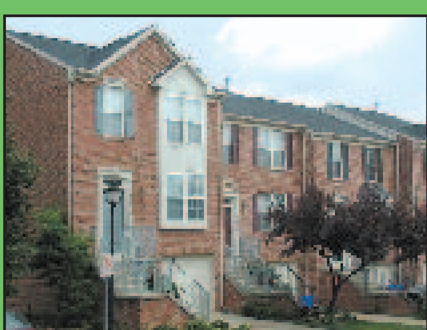
A COMMUNITY GUIDE TO CREATING AFFORDABLE HOUSING









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BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST

A COMMUNITY GUIDE TO CREATING AFFORDABLE HOUSING

A Community Guide to Creating Affordable Housing

This book is a project of the Regional Affordable Housing Initiative of Business and Professional People for the Public Interest (BPI).

BPI is a Chicago-based law and policy center dedicated to equal justice and enhancing the quality and equity of life for all people in the Chicago region. Today, BPI is at the forefront of a number of the most important issues facing the region, including efforts to transform segregated public housing, improve public education, and expand affordable housing. BPI's staff of lawyers and policy specialists uses a variety of approaches, including litigation, policy research and advocacy, community organizing, and collaboration with civic, business, and community organizations.

The *Guide* was authored by Cara Hendrickson, Skadden Fellow and Staff Attorney, and supervised by Nick Brunick, Director of the Regional Affordable Housing Initiative.

THE AFFORDABLE HOUSING DESCRIBED BELOW IS PICTURED ON THE FRONT COVER:

Top row, left to right

Chapel Hill, North Carolina. At Larkspur, 86 single-family homes will be constructed, 13 of which will be reserved as affordable in a community land trust.

Chicago, Illinois. Owners of The Rosemont rent over 25% of the building's apartments to tenants with extremely low incomes under the city's rental subsidy program.

Weston, Massachusetts. Dickson Meadows is a mixed-income homeownership development in which six of the 18 single-family homes are deed restricted as affordable.

Second row, left to right

Boulder, Colorado. All of the 14 single-family homes in the Poplar development are affordable through a partnership between the Boulder Housing Authority and a local not-for-profit.

Andover, Massachusetts. At Brookside Estates, 42 of the 168 units are affordable to families earning at or below 50% of the area median income.

Chicago, Illinois. At The Phoenix at Uptown Square, tax increment financing helped produce eight affordable condominiums in the mixed retail-residential redevelopment of a historic structure.

Third row, left to right

Fairfax County, Virginia. Created through the county's inclusionary zoning program, the McLean Crest development consists of 90 high-end town homes, of which 7 are affordable. Affordable two-bedroom town homes sell for $118,000, while the market rate homes sell for $650,000.

Lincoln, Massachusetts. Forty percent of the homes in the Battle Road Farm subdivision are reserved as affordable under the state's flexible zoning statute.

Longmont, Colorado. Longmont's inclusionary zoning ordinance produced two affordable single-family homes and 12 affordable condos in the Meadowview West development built by McStain Homes.

Fourth row, left to right

Montgomery County, Maryland. In the Potomac Glen development, 80 of the subdivision's 660 homes were priced affordably under the county's mandatory inclusionary zoning ordinance.

Westwood, Massachusetts. At Chase Estates, 25 single-family homes were priced affordably when the city negotiated with the developer seeking to construct a 100-home subdivision.

Highland Park, Illinois. Temple Avenue Town Homes are six affordably priced town homes that were created in part through funds generated by the city's demolition tax.

INTRODUCTION

A shortage of affordable housing exists in regions all over the country. One third of the country, approximately 95 million people, could not afford quality housing in 2001.[1] In over 70% of the metropolitan areas of the country, the minimum wage is less than half of what is needed to afford the fair market rent of an average two-bedroom apartment.[2] But the problem is not limited to the very low income or renters; homeowners and households with moderate incomes also face significant challenges finding affordable housing in many areas.

This shortage of housing affordable to moderate-income households not only harms families in search of affordable housing, but also diminishes the quality of life of an entire metropolitan region. When an area does not have an adequate and well-distributed supply of affordable housing, especially in areas of high job growth, the entire region suffers. Businesses have a harder time attracting and keeping employees when they cannot find affordable housing near their jobs. In the Chicago region alone, this geographic mismatch between job opportunities and affordable housing costs businesses $200-$300 million in direct costs each year.[3] A lack of moderately priced housing near jobs also causes increased air pollution and traffic congestion. In fact, it is estimated that these problems cost the nation over $63 billion a year in wasted fuel, delayed shipments, and lost work time.[4]

Despite the high costs of the affordable housing shortage, many people believe that it is impossible to create attractive, moderately priced housing in affluent areas near jobs and opportunity. Fortunately, there are many examples of how prosperous communities have created appealing, affordable housing, in several cases without the use of public dollars. Creating this housing has often involved drawing on the private and non-profit sectors as well as using local, state, and federal resources. With creative thinking and the use of a number of policy tools, municipalities have been able to structure fiscally sound developments that meet their community's unique needs.

This book highlights a number of affordable housing tools that communities may utilize to create moderately priced housing. It provides examples to municipalities and members of the public, private, and non-profit sectors showing that affordable housing can be a reality in communities with high land costs, high housing prices, and little available land. These case studies demonstrate that:

- Affordable housing can be built *in character* with the rest of the community.
- Affordable housing can be constructed with *little public subsidy.*
- Affordable housing will work in *affluent areas*.
- Affordable housing does not have to be constructed in *high-rise or dense developments.*
- Affordable housing can reach a *mix of household incomes.*
- Affordable housing can be built *without a decline in real estate values.*

The examples provided in this book are from communities around the country. Each case study highlights a different affordable housing tool or funding mechanism and illustrates its use through the description of a particular development. In this way, the case studies provide a nuts-and-bolts guide to implementing strategies that produce attractive, moderately priced housing embraced by both its occupants and the community.

[1] National Low Income Housing Coalition, *America's Neighbors: The Affordable Housing Crisis and the People it Affects*, 2004, at 1. Housing problems included high cost burden, overcrowding, poor housing quality, and homelessness. According to the U.S. Department of Housing and Urban Development, housing is considered "affordable" when it costs no more than 30% of a household's monthly income.

[2] National Low Income Housing Coalition, *Out of Reach 2004*, 2004, at 3.

[3] Boston Consulting Group, *Chicago Metropolis 2020: Final Steering Committee Readout*, 2002.

[4] Texas Transportation Institute, *2004 Urban Mobility Study*, 2004, at 3. These expenses cost the Chicago region over $4 billion each year. *Id.* at 14.

I. INCLUSIONARY HOUSING TOOLS

Overview

A municipality can use its zoning code in a variety of ways to ensure that moderately priced housing is constructed within the community. It may amend its zoning code to officially require that a certain percentage of units be priced affordably in all new developments – called a mandatory inclusionary zoning ordinance. A similar but more flexible approach may be used by adopting an informal policy or preference for developments that include such housing. In many instances, a community will use the presence of an informal policy or a voluntary program to aggressively negotiate with developers for the creation of some affordable homes or apartments within market-rate developments. Or, a municipality may simply offer flexibility in existing zoning provisions such as density limits, set-back requirements, or use designations that would remove barriers to creating affordable housing. Hundreds of communities across the country now use some form of inclusionary zoning at the local level in order to address affordable housing needs.[1]

Communities that establish more formal inclusionary housing policies will enjoy more consistent and predictable affordable housing development. Nevertheless, communities may also consider more flexible approaches to address an urgent need for affordable housing.

The case studies in this section illustrate different kinds of municipal approaches, both voluntary and mandatory, that involve the use of zoning powers to ensure the development of affordable housing:

- **Mandatory Inclusionary Zoning**
  The Moderately Priced Dwelling Unit Program in Montgomery County, Maryland, requires that between 12.5% and 15% of the housing units in new developments with more than 35 units be priced affordably. The Potomac Glen case study demonstrates that, with municipal pressure, developers can create moderately priced, attractive homes at no public cost. Even communities that do not adopt mandatory inclusionary zoning ordinances will see this as an effective example of the ability to use private market activity and the zoning code to create affordable housing.

