

A typical request for an accommodation involves a group home that seeks to have more unrelated

PUBLIC HEARINGS IN ZONING MATTERS ARE AS AMERICAN AS APPLE PIE

There is a long history of requiring public notification and public hearings when a zoning board is adopting a new ordinance or considering an owner's request for zoning relief.

ILLEGAL DISCRIMINATION

EXAMPLE

COMMUNITY APPROVAL REQUIRED FOR LOW INCOME HOUSING

Multifamily housing may locate in residential areas as a matter of right. But county law requires any developer seeking to develop multifamily housing that will serve low or moderate income residents to send letters to adjacent neighbors and consider their concerns before granting approval.

BUILDING BETTER COMMUNITIES NETWORK

The Building Better Communities Network website, located at www.bettercommunities.org, is an information clearinghouse and communication forum dedicated to building inclusive communities and to successfully siting affordable housing and community services. This website was created to help those who site community housing, by providing them with the tools they need to successfully complete their housing efforts.

ALTERNATIVES TO MASS MEETINGS

PUBLIC HEARINGS

- ★ **Public hearings often provide forums for large numbers of residents to express anger and fear at the prospect of having unwanted neighbors in their midst. Responsible public policy requires a mechanism for distinguishing legitimate from illegitimate objections, giving voice to the former and ensuring that the latter have no role in the process.**
- ★ **Developers can ask zoning officials to employ alternatives to widespread notification and mass meetings:**
 - **Door to door outreach by providers to answer community concerns about affordable housing**
 - **Small meetings with elected officials and the leadership of neighborhood organizations to respond to community concerns in a controlled atmosphere**
 - **Designating a city agency to conduct conciliation or mediation between developers and concerned citizens to seek common ground**

residents than permitted in the ordinance. For example, if the ordinance permitted four unrelated residents and the group home asks to have six, the municipality would have to assess whether the exception would impose an undue financial or administrative burden. Or if allowing an exception to the rule would fundamentally alter the zoning ordinance. Unless this burden is met, accommodation would have to be granted.

This provision has proven difficult to implement in practice, with federal and state courts

being called upon to decide dozens of cases in Pennsylvania in which local governments have been accused of failing to make such accommodations.

Pennsylvania Presents Unique Circumstances

Unlike many other states, Pennsylvania's legislature has retained very little authority over zoning and land use, having delegated it to over 2600 units of local government. Counties, cities and townships view zoning and land use powers as their primary means of shaping their jurisdictions and preserving the character of their communities. The broad discretion given to local governments and the resulting wide variability in the treatment of affordable housing has some important implications for state government.

The Fair Housing Act has prohibited zoning discrimination against group homes since 1988, but many Pennsylvania municipalities still have discriminatory ordinances on their books. As a consequence, Pennsylvania has had more group home litigation than any other state in the nation.

ILLEGAL DISCRIMINATION

EXAMPLE

STRICTER ENFORCEMENT AGAINST HOUSING FOR PEOPLE WITH DISABILITIES

A village zoning department reclassifies a group home for six people with developmental disabilities from a residential to an institutional use, thereby requiring the home to comply with onerous fire and life safety codes or secure a special use permit. These requirements are not imposed on traditional families with six people.

HOUSING FRIENDLY LAND USE POLICIES

★ Austin, Texas:

SMART Housing works with developers to ensure submissions respond to legitimate community concerns about land use impact and explicitly reject extraneous grounds of opposition. By getting the developer and the neighbors at the same table early in the process, the staff is able to identify and deal with legitimate land use issues. Its internal goal is to have a zoning application on the docket of City Council for final action within 45 days after it is filed.

★ Portland, Oregon:

The Office of Neighborhood Involvement has instituted the Community Residential Siting Program (CRSP), as a centralized point of information and referral to deal with questions and concerns around the siting of residential social services. It provides mediation and facilitation services for groups in conflict.

★ Montgomery County, Maryland:

The Moderately Priced Dwelling Unit (MPDU) program is a form of inclusionary zoning. It rewards developers with additional density and requires them to incorporate moderately priced units into every new development of 50 or more units. The county housing authority reserves the first right of purchase of rental units.

Alternatives to Litigation

Litigation can be expensive and time-consuming and can divert housing developers and municipalities away from other important priorities. It ought to be a last resort used only when alternative means have failed. A number of organizations, including the Building Better Communities Network, have been engaged in developing alternative approaches to litigation and endless controversy in local zoning hearings.

Exemplary Practices

Cities and towns can avoid litigation and ensure that their zoning ordinances and practices are consistent with the Fair Housing Act, Americans with Disabilities Act and other civil rights laws. They can adopt policies that clearly delineate between legitimate land use issues and those which illegally focus on race, ethnicity or disability of the residents. Municipalities can also demonstrate that they affirmatively further fair housing by establishing strict timelines for considering new development requests and not permitting an extended community process to strangle affordable housing proposals. A number of local governments have adopted exemplary practices which Pennsylvania municipalities should consider.

**“Developers are left
wondering if there has
been discrimination and
whether that discrimination
is illegal.**

**They look for effective ways
to counter the opposition,
or better, to stop it
before it develops.”**



They can't do that, can they?

Developers of housing do not usually think of themselves as taking action that may be protected by civil rights laws. As more and more developers seek to develop affordable housing, address density or other zoning requirements on their development plans, and explore housing for people with disabilities, they are running into community and governmental opposition. Some of that opposition brings the rights and remedies of fair housing laws into play in the planning and zoning arena. Those rights and remedies may protect builders and developers from illegal discrimination based both on the kind of housing that they are trying to develop and against the people who may live there.

Community opposition to affordable housing takes many forms:

- ★ Decision makers who don't want a particular type of housing, or a particular type of person living in the housing.
- ★ Community opposition to the kind of housing or the people who are likely to live there.
- ★ Government restrictions that harm development plans.
- ★ One development plan being treated differently from another in the planning, funding, or zoning approval process. Often the result of these objections is that the proposed housing development is halted in its tracks, or so restricted that it is not economically or practically feasible.

Developers are left wondering if there has been discrimination and whether that discrimination is illegal. They look for effective ways to counter the opposition, or better, to stop it before it develops. They may wonder if there is action they can take to protect their interests.

Fair housing laws prohibit illegal discrimination in housing, and if they apply, there are strong protections that extend to developers as well as to the residents or potential residents of affordable housing. Because of the power of these laws, lawsuits to enforce them are not always necessary. Sometimes educating decision makers about these laws is enough, either because they want to act within the boundaries of the laws, or because they are worried about the consequences if they do not.

KEY LAW THE FEDERAL FAIR HOUSING ACT

The Fair Housing Act prohibits discrimination in housing-related transactions because of:

- ★ **Race (African American/black or Caucasian/white)**
- ★ **Color (Skin tone, whether light skinned or dark skinned)**
- ★ **Religion (Religious beliefs of an individual or a group)**
- ★ **National Origin (the country of birth of a person or his/her ancestors)**
- ★ **Sex (Gender, male or female)**
- ★ **Familial Status (Having a child or children under the age of 18 in a household)**
- ★ **Handicap (Physical or mental)**

Illegal discrimination against a builder? How does that work?

- *A lender can't refuse to make a bridge loan to a builder because she is a woman.*
- *Planning staff can't refuse to deal with a developer because he is black.*

OTHER CIVIL RIGHTS LAWS

Besides the Fair Housing Act, cities, townships, and other governmental entities have other civil rights obligations:

- ★ **The Americans with Disabilities Act (ADA) applies to all “public services” of state and local governments, regardless of whether they receive federal funds. The ADA requires that such services be offered in the “most integrated setting” appropriate for people with disabilities. This might invalidate restrictive zoning provisions.**
- ★ **As a condition of receiving federal financial assistance, such as CDBG and HOME funds, local governments must also take steps to eliminate barriers to fair housing as a means of “affirmatively furthering fair housing.”**
- ★ **By receiving such funds, counties, cities and towns are also required to comply with Title VI of the Civil Rights Act (prohibiting discrimination on the basis of race, color and national origin) and Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability)**

If a state or municipality is found to have violated any of these laws, and voluntary compliance cannot be achieved, a lawsuit may be filed challenging the action, and federal agencies may terminate or suspend funding.

The Key Laws

There is a key federal law, a Pennsylvania law, and local ordinances that prohibit discrimination in housing. How do they work? Who is protected? What rights do they give builders and developers?

The federal Fair Housing Act makes it illegal to discriminate in all kinds of housing-related activities, based on race, color, religion, national origin, sex, familial status or handicap. This last term is thought to be antiquated and disrespectful. This toolkit will use the term “disability” unless it is quoting directly from the law or a court case. Pennsylvania law also covers discrimination based on age. Collectively, these are known as the “protected classes.”

EXAMPLES OF ILLEGAL HOUSING DISCRIMINATION?

“We don’t want your housing here because we don’t want any more Mexicans coming into this area.”

“There will be too many children living in this housing and it will burden our schools.”

“We don’t want those crazy people in our neighborhood.”

Another federal law, the Equal Credit Opportunity Act (ECOA) prohibits discrimination based on marital status, age, or receipt of public assistance income (in addition to race, color, religion, national origin or sex) in credit transactions. Situations involving ECOA may not come up often, but sometimes arise when a developer is seeking a business or construction loan

UNFAIR DOES NOT ALWAYS EQUAL ILLEGAL

Not every unfair or unreasonable action is illegal discrimination.

To be illegal the action must be BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, FAMILIAL STATUS, DISABILITY (FAIR HOUSING ACT) OR AGE (PA LAW) OR MARITAL STATUS OR RECEIPT OF PUBLIC ASSISTANCE IN A CREDIT TRANSACTION (ECOA)

that is denied for one of these unlawful reasons. Federal laws that apply to recipients of funding from the federal government have additional prohibitions that pertain to discrimination based on race (Title VI of the 1964 Civil Rights Act) and disability (Section 504 of the 1973 Rehabilitation Act) or receipt of Section 8 as a source of income (Section 42 of the Internal Revenue Code-Federal Law Income Housing Credit Program.)

NO MEXICANS ALLOWED!

What is Illegal Discrimination?

The laws may protect a builder or developer herself, if she finds that someone won't deal with her in a housing transaction because of her race or gender, for example.

It is more likely that discrimination will occur because of the people who will live in the housing. There are many examples of housing that has been restricted, delayed, or rejected illegally because the people who will live there are African American, Latino, people with mental illness, recovering drug users or families with children.

Some situations involving discrimination are easy to identify because the intention to discriminate is clear.

Discrimination can occur even when there is no expressed intent to discriminate. Opponents do not always speak openly about their prejudices; sometimes they use "code words" or pretexts to express their opposition. In the case of such subtle discrimination, developers, builders, and others may be treated in a way that excludes them, limits their opportunities or restricts their plans for development.

ILLEGAL DISCRIMINATION

EXAMPLE

UNEQUAL TREATMENT

Additional requirements are imposed because of the race and national origin of the people who will live in the property.

A developer wanted to build low income tax credit property in a rural area that is predominately white. This property was anticipated to have a significant African American population because there is a great need for affordable rental housing in the area, and the population with the greatest need for affordable housing is 60 percent African American. Although a market rate rental property of a similar size that will serve retirees in the area (almost all of whom will be white) was easily approved just two months before, the township officials require that the proposed tax credit property be reduced in size, and mandate more financing documentation, a comprehensive environmental impact study, and a special tax requirement, imposed only on tax credit properties.

The Difference Between Unfair and Illegal

Not every adverse action against a person or group is a violation of the fair housing laws. First, some actions may be totally unfair, unreasonable, or outrageous but if they are not BECAUSE OF discriminatory reasons, they do not violate fair housing laws. They may violate other laws, they may violate planning and zoning requirements, they may be appealed through a local planning and zoning commission, they may even violate a state or local law or requirement, but if they are not taken "because of" one of the illegal reasons, they don't violate the civil rights laws.

Even an unfair or unreasonable action that is directed against housing that will be occupied by members of protected classes may not be illegal housing

ILLEGAL DISCRIMINATION

EXAMPLE

DISPARATE IMPACT

A density requirement prohibits development of affordable housing and disproportionately affects African Americans and Hispanics who would live in the housing.

A local government refuses to grant a variance to a one-acre single-family density requirement to permit development of affordable rental housing. The housing serves mostly African Americans and Hispanics in a predominately white area.

discrimination. The action, again, must be BECAUSE OF race, or national origin, or one of the other protected classifications.

What Actions are Discriminatory?

How can someone tell if the action that is being taken is BECAUSE OF one of these protected classifications? Sometimes people will say so. There are real examples, in the recent past, of Pennsylvania builders being told that zoning approvals will not be given because a community does not want any more Mexicans in the area.

ILLEGAL DISCRIMINATION

EXAMPLE

UNEQUAL TREATMENT-

Different procedural steps are required during the development process and special rules are applied because people with disabilities will live in the property.

A local zoning ordinance violated the Fair Housing Act because it required public notice and a hearing only for group homes and prohibited residence by "exceptional persons" who could not exit the property without assistance.

In these cases, it is very clear that the discrimination is "because of" the national origin of the people who are expected to live in the property.

Where there is an open statement by a decision-maker, whether in writing or made orally, that indicates a preference for one group over another in a housing transaction, or which overtly expresses a limitation based on any of the illegal grounds, discrimination has occurred. Courts describe this as showing direct evidence of discriminatory intent. It is not common for municipal officials to say that they intend to discriminate.

As one court said, "Municipal officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority. Even individuals acting from invidious motivations realize the unattractiveness of their prejudices when faced with their perpetuation in the public record. It is only in private conversation, with individuals assumed to share their bigotry, that open statements of bigotry are made, so it is rare that these statements can be captured for purposes of proving racial discrimination in a case such as this." *Smith v. Town of Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982).

If a decision-maker makes a discriminatory statement, that alone may show a violation of the Fair Housing Act, but when it also expresses discriminatory conduct, there may be a separate violation of the law. The refusal to grant a zoning approval because "Mexicans" are expected to live in the property amounts to two violations of the Fair Housing Act because it is a discriminatory statement and because it amounts to discriminatory conduct.

Unequal Treatment

In many situations there may be no *direct* evidence of discrimination, but other kinds of evidence may show illegal discrimination. One way to show illegal discrimination is to compare how one

**LAND USE POLICIES WITH A
POSSIBLE DISPARATE IMPACT**

- **Density requirements: units per acre, ceilings on number of units**
- **Prohibition of multifamily housing, tax credit housing, Section 8 housing**
- **Mandated design and other criteria that result in an extremely high per-unit cost**
- **Ceiling of 4 unrelated adults in housing**

housing development is treated in comparison to another. Where the difference between them is the race, national origin or other protected classification of the residents or proposed residents, there may be unequal treatment.

Disparate Impact

Another way discrimination occurs is when there is a policy, rule, practice, or procedure, such as a local ordinance, that doesn't look or sound discriminatory. But, as it is applied, it disproportionately harms a protected group. Lawyers call that "disparate impact" because of its discriminatory impact and because there is no compelling government interest supporting the policy. If there is a compelling interest, a local zoning and land use authority must still establish that there is no better way to achieve that interest in a less discriminatory way.

In some communities, refusing approvals for all new multifamily housing will illegally discriminate. In some communities it won't. It depends on who is likely to live in the planned housing. In some communities, multifamily housing will be occupied by a mix of different types of people, broadly representative of the community. In other communities, the housing will be occupied primarily by people of color, families with children, or people with disabilities. In this latter situation, adverse action against the housing might amount to illegal discrimination because

the action would discriminate in practice, even if it weren't intentionally discriminatory.

Disability Discrimination

Illegal discrimination may also occur when the usual rules, policies or procedures affecting housing for people with disabilities serve as artificial barriers to the establishment or operation of the housing. Fair housing laws require local governments to waive or modify zoning and land use rules when doing so is necessary to afford equal housing opportunity for people with disabilities. These changes, known as "reasonable accommodations," may be requested by a person with a disability herself, or by a developer or human services agency whose clients are people with disabilities. Accommodations may be sought either in the zoning ordinance itself, or to some policy or practice by which the ordinance is applied.

A typical request for an accommodation may involve a group home that seeks to have more unrelated residents than permitted in the ordinance. If the ordinance permitted four unrelated residents and the group home asked to have six because that number was required to provide a therapeutic atmosphere or

ILLEGAL DISCRIMINATION

EXAMPLE

**DENIAL OF REASONABLE
ACCOMMODATION**

- **A provider contracted to buy a motel in a commercial/industrial zone to use as an SRO for homeless people, many of whom had disabilities. The zoning board refused to waive a use-variance requirement amounting to a denial of a reasonable accommodation. The denial was illegal because the accommodation didn't unduly burden the zoning board or fundamentally undermine the purpose of the zoning ordinance.**

to sustain the home financially, the municipality would have to assess whether allowing two additional residents would impose an undue financial or administrative burden, or whether allowing an exception to the rule would fundamentally alter the zoning ordinance. Since either defense would be difficult to establish, it is likely that an accommodation would have to be granted.

Intimidation and coercion

There is one other important part of the federal Fair Housing Act—and almost every other civil rights and fair housing law. Fair housing laws prohibit anyone from interfering with the fair housing rights of another person, or from coercing or intimidating a person exercising their fair housing rights. This provision deals with a broad range of situations where one person or entity tries to interfere with other people who are trying to engage in fair housing activities. Violations of this provision have been found when governmental or funding agencies interfere with development plans. The law also prohibits private parties from using intimidation or coercion or

from otherwise interfering with housing plans for any illegal reasons.

WORDS TO WATCH OUT FOR

- ★ "Decline in property values"
- ★ "Like a ghetto"
- ★ "Criminal element"
- ★ "Changing neighborhood"
- ★ "We have enough affordable/multifamily/group home/tax credit housing"
- ★ "Burden on schools"

Examining Adverse Zoning Treatment

When confronted with treatment that delays, denies or restricts affordable housing, the developer should examine the following factors to determine whether fair housing laws may have been violated.

EXAMPLE

INTIMIDATION, COERCION, INTERFERENCE

- **Racial graffiti and threats to "burn the place down" are scrawled on the fence surrounding the construction area for affordable housing**
- **Enforcement of a restrictive covenant is used to block the sale of a single family home because it is being purchased for use as a group home**
- **Repeated criminal or civil investigations are conducted of builders or developers**
- **An unfounded lawsuit is filed to try to stop development because of the national origin of the proposed residents**

ADVERSE ZONING ACTION THAT MAY INDICATE A FAIR HOUSING ACT VIOLATION

There is *direct* evidence that the real reason may be illegal discrimination.

- ★ Decision-makers, whether elected or appointed, make discriminatory statements
- ★ Elected officials appear to base their decisions on illegal, discriminatory sentiments

The adverse zoning action will affect significant numbers of potential residents who are among the groups protected against discrimination and who are expected to live in the housing if it is developed.

The reasons given for adverse zoning action seem to be “code words” for illegal discrimination. Information about the prospective residents of the housing is of more interest than more typical zoning questions.

Data shows that the decision will continue a pattern of segregation.

- ★ For example, affordable housing that will likely house Latinos is rejected, in a neighborhood that is mostly white

The historical background shows that the zoning patterns or decisions came from discriminatory origins

- ★ Prior applications have been rejected with evidence of discriminatory motivations
- ★ There has been a history of refusals to permit low income housing or rental housing in a particular area

The timing and sequence of events are unusual or suspicious

- ★ For example, a week after an application for zoning approval is filed for multifamily housing constructed with three stories, planned to house primarily African Americans, the zoning board recommends an amendment to the zoning ordinance that would only permit two-story multifamily units.

There are departures from usual procedural steps.

- ★ A hearing is scheduled when normally there is no hearing, the comprehensive plan is not followed when it normally is followed, the comprehensive plan is amended

The usual reasons for accepting or denying similar approvals are not applied.

- ★ New reasons or additional requirements are imposed after community opposition arises or a particular application is submitted
- ★ Issues that appear to be valid concerns are raised that have never been discussed before

The reasons given for rejecting a development are not true, or they are not applicable to this development.

The legislative or administrative history of the zoning decisions is unusual or contains evidence of discrimination.

- ★ For example, elected officials make statements in correspondence, meetings or the media that indicate consideration of discriminatory reasons.
- ★ There is extensive public commentary or controversy with discriminatory overtones that surrounds the decision-making.

Nondiscriminatory race or national origin-neutral reasons, like traffic, safety, crime rates, impact on public services, are cited without any comprehensive study of their content. They are either not applicable, the study is not accurate or supportable.

Other similar housing that will not have minority residents is not viewed with the same exacting scrutiny as housing that will have a significant minority population, number of families with children or people with disabilities.

How to Challenge Housing Discrimination

How are these laws enforced and what happens if a violation is found? *What are the remedies authorized by the Fair Housing Act?* If a case of illegal housing discrimination is established, the remedies that are provided by the Fair Housing Act include:

- Injunctions to prevent adverse action
- Compensatory damages for financial losses suffered
- Compensatory damages for mental distress caused as a result of the discrimination
- Approval of variances, zoning permissions and other actions to correct past discrimination
- Other relief that varies according to the kind of case that is involved
- Punitive damages and civil penalties

All of the key federal and state laws have filing deadlines called statutes of limitations which restrict the amount of time that is allowed to complain. The amount of time that is required varies according to which law is used to challenge the process. The time frames, agencies and remedies are listed in "Enforcement Resources" at the end of this chapter. More resources, including typical zoning and land use cases, are listed in the "Resources" chapter of the toolkit.

Filing a federal complaint

For zoning and land use cases, the Fair Housing Act permits a complaint to be filed and investigated either by the United States Department of Housing and Urban Development (HUD) or by the United States Department of Justice (DOJ). If HUD conducts an investigation, DOJ is authorized to bring a case in federal court to challenge the discrimination. However, neither HUD nor DOJ is required to investigate or litigate every case that is filed with the agency. If a complaint is filed with either agency, it is important for the person or organization that files a complaint to keep in touch with the agency.

Filing a lawsuit

Whether or not these agencies take appropriate action, the Fair Housing Act permits a private lawsuit to be filed directly in federal or state court to protect fair housing rights. Filing a private lawsuit is sometimes quicker than filing a case with any agency, but of course it requires that a lawyer be hired and the costs of the case paid by the person or organization bringing the case. The civil rights laws generally permit legal fees to be paid by the opposing side if the lawsuit is successful.

Filing a state complaint

Similar rights and remedies are provided under state law. The Equal Credit Opportunity Act, which applies to lending transactions, is also enforced by DOJ or by a private lawsuit. Pennsylvania state law is enforced by the Pennsylvania Human Relations Commission or through a lawsuit filed in state court.

Don't Litigate, Agitate

A developer seeking to develop affordable multi-family or single family housing in Pennsylvania must recognize the possibility that unlawful discrimination may occur during the approval process. In many cases, litigation isn't necessary. There are many strategies that can be used successfully to get approvals without being stopped or slowed by housing discrimination.

ENFORCEMENT RESOURCES*

| LAW | TIME FOR FILING | ENFORCEMENT AGENCY | AGENCY CONTACT | REMEDIES |
|--|---|---|---|---|
| Fair Housing Act 42 U.S.C. 3601 | Complaint filed with HUD within from discrimination | United States Department of Housing and Urban Development | Office of Fair Housing and Equal Opportunity Department of Housing and Urban Development OR Fair Housing Hub U.S. Department of Urban Development Philadelphia, Pennsylvania | Injunctions, damages for financial losses and mental distress, corrective action, attorneys fees, punitive damages or civil penalties |
| | No time limitation on DOJ pattern or practice" lawsuit | United States Department of Justice | U.S. Department of Justice Civil Rights Division Washington, D.C. | |
| | Private lawsuit within two years from discrimination | Federal or State Court | | |
| Pennsylvania Human Relations Act 43 P.S. 951-963 | 180 days from the date of the discrimination | Pennsylvania Human Relations Commission | Harrisburg, PA 301 Chestnut Street Suite 300 Harrisburg, PA 17101 (717) 787-4410 (717) 783-9308 (TTY) | Order to cease and desist discrimination, damages for financial losses and mental distress, corrective action, attorneys fees punitive damages or civil penalties |
| Equal Credit Opportunity Act (ECOA) 15 U.S.C. 1691 et seq. | File a lawsuit within two years of the alleged violation. | United States Department of Justice Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Surface Transportation Board, Secretary of Agriculture, Farm Credit Administration, Securities And Exchange Commission, Small Business Administration, and Secretary of Transportation. | U.S. Department of Justice Civil Rights Division Washington, D.C. | Actual damages, injunctive relief, attorneys fees |
| | Administrative enforcement by the regulatory agency having oversight over a lender | | | |
| | Private lawsuit in federal or state court | | | |
| Title VI of the Civil Rights Act of 1964 42 U.S.C.2000d et seq. | 180 days to file an administrative complaint with the Department of Housing and Urban Development | United States Department of Housing and Urban Development (or other federal agency providing federal funding) | Office of Fair Housing and Equal Opportunity Department of Housing and Urban Development Washington, DC OR Fair Housing Hub U.S. Department of Housing and Urban Development Philadelphia, Pennsylvania | Compensatory damages, cease and desist orders, corrective action, attorneys fees and costs |
| Section 504 of the 1973 Rehabilitation Act 29 U.S.C. of 1973 | 180 days to file an administrative complaint with the Department of Housing and Urban Development | United States Department of Housing and Urban Development (or other federal agency providing federal funding) | Office of Fair Housing and Equal Opportunity department of Housing and Urban Development Washington, DC OR Fair Housing Hub U.S. Department of Housing and Urban Development Philadelphia, Pennsylvania | |
| | Private lawsuit | Federal or state court | | |

*Addresses and phone numbers are found in the resource section of the end of the toolkit

**"Developers must develop
a message that will build public support."**



Launching a successful community campaign

Smart developers plan a strategy in advance.

They plan a strategy for the development itself—financing, design, budget—and they also develop a campaign to win community support for the development. The best-planned development is not a good development unless it is effectively implemented. Effective planning, therefore, means doing the preparation to ensure the successful integration of a development into the community.

Some developers plan their strategic operations to avoid local opposition by working only in welcoming jurisdictions, using only land that has the necessary approvals already, proposing only politically acceptable developments (senior housing, for example, which in many communities is the most acceptable housing after expensive single family developments), or making significant concessions as soon as significant opposition develops. In many areas, the market for these kinds of housing is already saturated or the need and demand for other kinds of housing (which may attract more community opposition) is much higher.

Other developers seek to develop housing where the existing neighborhood already has many low-income residents or minority populations because of past exclusionary zoning policies and discrimination. Development in these areas tends to increase or perpetuate segregation by race and income, limit opportunities, and run into other

forms of opposition. The Fair Housing Act and other civil rights laws constrain the activities of municipal decision makers by requiring them to avoid actions that perpetuate segregation. As a result, a borough or township may be able to defend against a lawsuit under the Fair Housing Act if it turns down more affordable housing in areas that are already racially or economically segregated.

This toolkit is written for developers who choose to work in areas that are either diverse or homogeneous and where there may be community or decision maker opposition and where the fair housing laws may be violated by adverse decision making. In this chapter, we'll talk about the strategies a developer can employ to head off, prevent, or combat community opposition.

Effective planning, means doing the preparation work to ensure the successful integration of a development into the community.

Every development and every community is different, but each development needs a plan to bring basic pieces of factual information together with likely allies, and coordinates efforts toward ultimate approval of the development. A development cannot succeed if the developer waits until opposition arises before developing a plan that includes all these elements.

Preliminary Research

Planning for approval requires a developer, as part of its due diligence, to collect and develop information about the community in which the new housing will be built, and to determine the extent of existing support for the development. In some cases, this assessment will also suggest likely

WHAT INFORMATION SHOULD BE GATHERED BEFORE ANYTHING HAPPENS?

The community zoning process

- What approvals are likely to be needed for this project?
- What is the usual process for approvals?
- Who will review the application?
- Who will make the decisions?
- What are the criteria for decisions?
- What is the likely timeline?
- Who are the real decision makers?
- What do other developers say?

The neighborhood around the proposed site

- What is the surrounding neighborhood like?
- What types of housing are already in the neighborhood
- Who are the local neighborhood leaders?
- Has the neighborhood been the site of other recent development and what was its reaction to the proposed development?
- What are the neighborhood needs and concerns?
- What are the neighborhood's organizational, locational, and resource assets?
- What is the racial, ethnic and economic makeup of the neighborhood?

The community as a whole

- What kinds of housing needs are there in the community?
- Will the proposed project meet those needs in some way?
- What history do affordable housing proposals have in the community?
- What advocacy groups are active in the community?
- What recent housing and neighborhood issues have been in the news?
- What positions have local media, especially newspapers, taken on housing development projects?
- What has local government said and done about affordable housing?

Local allies

- Who are they?
- What activities have they recently been engaged in that relates to affordable housing?
- What are their linkages to local government decision makers?

Legal issues

- What are the likely soft spots in the proposal and what needs to be done to correct them?
- Are there any zoning issues that might be raised legitimately?
- What is the zoning law on those issues?
- Can fair housing issues be predicted? Are there fair housing cases that relate to the particular issue?

areas of weakness, or possible areas of opposition, so that a strategy can be developed in advance that anticipates likely areas of community concern and suggests solutions to problems.

Analyze the Zoning Process

The developer's preliminary research should look at the zoning process itself and the criteria for decision-making. What zoning approvals will be needed? If rezoning, variances or waivers are needed for the development to be approvable, the relevant ordinance, procedures and decision criteria need to be collected. Identify time frames for the process, the preliminary and final decision makers. The developer must ascertain whether the process requires or permits a hearing. Even more important is the identification of the real decision makers, not the just the "on-paper" decision makers. Identify who will be the opinion leaders, what reliance is given to staff recommendations and what role various elected and appointed officials typically play in the approvals process. If staff recommendations are accepted 90 percent of the time, an approval strategy should be directed at staff. If a township planning commission makes the real decisions, the strategy should be directed at that body. If the mayor or a council member is the real decision point, a developer should find that out and plan accordingly.

One way to find out local procedures and how the real process works is to talk to other developers, especially housing developers, who have recently been through the process. Ask them whether or not their developments raised concerns. Solicit their advice and determine what lessons they learned. A developer who has gone through a recent fight over a commercial development might also be helpful.

Other possible resources are state or local advocacy groups, such as low income housing devel-

opment groups, private fair housing groups, housing finance agency staff or local lawyers who specialize in planning and zoning law. Such lawyers should be asked whether or not they represent local governments before a detailed discussion occurs. In some situations, the lawyers with the most experience in these areas also have contracts to represent local governments and may have an inherent conflict of interest.

The Surrounding Neighborhood

Developers routinely examine a proposed site for development with great care. Equal care should be taken in examining the neighborhood surrounding the proposed site. Does it have any recent experience with development proposals? Developers should consider a neighborhood's recent history, both positive and negative, in planning a strategy. A recently approved application for a similar type of housing may not be a sign that there will be no opposition. Examine the record of the approval, understand how the approved housing is the same as or different from

the current proposal.

Assess if and why the proposed development is still needed. A prior rejection of a proposal is not necessarily a sign that a new development

Support for a particular development does not always come easily, or without hard work.

should not be considered. Examination of a past proposal and the reasons for its rejection may be instructive in identifying pitfalls to avoid in a future application, it may even suggest positive opportunities for another development. In addition, evidence of adverse actions against other affordable housing developments can be useful evidence if the proposed development is rejected for illegal discriminatory reasons. By the same token, evidence of procedures applied to developments that were approved may be used to show

that municipal officials departed from customary procedures in rejecting a specific proposal.