- **Voluntary Inclusionary Zoning**
  The Magnolia Gardens development clearly shows how, with encouragement from local officials, developers can create attractive, moderately priced housing without the use of public dollars. In this example of the Chicago Partnership for Affordable Neighborhoods program, the attractive market of a gentrifying neighborhood, coupled with the political will of the local alderman, ensured that the developer would sell 10% of the homes at an affordable price while still earning a reasonable return. This informal program depends on the commitment and will of local officials to negotiate the inclusion of affordably priced units in new developments, and provides purchase price assistance, zoning relief, or other assistance in many cases.

- **Flexible Zoning Standards**
  These Massachusetts case studies demonstrate how a committed community can negotiate with a developer to construct affordable housing, again without the use of public dollars. In the Chase Estates development, the community of Westwood even negotiated for additional fees from the developer in order to create the city's first Housing Trust Fund. Even without benefit of the 40B law that exists in Massachusetts, local communities can negotiate the terms of a new development with potential developers as illustrated in these examples.

[1] Business and Professional People for the Public Interest, *Inclusionary Housing: A Policy that Works for the City that Works*, 2003, at 9.

MANDATORY INCLUSIONARY ZONING

Moderately Priced Dwelling Unit Program

Potomac Glen

The Development:
Potomac Glen • Montgomery County, Maryland

Potomac Glen is a 240-acre development in Montgomery County, Maryland, that priced 80 of its 660 homeownership units as affordable, in accordance with the county's mandatory inclusionary zoning ordinance. When the development was completed in 1996, market-rate homes at Potomac Glen sold for up to $330,000, and the affordable units sold for about $90,000. The project was financed using entirely private equity; no public dollars were used.

The Tool: Mandatory Inclusionary Zoning

Inclusionary zoning ordinances require new residential developments over a certain size to price a particular percentage of their units affordably. In exchange, municipalities may give developers certain benefits such as a density bonus, where the developer is permitted to construct the affordable units and additional market-rate units beyond that allowed under the current zoning ordinance. Other incentives may include expedited permit processes, relaxed design standards, red uced parking requirements, and waivers of certain municipal fees, all designed to decrease the developer's cost of construction. Developers may also seek other funding sources, including tax-exempt bonds, federal funds such as HOME or CDBG, or state and local subsidies, depending on the development's composition. Because almost all new developments are subject to the terms of an inclusionary zoning ordinance, the responsibility is shared by all and affordable housing units are integrated throughout a community, rather than concentrated in a few areas.

Some communities have adopted voluntary or ad hoc inclusionary zoning policies, but mandatory programs offer the most predictability and have resulted in the largest production of affordable units.[1] Mandatory inclusionary zoning ordinances have been passed by localities across the country, including Madison, Wisconsin; San Diego, California; Newton, Massachusetts; Denver, Colorado; Santa Fe, New Mexico; Davidson, North Carolina; and many others.

MPDU

- Requires 12.5%-15% of new units to be priced affordably
- Affordable units targeted to 65% of AMI
- Over 11,500 affordable units created since 1974
- Density bonus provided if more than 12.5% of units are affordable

Montgomery County's Moderately Priced Dwelling Unit (MPDU) Program

Montgomery County passed its inclusionary zoning statute, the Moderately Priced Dwelling Unit (MPDU) program, in 1974. Since then, the program has become a model for the nation, producing over 11,500 affordable housing units, including detached and semi-detached homes, townhouses, condominiums, and high-rise apartments.[2] For-sale homeownership units make up 72% of these affordable units, and the remainder is rental. Today, about 250 units are produced each year through the program.

Under the MPDU program, every new subdivision or development with 35 or more units must price between 12.5 and 15% of its units affordably. The affordable units are targeted to households making 65% or less of area mean income (AMI), with priority given to people who live or work within the county. The Housing Opportunities Commission, Montgomery County's public housing authority, also has a right to purchase up to one-third of the affordable units in any development for use by lower-income households (typically, those earning less than 50% of AMI). This provision allows the county to serve the full range of working households in need of moderately priced housing in the county, not just those at the 65% of AMI level.

Montgomery County has set maximum rents for its MPDU units as affordable to households earning up to

65% of AMI. For homeownership units, this cap includes the cost of closing and brokerage fees, and for rental units, it includes parking costs and utilities. The Moderately Priced Housing Office, a division of the county Department of Housing and Community Affairs, oversees the program and determines the eligibility of participants, administering a lottery system for selecting participants and enforcing ordinance requirements.

Potomac Glen

- Completed in1996
- 660 total units; 80 priced affordably
- Affordable units targeted to 65% of AMI
- No public subsidy provided

Developers are required to provide a minimum of 12.5% of the total number of units in the subdivision as moderately priced dwelling units. As a result, many developers seek a density bonus for their development. If, through the development review process, they receive a density bonus of more than 15%, the MPDU requirement increases incrementally (up to a maximum 22% density bonus).[3]

The MPDU program encourages developers to integrate affordable units into the neighborhood. In order to make a development's affordable units more compatible with its market-rate units, the MPDU program gives developers a 10% compatibility allowance, which means developers can include amenities such as brick fronts and bay windows and charge up to 10% more on affordable units than they otherwise could in order to fund the additions. These improvements are intended to make the affordable units visually compatible with market-rate units.

Occasionally, a developer may successfully argue that a development is an "exceptional case," that the package of residential services proposed for the development would make the affordable units unaffordable and that developing affordable units off-site would produce greater public value and significantly more affordable units.[4] In such exceptional cases, the developer must ensure that significantly more affordable units than the current development can support will be produced elsewhere, through one of three alternatives: building affordable units in the same or in an adjoining planning area; conveying land in the same or an adjoining planning area that is suitable to contain the units; or contributing enough funding to the Housing Initiative Fund to produce the units.[5] Such an exception has been granted infrequently since it was created in 1989.

MPDU units must remain affordable for 10 years if they are homeownership units, and rental units must remain affordable for 20 years. During the restricted affordability periods, resale price is capped at the original sales price plus inflation and the fair market value of any approved capital improvements made to the unit. The current length of the affordability period is the result of an extension in 1981. Even with this 10/20 year control period, however, Montgomery County has lost affordable units at an alarming rate: of the over 11,500 units created, 3,800 had been lost by 1999. This illustrates why many communities have adopted long-term deed restrictions that extend from 30 years to perpetuity in some cases.

Including Affordable Units in Potomac Glen

Ryan Homes, Inc., developed Potomac Glen in accordance with Montgomery County's MPDU program in the early 1990s.[6] Of the 660 total units, 80 were priced affordably Because it created only the mandated 12.5% affordable units, the development received no density bonus. The developer did receive, however, a 10% compatibility allowance, which allowed it to increase the price of the affordable units by 10% to include extra amenities that made the affordable units appear similar to the market-rate units.

Construction of the units was completed in 1996. The development's townhomes range from two to four bedrooms and have 2-1/2 baths, basements, and garages. Market-rate units in the development sold for about $330,000 for the single-family homes and for over $280,000 for the townhomes. The affordable units sold for approximately $90,000.

Today, Ryan Homes is building a second MPDU development in Montgomery County. Clarksburg Ridge will include 20 MPDU units and no more than 160 market-rate homes. Single-family homes at Clarksburg Ridge are expected to begin at $500,000, while the affordable townhomes will sell for between $140,000-$150,000. The development will be entirely privately financed, although Ryan Homes will not be required

to pay the development impact fee or system development charges for the affordable units that would otherwise apply. The development is expected to be completed in 2005.

Conclusion

By requiring every development over a certain size to include affordable units, inclusionary zoning can create affordable housing without the use of public tax dollars. Inclusionary zoning shares the burden of producing affordable housing between developers and the community and integrates affordable housing throughout an entire area. The municipality can determine the threshold level of affordability it desires to target, as well as any incentives or waivers it will provide to offset the requirement of providing affordable housing. Inclusionary zoning stands as a proven tool for affluent communities working to ensure that a range of housing options are available for working families and seniors.

[1] Nicholas J. Brunick, *The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs*, ZONING PRACTICE, Sept. 2004, at 2.

[2] Montgomery County, Maryland Department of Housing and Community Affairs, *MPDU – Program Summary and Background*, http://www.montgomerycountymd.gov.

[3] Interview with Patrick Maier, Innovative Housing Institute, October 2004. For every one percent bonus in density, the MPDU requirement increases a tenth of a percentage point. Patrick Maier is the source for a significant amount of the information about the MPDU program.

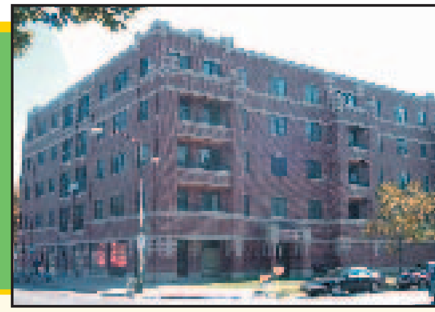
[4] One example where the exception might apply is a luxury high-rise condominium where the condominium fees are extremely high and the services provided cannot be eliminated or modified for a MPDU resident.

[5] MONTGOMERY COUNTY, MD., CODE §25A-5(e).

[6] Interview with Eric Larsen, Montgomery County Department of Housing and Community Affairs, August 2004. Eric Larsen is the source for a significant portion of the Potomac Glen material.

VOLUNTARY INCLUSIONARY ZONING

Chicago Partnership for Affordable Neighborhoods



Magnolia Gardens

The Development:
Magnolia Gardens • Chicago, Illinois

Magnolia Gardens is a 40-unit condominium development constructed in Chicago's Uptown neighborhood. Four of the units were sold for about $140,000, affordable to families at 80% of area median income (AMI), while the market-rate units sold for about $300,000. Ten percent of the units in the development were reserved as affordable under Chicago's voluntary inclusionary zoning program, Chicago Partnership for Affordable Neighborhoods (CPAN).

The Tool: Voluntary Inclusionary Zoning

Inclusionary zoning programs can take the form of mandatory requirements found in the local zoning code or voluntary programs that provide incentives for developers to include affordable housing in new developments. Municipalities may also negotiate with developers on individual projects through an ad hoc policy to encourage moderately priced development. Although the trend nationwide has been toward the uniformity that mandatory inclusionary housing provides, voluntary policies can offer a constructive tool for creating affordable housing.

CPAN

- Encourages 10% of new development to be priced affordably
- Local aldermen negotiate with developers and provide incentives such as expedited permitting, reduced fees or grants, infrastructure support, or density bonuses
- Units remain affordable for 30 years through a junior mortgage assigned to the city
- Since 2002, 35 participating developments and over 200 affordable units created

Chicago Partnership for Affordable Neighborhoods Program

The CPAN program was created in 2002 as a partnership tool between developers and the city of Chicago to create affordable homeownership units in market-rate developments, especially in appreciating neighborhoods. The city uses two main tools to accomplish affordability: a write-down in development costs to the developer and the provision of purchase price assistance to homebuyers. Although each project is negotiated individually, the goal of the program is to make at least 10% of the units in each development affordable. The commitment of the local alderman[1] to participate in the CPAN program is a major factor in determining whether it is used in new developments. The alderman may actively engage developers in negotiations around new developments and may use zoning and other city incentives to create opportunities for affordable housing.

Since 2002, 35 developments have participated in the CPAN program, and over 200 affordable units have been created or are in the process of being built. About half of the units created through CPAN have been purchased by families making less than 80% of AMI,[2] and half have been sold to those earning between 80% and 100% of AMI.[3]

The affordability of the units is preserved, even if they are sold, by the imposition of a junior mortgage. As part of the CPAN program, a thirty-year second mortgage is assigned to the developer in the amount of the market price less the affordable price. The developer, in turn, assigns the second mortgage to the Chicago Low Income Housing Trust Fund, which holds the mortgage for the 30-year affordability period. If the CPAN owner sells the unit within the affordability period to a non-affordable buyer, he or she must repay the full amount of the second mortgage, plus 3% interest. In this way, the junior mortgage provides a disincentive for a CPAN owner to sell the unit at full market price, since the windfall from the market-rate price of the sale (measured by the amount of the junior mortgage) would be surrendered to the Trust Fund.

The CPAN program has been designed to permit flexible development incentives so that municipal officials can make arrangements with developers that best

serve each project. As an incentive to participate in the program, the city may assist the developer in a range of ways. For example, the city provides assistance in expediting the permit application process. Financial assistance may be available in the form of reduced application fees or construction grants. In some developments, the city has provided infrastructure support to the new development in the form of new sidewalks or landscaping. Other projects have included density bonuses that allow more units to be constructed than would otherwise be permitted.

Magnolia Gardens

- 36 market-rate units sold for about $300,000 each
- 4 affordable units sold for about $140,000 each
- Affordable units served families at 80% of AMI
- Total cost of development, about $10 million, financed entirely through private equity and construction loans

As part of the CPAN program, potential buyers are approved by the city's Department of Housing to ensure they are income-qualified (with incomes at or below 100% of AMI), that they are either first-time homebuyers or have not owned a home in the past three years, and that they qualify for a mortgage. In addition, all interested buyers must participate in a homeownership training program, usually sponsored by a local community organization. The Department of Housing maintains an ongoing list of interested homebuyers with over 1,000 families.

To make the homes affordable to families with lower incomes, the city offers purchase price assistance to buyers who demonstrate a gap between the amount of the first mortgage they can secure and the affordable sales price. Assistance is in the form of a deferred loan at 0% interest, and is available to families making less than 80% of AMI ($57,500 in 2004 for a family of four). Federal HOME funds are used by the city to subsidize the mortgage. In this way, CPAN provides incentives for developers to create housing affordable to families at 80%-100% of AMI, and then provides HOME funds to write down the cost further for families earning less than 80% of AMI.

Who Benefits?

The four CPAN homes were purchased by a:

- public school teacher
- U.S. government employee
- staffer of a philanthropy
- college financial aid officer

Magnolia Gardens: CPAN Encourages Affordable Unit Creation

The affordable units constructed at Magnolia Gardens through CPAN were the result of negotiations between the developer and the local alderman. In 2002, Northbridge Partners acquired a vacant parcel of land in Chicago's Uptown neighborhood.[4] Although the CPAN program is not mandatory, some city council members, including Uptown's Alderman Shiller, made participation in the program a requirement for residential construction in their jurisdiction. When the alderman explained to Northbridge that development in the area must include at least 10% affordable units, it agreed to include affordable housing in the development.

After discussing the development with the alderman, Northbridge approached community groups interested in the redevelopment of the parcel. Not only did the community support inclusion of affordable units, many area residents expressly conditioned their approval of the new development on its moderately priced housing component.

Magnolia Gardens was completed in 2004. The affordable units sold for $140,000, making them affordable to a family earning 80% of AMI. The market-rate units sold for between $280,000 and $300,000. The total cost of the project was about $10 million, and it was financed entirely through private equity, including construction loans.

Demand for the affordable units was high. Hundreds of Chicago residents put their names in a lottery drawing for the units. The four families selected include a public school teacher, a federal government employee, a staffer at a local philanthropic organization, and an employee in a university financial aid office. Two of the homeowners also received purchase price assistance.

In addition to earning the goodwill of city officials and contributing to the community, the developer received a $10,000 reduction in its permit fee per affordable unit, for a total savings of $40,000.

"I strongly support the CPAN program," said Kent Knebelkamp, President of Northbridge Partners. "When developers are aware of the program requirements, they can still make an adequate profit on their development, and it provides housing for people who

want to live in the community but otherwise could not afford to, like teachers and firefighters." In fact, Northbridge is currently planning a second CPAN development in the city's trendy Ravenswood neighborhood. The development, to be called Ravenswood Square, will include nearly 20% affordable units. Northbridge plans to request a modification of the zoning of the parcel to allow for a modest increase in density on the site, a process it anticipates will be made easier due to its participation in the CPAN program.

Conclusion

Chicago's CPAN program encourages local city council members to negotiate with developers in their district to obtain inclusion of affordably priced units in new developments. The program's flexibility allows each deal to be structured in a way that best fits each project. It illustrates how public officials can negotiate with private developers to encourage and secure the construction of moderately priced homes in affluent and appreciating neighborhoods.

[1] Members of Chicago's city council are referred to as aldermen.

[2] "Area median income" is determined based on income levels in the primary metropolitan statistical area (PMSA). The Chicago PMSA includes Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will counties. HUD USER, http://www.huduser.org.

[3] Interview with Brian O'Donnell, City of Chicago, Department of Housing, August 2004. Brian O'Donnell and Bonita Scarlett-Logan, also of the Department of Housing, are the sources for a significant portion of the CPAN material.

[4] Interview with Kent Knebelkamp, Northbridge Partners, September 2004. Kent Knebelkamp is the source for a significant portion of the Magnolia Gardens information.