What is the character of the neighborhood? Will the development provide housing for people who live there now? Will the development change the neighborhood in particular ways, will it enhance it in positive ways? If

there are particular community needs identified, can the proposed development meet them in some way? For example, if a community lacks nearby childcare, development plans might include an on-site day care operation. The absence of a local park or playground might suggest that a community playground be part of a proposed development. If there is no community meeting space nearby, a development might offer a community center space as part of its plans. A new development can replace vacant lots, dilapidated buildings, or provide a buffer to ameliorate traffic noise.

A community's strengths can also suggest support for a particular development. If the neighborhood is predominantly older single-family housing in good repair, a new development might enhance property values. A new multifamily housing development could provide housing for daughter and sons, or grandparents of current property owners.

The race, and ethnicity and economic status of the neighborhood can be an important factor. Areas that are predominantly or completely white may have some resistance to Section 8 housing in one area but might readily accept a mixed income tax credit rental property. A neighborhood that is already somewhat integrated racially or ethnically might accept a homeownership development more readily than a rental development or have no significant objection to a Section 8 development. Every neighborhood will be different. Generally, from a

fair housing point of view, a development that will help integrate a neighborhood racially, ethnically and/or economically is likely to be considered to further fair housing. At the same time, a development that will bring significantly higher levels of diversity to a neighborhood may be more likely to encounter resistance from existing neighbors.

The Needs of the Community

A realistic strategy will also address the needs of the community as a whole. If a community has no affordable housing, it is likely to need some. If a community is located near jobs, larger cities, or a large population of people with low or moderate incomes, it is likely to need affordable housing. Recipients of Community Development Block Grant (CDBG) funding—cities, states and regions—have Consolidated Plans (Con Plans) that should contain information about

WHO ARE NATURAL ALLIES TO A HOUSING DEVELOPER?

- **Housing advocates**
- **Advocates for people who are homeless**
- **Faith groups**
- **Other developers**
- **Housing finance agency**
- **Lenders**
- **Faith-based organizations whose members would be likely beneficiaries of housing**
- **Private fair housing groups and fair housing enforcement agencies**
- **Civic organizations**
- **Local businesses who would benefit from new residents in the area**
- **Environmental organizations**
- **Labor**
- **Past and present elected officials**

MATERIALS FOR CAMPAIGNS

- Brochures
- Fact sheets
- History of this developer's successes
- Postcards
- Posters
- Slideshows
- Enlarged photos of similar developments

housing needs and development plans in the area. Consolidated Plans also must include an Analysis of Impediments to fair housing (sometimes known as the "AI"), or a plan by which the community will affirmatively further fair housing and seek to overcome barriers to equal opportunity. The AI is required, and must be implemented. It identifies barriers to equal housing opportunities being experienced by all groups protected against discrimination under the Fair Housing Act. In particular, it should include the needs of those groups and the steps that will be taken by the community to address those housing needs. An AI can be a valuable resource. Together with the Con Plan, it is required to document the nature and extent of housing needs in a community. Developers should read Con Plans and AIs carefully because they may amount to a strong endorsement of new affordable housing development. Documents can also be an important source of information about traffic and infrastructure issues, and even, through its identification of groups that participated in its development through public hearings or otherwise, a possible place to identify allies.

The community's history in responding to affordable housing proposals is also important. Have approvals already been granted? Were they a matter of controversy or not? Did the project fail or succeed? Has the community gone on record in

support of, or opposed to, low income housing, affordable housing, multifamily housing? Developers who forget the mistakes of the past are doomed to repeat them.

At the same time, developers will be well advised to become active in on-going community-wide strategies to improve the general climate for affordable housing. This may mean attending meetings and becoming engaged in activities that housing advocates are conducting, participating in development of housing policy, attending public hearings on issues other than those for a particular development and promoting the enforcement of fair housing laws in general.

There are many sources for potential allies. Housing and homelessness groups already active in the community are particularly good resources because they are likely to know both the scope of the problem and likely sources of support and opposition. It is not wise to assume a natural kinship, however. A developer should expect to make an effective presentation on behalf of the proposed development to these potential allies and to show how the proposed development might ease the burden they feel. A moderately priced homeownership program, for example, might not be of particular interest to a group working to end homelessness unless the homeownership program will result in vacancies in Section 8 or public housing rental properties. Draw on the expertise and experience of these allies to better understand the community, its housing dynamics and to anticipate any areas of community concern.

Develop an Analysis and Materials

Support for a particular development does not always come easily, or without hard work. **Early in the process it is important to develop a set of talking points about why THIS development is the right project for THIS neighborhood and THIS community at THIS point in history.**

TOURS OF AFFORDABLE HOUSING

The Non-Profit Housing Association of Northern California has developed materials about how to organize successful affordable housing tours. They suggest developing tours of existing affordable housing projects to neutralize opponents and gather support from allies.

Among their suggestions:

★ **Identify the goals of a tour.**

★ **Gather a team to co-sponsor the tour.**

★ **Motivate the target audience.**

★ **Make sure all the details are resolved.**

★ **Select sites carefully.**

★ **Make points that support the project and the objectives of the tour.**

★ **Provide handouts.**

★ **Follow up.**

How to Organize Successful Affordable Housing Tours, Non-Profit Housing Association of Northern California, <http://www.nonprofithousing.org/actioncenter/toolbox/acceptance/organizehousingtour.pdf>

While this will have much to do with the positive attributes of the particular community, it also describes the concrete linkages between the proposed development and the community—it answers the question: "Why is the development so important here and now?"

At the beginning, this fact sheet may be as simple as six or eight points, covering size, location, potential residents, benefits to the neighborhood, benefits to the community, consistency with community goals in areas like design, size, needs, etc. Such a list might also anticipate and respond generally to an identified area of potential opposition. If, in prior applications, the quality of the housing construction has been a subject of discussion or rejection,

the short list of positives might include references to the developer's prize-winning design and construction of a development in another location.

Developers must develop, in short, a message that will build public support. This message should be repeated, expanded, and amplified as a campaign continues. As meetings are initiated with allies and with public officials, the message will be adjusted as necessary to answer questions that come up with frequency. As the message and the information become more specific, developers should prepare materials that can be distributed in a variety of forums to educate various segments of the community about the development.

The types of materials that will be needed will vary based on the kinds of issues that are developing and whether or not serious opposition has developed. But basic materials should be developed regardless of whether or not opposition has developed. They are useful in winning allies and supporters, they are a relatively easy and inexpensive way to educate the community and decision makers, and they have the advantage of keeping the positive aspects of the development in the public eye.

Identify Potential Supporters and Seek Their Endorsement

Developers should identify actual and potential supporters and work to get and keep their support. Key players and critical opinion shapers should be identified early. Follow all meetings with thank you calls. Address issues that are raised immediately; follow up promptly. Developers should provide appropriate responses to every genuine issue of concern—whether the response is education, information with history, statistics, supporting data or plans. **The goal during meetings is not just to present the developers' position, but to listen for, identify, and resolve genuine concerns.** As legitimate concerns are addressed, only "unreasonable concerns"

and discrimination, stated and unstated, will remain.

Potential supporters will vary in different communities. They may include people whose business it is to decide situations on the facts like planning and zoning staff and other decision makers. Potential supporters may include elected or appointed officials who are not directly involved in the decision making, and who are able to support the need for a particular type of housing in a community without becoming embroiled in controversy. Members of legislative bodies, mayors, and others who do not decide zoning issues may be willing to provide support because they see the needs of the community as a whole.

Informal community opinion leaders, like clergy or neighborhood association officers may be aware of strong reasons for community support, such as need for benefits of affordable housing. They also may be able to provide stories that can illustrate why affordable housing is needed in the community. Support from neighborhood associations

POTENTIAL SUPPORTERS

- **Planning and zoning staff.**
- **Decision makers.**
- **Elected and appointed officials whether or not they are decision makers.**
- **News media, including editors of local newspapers.**
- **Community opinion shapers, clergy, informal leaders.**
- **Neighborhood groups and associations.**
- **Individual residents in the neighborhood of a proposed development.**
- **People who live near other affordable housing projects and have overcome their initial concerns about the impact on the neighborhood.**

should not be written off. Sometimes an early educational meeting that focuses on how proposed housing will be of benefit to the neighborhood is key to the ultimate success of the development.

Finally, developers should seek to identify individuals from the neighborhood who are willing to support the development. Nothing is more effective than a neighborhood resident who is able to be articulate and strongly supportive of a development in her neighborhood.

Prepare a Media Strategy

There are really only two choices for a media strategy:

1. **Affirmatively seek out the media and make the case for a development, and/or**
2. **Prepare to respond to media coverage if and when it is received.**

In some cases, where neighborhood opposition is anticipated, it may be best to seek media coverage early to shape the message. The best defense is a good offense. In other situations, a strategic assessment may conclude that a low profile is most conducive to ultimate approval.

In either case, media contact should communicate the benefits of the development. Working with the news media is a better strategy than ignoring them. A developer should identify one person to be spokesperson and that spokesperson should be prepared to communicate the message clearly, succinctly and consistently.

Working with media may require two components: one is seeking positive feature or news coverage by reporters, and the other is seeking editorial support for the development. In smaller communities, it is the local editor of the newspaper to whom a media campaign should be addressed, since support from the editor effectively means support in the reporting as

well. In larger communities, the two functions are separate, and both should be addressed.

Reporters will want brief factual summaries of information, quotations from spokespersons, and quick pithy responses to statements from opponents. Provide reporters with resources that will enable them to be objective. Offer them tours of other properties, interviews with key supporters or success stories from actual or potential clients.

Editorial staff may need to hear broader community-based justifications for the housing. An early meeting with editorial staff to discuss the development and ask for support is useful as part of an affirmative strategy.

Prepare a Legal Strategy

Early in the process, after identification of any likely zoning or land use issues, and certainly as soon as any community opposition based on illegal discrimination is identified, developers should prepare a legal strategy. The kind of strategy will vary depending on the nature of the opposition and the kinds of issues that are being raised in opposition. While litigation may not be necessary, it is essential for a developer to have an accurate assessment of rights as early in the process as possible. The strength (or weakness) of those rights will have a profound effect on other parts of the development strategy.

KEY ELEMENTS OF A LEGAL STRATEGY

- 1. Collect information about how other similar applications have been treated.**
- 2. If discriminatory statements are made, document them. Collect fliers, newspaper articles, petitions and other information that express discriminatory sentiments.**
- 3. Get the names of people who are making the discriminatory statements.**
- 4. If public meetings are held in the face of community opposition, ask that they be recorded, and if they are not, arrange to record them yourself.**
- 5. Document the likely impact of an adverse decision on protected classes.**
- 6. Be prepared to work with legal counsel or fair housing allies to educate government attorneys, government decision makers, or planning staff about fair housing laws.**
- 7. Involve people knowledgeable in fair housing law in planning meetings, public hearings and strategic planning.**
- 8. Develop data that deals with and resolves legitimate concerns.**
- 9. Get legal assistance from attorneys who are knowledgeable about fair housing laws.**

Adjust the Strategy as Necessary

A strategy that looks comprehensive and effective three weeks before an application is submitted can be outdated rapidly by emerging events. Unexpected reasons for opposition develop, planning staff asks for concessions or an expected supporter changes her mind. Before, during and after an application, constant attention and communication are necessary to make the strategy effective. Frequent meetings with allies, supporters, and others should be routine. New materials must be developed to respond to new issues. Strategy changes will become necessary.

For a campaign to be successful, constant attention is needed to ensure that a developer's team provides positive education and outreach to the community, resolves legitimate objections promptly and reasonably. It is up to the developer to create an effective and knowledgeable presence in support of the development.

**"The First Amendment to the United
States Constitution,
and state constitution
provisions, prohibit the government,
including municipal and
township officials,
courts, and government fair housing
enforcers from infringing
on constitutional
rights while protecting
fair housing rights."**



Advancing fair housing while protecting free speech

When developers and others are seeking to exercise their fair housing rights, they may encounter community hostility, sometimes in the form of outspoken opposition, and very rarely in the form of threats or violence. The First Amendment to the United States Constitution and state constitution provisions prohibit the government, including municipal and township officials, courts, and government fair housing enforcers from infringing on constitutional rights while protecting fair housing rights.

The First Amendment does not protect discriminatory conduct, but the First Amendment protects some forms of speech.

The Fair Housing Act Addresses Discriminatory Conduct

The Fair Housing Act protects developers against discriminatory conduct by government officials, by neighborhood groups, sellers, and others. Conduct by government decision-makers may include such actions as:

- making zoning decisions
- granting variances or imposing requirements of density or design approval
- enforcing spacing and density requirements
- denying or reducing funding

- requiring additional studies or procedural steps
- unreasonably delaying decision making

Relevant conduct by sellers could include:

- refusing to sell a house for use as a group home
- taking property off the market to avoid selling it for use as a particular development
- imposing unusual, unrelated or burdensome requirements on the sale
- imposing density or use restrictions
- seeking additional offers on a property that could result in the discriminatory rejection of an existing offer

Conduct by neighborhood groups includes:

- trying to enforce an illegal local covenant to halt development in a community
- filing or threatening to file a frivolous and unsupported lawsuit to impose illegal or discriminatory requirements
- engaging in criminal conduct

Because the First Amendment bars the government and the courts from infringing on First Amendment freedoms, government officials, sellers and neighbors whose speech is discriminatory are, for the most part, shielded from liability under the Fair Housing Act. That means that an administrative complaint or a lawsuit based on speech alone is unlikely to be successful. The Fair Housing Act does prohibit discriminatory conduct—such as a refusal to sell or a denial of a variance. Fair housing rights do not

“Even where individual members of government are found not to be biased themselves, liability may still be imposed where discriminatory governmental actions are taken in response to significant community bias.”
Tsombanidis v. City of West Haven, 129 F. Supp. 2d 136, 150 (D. Conn. 2001).

exist in a vacuum, but are in tension with First Amendment protections. That means a developer must understand something about the First Amendment in order to determine whether actions by opponents are barred by the Fair Housing Act.

“Even where individual members of government are found not to be biased themselves, liability may still be imposed where discriminatory governmental actions are taken in response to significant community bias.” *Tsombanidis v. City of West Haven*, 129 F. Supp. 2d 136, 150 (D. Conn. 2001).

The First Amendment Protects Speech

The First Amendment protects against government interference with the freedom of speech, freedom of religion, freedom of association, freedom of the press, and freedom to petition the government about grievances.

The General Rule

Municipal or township decision-makers such as planning and zoning officials, mayors, commissioners and others may not violate constitutional rights, including the right of freedom of speech. They must listen to the grievances of residents, no matter how distasteful or disagreeable they are. The press is entitled to its freedoms as well—to report and editorialize about local issues of interest to the public. Governmental action may not be used to stop individuals from distributing petitions or fliers, speaking out publicly or testifying at hearings, being interviewed by the newspaper, or even expressing objectionable or bigoted opinions. Their speech is protected against governmental action, and that includes using the courts or any government enforcement

process against them because they have exercised their right to free speech.

The Exceptions to the Rule

There are some exceptions to this general rule protecting speech. Although most expressions of free speech by individuals cannot be challenged through fair housing enforcement, reasonable restrictions may be placed on the time and place of the speech. There is no absolute right to say whatever you want to, whenever you want. There is no right to free speech when that speech amounts to slander, libel, or invasion of privacy. Speech is not protected when criminal actions are involved.

An important and potentially difficult area at the intersection of speech and conduct concerns discriminatory statements or advertising.

Because they are considered a form of “commercial speech,” statements, advertisements and notices concerning housing are subject to a greater degree of governmental regulation than ordinary speech. Under that authority, Congress included a provision in the Fair Housing Act making it illegal to “make, print or publish...any notice, statement or advertisement...that indicates any preference, limitation or discrimination based on” any of the protected classes. As a consequence, decision makers—like planning and zoning staff, township officials and politicians—and housing providers may be liable for their discriminatory statements.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

The First Amendment to the United States Constitution

Conduct that may be considered to be illegal discrimination:

- ★ **Direct discriminatory conduct (“No Mexicans Allowed”) is prohibited.**
- ★ **Unequal treatment, without one or more legitimate, nondiscriminatory reasons, is prohibited.**
- ★ **Policies that are neutral and that are applied to everyone may still be prohibited if they are not justified by a compelling reason and there is no less discriminatory way to achieve legitimate goals.**
- ★ **For disability, a reasonable accommodation must be made to usual business operations or procedures where the accommodation is needed for people with disabilities to benefit from the housing. The accommodation won’t fundamentally alter the program or create an undue financial and administrative burden.**
- ★ **Intimidation, coercion, and interference with fair housing rights are prohibited.**

For example, if in the course of a public hearing, a planning and zoning official testified that an application must be rejected because there would be too many children living in the property and that would burden the schools, the municipality which employed the official could be liable for both the discriminatory conduct—the rejection of the application—and the discriminatory statement—indicating a limitation or preference based on familial status.

Decision Makers May Not Make Decisions Based on Community Bias

Finally, and very importantly from a developer’s point of view, a government entity must consider the rights of its citizens to approach

them with their opinions, and to express those opinions. However, a government body or decision maker may not rest its decision, in whole or in part, on such discriminatory ideas or opinions. Government decision makers may not make discriminatory decisions in response to the biases of their constituents, even when their constituents demand that they do so.

Government officials must be free to HEAR all opinions, but not to ACT in a discriminatory way, and not to react discriminatorily even when their constituents express opposition for discriminatory reasons.

WHAT DOES THIS MEAN FOR DEVELOPERS?

Developers must anticipate and be ready to counter community opposition that will almost certainly be expressed in the context of First Amendment rights. This requires:

- **Preparing the best possible public justification of the development proposal.**
- **Connecting with supporters in the community who are prepared to publicly endorse the proposal.**
- **Understanding the extent to which fair housing laws can help counter discriminatory conduct by the public and by decision makers.**
- **Documenting every interaction with opponents, so that if a discrimination claim must be filed, relevant evidence is available.**

When strong community opposition with civil rights overtones emerges, community and governmental leadership often can effectively challenge it with public education, the expression of public support for the project, and encouraging an unbiased and factual consideration of the issues.

Argued: Requiring the residents of a group home to undergo a public hearing on their proposed special use request would subject them to “a firestorm of vocal opposition within the neighborhood.”

Rejected: Public input is an important aspect of municipal decision-making; the court refuses to impose a blanket requirement that cities waive their public notice and hearing requirements in all cases involving the handicapped.

United States v. Village of Palatine, 37 F. 3d 1230 (7th Cir. 1994)

The attitude of local government officials is critical in this process. A public official who understands the constitutional and civil rights restrictions on governmental conduct will seek to have the process administered fairly, openly, and without consideration of discriminatory motivations. An objective review and analysis of all the relevant factors may be conducted.

Hyperbole, exaggeration or unsupported claims of community harm that allegedly may be caused by development, or a particular development, must be examined, studied and decided objectively by government decision makers. Opinions may be heard, but discriminatory opinions may not be relied on by government decision makers. Government entities should act with awareness that their good intentions may not protect them from liability if they act based on biased community input, or if their conduct amounts to illegal discrimination, regardless of their intent.

Developers may need to remind public officials that they expect fair and nondiscriminatory treatment. If indications of illegal discrimination surface, it would make sense for a developer to request a fair housing analysis of public agency action with respect to a housing proposal so that local elected officials can be put on notice about

their potential liability under the Fair Housing Act. When township attorneys, planning and zoning counsel lack sufficient knowledge of the Fair Housing Act to do this credibly, a developer may want to commission such an analysis from a knowledgeable private fair housing attorney or consultant.

Is a Hearing Necessary?

Sometimes when discriminatory community opposition arises, public officials rush to schedule a public hearing. This decision is not always advisable. First, a public hearing may not be required, and requiring a hearing, when the usual rule is to have no hearing, may violate fair housing laws because it amounts to unequal treatment. On the other hand, when hearings are universally required of new projects, developers and organizations that have resisted public hearings for fear that community opposition may result in delay or denial of their development have not been particularly successful.

Planning for a Public Hearing

If government officials decide to have a hearing, or must have a hearing because the ordinance requires one, and community opposition is anticipated, there are a number of key issues that should be considered as part of planning for the hearing. Government officials should make these plans, but experience shows that sometimes they do not. When township or planning staff fails to think in advance about the issues that come up in public hearings, developers should think about it for them, and approach them with suggestions. A public hearing need not be a free-for-all or an unstructured debate. Such hearings risk providing much heat and little light, and they can become an unpleasant experience—or a positive turning point toward community acceptance—depending on how they are handled.

The governmental body should establish a maximum period of time for the hearing to last (start and end time) and a time limitation

TEN TIPS FOR GOVERNMENTS TO FOLLOW TO ENSURE FAIR HEARINGS

- **Establish a maximum time frame for the hearing in advance and enforce it.**
- **Consider recording the hearing through tape recording or other mechanism.**
- **Arrange for a presentation from the developer; arrange for a presentation from planning staff or other official to set forth a staff recommendation and any objective issues that must be addressed.**
- **Identify one person who will manage the meeting.**
- **Before the hearing begins, remind all participants to listen respectfully, to remain polite, not to interrupt others, or engage in cross talk.**
- **Maintain an official sign-in sheet that includes the name, address and phone number for each speaker. Call speakers in order.**
- **Establish an order for speakers. The order may be in order of sign in, or sign in may be divided into speakers who are pro and con the proposed action and the speakers may alternate.**
- **Limit the amount of time each speaker may take and announce that amount of time on the sign-in sheet. Enforce it.**
- **If any speaker makes discriminatory remarks the speaker should caution them and the audience about making discriminatory remarks. If any speaker makes profane or foul remarks, stop the speaker, and caution them and the audience about making such remarks.**
- **Consider taking a vote or making a decision at another meeting to avoid demonstrations from the audience about an unpopular decision.**

announce, for example, that a hearing will convene at 6:30 and end no later than 9:00 pm, for example. It is not uncommon to announce in advance, and enforce, a rule that each speaker has three minutes, or five minutes, to make their statement. This strategy upholds free speech rights while helping to ensure that debate does not get out of hand.

Strategies for Hearings

A developer should seek to control the agenda for a public hearing. The developer should make a presentation that is not subject to the speaker time limitation required of the general audience. It generally should ask planning staff or other officials to set out positions, relevant information, and reservations or concerns. The developer should be advised of those concerns before the hearing, so that the developer can address them before the hearing or at the hearing.

A developer should encourage local government officials to manage the hearing effectively. For example, a hearing should have an official sign in sheet as a useful way to recognize speakers, to maintain a record of speakers, and even to organize the hearing. For some hearings, a speaker sign-in sheet—which might contain information such as name, address, telephone number, political subdivision, etc.—may be used simply to order the speakers, so speakers speak in the same order that they signed in. In other situations, speakers might sign in as either pro or con the pending decision, so that speakers may be called on in alternating order, first pro, then con, and so forth. Sometimes this alternating speaker strategy helps reduce outbursts and “piling on” of one thread of opinions. A developer should suggest this strategy if it could be useful in a particular hearing.

A developer should suggest tactics that will enable a hearing to be conducted in a courteous and respectful fashion. For example, a developer

DEVELOPER STRATEGIES FOR PARTICIPATING IN A PUBLIC HEARING WHERE COMMUNITY OPPOSITION IS EXPECTED

- **A developer should have a plan.**
- **A developer should have supporters who will speak on behalf of the project.**
- **A developer should have a carefully planned presentation that educates and informs the community.**
- **A developer should have handouts, summary sheets, and other information that reacts to actual or possible objections.**
- **A developer should have media strategies in place.**
- **A developer should have the hearing recorded, if the public agency does not, with the agreement of the agency.**

could encourage the manager of the hearing to make an announcement at its beginning, calling on all speakers, and the audience, to hear each other respectfully and thoughtfully. He should remind speakers of the limitation on the amount of time that they may speak, and that the time limitation will be enforced if necessary. If the hearing will be recorded that fact should be announced at the hearing's beginning.

A developer should feel free to make suggestions in advance about what should happen if outbursts, or overtly discriminatory statements, are made at the hearing. If any speaker makes a remark that expresses discriminatory content, the manager of the hearing should advise the audience that those sorts of remarks could be considered to be discriminatory, that discriminatory comments will not be considered by the decision makers because the decision will be made on reliable facts and on the record, not on

opinions. If a speaker makes a profane or foul remark, the hearing manager should stop the speaker, and caution them and the audience not to make profane or objectionable comments, before letting the speaker continue. A speaker who makes a direct threat of a criminal act should be sternly cautioned.

In very rare situations, a developer may request that a hearing may be halted or continued on another date, if the crowd repeatedly interrupts, makes repeated discriminatory remarks, or if repeated cautions does not permit a reasoned discussion.

At many hearings, decision-making takes place at the end of the hearing. In rare circumstances, a vote or other decision-making action may be postponed. A developer may ask for additional time to provide a response to comments or to provide supplementary information. A "cooling off" period may reduce negative response or hostility and permit additional time for further action to avoid a negative decision.

How Should a Developer Prepare for a Hearing?

A well-prepared developer will already have much of the information that is needed to respond to community concerns. A developer's planned strategy should have included

all of the likely issues around which opposition could have developed; new issues should be the subject of quick

research, letters informing the deciding officials of the developer's response to the issue, and, if necessary, making the response available to the public through news media outreach.

Government decision makers may not make discriminatory decisions in response to the biases of their constituents...

The proposal should already have support by various community-based individuals and organizations that should be contacted well in advance of the hearing and invited to attend, speak in support, and contact appropriate government officials in support of the proposal. If the public agency does not usually record such hearings, or if there seem to be good reasons to record it because of the need to counter likely objections and/or discrimination, the developer should get the necessary approvals and make early arrangements for recording it.

Direct assistance should be considered at this point from fair housing experts, whether in private fair housing groups or legal counsel. Depending on the kinds of issues that are likely to be raised, and their connection to past fair housing litigation, case law may exist that might suggest certain strategies or responses by developers, and that also might be raised in the hearing or in correspondence to decision makers, to assist them in avoiding a discriminatory decision. The Resources section of this toolkit provides limited legal resources but it is not a substitute for a thoughtful analysis of current fair housing principles and cases.

A developer should plan a careful presentation of issues. The person who is selected to make the presentation should be well equipped to handle any questions that might be raised, and to make prompt responses. It is sometimes useful to have a representative present whose only function is to take notes of issues that will require further follow up after the hearing. Developers should not be afraid to address and respond to the most credible challenges to the project. The decision makers should make their decisions on the record, and a developer's ability to anticipate the key issues and respond to them on a factual basis at the hearing or im-

mediately after the hearing is an important way of keeping the discussion to the facts, rather than permitting the discussion to be based in opinion and emotion.

Handouts, summary sheets, and other written materials should usually be prepared for a hearing and distributed to hearing officers and to the audience if appropriate. For some larger projects, an audiovisual presentation, such as a slide show or power point presentation, should be considered. For example, if the look and feel of a project, based on design concerns, is an issue, slides or other forms of presentation that presents a sketch, photograph, or other representation of the particular design that is planned, may reduce opposition.

The developer should make an orderly and thoughtful presentation. If the community has material in its own documents, such as in the Consolidated Plan or an Analysis of Impediments to Fair Housing that supports the need for this type of housing, that material should be provided and referred to in the presentation. If objections have been raised on grounds that can be evaluated and rejected, studies and analyses of the data should be mentioned, and copies provided to the decision makers. The presenter should deal straightforwardly with the legitimate objections to the project. The key to a presentation of this type is to make sure that the record of the hearing and the decision-making is adequate to support a decision in favor of the project, and to address and inform the decision makers and the public about the positive points of the project and the answers to any areas of concern.

The Most Useful Media Strategies

For obvious reasons, support from local news media outlets can be important to the approval, and continued success, of a project. An early effort

should be made to reach out to media and provide them with accurate, and comprehensive information that is accessible and usable by the media.

A second element of success is to develop a few key ideas that arise from the overall strategy, that are reinforced in the presentation at a hearing, and that are brought up in press contacts. These messages should reflect some of the most positive aspects of the project—whether those positive aspects are new rental housing with three and four bedroom units that are badly needed for families, affordable housing for seniors that is lacking in the community, high quality design and maintenance, compatibility with the existing housing stock, affordability, or whatever, the most positive messages about the project should always be part of a presentation.

Finally, the person who is dealing with media for a developer must be able to have solid answers for difficult questions. The news media usually want to present a balanced story, and the developer must provide the information that will enable the press to report it.

Occasionally, the local news media will not be responsive and may actually be hostile to a particular development.

Whether a press release, press conference, or other special outreach is needed will depend on the particular situation. A press release in advance of a hearing can help ensure that news media that have been fair will attend and cover the hearing. A press release after the hearing may provide material for a follow up story that responds to concerns that are raised for the first time at a hearing. A press conference, especially in conjunction with other community supporters, fair housing advocates, or housing advocates, can help inform the public of the breadth of community support and the objectively positive reasons for the development.

Free Speech and Criminal Conduct

Rarely, community and individual opposition may result in criminal action in response to a development proposal. Whether criminal conduct results from a threat, vandalism, trespass, arson or other actual or threatened harm, speedy involvement of law enforcement officials is critical.

If a criminal act involving threatened harm to a person is related to a civil rights concern, local or state police involvement can be supplemented by a FBI investigation. The Fair Housing Act contains a provision making it a crime to, by force or threat of force, willfully injure, intimidate or interfere with a person who is exercising or assisting others to participate in housing opportunities without discrimination. So if someone attempts to burn a construction site and there are indications that illegal discrimination is motivating the arson, local police and the FBI should be promptly notified.

Government officials should be encouraged to quickly and publicly oppose these kinds of hate

WHEN LOCAL MEDIA ARE HOSTILE

- **Make several efforts to meet with key players including editorial boards.**
- **Send the appropriate factual information to several sources within a particular news market.**
- **Look for ways to reach out to other media, such as radio or television, rather than a hostile local newspaper.**
- **Expand the area of news coverage to nearby larger media markets.**

Advancing fair housing while protecting free speech

crimes and they, along with community groups, should call upon law enforcement to perform a prompt and thorough investigation.

Community supporters and developers should make efforts to involve the community in developing a strong community-wide response to hate crimes, including unified expressions of concern, responses from community and religious leaders, and leadership in opposing hate crimes and seeking judicial and legal remedies. Resources for developing a community voice against hate crimes are included in the Resources section of the toolkit.

**"We need to nurture positive
relationships with elected and
appointed officials and
seek out new ways
in which government can
be transformed into a positive force
for development of affordable housing
for all residents,
regardless of race, age,
income or disability."**



When local government is not on your side

It is a rare occasion these days when a developer can find a parcel of land that is appropriately zoned for multi-family housing and that is cheap enough to keep the resulting costs affordable to people with low or moderate incomes. More often, the developer will need a variance or use permit or other form of zoning relief. Similarly, keeping acquisition and development costs low may require financial assistance from local government. Either way, successfully building affordable housing is going to require having favorable relations with municipal staff, appointed planning and zoning boards and local elected officials. But getting that support is an underappreciated art form. This chapter provides some recipes for success.

Identifying the Players and Their Positions

Because of the tradition of citizen involvement in land use matters, local officials, whether elected or appointed, are keenly aware of the views of their constituents on affordable housing, and may choose to curry favor with some constituents by opposing new affordable housing proposals. As a result, the stakeholders or players in local zoning and land use matters may either be municipal officials or influential private citizens or both. It is important at the outset to understand the entire

roster of players with whom a developer might have to make contact.