FLEXIBLE ZONING STANDARDS

Massachusetts's 40B Program

Top photo: Chase Estates; lower photo: Avalon at Newton Highlands, photo courtesy of Bill Horsman Photography

The Developments:

Chase Estates • Westwood, Massachusetts

Avalon at Newton Highlands • Newton, Massachusetts

Avalon at Newton Highlands, a luxury rental community located in Newton, Massachusetts, rents 74 affordable apartments at prices nearly one-third the market-rate level. As the first rental development in Newton in nearly 20 years, construction of the apartments was strongly supported by the community. The development took advantage of the state comprehensive permit process, which allowed local negotiations over the proposal to proceed effectively and efficiently.

The Tool: Massachusetts's 40B Program Encourages Flexibility in Zoning

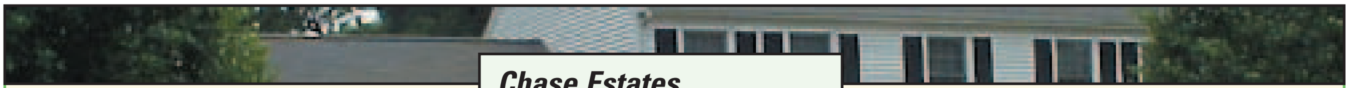
Chapter 40B is a Massachusetts zoning statute enacted in 1969 to address the statewide shortage of affordable housing. Its goal is to encourage production of affordable housing by reducing the unnecessary barriers created by local approval processes, local zoning, and other regulatory restrictions. The program encourages the production of affordable units at little or no public cost because in most 40B developments, the sale of the market-rate units subsidizes the reduced prices of the affordable units.[1]

The statute establishes two tools to create affordable housing. First, developers of affordable housing may apply for a comprehensive permit from the local Zoning Board of Appeals rather than having to seek separate approvals from various municipal bodies. To qualify for Chapter 40B, a state or federal housing program, such as MassHousing, MassDevelopment, the Department of Housing and Community Development, or the U.S. Department of Housing and Urban Development, must review the development proposal and confirm that it meets the affordability requirements.[2] At least 25% of the housing in the development must be affordable to households that earn no more than 80% of area median income (AMI),[3] and affordability restrictions must be maintained for at least 15 years.[4] Towns are allowed to establish a preference for local residents for up to 70% of the units. Private developers must agree to restrict their profit on the development.[6]

FLEXIBLE ZONING STANDARDS

- Allow communities to negotiate with developers for affordably priced units
- Massachusetts's 40B law provides comprehensive permit process and state Housing Appeals Committee to reduce regulatory barriers
- In most developments, sale of market-rate units subsidizes lower price of affordable housing
- Flexibility may be exercised in zoning changes or variations or through the Planned Unit Development process

Once a project is eligible, the developer submits an application for a comprehensive permit to the local Zoning Board of Appeals. The Board may grant all local approvals necessary for the project after consulting with other relevant agencies, resulting in a more streamlined review process. The Zoning Board of Appeals is also authorized to apply flexible zoning standards. For example, local zoning codes may limit development to one house per acre. Under Chapter 40B, the local Zoning Board of Appeals can approve higher-density development projects (e.g., one house per 1/4 acre), making it financially feasible to develop affordable housing.



Chase Estates

- 100 single-family homes
- 25 homes sold at about $100,000 each; affordable to families at 80% of AMI
- Market-rate homes sold for over $300,000 each in 2000 and are reselling for up to $800,000
- Construction entirely privately financed

Town of Westwood

- Median home price: $404,702
- Median income: $98,680

Chapter 40B also created a state Housing Appeals Committee that can review and overrule an adverse decision by a local Zoning Board of Appeals that affects a development with at least 25% affordable housing where less than 10% of the housing stock in that community is affordable. Once 10% of a community's housing stock is affordable, rejections of additional developments cannot be appealed.

From 1970 to 1999, local Zoning Boards of Appeals granted 17% of the Comprehensive Permits applied for and granted an additional 54% with conditions attached. During this period, the Housing Appeals Committee upheld the local Zoning Board decision in 18 cases, overruled the local decision and ordered the granting of a Comprehensive Permit in 94 cases, and approved a compromise reached by the developer and the Zoning Board in 83 cases. Additional appeals filed were either withdrawn, dismissed, or had some other resolution.[7]

Chapter 40B has been responsible for the production of affordable housing developments that otherwise may not have been built under traditional zoning approaches. The combination of flexible rules and a right of appeal to the Housing Appeals Committee has meant that the majority of Chapter 40B proposals are negotiated at the local level and approved with conditions set by the local Board of Appeals.[8] Zoning boards and other town officials often work with developers to modify the project. Furthermore, the zoning board may include conditions and requirements on any aspect of the project such as height, density, site plan, utility improvements, or long-term affordability, provided these conditions do not make the development economically unfeasible. Issues such as density, buffer zones, and infrastructure improvements are typical items for negotiation.

Since the statute was passed, over 35,000 units of housing in more than 500 developments have been created in over 200 Massachusetts municipalities.[9] Chapter 40B has encouraged local communities to negotiate aggressively with developers for the inclusion of moderately priced housing in new developments. Developments built through Chapter 40B include church-sponsored housing for the elderly, single-family subdivisions that include affordable homes for town residents, multifamily rental developments, and mixed-income condominium developments.

Chase Estates: Flexible Zoning Standards Create Affordable and Market-Rate Homes

Westwood is an affluent Massachusetts town in which single-family homes sell for up to $1.5 million. The median income in Westwood is $98,680, and the median home price is $404,702.[10] Delphic Associates, the developer of Chase Estates, initially approached the town of Westwood with a plan for a 335-unit condominium development.[11] Although the condominium composition of the proposal met opposition, the town recognized the opportunity to shape a development that might meet its need for affordable housing. Negotiations between Westwood and the developer ensued.

Delphic compromised on the scale and density of the development, promising to build an entirely single-family home subdivision.[12] Additionally, it agreed to sell 25% of the new homes at prices affordable to families at 80% of AMI. In exchange for the affordable units, the town agreed to allow the developer to build at a higher density; instead of one home per acre, four homes per acre were approved. The frontage and set back requirements were also modified accordingly. As a result, where only 25 homes on one-acre lots could have been constructed under existing zoning regulations, the city negotiated the construction of 100 homes on quarter-acre lots, 25 of which would be affordable. Construction of the development began in 1995 and was completed in 2000.

Prices for the affordable homes were fixed at 80% of AMI; three-bedroom houses sold for $95,000 and four bedrooms sold for about $100,000. The presence of affordable homes in the community has not discouraged rising home values; market-rate homes in the development that originally sold for between $300,000 and $350,000 are now selling for up to $800,000.

All of the affordable homes are deed restricted to

Newton Highlands

- 294-unit luxury rental development
- 74 apartments deed restricted to remain affordable in perpetuity to families at or below 80% of AMI
- Market-rate rents from $2,400/month, and affordable rents from $670-$1,100/month
- Strong rental market supported construction with no public subsidy

remain affordable for 40 years. If an affordable unit is resold during that period, the unit must first be offered to the state of Massachusetts, the town of Westwood, or the Westwood Housing Authority, which will resell it to a qualified homebuyer.[13] If the state or Westwood does not purchase the property or the bank forecloses on the property and it is sold to an unqualified buyer, the seller will be able to keep only a portion of the selling price. The amount that the seller is entitled to keep is determined by a formula that allows a seller to retain a portion of the selling price equal to the original affordable price divided by the original market-rate value, multiplied by the current market value of the home.[14]

The total cost of constructing Chase Estates was approximately $22 million. No public subsidy was provided; the construction was completed using entirely private financing. The state provided approximately $250,000 in funding for infrastructure improvements, including sewer, sidewalks, and street lights. (Funding for the infrastructure improvements came from federal CDBG and Community Development Action grants.)

The town of Westwood received over 1,300 applications for the 25 affordable homes for sale at Chase Estates. Seventy percent of the units were filled with residents who received a "local preference": they were either born in Westwood, had immediate family who lived in the town, or worked there. Since the homes were completed, none of the affordable units have been resold.

Chase Estates is noteworthy for the proactive role taken by the town of Westwood in managing the negotiations with the developer to create affordable homes. For example, when the developer requested a modification in the comprehensive permit to change the home style from ranch to colonial, the town seized another negotiating opportunity. Because the modification created a larger profit for the developer, the town responded to the request by negotiating an additional $6,000 payment to the town for the sale of each market-rate home to be used for the creation of affordable housing.