Once the full list of stakeholders is assembled, it is important to research how each stakeholder might influence a decision on a given development, and to decide the order in which they should be approached. If the development is in a city or town that has had recent conflict over the siting of affordable housing, elected officials may feel strongly that no proposal should be submitted to city staff before neighborhood organizations have had an opportunity to be briefed and to state their positions. In that case, the first conversations would be with neighborhood leaders.

Approaching and Engaging Neighborhood Opponents

A developer proposing multifamily affordable housing in a community hostile to that very idea may worry that engaging neighbors may be a futile gesture at best and at worst a way of giving opponents a huge head start in fomenting against the development. But development spon-

WHAT YOU ARE LIKELY TO HEAR

We don't have anything against affordable housing. We just think it ought to be built somewhere else.

- ★ **The city needs a moratorium on the development of new affordable housing until we can figure out how to make sure how to do it equitably.**
- ★ **Public funds ought to go to those developments where developers have built consensus in the community, not to those that are controversial.**

WHO ELSE SHOULD WE BE TALKING WITH?

There are key leaders in every community, but they do not always have the same jobs or titles. To find them, always ask: Who else should I be talking with about this?

sors have often found outreach to be a very productive method of disarming the opposition.

While the Fair Housing Act gives localities wide latitude to consider the views of citizens, it could certainly be used to challenge an arrangement by which city officials effectively gave opponents veto power that amounted to illegal discrimination.

When faced with a choice of litigating civil rights claims or getting a development built, most developers will choose the latter. That may mean bypassing the legal system, trying to make peace with the neighbors and building an environment of goodwill that will ensure the viability of the next development. One of the leading scholars in the field of managing local opposition is Tim Iglesias of the University of San Francisco School of Law. In a previous job as principal staff member of the Community Acceptance Support Consortium in California's Bay Area, Iglesias refined a multi-step process of assessing, anticipating and responding to community opposition. This approach requires careful attention to the concerns expressed by neighbors and a recognition that addressing these may actually improve the development and its ability to succeed over the long term.

Among these, Iglesias suggests that the third step may be most important. He cautions: **Don't expect to convert opponents into supporters. Recognize that participating in the opposition may be the most exciting experience of community purpose and**

unity that the neighbors have ever felt. A few might come around to support you, and they may be very helpful to you.

(Building Inclusive Community, p. 52).

In the end, a developer does not need to win over every opponent, only those whose position or ability to sway others has the potential for defeating the proposed housing development. Developers will do best by confirming the support of strong allies, attempting to win over influential players in the middle and limiting the damage that can be done by committed opponents.

Developing an Effective Strategy for Planning and Zoning Staffs

Sometimes a developer's first contact will be with the professional staff of the municipal planning and zoning agencies. By professional training, these staff members are focused not on political considerations but on careful analysis of whether a proposed land use conforms to the community plan and zoning ordinance, and whether a non-conforming characteristic can be harmonized through the use of a variance, special use permit or other form of zoning relief.

The experience of developers and advocates across the country is that planning and zoning professionals conduct their business largely without undue influence from members of the public and elected officials. They are generally well informed about their obligations under the Fair Housing Act and other civil rights laws, and take care to abide by them. The American Planning Association has issued a number of policy guides that incorporate civil rights principles and emphasize the role of planning professionals in meeting the housing needs of all members of a community.

As a result, if a development is seen as a community asset, it is not unusual to secure necessary approvals in a timely and orderly fashion from

When local government is not on your side

municipal planning and zoning staff. Having their carefully documented staff recommendation can give a significant boost to any development proposal.

Appointed or Elected Planning and Zoning Boards

In order to ensure political accountability, most local ordinances provide that anyone aggrieved by the decision of planning and zoning staff may lodge an appeal with the appropriate commission

DOOR-TO-DOOR CAMPAIGN WINS OVER NEIGHBORS

Pine Street Inn (PSI) in Boston wanted to rehab a building to provide 10 single room occupancy units for people with HIV/AIDS, but needed zoning relief.

Prior to the public hearing, PSI staff conducted intensive door-to-door canvassing in the neighborhood, in order to:

- ★ **meet the majority of residents and explain the development;**
- ★ **answer questions about all aspects of the development;**
- ★ **provide residents with the name and number of PSI planning director for any further information requests; and**
- ★ **determine the extent of initial opposition.**

This work put many neighbors' concerns to rest, and actually produced a number of strong supporters. During the community meeting, people who attended were asked to either sign a support statement in favor of the development or a non-opposition statement.

On the night following the meeting, PSI staff went door-to-door to answer any questions of residents who were not able to attend the meeting and to request that these residents sign one of the two statements. Thirty-two community members signed the support statement; one signed the non-opposition statement. The neighborhood organization then wrote a strong letter of support.

BEST PRACTICES

EXAMPLE

Montgomery County, Maryland, had local ordinances that imposed a neighbor-notification requirement only to providers of housing for people with disabilities and required public hearings before the county review board for each group home application. In a lawsuit brought by a group home provider, the federal court struck down both provisions saying that they violated the rights of people with disabilities under the Fair Housing Act.

Potomac Group Home v. Montgomery County, 823 F.Supp. 1285 (D. Md. 1993)

(sometimes also known as the Board of Zoning Appeals, or BZA). While many appeals are filed by landowners who have been denied variances on their own properties, neighbors and others in the immediate vicinity also have the right to appeal decisions that affect adjacent parcels. For example, a neighborhood association may appeal a staff recommendation to grant a special use permit for a group home or an affordable multifamily apartment development.

Typically comprised of citizen members who have been appointed by local elected officials, these volunteer public servants may lack the professional training common in city agencies, and may feel more beholden to the citizens who elected their benefactors. One of the most effective ways of influencing such commissioners is to make support for your development very visible. Because they are essentially political bodies, commissions and BZAs are likely to endorse developments that appear popular.

Local planning and zoning commissioners volunteer their time to help manage and improve their communities, but they often lack the resources for understanding civil rights issues implicit in zoning

and land use decisions. Developers will benefit by taking affirmative steps to help commissioners understand these issues, particularly when those steps are taken outside the context of a particular conflict over a particular parcel.

Developing an Effective Strategy for Skeptical Elected Officials

Elected officials are charged with maintaining livability in communities facing numerous physical and fiscal challenges. They know about their obligations to comply with the Fair Housing Act, the Americans with Disabilities Act and a slew of other complicated federal requirements, but often feel caught between a rock and a hard

FOUR STEPS FOR WORKING THROUGH LOCAL COMMUNITY ISSUES

- **Identify the issues of greatest concern to the community. Listen carefully to each and don't assume that you already know the basis of opposition or concern.**
- **Prepare to respond to each kind of issue. Dig deep to understand whether it is based on lack of information, fear of change, prejudice against the prospective residents, or just a concern about not having been consulted ahead of time.**
- **Adopt the right attitudes. Be patient, understanding and respectful in your interaction with opponents. Avoid being defensive. The tenor of your response might demonstrate how reasonable you are, and may win converts.**
- **Set reasonable limits on concessions you will make, incorporate good suggestions from neighbors, keep open lines of communication, even with the most fervent opponents. Don't overpromise; don't let your organization be cast as the enemy of the neighborhood; don't portray the opposition negatively in comments to the press.**

HomeBase, Building Inclusive Community, pp. 48-53 (1996)

BEST PRACTICES

EXAMPLE

Lydia Apartments in Minneapolis was proposed as a creative re-use of an abandoned nursing home, and would provide 40 single room occupancy apartments for people who were homeless and who had disabilities. The project sponsor, Plymouth Church Neighborhood Foundation, did its homework and presented a strong proposal. City staff wrote a strong endorsement of the project, which provided the basis for favorable consideration by the Planning Commission and the City Council.

place, as homeowners, business leaders and other powerful interests push them to resist change in established neighborhoods and to preserve green space throughout metropolitan areas.

As tempting as it may be to see elected officials as adversaries in the affordable housing development process, it is more productive to nurture positive relationships with elected and appointed officials and seek out new ways in which government can be transformed into a positive force for development of affordable housing and community-based services for all residents, regardless of race, age, income or disability.

In the final analysis, a developer seeking zoning relief (or contribution of local funds to make the development more affordable) needs to be adept at simple vote counting.

With limited resources, a developer has to be strategic about building support. Most studies suggest that roughly 20% of the public will favor your development and roughly 20% will be unalterably opposed. The same could probably be said of elected officials. In order to prevail, your development must appeal to the 60% in the middle. Not surprisingly, reaching elected officials is a

When local government is not on your side

function of reaching their constituents. Good preparation at the early stage of engaging the community is likely to pay off when the votes are counted. Even if you have not won over every opponent to your side, your work may have been effective in convincing some opponents to sit out the conflict altogether.

In approaching elected officials, every decision a developer makes should be focused on developing or reinforcing a working majority in your favor. Developers should have a host of political, community building, legal and public relations

MAKING YOUR SUPPORT VISIBLE

In the time leading up to a public hearing:

- ★ **Secure the written endorsement of business leaders, clergy members, civic organizations and other influential stakeholders.**
- ★ **Mobilize your supporters to speak on behalf of your project, both privately and publicly, with the decision makers. It is best to have your message delivered by many different voices.**
- ★ **Identify sympathetic writers and editors at your local newspaper, radio and TV station and seek a favorable article or editorial.**
- ★ **If you have previously done a successful project, invite neighbors of that project to speak up about their positive experiences with your residents and staff members.**

At the hearing itself:

- ★ **Make sure your supporters turn out in large numbers. Even if they do not all speak, having a show of hands can impress the decision makers (and opponents) with the strength of your effort.**
- ★ **Carefully plan your presentation to cover the benefits to the community and to anticipate and respond to the concerns that have been most often expressed by opponents.**

HELPING COMMISSIONERS TO DO THE RIGHT THING

Developers should encourage commissioners to:

- ★ **Participate in the federally mandated Consolidated Plan process for the community.**
- ★ **Learn more about the Fair Housing Act, and ensure that the local zoning ordinance and practices comply.**
- ★ **Take a closer look at research on the effects of affordable housing, group homes, and community services on neighborhoods.**
- ★ **Maintain an open door policy with providers so they will feel comfortable providing a “heads up” about proposed housing or service programs.**
- ★ **Work with developers to conduct community education about the local needs for affordable housing and services before work begins on a particular site.**
- ★ **Establish “fair share” plans to ensure that every community will be home to affordable housing and community services.**
- ★ **When a public hearing is required, have staff work with providers to canvass and educate neighbors ahead of time so that the public hearing does not become driven by emotional opposition arguments, but remains focused on land use issues.**

strategies at their disposal, and carefully gauge the mix of these that is necessary to get and keep the necessary votes.

Sometimes that can be done indirectly, by convincing elected officials that you have a good product that will help low-income residents and the community as a whole.

In terms of making more direct contact with elected officials to secure their support, most developers apply common-sense advice drawn from the field of community organizing.

THE CENTRAL QUESTION

If the crucial vote were taken tonight, who would vote for and against our proposal?

Confronting Delaying Tactics

Tim Iglesias makes clear that his goal is to help providers get housing up and running with minimal delay and cost. To do so, his approach includes three other objectives: "(1) Respect for the legitimate concerns of the local commu-

PORTRAYING YOUR PROJECT AS A COMMUNITY ASSET

Developers who have been successful in building support among elected officials point to the following common elements in their performance:

- ♦ **Operating housing to truly make it an asset to the community. By maintaining high standards for the physical appearance of the property and the behavior of residents and staff, developers can improve the quality of the community.**
- ♦ **Personalizing the importance of affordable housing by taking elected officials on tours of successful housing communities and by giving them the stigma-busting opportunity to meet residents.**
- ♦ **Entering into mutually respectful good neighbor agreements.**
- ♦ **Having residents join in community efforts, including neighborhood beautification, civic affairs, school literacy programs, block parties, etc., lowers the barriers between residents and their neighbors, and reduces the sense of social isolation that can occur for low-income families.**
- ♦ **Providing municipal officials and neighborhood leaders the name and phone number for a responsible staff person who can be contacted "24/7" in case of problems.**

nity; (2) Respect for the rights of current and prospective residents; and (3) Advancing the prospects of future affordable housing proposals in the community."

Knowing that delay can mean the death of developments, opponents often insist on extensive zoning and land use review of proposals for affordable housing. As a result, many needed developments never get off the drawing board. Developers need to decide the point at which delay threatens the viability of a development and determine whether they are prepared to assert their legal rights. Unlike the political process, which often has no deadline by which a decision must be made, the courts are in a position to grant immediate relief where it is necessary.

Because the risks of litigation are high not just in terms of winning or losing, but also of the potential impact on future relations with elected official

LITIGATION CAN BE EFFECTIVE AS A LAST RESORT

A developer of supportive group homes for people with Alzheimer's sought a special zoning accommodation to operate a group home for five people in a residential district. The zoning ordinance in question allowed no more than four unrelated persons to occupy a single home in a residential district and then only on a non-profit, cost-sharing basis.

Local agency staff recommended approval, but elected officials delayed formal action on the application because of objections voiced by neighbors. Because his option on the property was about to expire, the operator brought an action claiming the parish had failed or refused to provide a reasonable accommodation.

The court held that the local zoning ordinance clearly has a harsher impact on people with Alzheimer's who may wish to live in a residential neighborhood, and ordered the local government to permit the developer to house five people.

Groome Resources, Ltd. v. Parish of Jefferson, 52 F.Supp.2d 721 (E.D. La. 1999), affirmed 234 F.3d 192 (5th Cir. 2000)

GETTING (AND KEEPING) ELECTED OFFICIALS ON YOUR SIDE

Just as sponsors of legislation in Congress won't bring a bill to the floor until they can be sure it will pass, developers should be involved in ongoing canvassing of elected officials, in the following direct and indirect ways:

- Meeting with as many elected officials as possible, one-on-one or in small groups, to present the proposal and to hear comments and concerns
- Conferring with community leaders about the voting history and likely position of elected officials on your proposal
- Recruiting supporters and preparing them to lobby elected officials on your behalf. Bringing in members of the business community, the clergy, civic and labor organizations, social services providers and good government groups will reinforce the breadth and depth of your support in the eyes of elected officials
- Making presentations to community organizations and getting their public endorsement of your development will raise the comfort level of elected officials concerning your development
- Having the support of city agencies, such as the police department, the school system and taxing authority, makes it easier for elected officials to support new housing
- Convincing elected officials that your housing will save money for the local government, or effectively address some other social problem, like homelessness, addiction, urban sprawl or crime, will endear officials to your proposal
- Winning over key members of the local governing body (or of the state legislature) will make it easier to convince others to support you

BEST PRACTICES

PERSISTENCE OVERCOMES DELAYING TACTICS

St. Peter's Homes, a small non-profit housing developer in Charlotte, North Carolina has proven again that patience and hard work in the community beat NIMBY distortion and fear tactics. St. Peter's started with a clear vision about the need to provide permanent housing, rather than more emergency shelter. It had developed good support from its adjacent neighbors, but objections from a neighborhood organization over a mile away delayed the development for several months. St. Peter's responded with persistence, attending every public meeting and offering to meet privately with opponents, despite their open hostility to the development. They continued to mobilize public support and to work with the media to correct misinformation. They worked the city's process tenaciously, and eventually secured a \$1 million capital funding grant from the city council.

sand neighbors many developers choose old-fashioned persistence instead.

Conclusion

The good news is that the tools available for doing so are growing in number and sophistication. Against an historical backdrop of very broad local discretion on these matters, the federal and state governments have, over the past three decades, sought to regulate the land use process to ensure equitable treatment of minority groups, environmental preservation and efficient use of natural and material resources. Beyond that, a number of organizations have developed new approaches to managing local opposition that respond early and comprehensively to many predictable sources of community concern. With these and other tools in hand, affordable housing developers and providers who face skepticism or outright opposition from local government officials have new opportunities to spin straw into gold.