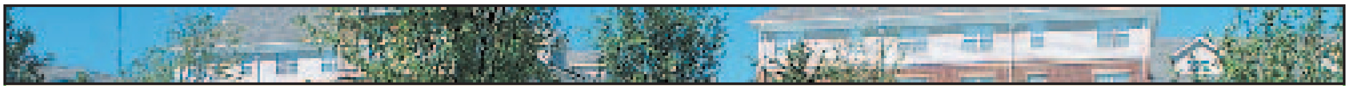
This additional payment generated $450,000 that Westwood used to create a Housing Trust Fund. The accumulation of these funds has allowed the town to acquire nine rental units in four duplexes and one affordable home built in another 40B development. These units are primarily rented to Housing Choice Voucher holders by the Westwood Housing Authority. Thus, by skillfully negotiating with the developer, the town gained not only the 25 affordable single-family homes, but also an additional nine rental units of affordable housing, all at no cost to the municipality.

Newton Highlands: Efficiency of the Comprehensive Permit Process Helps Create Affordable Housing in a Luxury Development

Avalon at Newton Highlands is a 294-unit luxury rental community that contains 74 affordable apartments. It is located in Newton, Massachusetts, along a major town corridor in the Boston suburb. The site of the development was formerly the subject of a proposal for a large retail store. That proposal generated significant community opposition due to the high amount of vehicular traffic the store would generate, and the proposal was rejected.

Instead of building a large retail store, the community focused on building more affordable housing. Newton had a number of young professionals, retirees, and empty-nesters who wanted to remain in the community. AvalonBay, a large residential developer, proposed a rental development for the site called Avalon at Newton Highlands that would include 25% of the units as affordable apartments.[15] The community was supportive of the proposal, in particular because it included much-needed affordable housing for the area.

Because less than 10% of Newton's housing stock was affordable, the developer was able to take advantage of an expedited comprehensive permit process for its project. First, the AvalonBay proposal was determined to comply with 40B standards by MassHousing, and it received its letter of financing.[16] Next, the developer presented the project to the local Zoning Board of Appeals, which held a public approval process. After requesting slight modifica-



tions in the kinds of services that would be offered on site,[17] the Zoning Board of Appeals granted AvalonBay a comprehensive permit that allowed the construction of the development to begin.

AvalonBay's comprehensive permit included exemptions from the underlying zoning characteristics of the land. It received an exemption to develop multi-family housing on land zoned for industrial/ mixed use and also exemptions for signage, height, set backs, and parking. Normally, the land would have had to be re-zoned at the city council level. Instead, under the comprehensive permit process, the application for Newton Highlands was submitted to the Zoning Board of Appeals in April 2001, and it was approved eight months later in January 2002. Construction began in June 2002 and concluded in December 2003.

In response to community requests that the affordable apartments at Newton Highlands serve a diverse population, half of the affordable units are reserved for families making less than 80% of AMI; 15% of the units are reserved for families making less than 65% of AMI; and 35% of the units are reserved for families making less than 50% of AMI. Rents for the affordable one-bedroom units range from $670-$1,100, compared to market-rate units starting at $2,100. Two-bedroom units rent for $800-$1,300 for affordable families, while market-rate units start at $2,400. Similarly, three-bedroom units for affordable renters range from $920-$1,500, and they start at $3,100 for market-rate renters. The affordable apartments are deed restricted to remain affordable in perpetuity.

The developer received over 2,000 applications for the 74 affordable apartments, and it chose to exercise a local preference for those who reside or work in Newton. Of the 2,000 applications for the affordable units, over 350 came from applicants with connections to the city of Newton. The development has been so successful that it maintains a wait list for its apartments, and it was one of the developer's strongest lease-ups in many years.

All of the apartments at Newton Highlands are comfortably appointed and include amenities such as nine-foot ceilings, granite counter tops, private balconies, and washers and dryers. The clubhouse and leasing office includes a billiard room, community kitchen, lounge, fitness room, and concierge-staffed lobby. The eight-acre community also includes five special-feature courtyards: an outdoor pool, an esplanade, a putting green, a children's playground, and a reading garden.

The total cost of the project was approximately $58 million, privately financed by the developer.[18] As part of the development, AvalonBay agreed to improve some of the infrastructure supporting the development, including sidewalks and street lights. The strong market for the market-rate rental units allowed the developer to support the construction of the affordable units. This kind of development is nothing new to AvalonBay, which has successfully completed 10 mixed-income communities with a total of 1,978 units and has 525 affordable units in service or currently under construction in the Boston metro area alone.

Conclusion

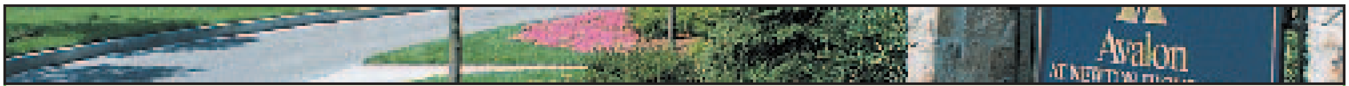
Under pre-existing zoning regulations, only 25 single-family homes would have been constructed in the Chase Estates development. Instead, because of the town's proactive negotiations for affordable housing, the community received 100 single-family homes, with 25% of them affordable to families at 80% of AMI. Moreover, the market-rate homes nearby doubled in value in four years.

The ability of AvalonBay to seek a comprehensive permit allowed it to complete its much anticipated rental development more efficiently, while generating valuable community input in the process. With flexibility in the local approval process, the developer was able to capitalize on a strong rental demand to create 74 affordable units at no public cost. Even without a comprehensive permit process, municipalities can engage in similar planning by providing flexibility in their zoning regulations, through granting zoning changes or variations to allow developers to include affordable homes while still earning a reasonable return, or through negotiating with developers for the creation of affordable units during the Planned Unit Development process.[19]

1 Citizens' Housing and Planning Association, *Fact Sheet*, http://www.chapa.org/40b_fact.html.

2 In addition to meeting affordability requirements, a potential Chapter 40B developer must have legal control over the proposed development site and must be eligible, as a non-profit or limited dividend organization, to receive funding from a state or federal housing program.

3 Alternatively, the development can provide 20% of the units to households earning below 50% of AMI. Massachusetts Department of Housing and Community Development, *Fact Sheet on Chapter 40B*,



http://www.mass.gov/dhcd.

4 "Area median income" is determined based on income levels in the primary metropolitan statistical area (PMSA). The Boston PMSA includes parts of Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester counties. HUD USER, http://www.huduser.org.

5 Developers establish "limited dividend" organizations that restrict aggregate profit to less than 20% of the total development costs. Massachusetts Department of Housing and Community Development, *Fact Sheet on Chapter 40B*, http://www.mass.gov/dhcd.

6 The local Zoning Board of Appeals is empowered by Massachusetts law to approve zoning changes, variances, and concessions that would otherwise have to be approved by a 2/3rd vote at the annual "town meeting," during which all residents of a town meet and vote on public issues. Given the onus of the town meeting process, in many situations town officials and the developer find that it is in their interest to use the Zoning Board of Appeals process.

7 Citizens' Housing and Planning Association, *The Record on 40B: The Effectiveness of the Massachusetts Affordable Housing Zoning Law*, 2003, at 40-41.

8 Massachusetts Department of Housing and Community Development, *Fact Sheet on Chapter 40B*, http://www.mass.gov/dhcd.

9 *Id*.

10 2000 U.S. Census Data, adjusted for inflation to 2004 dollars.

11 Citizens' Housing and Planning Association, *The Homes of 40B: Case Studies of Affordable Housing Using the Comprehensive Permit*, 2001, at 10-11.

12 Interview with Michael Jaillet, Town of Westwood, July 2004. A significant portion of the information about Chase Estates was provided by Michael Jaillet.

13 The Westwood Housing Authority may rent the unit to a qualified family.

14 The resale formula has changed for more recent developments. Rather than reflecting the rate of change in the appraised housing value, the selling price may only increase at the rate of inflation. This new resale formula keeps the price of the resold unit affordable to families earning 80% of AMI.

15 Interview with Liz Smith, AvalonBay, August 2004. Liz Smith provided a significant amount of information about the Newton Highlands development.

16 The letter of financing denotes approval under 40B standards and does not imply the receipt of public funds for the development.

17 AvalonBay originally proposed an on-site day care center as part of the Newton Highlands development. After the community expressed its opinion that the center was not the best fit for the development, the day care center was removed from the plans.