**"Despite the passage of disability
civil rights laws, since the late 1980s,
dozens of Pennsylvania cities,
townships and boroughs
have witnesses pitched battles
over the siting of group homes,
assisted living centers and
other housing that is reserved
for people with disabilities."**



Opposition to housing for people with disabilities

For most of the 20th century, the official policy of the United States was to segregate people with disabilities from "normal" society. People with disabilities lived in large institutions, like psychiatric hospitals, "training centers," nursing homes or "county homes" (formerly known as almshouses). Beginning in the early 1960s, a movement toward community living began, based on the core principle that people with disabilities are entitled to the same opportunities enjoyed by people without disabilities. That includes the opportunity to live in housing of one's choice in the community.

Society uses several different definitions of disability, so any discussion of this topic would benefit by clarifying basic terms.

Because it focuses on advancing affordable housing through civil rights laws, this toolkit uses the broadest definition of the term "disability."

As disability civil rights laws were adopted over the past four decades, people with disabilities sought opportunities to live in the community rather than in institutions. But the initial reaction of the housing market was not favorable. Many public housing authorities and private owners adopted explicit policies excluding people with disabilities. As a result of these forces, and recognizing that some

DEFINITIONS OF DISABILITY

DISABILITY BENEFITS UNDER SOCIAL SECURITY:

The Social Security Administration (SSA) uses the most restrictive definition of disability, framing the concept in terms of the complete inability to work. The federal government estimates that about 9 million people meet this definition.

FEDERALLY SUBSIDIZED HOUSING:

The Department of Housing and Urban Development (HUD) uses several definitions of disability, expanding on the SSA definition to include people with developmental disabilities and people whose mental or physical impairments are expected to continue indefinitely, impede the ability to live independently, and could be improved by more suitable housing conditions. Although statistics are hard to find, this may include more than 20 million people.

CIVIL RIGHTS LAWS:

The Fair Housing Act (FHA), Americans with Disabilities Act (ADA) and the Rehabilitation Act all use a common and much broader definition: A physical or mental impairment, which substantially limits one or more major life activities. The federal government estimates that 54 million Americans meet this definition, and thereby enjoy coverage under these laws.

people may need specialized health care, personal care services or other supports to live in the com-

"HOUSING PLUS SERVICES" MODELS

SECTION 202: A federal funding program designed to create new, affordable apartments for people over the age of 62 who may need some assistance. Section 202 developments built between 1973 and 1992 might also house some younger people with disabilities.

SECTION 811: Similar to Section 202, this federal program, begun in 1992, gives capital grants to providers of housing and services to people with disabilities.

GROUP HOMES: Small congregate settings for people with psychiatric or developmental disabilities, head injuries or addiction disorders. Group homes and similar models provide housing and appropriate services, and are usually considered a form of transitional housing.

PERSONAL CARE HOMES: Small homes that offer personal care services, assistance and supervision to four or residents who need and receive personal care services. They are licensed through the Department of Public Welfare.

ASSISTED LIVING: Larger residential settings that provide a variety of on-site health-related and other personal-living services, are subject to some state licensing requirements and offer only private – as opposed to shared – occupancy units.

NURSING HOMES: Facilities that provide skilled nursing care or rehabilitation services for injured, disabled, or sick persons who require full-time medical and related services (e.g., administration of medication and prescribed treatments), but who do not need the acute level of care provided by hospitals.

munity, new forms of "housing plus services" have been developed over to serve people with disabilities.

Because each of the models described above provides housing in addition to services, the courts have uniformly held that they are considered "dwellings" under the Fair Housing Act, and therefore enjoy protection against discriminatory zoning and land use practices.

Despite the passage of disability civil rights laws, since the late 1980s, dozens of Pennsylvania cities, townships and boroughs have witnessed pitched battles over the siting of group homes, assisted living centers and other housing that is reserved for people with disabilities.

Increased Demand for this Kind of Housing

The shift from institutional to community housing has been dramatic and was reinforced by the United States Supreme Court's decision in *Olmstead v. L.C.* in June of 1999. That case, decided under the Americans with Disabilities Act, said that states must provide community-based services rather than institutional placements for people with disabilities. To fulfill this requirement, a state must continuously assess whether people in psychiatric hospitals, nursing homes and other institutions can be served in the "most integrated setting" appropriate to their needs. Over the course of the next decade that will mean a tremendous increase in demand for mainstream

SCHUYLKILL TOWNSHIP LIMIT ON "UNRELATED PERSONS" STRUCK DOWN

The U.S. Department of Justice sued the Schuylkill Township for denying the Devereux Foundation permission to establish a home for five adults with developmental disabilities in an area zoned for single families. The court invalidated the township's ordinance because it had a discriminatory effect on persons with disabilities.

--*United States v. Schuylkill Township*, (E.D. Pa. 1999)

**ZIMMER TOWNSHIP SPACING
ORDINANCE INVALIDATED**

The Justice Department joined a private lawsuit brought by people with mental retardation challenging a 1985 Moon Township ordinance that required that group homes be separated from one another by at least one mile. The court entered a consent decree forbidding the township from imposing those restrictions since those restrictions were not imposed on "traditional" families and because they had a direct impact on people with disabilities.

--Zimmer and United States of America v. Moon Township (W.D. Pa. 1990)

affordable housing and for the forms of specialized housing described above.

The Olmstead decision will have a significant impact on PA's State and local laws and services, including those that affect housing.

Many Local Zoning and Land Use Practices in Pennsylvania Unduly Restrict Housing for People with Disabilities

Local governments use zoning and land use powers to shape and control the character of their neighborhoods. Many boroughs and townships impose limits on the maximum number of unrelated people who can live together in residential neighborhoods. While this limitation may be designed to keep out fraternities, sororities and boarding houses, it also operates to restrict group homes, personal care homes and other options for people with disabilities.

Another method frequently employed by localities that do not want housing for people with disabilities is the spacing ordinance. Typically, such ordinances require that a group home or other congregate home not be located within a specified radius (typically a quarter mile or more) from any other such home. Given the geograph-

ical boundaries of the borough or township and the finite number of residential neighborhoods in which to locate a group home, spacing requirements have the effect of limiting the number of group homes that can operate in a municipality. The offensiveness of such requirements can be understood by asking whether zoning and land use authorities would require quarter-mile spacing between the homes of African Americans or Catholics, or any other group protected under the Fair Housing Act.

The Fair Housing Act prohibits discrimination "because of" disability. In addition to authorizing lawsuits by people with disabilities who have been victims of discrimination, the law also gives standing (the legal right to sue) to developers and operators of housing for people with disabilities. Because of special provisions in the law, the Justice Department is authorized to sue local governments in cases involving zoning and land use since such cases are likely to have an impact on all residents of a locality.

**THE FAIR HOUSING ACT REQUIRES
"REASONABLE ACCOMMODATIONS"**

- **Discrimination under the Fair Housing Act includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a disability] an equal opportunity to use and enjoy a dwelling." 42 U.S.C. ' 3604(f)(3)(B).**
- **So long as the requested accommodation does not constitute an undue financial or administrative burden for the landlord, or fundamentally alter the nature of the housing, the landlord must provide the accommodation.**

REASONABLE ACCOMMODATION IN PRACTICE

- **The reasonable accommodation requirement of the Act mandates that officials “change, waive, or make exceptions in their zoning rules to afford people with disabilities the same opportunity to housing as those who are without disabilities.”**
- **An accommodation is “reasonable” if it does not impose an undue financial or administrative burden and does not undermine the zoning scheme.**

-- *Hovsons, Inc. v. Township of Brick*, (3d Cir. 1996)

Local Governments Must Take Affirmative Steps to Afford Equal Housing Opportunity to People with Disabilities

The failure to provide a reasonable accommodation is an independent form of discrimination under the Fair Housing Act. In addition to prohibiting ordinances and practices that intend to discriminate against housing for people with disabilities, the failure of zoning officials to allow for “reasonable accommodations” in their policies violates the Fair Housing Act as well, regardless of whether the officials acted with discriminatory intent.

There are many examples in Pennsylvania and nearby states in which units of local government have been found to violate obligations under the reasonable accommodation provision of the Fair Housing Act. The penalties for this kind of violation can be just as severe as those for intentional discrimination.

While these decisions reveal that many zoning laws must yield to the right of people with disabilities to live in the homes of their choice, it would be a mistake to assume that they always will do so.

EXAMPLE

FAILURE TO ACCOMMODATE

- **A city's failure to grant a reasonable accommodation of its minimum side yard requirement for a single room occupancy facility for persons with mental illness and recovering substance abusers violated the reasonable accommodation provision.**

United States v. City of Philadelphia (3d Cir. 1994).

- **A municipality's failure to issue a variance to its zoning laws to allow the operation of a single room occupancy facility for persons with mental illness and recovering substance abusers in a commercial/industrial district might violate the reasonable accommodation provision.**

Judy B. v. Borough of Tioga (M.D. Pa. 1995).

- **A requirement that group homes obtain a variance to operate within 1,000 feet of another group home was deemed to be an insufficient accommodation where the variance process was lengthy, costly, and burdensome.**

Horizon House Developmental Services, Inc. v. Township of Upper Southampton (3d Cir. 1993).

- **Refusal to waive zoning laws that restrictively define “family” and/or limit the number of unrelated persons who may live together so as to bar operation of group facilities have been held to violate the reasonable accommodation provision.**

Oxford House, Inc. v. Town of Babylon (E.D.N.Y. 1993)

- **A municipality's refusal to permit a nursing home to operate in a mixed residential zone violated the reasonable accommodation mandate.**

Hovsons, Inc. v. Township of Brick, (3d Cir. 1996).

When is a Reasonable Accommodation Requested?

An accommodation to zoning and land use rules can theoretically be requested at any time that it becomes necessary. As a practical matter, though, such a request must often be made early in the process in order to give the local government an opportunity to decide whether the requested change would impose an undue financial and administrative burden or would constitute a fundamental alteration of the zoning ordinance.

The Fair Housing Act requires that local governments provide accommodations, but does not mandate the process used to consider accommodation requests. Most local governments have established processes to consider requests for variances, special use permits and other forms of zoning relief. So long as a reasonable accommodation request can be dealt with fairly, and in a timely fashion through established methods, a local government will comply with the Fair Housing Act.

Fighting Disability-Based Stereotypes

When Congress added disability as a protected class under the Fair Housing Act, it said that it was "repudiat[ing] the use of stereotypes and ignorance, and mandat[ing] that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion."

One commonly-held stereotype about people with disabilities is that they all need specialized housing. In fact, most do not. Rather, they need the same kind of decent, safe and affordable housing that all people need, although some people require certain accessibility features. Congress recognized that many people with disabilities would need such "mainstream" units, and required housing developers who are building new apartments after 1991 to comply with design and construction accessibility standards.

For those people who need housing with specialized services, the courts have recognized that the Fair Housing Act confers a right to "the residence of their choice." That means that zoning and land use laws and practices cannot limit or remove that choice because of stereotypical ideas about what housing for people with disabilities should look like or where it should be located.

THERE ARE LIMITS ON WHAT CAN BE ACHIEVED WITH REASONABLE ACCOMMODATION

★ **A court held that it was *not* a reasonable accommodation to grant a variance to allow construction of a two-story, four-unit apartment building in a residential district simply because the first floor units would be accessible. The reasonable accommodation mandate did not require waiver of any zoning rule any time a developer wants to develop accessible housing.**

Brandt v. Village of Chebanse, (7th Cir. 1996).

★ **A court held that denial of a conditional use permit to construct a community-based residential facility was *not* a violation of the reasonable accommodation provision since the application was denied due to the inadequacy of the plans and because the proposal was inconsistent with the zoning scheme.**

Erdman v. City of Fort Atkinson (7th Cir. 1996).

★ **A court rejected a reasonable accommodation claim challenging a city's denial of a special use permit to allow an adult foster care facility to operate in the central business district since the city stated it would assist the provider to locate another location.**

Thornton v. City of Allegan, (W.D. Mich. 1993).

**"Immediately after
an adverse decision,
a developer should make
a legal and political assessment
about next steps."**



The score?—Local opposition 1, developer zip. What happens when, despite the strategic plan, the hard work of the developer’s team, allies and supporters, the media outreach, the community education, the brochures and fliers, the development is defeated? Immediately after an adverse decision, a developer should make a legal and political assessment about next steps.

Reconsideration

There may be grounds for, and a process to request, reconsideration by the same body. When the decision is clearly in violation of either the zoning and land use law or civil rights laws, a developer should consider writing a demand letter that describes why the decision is wrong and outlines the potential liability the municipality may face if its decision stands. The letter should conclude with a request that the matter be reviewed and a different decision rendered. Sometimes a municipal lawyer will be supportive of reconsideration, fearing that there will be difficulties in successfully defending an appeal.

Appeal or Litigation

When no reconsideration process exists, the next assessment is whether to appeal an adverse action, assuming an appeal process exists. This decision is usually made after considering a variety of factors, including the relative strengths and weaknesses of a zoning appeal or a fair housing case.

Is it the zoning principles and state requirements for land use decision-making that have been violated?

Is the decision challengeable under the usual standards for an appeal to a planning and zoning administrator, BZA or other administrative entity or to state court? A typical NIMBY case, without civil rights overtones, is typically appealed through this process, if it is appealed at all.

On the other hand, fair housing issues may be the predominant concern about the decision. In these cases, provided that the action denying your development represents the final decision of the administrative body responsible for such matters, it is often better to consider bringing a separate fair housing case using one of the enforcement routes described in Chapter 3.

There are several reasons to consider fair housing.

First, zoning and land use appeal processes and officials are not expected to be knowledgeable about fair housing issues, and they frequently uphold decisions that appear to be reasonable to them without applying a fair housing analysis. In some cases, zoning appeals boards have even refused to hear fair housing issues.

Second, the fair housing remedies in the civil rights laws are typically stronger than the remedies in a zoning appeal.

Third, other kinds of relief, like injunctions to halt the effects of an adverse decision or to preserve the circumstances while a court decides the case, may provide more protection for developers.

Finally, fair housing claims may simply be presented and decided more effectively in a sep-

A GOVERNMENT BODY THAT IS SUED FOR A CIVIL RIGHTS VIOLATION SHOULD BE CONCERNED ABOUT

- **THE COST OF DEFENSE.** Often insurance does not cover defense of a civil rights law suit.
- **THE BURDEN OF DEFENSE.** Involvement in litigation is a time consuming process, and may include time collecting and copying material, meeting with attorneys—sometimes repeatedly—and participating in lengthy, depositions and hearings.
- **THE RISK OF FEDERAL GOVERNMENT INTERVENTION.** A lawsuit may be brought or joined in by the United States Department of Justice under its authority to challenge discriminatory zoning and land use activities. The United States Department of Housing and Urban Development may investigate.
- **THE RISK OF LOSS.** If a civil rights lawsuit *is successful*, compensatory damages, punitive damages, attorneys fees and undertaking court ordered remedial action all are expensive to pay for and challenging to undertake.
- **THE CONSEQUENCES TO FEDERAL AND OTHER FUNDING.** Governmental bodies who receive federal funding are obligated to further fair housing. Failure to do so threatens that funding. HUD has denied funding approvals when civil rights violations have occurred as demonstrated by a fair housing lawsuit.
- **THE COMMUNITY CONSEQUENCES.** A community that has suffered a long and divisive fight based in discriminatory opposition should be concerned about the emotional damage that such a fight has on a community's long term well being.

arate action. Generally, attorneys who are knowledgeable both about the zoning law and civil rights laws should be involved in the decision making about an appeal or independent fair housing litigation.

Cost is also a factor in litigation or appeal. Developers who are prepared to stand firm and challenge illegal and discriminatory decision-making must commit a significant amount of time and resources to that task.

Another factor that must be considered in deciding what should be done about an adverse decision is the precedent that it sets, for that developer and others. While some developers may be tempted to "cut their losses" and move on to another city or neighborhood that might be more welcoming, many are choosing to stand and fight adverse decisions, especially where illegal discrimination has played a role in the decision-making. Other developers and advocates may provide moral, technical and even financial assistance to these challenges on the basis that a successful challenge will reduce similar adverse decisions in other communities.

A fair housing challenge to adverse decision-making should be initiated quickly. In zoning and land use terms, a delay of even a few months means lost opportunities, threats to funding and the risk that facts, witnesses, and even documentation will be lost. In addition, prompt institution of proceedings sends a signal that discriminatory decision making will be met surely and swiftly with adverse consequences for the governmental body.

Other Options

There are, of course, other options after an unsuccessful challenge. One option is to move to another location in the same community with the same or similar application. Generally, this strate-

Last resorts

gy is only successful if key decision makers have signaled that this is an advisable strategy.

Developers that have been unsuccessful and do not choose to challenge the decision should assess whether another developer or another type of development could have been successful, even when this assessment may be painful. If another type of development could have been successfully approved, the question remains why another development could have succeeded. If the development itself could be modified; if the modification was reasonable and possible, the question arises as to why the modification could not have been negotiated during the application process for the initial application. If the difference between the developments has to do with who the potential residents would be, the developer should assess again the possibilities of a fair housing challenge. **If, for example, a multifamily development for seniors would have been approved but a multifamily tax credit development for families would not, the question should be asked again—why would one fail and the other be successful absent illegal discrimination?**

Finally, developers and their allies should work together to improve the climate for affordable housing across the state. Improvements in the environment generally will mean improvements for all who seek to engage in affordable housing and other housing development. Continuing to share successes and failures, working with allies who also seek to improve affordable housing options, challenging exclusionary and discriminatory attitudes, ultimately improves everyone's options. The people who need housing –and the Commonwealth–will ultimately be better off for the effort.

Addendum

Making the Case for Affordable Housing Development—What the Research Shows

Low Income Housing Tax Credit Housing Developments And Property Values

By Richard K. Green, Stephen Malpezzi and Kiat-Ying Seah

Synopsis: A review of eight studies on the issue of the effect of low-income housing on property values generally does not support the proposition that such housing diminished property values. Often it is the case that low-income housing developments cause surrounding property values to increase. Interestingly enough, past authors have generally found that such developments have a more positive impact in higher income areas. It seems to be the case that it is only when low-income housing developments are located in areas that already have concentrated poverty that they have a negative impact on property values. "In our view, the key policy implication of our results is that Section 42 developments are best placed in relatively affluent communities, where there is no evidence that that developments cause property values to deteriorate. This phenomenon is consistent with findings from past literature."

The Center for Urban Land Economics Research, University of Wisconsin (June 14, 2002). Available at http://www.novoco.com/Research_Center/uw_study.pdf

Innovative Housing Institute, A Study of the Impact of Subsidized Housing on Property Values of Private Market Rate Housing in Mixed-Income Environments in Montgomery County, Maryland and Fairfax County, Virginia

Synopsis: Overall, there was no significant difference in price trends between non-subsidized homes in the subdivisions with subsidized units and the market as a whole -- whether measured at the zip code or county-wide level. Furthermore, there was no difference in price behavior between non-subsidized houses located within 500 feet of subsidized housing and those farther away in the same or an adjacent subdivision. Even the price trends of those non-subsidized homes located immediately adjacent to a subsidized dwelling (either next door, back-to-back, across the street, or within 25 feet) were unaffected by their proximity. In sum, the presence or proximity of subsidized housing made no difference in housing values as measured by relative price behavior in a dynamic market.

Available at <http://www.inhousing.org/housenex.btm>

In the Wake of Desegregation: Early Impacts of Scattered-Site Public Housing on Neighborhoods in Yonkers

By Xavier de Souza Briggs, Joe T. Darden and Angela Aidala

Synopsis: Our site-by-site price analyses turned up no significant effects, whether of announcement or occupancy, at the seven sites, not even the O'Rourke site - the first built and one of the two largest sites. The direct reading of our price analyses is that the SSPH sites were located in micro areas that were already lower valued relative to the larger neighborhood (census tract). The evidence is that good housing management, the early involvement of police and other public officials in mitigating homeowner fears, and the longer-run comeback of housing demand in the region combined to eliminate any generalized effect of the controversial housing on nearby home prices. We cannot, however, rule out negative effects on particular transactions that may reflect early "panic selling" or flight.

New York, 65 Journal of the American Planning Association 27ff. (Winter 1999)

A Study of the Relationship Between Affordable Family Rental Housing and Home Values in the Twin Cities,

Family Housing Fund

Synopsis: We conclude from our research that there is little or no evidence to support the claim that the tax credit family rental developments in our study eroded surrounding home values. The information from this research suggests that the various housing sub-markets examined in our study performed normally in the years after the construction of the tax-credit properties in question, varying in similar fashion to the pre-construction years, and responding to supply and demand forces in a similar manner as the larger market.

Maxfield Research, (September 2000), Available at
http://www.fhfund.org/_dnld/reports/Property%20Values_Full%20Report.pdf

The Question of Property Values, Campaign for New Community

Michael Dear and Robert Wilton

Synopsis: It seems clear from the studies contained within this bibliography that there is an overwhelming volume of evidence supporting the contention that human service facilities do not significantly impact the market values of properties around them. They do not make proximate properties harder to sell, and they do not destabilize the neighborhood by inducing relocation. The studies included here cover the time span 1973 - 1993, and there appears to be very little fluctuation in findings during this period. However, one weakness of the bibliography is that it does not contain studies documenting the property value impact of some of the more contemporary facilities such as group homes for people with AIDS and homeless shelters. Despite an extensive search, no literature was found dealing with the property value impact of these facilities, clearly an important absence given current siting difficulties.

A final point--despite the weight of evidence collected here, the property values "myth" remains a powerful battle cry for communities opposed to the siting of human services facilities. It is clear that more work should be done to provide facility operators and advocates with the tools they need to effectively counter such claims.

(1998) Available at
http://www.bettercommunities.org/index.cfm?method=question_of_property_values

Resources

WEBSITES

www.housingalliancepa.org

Housing Alliance of Pennsylvania: Articles, studies and information about affordable housing in Pennsylvania, legislative initiatives and public policy issues.

www.pfha.org

Pennsylvania Housing Finance Agency: Information about funding availability, studies about affordable housing in Pennsylvania, interest rates and other information.

www.bettercommunities.org

Building Better Communities Network: Community building, conflict resolution, funding, good government, news articles and studies on NIMBYism, discrimination, and housing needs.

www.nlihc.org

National Low Income Housing Coalition: Many articles on affordable housing and its connection to housing needs, including the NIMBY Report, legislative and public policy reports and studies, and advocate's guide.

www.knowledgeplex.org

Extensive articles on areas such as housing preservation and expiring use, multifamily housing, senior and special needs housing, fair housing, and many related articles. Also includes best practices, discussion, research and more for professionals working in affordable housing and community development.

www.uic.edu/aa/cdc/AHDC/website

Design Matters website which catalogues good examples of housing design around the country.

www.hud.gov and especially

www.hud.gov/initiatives/affordablecom.cfm

Resources about HUD programs, grant opportunities, and HUD's new Affordable Communities Initiative, with resources about regulatory barriers to development of affordable housing, best practices, and regulatory reform strategies.

www.regbarriers.org

HUD's regulatory barriers clearinghouse: Information about laws, regulations, and policies affecting the development, maintenance, improvement, availability, and cost of affordable housing.

www.jchs.harvard.edu

Joint Center for Housing Studies at Harvard: Studies and reports on housing patterns, State of the Nation's Housing.

www.tcab.org

Resources on state and local campaigns to support affordable housing

www.community2000online.org

CommUNITY Online: Resources for developing community responses to hate crimes and community tensions, includes strategies for fighting hate, lesson plans for students, studies on housing segregation.

www.bazon.org

Bazon Mental Health Law Center: Resources on fair housing cases affecting persons with disabilities. Publications for consumers and lawyers.

Resources

www.fairhousing.com

National Fair Housing Advocate: News reports, fair housing statutes, regulations and requirements, HUD resources relating to fair housing

www.civilrights.org

Leadership Conference on Civil Rights: Information on general civil rights issues, including housing.

www.designadvisor.org

Affordable Housing Design Advisor: Contains checklists, resources (including powerpoints) supporting higher density design approaches, information about identifying and achieving good design.

www.fairhousingfirst.org

Fair Housing FIRST: Resources and information about providing required accessibility in compliance with the Fair Housing Act for all multifamily buildings designed and constructed since March 13, 1991. Includes information about requirements, standards, and accessible housing resources and products. Long list of frequently asked questions about technical design issues.

www.housingresearch.org

Housing Research Foundation: Resources on developing public housing, focuses on HOPE VI and public and senior housing.

www.nonprofithousing.org

The Non-Profit Housing Association of Northern California: Public education materials, dealing with property value concerns,

what works in affordable housing education, and dealing with opponents of housing and service development.

www.ruralhome.org/pubs/fairhousing/zoning/contents.htm

Housing Assistance Council: Outline of fair housing issues in zoning and land use cases in rural areas, including strategies for response.

www.housingrights.com/land2.htm

Housing Rights, Inc.: Fair housing law, zoning and land use issues, and other general legal summaries.

www.fbcsf.com

Fair Housing Council of Suburban Philadelphia: Provides information, counseling, assistance on fair housing issues

www.fairhousingmontco.org

Fair Housing Council of Montgomery County, PA. Provides education and outreach and assistance on fair housing issues.

www.10000friends.org

Promotes policies and actions that will revitalize and sustain the social and economic well-being of Pennsylvania's diverse urban, suburban, and rural communities, foster responsible land use, and conserve natural, heritage, and fiscal resources.

www.opensoc.org

Fund for an OPEN Society provides technical assistance to communities seeking to become racially and ethnically inclusive.

aia.org, www.aiapa.org, www.aiaphila.org
American Institute of Architects Pennsylvania
and Philadelphia chapters. Information for
architects.

www.planning.org, www.planningpa.org
American Planning Association and
Pennsylvania Planning Association. Journal
articles and events relating to planners.

ARTICLES AND BOOKS

General

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Housing in America, 2001."*

Communication and Publications. National
Housing Conference Online. 8 May 2003.
[http://www.nbc.org/comm_and_pubs_pay-
check01.htm](http://www.nbc.org/comm_and_pubs_paycheck01.htm)

*"Regional Approaches to Affordable
Housing."* American Planning Association.

"California Inclusionary Housing Reader."
Institute for Local Self Government.

Haughey, Richard M. *"The Case for
Multifamily Housing."* The Urban Land
Institute. 2003.

*"Zoning Affordability: The Challenge of
Inclusionary Housing."* Zoning News.
American Planning Association. Aug. 2003.

Canby, Anne. *"Affordable Housing and
Transportation: Creating New Linkages
Benefiting Low-Income Families."* Housing
Facts & Finds. Fannie Mae Foundation. Vol.
5, No. 2. 2003.

Nelson, Arthur C. *"Top Ten State and Local
Strategies to Increase Affordable Housing
Supply."* Housing Facts & Finds. Fannie Mae
Foundation. Vol. 5 No. 1. 2003.

*"Reducing Land Use Barriers to Affordable
Housing."*

PA Department of Community and Economic
Development. Fourth Edition. Aug. 2001.

Fox, Radhika K. and Kalima Rose.

*"Expanding Housing Opportunity in
Washington, DC: The Case for Inclusionary
Zoning."* PolicyLink. Fall 2003.

Anderson, Mary. *"Opening the Doors to
Inclusionary Housing."* Business and
Professional People for the Public Interest
(BPI).

Watson, Gregory J. and Frederick J. Eggers.
*"Rental Market Dynamics: Is affordable
Housing for the Poor an Endangered
Species?"* Office of Policy Development and
Research (HUD)

Katz, Bruce and Margery Austin Turner.
*"Rethinking Local Affordable Housing
Strategies: Lessons from 70 Years of Policy
and Practice."* The Urban Institute.
December 2003.

DESIGN

*"Design Matters: A catalog of exemplary
affordable housing,"* The City Design Center
at the University of Illinois at Chicago,
Exemplary design examples for affordable
housing.

<http://131.193.111.149/abc/catalog/home.html>

“Good Neighbors: Affordable Family Housing, Case studies in affordable housing design.”

<http://www.andnet.org/goodneighbors/about/index.html>

Canada Mortgage and Housing Corporation, affordable housing strategies, design examples, and exemplars from Canada,

<http://www.cmhcschl.gc.ca/en/imquaf/afbo/>

Design Center for Urban American Landscape, affordable housing design fact sheets and examples for Minneapolis/St.

Paul, http://www.cala.umn.edu/design_center/projects/current/current_research_areas/housing/corridor_housing/corridor_housing.html

Affordable Housing Design Advisor, Videos, demystifying density, how to achieve good design. <http://web.njit.edu/abs/>

College of Human Services, Accessible housing design.

<http://outreach.missouri.edu/edninfo/affordada.htm>

Affordable Housing and Property Values

Xavier de Souza Briggs, et al., *“In the Wake of Desegregation: Early Impacts of Scattered-site Public Housing on Neighborhoods in Yonkers, New York,”* 65 Journal of the American Planning Association 27 (Winter 1999)

Maxfield Research, Inc., A Study of the Relationship Between Affordable Family Rental Housing and Home Values in the Twin Cities (September 2000), available at http://www.fbfund.org/_dnld/reports/Property%20Values_Full%20Report.pdf

Michael Dear and Robert Wilton, *“The Question of Property Values (1997),”*

available at

http://www.bettercommunities.org/index.cfm?method=question_of_property_values

Affordable Housing and Crime Rates

Urban Institute, "*The Impacts of Supportive Housing on Neighborhoods and Neighbors*" (April 2000). Available at <http://www.buduser.org/publications/sup-psvcs/support.html>

Michael Dear and Robert Wilton, "*Crime & Safety: Fact and Fiction*" (1997). Available from Building Better Communities Network, at <http://www.bettercommunities.org/index.cfm?method=bookstore>

Community Shelter Board, "*Emergency Shelter's Impact on Crime in Neighborhoods*," available at <http://www.csb.org/Publications/crime.pdf>

"*Affordable Housing and the Character of the Neighborhood*" Tenney-Lapham Neighborhood Association, Land Use Vision of the Neighborhood, available at <http://danenet.wicip.org/tlna/web-data/steering/housing6.html>

Non-Profit Housing Association of Northern California, "*What is Affordable Housing?*" available at <http://www.nonprofit-housing.org/about/affordablehousing/index.atomic>

Danielle Arigoni, "*Affordable Housing and Smart Growth: Making the Connection*" (2001), National Neighborhood Coalition, http://www.knowledgeplex.org/kp/report/report/relfiles/nnc_epa_ab_sg.pdf

Affordable Housing and Design

Michael Pyatok, "*Good Neighbors: Affordable Family Housing*," available through <http://www.andnet.org/goodneighbors/about/index.html>

National Low Income Housing Coalition, *The NIMBY Report: Does Design Make a Difference?* (Fall 2001), available at <http://www.nlibc.org/nimby/fall2001.pdf>

Tim Iglesias, "*What Role Does Design Play?*," <http://www.1000fof.org/PUBS/NIMBYHAND-BOOK/Chapter%206.PDF>

Effect of Affordable Housing on Schools

National Multi Housing Council, "*Debunking the Homeownership Myth*" (September 1998), available at <http://www.nmhc.org/Content/ServeContent.cfm?IssueID=10&ContentItemID=194>

Councilmember Patricia Dando, "*Memorandum: School Overcrowding Solutions*" (July 1997). Available at <http://www.ci.san-jose.ca.us/council/dist10/Memos/school.html>

Anticipating and Responding to Opposition

HomeBase, "*Building Inclusive Communities*" (1996). This handbook contains numerous planning aids, troubleshooting guides, a good bibliography and a wealth of other resources. Together with a number of fact sheets, videos and other community acceptance strategies also developed by Iglesias,

Building Inclusive Communities is a comprehensive road map for assessing and engaging opponents in a constructive and respectful manner.