18 Following construction, AvalonBay took out a term-limited permanent loan with MassHousing in order to comply with the requirements of Chapter 40B.

19 The Planned Unit Development process allows a community to authorize plans for the mixed-use development of a large parcel in order to flexibly meet the community's needs.

II. COMMUNITY-BASED TOOLS FOR CREATING AFFORDABLE HOUSING

Overview

In addition to flexibility in zoning regulations, communities may implement a variety of tools to encourage the development of affordable housing. These tools can involve offering financial incentives, working creatively with developers, drawing upon private, public, and non-profit resources, and providing flexible, targeted assistance that produces immediate results. Municipalities can choose from a variety of community-based programs, including property tax incentives, community land trusts, creative public-private partnerships, models like the Regional Housing Initiative program, and rent subsidies.

The case studies in this section demonstrate that municipalities can implement creative and flexible programs to encourage and maintain the development of affordable housing within their borders:

- **Property Tax Incentives**
  Special property tax assessment levels and property tax abatements are tools that municipalities may use to provide incentives to developers to create or preserve affordable housing. This case study shows how a Cook County, Illinois, property tax incentive program, called the Class 9 program, provides over 650 properties with reduced tax liability when at least 35% of their apartments are rented at affordable levels. Cagan Management, the owner of 1116 Washington Boulevard, receives approximately $40,000 in property tax savings annually through the program, and without the incentive, it would not have been able to maintain affordably priced apartments for the community.

- **Community Land Trusts**
  Community land trusts (CLTs) provide an important vehicle for municipalities to ensure that affordable housing remains a community resource for the long term. CLTs maintain units as affordable by separating ownership of the land and the homes built upon it. The two developments profiled in these case studies demonstrate how, especially with municipal cooperation, CLTs can ensure the lasting creation of mixed-income communities. At the Buena Vista development in Boulder, Colorado, 49 homes were priced at levels affordable to families earning 80% of area median income (AMI), and nearly all of the purchasers were already living or working in the community. Through the encouragement of local officials, the Larkspur subdivision in Chapel Hill, North Carolina, will create 13 single-family homes that will remain affordable in perpetuity through a CLT.

- **Creative Public-Private Partnerships**
  The innovation and commitment of the public and private sectors working together can result in the creation of affordable units. Sunset Woods, a 100% affordable senior development with a mix of condominiums and apartments in Highland Park, Illinois, is a case study of how an affluent, built-out community with high land costs and housing values in suburban Chicago produced affordable housing through creative planning.

- **Regional Housing Initiative**
  The Regional Housing Initiative (RHI) in northeastern Illinois is a prototype for assembling existing public funds in a creative manner to create affordable rental units in a variety of settings. RHI enables developers to use Housing Choice Vouchers as operating subsidies to make a portion of their apartments available to low-income families. The program emphasizes the formation of mixed-income communities, especially near areas with job opportunities.

- **Rent Subsidies**
  Rent subsidy programs help make existing rental housing affordable, allowing a community to quickly implement an affordable housing strategy with immediate results and at a limited public cost. Chicago's Rental Subsidy Program, at a cost of about $7 million a year, provides a subsidy to owners who provide housing to approximately 2,000 extremely low-income households each year. This case study profiles The Rosemont, a newly renovated development that reserves approximately one-quarter of its apartments for residents earning less than 30% of AMI.

PROPERTY TAX INCENTIVES

Cook County Class 9 Incentive

1116 Washington Boulevard

The Development:
1116 Washington Boulevard • Cook County, Illinois

The 40-unit apartment building located at 1116 Washington Boulevard in the upscale Chicago suburb of Oak Park reserves at least 35% of its apartments for renters with incomes under 80% of area median income (AMI). As a result, the owner receives property tax savings that amount to nearly $40,000 a year through the Cook County Class 9 Incentive program.

Property Tax Incentives and Abatements in General

Special property tax assessment rates and property tax abatements are incentives that are designed to stimulate particular kinds of rehabilitation and development, especially in areas where there is a great need for economic revitalization. They also may be used to encourage the creation, renovation, and preservation of affordable housing, and the preservation and rehabilitation of landmark buildings.

CLASS 9

- Forty percent reduction in property tax assessment rate
- Rents for at least 35% of units may not exceed 80% of AMI
- To qualify, must be new development or extensive renovation
- More than 650 properties participate, representing 20,000 total units of housing

Both counties and municipalities can use property tax incentives and abatements to encourage the creation and preservation of affordable housing. Illinois counties with populations over 200,000 (including all those in the six-county Chicago metropolitan area) may enact a classified property tax system that would allow for the creation of property tax incentive programs. Even municipalities located in counties without classified assessment systems can create tax abatement or refund programs that function similarly to tax incentives by reducing the property tax liability of an owner of affordable rental property.

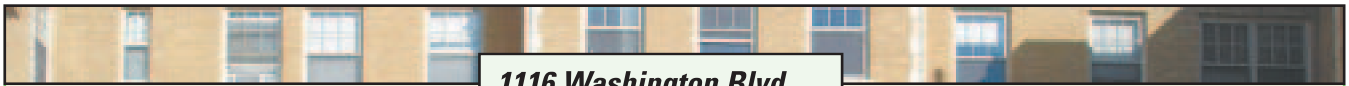
Municipalities may implement tax abatement programs to encourage affordable housing development either by providing a rebate to affordable housing owners, or by abating the tax liability at the time of collection under the state property tax code. Under the first model, a municipality may simply establish its own eligibility criteria and, after collecting the full amount of property taxes, rebate a portion to affordable housing properties according to the municipality's guidelines.

The second method allows taxes to be abated at the time of collection by the county clerk, as long as these abatements fall within specific property tax abatements available under the Illinois property tax code. Abatements done through this process are available for affordable senior housing,[1] those who make donations to programs designated by the municipality,[2] or other listed categories.[3]

The Tool: Cook County Class 9 Incentive

Cook County first initiated the Class 9 property tax incentive for affordable housing in 1988. The goal of Class 9 is to encourage new development, rehab, and long-term preservation of multifamily rental housing that is affordable to low- and moderate-income households across Cook County. Originally, Class 9 tax incentives were limited to properties in certain designated census tracts.[4] In 2001, the geographic limitation of the program was lifted and made available to property owners across the county.

In order to be eligible for participation in the program, a property must be a multifamily rental building with seven or more dwelling units. The program applies to new development and extensive renovation projects that include at least three primary building systems. Rents for at least 35% of the building's tenants may not exceed 80% of AMI. Of course, buildings must also be in compliance with all local building, safety, and fire codes. Developers who wish to participate must submit an application to the Office of the Cook Coun-



ty Assessor prior to beginning construction or rehabilitation.

The Class 9 program provides significant property tax savings for qualifying properties. Eligible owners receive a nearly 40% reduction in their assessment rate, from a 26% assessment rate to 16%. Both the land and the building are assessed at this reduced rate. Properties are eligible for the reduced rate for ten years, with the possibility to extend their Class 9 status for additional ten-year terms. If the property is sold or transferred during the ten-year Class 9 designation period, the new purchaser must continue to comply with all Class 9 requirements.

1116 Washington Blvd.

- Apartment building located in the upscale Chicago suburb of Oak Park
- At least 35% of rental units are reserved for renters at or below 80% of AMI
- Building is assessed at significantly lower tax rate, resulting in savings of $40,000 per year

The assessor's office compiles a rent schedule for participating property owners that is based on rents affordable to families making no more than 80% of AMI. Class 9 rents are gross rents and include the rental cost of the unit plus an allowance for any tenant-paid utilities, services, and appliances. To remain in the program, an owner must submit an annual affidavit certifying that the rent levels and household incomes meet Class 9 eligibility standards.

The Class 9 program is extremely popular, and the assessor's office has received over 1,500 applications from developers seeking to receive the reduced rate. Currently, more than 650 properties participate in the program, representing over 20,000 units of housing, at least 35% of which are affordable. The program has been so successful that the assessor's office plans to broaden the eligibility requirements so more properties will be able to take advantage of the incentive.[5]

Class 9 Allows Procurement of Affordable Units at 1116 Washington Boulevard

The 40-unit apartment building at 1116 Washington Boulevard in the upscale Chicago suburb of Oak Park is one of over 650 properties that receives property tax incentives through Cook County's Class 9 program. Cagan Management purchased the property with the Class 9 program in mind in 2002. Although it wished to purchase and renovate rental property, Cagan faced a real estate market in which multifamily building prices were being bid up by a wave of condominium conversions. The only way Cagan could afford to buy the building and maintain it as a rental property was to participate in the Class 9 program.[6]

In order to qualify for the program, Cagan significantly rehabilitated the Washington Boulevard property. It performed structural repairs and ground renovations, including roofing, tuck pointing, replacing the windows and boilers, and masonry repair. In fact, the property received a historic preservation award from the city of Oak Park. The renovation was also supported by a $10,000 Security Improvement Grant from Oak Park that allowed the developer to put in new exterior doors, hard-wire the smoke detectors, and provide emergency lighting.

Cagan now saves between $35,000 and $40,000 annually in its property tax bill due to its classification as a Class 9 property. Washington Boulevard rents are set affordably at $625-$795 for one-bedroom apartments. Cagan Management also owns several other buildings that participate in the Class 9 program across the city of Chicago and its suburbs, including the gentrifying neighborhoods of Hyde Park and Lakeview and the thriving suburb of Evanston.

Conclusion

Property tax incentives for affordable housing encourage construction and preservation of rental housing in a community, ensuring that a portion of the housing remains available at affordable levels. In Cook County, the Class 9 program is a proven tool readily available for use by communities and developers alike. Even if property tax incentives are not in place, counties and municipalities may design incentives that leverage property tax resources to provide similar incentives for affordable housing development. Property tax abatements are a simple and efficient way for local governments to encourage the creation of affordable housing, even without significant modifications to their tax assessment system.

1 35 ILCS 200/18-165(a)(5). The property must serve seniors over 55 in housing provided under any state or federal program that serves individuals whose income does not exceed 80% of AMI.

2 35 ILCS 200/18-165(b). Abatements are provided for taxpayers that donate at least $10,000 to a "qualified program" within a target area. Because the property tax code allows a municipality to designate almost any program as a "qualified program," a municipality could encourage private corpora-

tions and individuals to contribute to an affordable housing program by granting a property tax abatement in exchange for donations to the program.

3 35 ILCS 200/18-165.

4 Interview with Maria Caby, Office of the Cook County, Illinois Assessor, July 2004.

5 Currently, only developments that undergo extensive renovation of at least three building systems qualify for Class 9 benefits. The Cook County Assessor's Office plans to broaden the eligibility standards to require renovation of only two building systems and to allow for a broader number of qualifying building systems. Community Investment Corporation, *CIC Developments*, Fall 2004, at 1-2.

6 Interview with Michael Daniels, Cagan Management, July 2004. Michael Daniels provided a significant amount of the information about 1116 Washington Boulevard.

COMMUNITY LAND TRUSTS

Orange Community Housing and Land Trust and Thistle Community Land Trust

Top photo: Larkspur; lower photo: Buena Vista; photo courtesy of Thistle Community land Trust

The Developments:

Larkspur • Chapel Hill, North Carolina

Buena Vista • Boulder, Colorado

The Larkspur subdivision is located in Chapel Hill, North Carolina, where high housing costs and a scarcity of undeveloped land have spurred an interest in preserving affordability. The subdivision contains 86 single-family homes, 13 of which are permanently affordable through participation in a community land trust. The market-rate homes at Larkspur have sold for up to $600,000, while the affordable units have been priced from $100,000 to $130,000.

Buena Vista is a 57-home development, in which 49 of the units are permanently affordable to families at 80% of area median income (AMI). Located in North Boulder, Colorado, the development was constructed as part of a community land trust. The land trust, a local non-profit, retains ownership of all land in the development, ensuring the long-term affordability of the homes.

COMMUNITY LAND TRUSTS

- Separate ownership of land and home, leasing the land to the homebuyer and selling the home at an affordable price
- Prices remain affordable through resale formulas contained in the ground lease
- Most CLT homes in OCHLT and Thistle are reserved for families earning up to 80% of AMI
- Municipalities have played an increasing role in support of CLTs

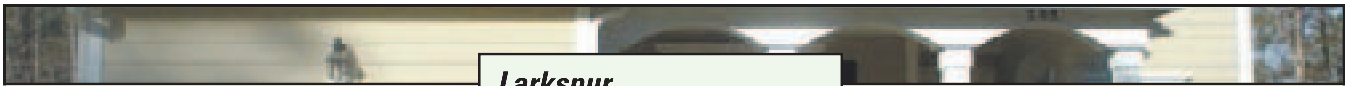
The Tool: Community Land Trusts Partner with Supportive Municipalities

Community land trusts (CLTs) are created to acquire and hold land for a community's benefit. They typically maintain the long-term affordability of housing by separating the ownership of the land from ownership of the home that is built on it. Homebuyers purchase homes at affordable prices and enter into long-term leases of the land with the CLT, which retains ultimate ownership of the land.[1] Approximately 120 community land trusts already exist or are under development across the country.[2]

Community land trusts are remarkable for their protection of the long-term affordability of housing and their responsiveness to local needs. Typically, CLTs are administered by private, non-profit corporations that can operate in a variety of settings and circumstances. For example, CLTs may develop new housing themselves through a community development corporation or may simply hold the land beneath housing produced by other developers.

CLTs ensure that a public investment in affordable housing will last a lifetime, instead of a few years. For example, a public subsidy to create an affordable homeownership unit can disappear when the initial homeowner resells the home. With a CLT, that subsidy ensures an active asset for the community forever.

In order to guarantee that CLT homes are sold at affordable levels, community land trusts design resale formulas contained in the ground lease. The resale formulas set maximum prices to ensure the homes remain at an affordable level for the next buyer. The majority of CLTs use what are called "appraisal-based" formulas. These formulas set the maximum price as the sum of what the seller originally paid plus a specified percentage of any increase in the market value. The CLT typically retains an option to repurchase any residential structures located upon its land if the owners choose to sell.



Community land trusts often work very closely with municipal governments in order to respond to local needs. Recently, municipalities from around the country have expressed intense interest in CLTs.[3] An increasing number of municipal officials recognize that CLTs can play an important role as stewards of community resources and can benefit both present and future community residents.[4]

Many municipalities have left the initiative and the leadership of the CLT to local non-profits, but a growing number of municipalities have played a leading role in introducing the idea of a land trust to a community and in facilitating its creation.[5] For instance, the Highland Park Illinois Community Land Trust, a private non-profit corporation, was created in 2003 after a city-initiated planning process recommended establishing a land trust. Even when governments have taken a leading role in creating a land trust, they have worked closely with non-profit partners and community residents to organize the CLT.

Orange Community Housing and Land Trust

Orange Community Housing and Land Trust is a private non-profit corporation that develops affordable housing and manages a community land trust. The organization was established in 1990 as Orange Community Housing Corporation, with a mission to provide affordable rental and for-sale housing. In 2000, the organization added a land trust component and became the Orange Community Housing and Land Trust (OCHLT).[6] The OCHLT currently manages 85 permanently affordable homes in Orange County, which includes the North Carolina towns of Chapel Hill, Carrboro, and Hillsborough.

The town of Chapel Hill was instrumental in the creation of OCHLT. In the past decade, Chapel Hill has become increasingly concerned with its growing real estate prices and dwindling supply of open land. Beginning in the mid-1990s, Chapel Hill instituted an informal policy that requires developers with residential zoning requests to price at least 15% of the units in new developments affordably.[7] Although the 15% requirement is technically an informal policy, in practice, developers construe the inclusionary zoning expectation as mandatory because residential development proposals are difficult, more expensive, and less likely to win approval without an affordable housing component. By the late 1990s, the city recognized that many of the affordable units created in the area were expiring and being sold at market rates. To address this challenge, the town formed a citizen task force, which specifically examined the community land trust tool. The OCHLT land trust was formed as a result.

To qualify to buy a home in the OCHLT, a homebuyer must live or work in Orange County, be a first time homebuyer (or not have owned a home in the past three years or be a divorced, displaced single parent), live in the home, and meet the income limitations. Sale of most of the CLT homes is limited to families at or below 80% of AMI, although some are also available to families up to 100% of AMI. Many residents in OCHLT homes are employees at the local state university, and other homebuyers are school teachers, social workers, housekeepers, and medical technicians.