Tim Iglesias, “*Managing Local Opposition to Affordable Housing: A New Approach to NIMBY*,” *Journal of Affordable Housing* (Fall 2002), available at <http://www.bettercommunities.org/IglesiasMLOinprint.pdf>

When Local Government Isn't on Your Side

Tim Iglesias, “*Managing Local Opposition to Affordable Housing: A New Approach to NIMBY*” 12 *JOURNAL OF AFFORDABLE HOUSING* 78 (Fall 2002), available at <http://www.bettercommunities.org/IglesiasMLOinprint.pdf>

American Planning Association, “*POLICY GUIDE ON HOUSING*” (ratified April 26, 1999), available at <http://www.planning.org/policyguides/housing.htm>

“*Planning Ahead for Affordable Housing: Building Support and Overcoming Local Opposition*,” California Housing Partnership Corporation, January 1, 1996 45 minute training video and 19 page workbook based on Building Inclusive Communities. Contact: Non-Profit Housing Association; 369 Pine Street, Suite 350, San Francisco, CA 94104; (415) 989-8166.

Michael Allen, “*From ‘NIMBY’ to ‘YIMBY’: How to Get (and Keep) the Government on Your Side in Zoning and Land Use*

Matters,” THE NIMBY REPORT, Getting to YIMBY: Lessons in YES In My Back Yard (No. 1, 2003)

Richard Tustian, “*Inclusionary Zoning and Affordable Housing*,” in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* 1(2) *NEW CENTURY HOUSING* 21 (October 2000), available in full text at <http://www.inhousing.org/NHC-Report/NHC-5.htm>.

National League of Cities' comprehensive “*Local Officials Guide to Fair Housing: The Siting of Group Homes for the Disabled and Children*”, available at www.bazelon.org/cpfba/group_homes.html.

Kevin Walsh, “*Mount Laurel Then and Now: Using the State Constitution to Further Affordable Housing*,” in *Using Civil Rights Laws to Advance Affordable Housing*, THE NIMBY REPORT, Fall 2002, pp. 20-23, available in full text at <http://www.nlibc.org/nimby/fall2002.pdf>

Massachusetts “Anti-Snob” Zoning Law:

Aaron Gornstein, Executive Director, Citizen's Housing and Planning Association, 18 Tremont Street, Suite 401, Boston, MA 02108. Telephone/TTY: (617) 742-0820. E-mail: aarong@chapa.org

New Jersey “Mount Laurel” doctrine:

Susan Bass Levin, Chairman, Council on Affordable Housing, 101 South Broad Street, P.O. Box 813, Trenton, NJ 08625. Telephone: (609) 292- 000. Website: <http://www.state.nj.us/dca/coah/>

California 'Housing Element' Law:

Dianne Spaulding, Executive Director, Non-Profit Housing Association of Northern California, 369 Pine Street, Suite 350, San Francisco, CA 94104. Telephone: (415) 989-8160. Michael Rawson, California Affordable Housing Law Project of the Public Interest Law Project, 449 15th Street, Suite 301, Oakland, CA 94612. Telephone: (510) 891-9794, ext. 145

Montgomery County "Moderately Priced Dwelling Unit" program:

Eric B. Larsen, MPDU Coordinator, Montgomery County Department of Housing and Community Affairs, Phone: (240) 777-3713. E-mail: eric.larsen@co.mo.md.us .

Website:

<http://hca.emontgomery.org/Housing/MPDU/summary.htm>

Austin "S.M.A.R.T. Housing": Stuart Hersh, Neighborhood Housing and Conservation Department, City of Austin. Telephone: (512) 974-3154. E-mail:

stuart.hersh@ci.austin.tx.us . Karen Paup, Co-Director, Texas Low Income Housing Information Service, 508 Powell Street Austin, TX 78703-5122. Telephone: (512) 477-8910.

Portland Community Residential Siting Program:

Eric King Coordinator, Referrals and Information Services, City of Portland Office of Neighborhood Involvement, City Hall, 1221 SW Fourth Avenue, Room 110, Portland, OR 97204. Telephone: (503) 823-2030

New Jersey "Good Neighbors" Program:

Margaret Sabin, Office of Public Affairs, New Jersey Department of Human Services, 240 West State Street, P.O. Box 700, Trenton, NJ 08625. Telephone: (609) 633-8652. E-Mail: mesabin@dhs.state.nj.us

Rochester Fair Housing Planning:

Thomas R. Argust, Commissioner, Department of Community Development, City Hall, Room 125-B, 30 Church Street. Rochester, NY 14614. Telephone: (716) 428-6550

Tim Iglesias' ***Building Inclusive Communities*** contains many basic lessons for planning commissioners, who must carefully weigh the community's needs for housing and services against the expressed concerns of existing residents. It is available from HomeBase, Attn: Kathy Cowan, 870 Market Street, Suite 1228, San Francisco, CA 94102. Tel: 415-788-7961.

Portland, Oregon's Office of Neighborhood Involvement sponsors the Neighborhood Mediation Center at www.myportlandneighborhood.org/

The National Low Income Housing Coalition and BBCN catalogue success stories and struggles in a monthly publication entitled ***The NIMBY Report***, available at www.nlihc.org.

Disability Based Discrimination

National League of Cities, FAIR HOUSING: THE SITING OF GROUP HOMES FOR PEOPLE WITH DISABILITIES AND CHILDREN (1999), available at <http://www.bazelon.org/issues/housing/cpfba/grouphomes.html>

U.S. Department of Justice and U.S. Department of Housing and Urban Development, GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT (1999), available at http://www.usdoj.gov/crt/housing/final8_1.htm

Consortium for Citizens with Disabilities and Technical Assistance Collaborative, OPENING DOORS (1996 report and quarterly journal on housing and people with disabilities), available at <http://www.tacinc.org/index/viewPage.cfm?pageId=41>

Corporation for Supportive Housing, *Between the Lines: A Question and Answer Guide on Legal Issues in Supportive Housing*, 2001 <http://www.csh.org/index.cfm?fuseaction=document.showDocumentList&parentID=14>

CASES

Buckeye Community Hope Foundation v. City of Cuyahoga Falls, 2001 U.S. App. LEXIS 19391, 2001 Fed App. 0299P (6th Cir. 2001)-Statements with discriminatory overtones (References to "Section 8," "different class of people," negative references toward low income housing considered as evidence of

racial bias in community that was 98% white; made by Mayor and citizens); violation of the Fair Housing Act found.

Deus v. Town of Sunnydale, 109 F. Supp.2d 526 (N.D. TX 2000) – Decision makers can be held liable for decisions made that respond to community bias. Minimum lot size and ban on apartment development violated Fair Housing Act.

Hovsons Inc. v. Township of Brick, 89 F. 3d `096 (3rd Cir. 1996) – Fair Housing Act violated when township refused to grant a variance to permit construction of a nursing home for elderly people with disabilities in a primarily residential area.

Huntington Branch NAACP v. Town of Huntington, 844 F. 2nd 926 (2nd Cir. 1988), aff'd 488 U.S. 15 (1988)-zoning ordinance restricting multifamily development to a small area that was already 52% minority discriminated based on race.

Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1287-90 (7th Cir. 1977)-Refusal to rezone property to permit development of low income housing which had a racially discriminatory effect and violated the Fair Housing Act.

Tsombanidis v. City of W. Haven, 129 F. Supp. 2d 136 (D. Conn. 2001) (*Tsombanidis I*); *Tsombanidis v. City of W. Haven*, 180 F. Supp. 2d 262 (D. Conn. 2001) (*Tsombanidis II*); *Tsombanidis v. City of W. Haven*, 208 F. Supp. 2d 263 (D. Conn. 2002). *Tsombanidis v. City of West Haven*, ___ F. 3rd. ___ (3rd Cir. 2003)-Group home denied reasonable waiver of zoning rule, evidence of community bias attributed to decision makers. A city must incur reasonable costs and take modest, affirmative steps to accommodate the handicapped as long as the accommodations sought do not pose an undue hardship or a substantial burden.

United States v. Borough of Audubon, 968 F. 2d 14 (3rd Cir. 1992), aff'd without opinion 797 F. Supp. 353 (D. N.J. 1992)- Injunction granted on request of the Department of Justice on allegations that local officials intimidated and harassed developers of group home by enforcing an invalid zoning provision.

United States v. City of Philadelphia, 30 F. 3rd 1994 (aff'd without opinion 838 F. Supp. 223 (E.D. PA 1993)- Refusal to permit a variance that would have permitted a group home for people with mental illness to substitute a side yard for a back yard zoning requirement violated the Fair Housing Act.

LEGAL ISSUES

Public officials may be immune from personal liability under the Fair Housing Act when they make broad land use decisions,

see *Horizon House Development Services v. Township of Upper Southampton*, 804 F. Supp. 683 (E.D. PA, 1992), aff'd without opinion, 995 F. 2d 217 (3rd Cir. 1993) but see *Smart Homes Inc v. Douglas County*, ___ F. Supp. ___ (N.D. Ga 1996) holding that zoning decisions applied to a specific parcel of land are not legislative actions to which immunity applies.

Stewart B. McKinney Found, Inc. v. Town Plan & Zoning Com'n, 790 F. Supp. 1197, 1216-19 (D. Conn. 1992) The plaintiff "need prove no more than that the conduct of the defendant[s] actually or predictably results in . . . discrimination; in other words, that it has a discriminatory effect. The plaintiff need make no showing whatsoever that the action resulting in . . . discrimination in housing was . . . motivated [by a desire to discriminate against the handicapped]."

Community Housing Trust v. Department of Consumer and Regulatory Affairs, 2003 Westlaw 1887958 (D.D.C., April 16, 2003)- "[T]he law is quite clear that "even where individual members of government are found not to be biased themselves," plaintiffs may demonstrate a violation of the FHAA if they can show that "discriminatory governmental actions are taken in response to significant community bias." (Citations omitted.) Accordingly, "a decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decision-makers personally have no strong views on the matter."

Resources

US v. Town of Cicero-Case filed by the Department of Justice claiming that the city enacted and then enforced a permitting process directed at limiting occupancy in an effort to impede Hispanics from moving into the city. The consent decree calls for payment of \$60,000 to families affected by enforcement of the code and cessation of enforcement of the code.

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Housing and Civil Enforcement Section,
NWB
Washington, D.C. 20530
(202) 514-4713
(202) 514-1716 (TTY)
www.usdoj.gov/crt

ENFORCEMENT AGENCIES

Office of Fair Housing and Equal
Opportunity
Department of Housing and Urban
Development
Room 5204
451 Seventh St. SW
Washington, DC 20410-2000
1 800 669 9777

<http://www.hud.gov/groups/fairhousing.cfm>

On-line complaint form

[http://www5.hud.gov:1025/netdynamics/ndN\\$API.nd/HUD903/pagHUDPrivacy](http://www5.hud.gov:1025/netdynamics/ndN$API.nd/HUD903/pagHUDPrivacy)

Pennsylvania Human Relations Commission
301 Chestnut Street, Suite 300, Harrisburg,
PA 17101
(717) 787-4410
(717) 783-9308 (TTY)
<http://www.phrc.state.pa.us>

Fair Housing Hub
U.S. Department of Housing and Urban
Development
The Wanamaker Building
100 Penn Square East, 12th Floor
Philadelphia, Pennsylvania 19107-3380
(215) 656-0663
1-888-799-2085
TTY (215) 656-3450

<http://www.hud.gov/local/pa/working/pbilly-contacts.cfm>

Who is low income? Many working people.

Affordable Housing Programs generally use Area Median Income (AMI) as the basis for income eligibility. In Pennsylvania as a whole, the median income is \$40,000.

**Households living on 60% of (AMI) are considered to be low income.
80% of AMI is \$32,000 (\$15 per hour)
50% of AMI is \$20,000 (\$10 per hour)
30% of AMI is \$12,000 (\$5.75 per hour)**

2,899,625 PA households (60.7%) earn less than \$49,999 a year

| | Average Wage | Entry Wage |
|---|--------------|------------|
| Accountants and Auditors: | \$43,190 | \$26,500 |
| Police and Sheriff Patrol Officers: | \$40,380 | \$23,780 |
| Administrative Law Judges and Hearing Officers: | \$48,060 | \$31,530 |
| Advertising Sales Agents: | \$33,530 | \$17,950 |
| Aerospace Engineering and Operations Technicians: | \$43,590 | \$34,780 |
| Agricultural and Food Science Technicians | \$30,810 | \$20,080 |
| Appraisers and Assessors of Real Estate: | \$47,220 | \$21,150 |
| Biochemists and Biophysicists | \$49,230 | \$33,080 |
| Claims Adjusters, Examiners and Investigators: | \$40,970 | \$28,690 |
| Clergy: | \$28,620 | \$14,990 |
| Commercial Pilots: | \$41,500 | \$13,930 |
| Conservation Scientists: | \$45,250 | \$29,560 |
| Editors: | \$43,660 | \$26,920 |
| Fire Fighters: | \$34,240 | \$23,380 |
| Graphic Designers: | \$33,660 | \$21,480 |

1,456,507 PA households (30.5%) earn less than 24,999

| | Average Wage | Entry Wage |
|---|--------------|------------|
| Air Transportation Workers: | \$22,600 | \$15,500 |
| Ambulance Drivers and Attendants: | \$18,560 | \$12,210 |
| Animal Control Workers: | \$23,880 | \$19,780 |
| Bakers: | \$18,890 | \$13,160 |
| Barbers: | \$19,480 | \$12,300 |
| Concierges | \$16,410 | \$12,200 |
| Customer Service Representatives: | \$24,010 | \$16,800 |
| Security Guards: | \$17,940 | \$13,070 |
| Data Entry Keyers: | \$20,140 | \$14,770 |
| Dental Assistants: | \$21,910 | \$15,290 |
| Home Entertainment Eq. Install and Repair | \$23,710 | \$19,220 |
| Emergency Medical Tech and Paramedics: | \$20,370 | \$14,830 |
| Farming, Fishing and Forestry Workers: | \$22,670 | \$12,290 |
| Floral Designers: | \$18,280 | \$13,320 |
| Gaming Dealers: | \$13,280 | \$11,960 |
| Preschool Teachers: | \$19,090 | \$13,330 |
| Hairdressers, Hairstylists | \$18,170 | \$11,960 |
| Home Health Aides | \$16,680 | \$13,610 |
| Secretaries: | \$23,220 | \$16,370 |
| Nursing Aides, Orderlies and Attendants: | \$18,930 | \$15,080 |

799,241 PA households (16.7%) earn less than \$14,999

| | Average Wage | Entry Wage |
|---------------------------------|--------------|------------|
| Bartenders: | \$14,120 | \$11,940 |
| Cashiers: | \$14,590 | \$11,960 |
| Child Care Workers: | \$15,710 | \$12,080 |
| Tour Guides | \$14,140 | \$11,960 |
| Ushers and Lobby Attendants: | \$13,740 | \$11,970 |
| Cooks, Fast Food: | \$13,180 | \$11,890 |
| Crossing Guards: | \$14,990 | \$11,860 |
| Waiters and Waitresses: | \$13,010 | \$11,880 |
| Minimum Wage Full-Time Workers: | \$10,300 | |

Income Levels of Non-Wage Earners

| | |
|---|----------|
| Social Security Recipients (1,451,386 households) | \$11,717 |
| SSI Benefit Recipients (203,851 households) | \$6,523 |
| Public Assistance Recipients (149,203 households) | \$2,848 |

*All wages are Average Annual Wages for 1999 from the PA Occupational Wages 2001 Edition book.

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