The city of Chapel Hill continues to provide considerable support to the OCHLT. It refers all developers that are creating affordable units according to the town's policy to the land trust so the housing created will remain permanently affordable. Chapel Hill, as well as Orange County and the neighboring towns of Carrboro and Hillsborough, also provide significant operating support to the CLT. The town of Chapel Hill and Orange County each provide about $100,000 annually to support OCHLT's operations. Although 70% of its budget comes from local communities, OCHLT also

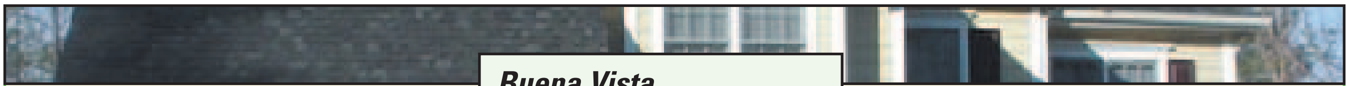
Larkspur

- 86 total homes, 13 permanently affordable through the community land trust
- Market-rate homes sell for up to $600,000; affordable homes from $100,000 to $130,000
- Affordable units created by town council's informal policy requiring 15% of new units be affordable
- All single-family homes with garages and porches

Who Benefits?

The four families who have moved into Larkspur homes so far include:

- An employee of the local university
- A dental hygienist
- A nurse at the local hospital
- An employee of the local medical center



raises about $100,000 in operating costs privately each year.

The Orange County communities also stay involved in the land trust through their appointees to the CLT's board of directors. Each town and the county has an appointee to the board, taking an active role in the ongoing direction of the CLT.

Buena Vista

- 57 homes, with 49 made permanently affordable through a community land trust
- Mixture of single-family homes, condominiums, and townhomes
- City authorized higher density and other zoning changes to accommodate development
- Market-rate homes started at about $290,000, while affordable condominiums started at $80,000

Larkspur Development: Single-Family Homes Reserved as Affordable in Community Land Trust

In 2002, the Zinn Design Build firm approached the town council of Chapel Hill seeking to build an 86-home development.[8] The town council, enforcing its informal written policy, requested that 15% of the units in the new development be sold at affordable levels. At the time, a city ordinance also required that 25% of all units constructed in a new development contain less than 1,300 square feet.[9] Zinn offered to price 15% of its units affordably if the council would waive the maximum square footage limitation.

The town council also required that the affordable units constructed at Larkspur become part of the OCHLT land trust. In addition to requiring the inclusion of affordable units and their reservation in a land trust, the town council also provided a modification of the zoning requirements to allow the Larkspur homes to be constructed closer to one another in order to preserve wetland areas on the site. The council also ensured that the affordably priced units would be disbursed throughout the subdivision.

Construction of the homes at Larkspur began in late 2002 and is expected to be complete in 2006. Following negotiations with the town council, Zinn agreed to sell seven of the 13 affordable units for $100,000 and the remaining six for $130,000. The market-rate units in the Larkspur subdivision initially sold for approximately $400,000, but units sold more recently have been priced near $600,000. All of the affordable homes at Larkspur have garages, three bedrooms, and front porches.

The development is being entirely financed using construction loans and private equity; no public funds have been used to subsidize the development.

The four CLT units completed in 2004 all were purchased by families from Orange County, including an employee at the University of North Carolina, a dental hygienist, a nurse at Duke Hospital, and an employee of the local medical center.

Demand for land trust units in Orange County is high. All of the CLT units at Larkspur have been pre-sold, and OCHLT maintains a wait list of about 40 additional families for the 13 homes at Larkspur.

Thistle Community Land Trust

Thistle Community Land Trust is one of the largest land trusts in the country and serves the high-priced Boulder area. The city of Boulder has a median household income of nearly $74,000 and a median home price of $500,000.[10] Thistle manages 76 permanently affordable homes across the Boulder area, and it plans to build 500 CLT homes in the next five years. The community land trust is an outgrowth of the pre-existing Thistle Community Housing Community Development Corporation.

Following the CLT model, Thistle offers land trust homes at below-market prices by acquiring and building affordable homes and limiting resale prices. Thistle continues to own the land, leasing it to the homebuyer with a 99-year renewable land lease. Thistle works with the financial community to ensure that qualified buyers have access to financing and provides resident training and support services to homebuyers.

To qualify for a Thistle CLT home, a homebuyer cannot earn more than 80% of AMI.[11] Thistle also sets non-retirement asset limits for homeowners to qualify. Thistle homebuyers pay a nominal monthly fee to the CLT for land taxes and the administration of the program. Like other CLTs, homeowners agree to limit the price of their homes when they sell. This allows homeowners to recover their investment plus about 18% of the market appreciation, depending on the level of investment.[12] In order to facilitate resales, Thistle maintains an active list of qualified buyers.

Buena Vista Community Land Trust Guarantees Permanent Affordability

Buena Vista is a 57-home community in which 49 of the homes are permanently affordable through the Thistle community land trust. Completed in 2000, the community is a mixture of single-family homes, condominiums, and townhomes. A large open center green, community gardens, and a community center with meeting space and kitchen facilities are part of the development.

Originally the 3.7 acre Buena Vista site was not zoned for residential development. Because the proposed development contained affordable housing, the city of Boulder zoned the property to medium density residential with reduced parking and setback requirements.

Market-rate homes in the development started at about $290,000, while the affordable condominiums ranged from $80,000 to $165,000. As in its other CLT properties, Thistle continues to own the land and leases it for a nominal amount to each homeowner. CLT homeowners also sign an agreement limiting the resale price to initial cost plus a maximum increase of 25%, allowing the homeowner to achieve a measure of capital appreciation.

Funds for Thistle projects have come from a host of sources, both public and private. The Buena Vista community cost about $8 million to develop.[13] Financing included private construction loans, federal HOME and CDBG grants, along with approximately $1.1 million in funds from the Boulder Community Housing Assistance Program.

Of the 49 residents who purchased affordable homes in the Buena Vista community, 48 were already living and working in Boulder.[14] Purchasers of the affordable homes included teachers, postal workers, librarians, software engineers, carpenters, firefighters, massage therapists, and small business owners.[15]

Homes that are part of Thistle's Community Land Trust have provided a unique opportunity for families to build the equity necessary to gain a stable financial footing. Although the profit a homeowner can earn on the sale of a CLT home is limited by the terms of the ground lease, many of the families who have sold their Thistle land trust homes move on to market-rate homeownership opportunities.[16]

Conclusion

Community land trusts provide for perpetual affordability of moderately priced housing by separating ownership of the land from ownership of the homes. They ensure that housing priced affordably at a point in time remains affordable in the long term.

The OCHLT and the Thistle CLT, in conjunction with a local municipal commitment to negotiating with developers for inclusion of affordably priced housing, have created attractive, moderately priced housing in areas with high real estate costs and a scarcity of open land.

1 Unlike the common community land trust model, the Orange Community Housing and Land Trust sells a leasehold interest in both the land and the home, due to unique constraints in North Carolina state law.

2 Institute for Community Economics, *Options and Issues in Creating a Community Land Trust*, 2001, at 1.

3 *Id.* at 9.

4 *Id.*

5 *Id.*

6 Interview with Christine Westfall, Orange Community Housing and Land Trust, July 2004.

7 The practice takes the form of an informal policy, rather than an ordinance, because the state of North Carolina is a non-home rule state and the state legislature has not legally enabled municipalities to pass mandatory inclusionary zoning ordinances. Despite this limitation, the community of Davidson, North Carolina, has passed a mandatory inclusionary zoning ordinance.

8 Interview with Robert Dowling, Orange Community Housing and Land Trust, October 2004. A significant portion of the information about OCHLT and Larkspur was provided by Christine Westfall and Robert Dowling.

9 Because the state of North Carolina has not enabled municipalities to draft ordinances that include affordability requirements, the square footage limitation was included to serve as a proxy to create moderately priced homes.

10 Tom Kenworthy, *Housing Costs at a High Altitude*, USA Today, March 29, 2004.

11 "Area median income" is determined based on income levels in the primary metropolitan statistical area (PMSA). The Boulder PMSA includes all of Boulder County.

12 Thistle Community Land Trust, *Limited Resale Price Information*. Information sheet on file with Business and Professional People for the Public Interest.

13 Elizabeth Gold, *Blue Vista envisions class American neighborhood*, Boulder County Business Report, December 12, 2003.

14 *Boulder's Thistle Housing making home ownership, rental more affordable*, Boulder County Business Report, November 2, 2001.

15 Kevin McCullen, *Program Helps Middle Class Own Homes in Boulder*, Denver Rocky Mountain News, April 19, 2000.

16 Interview with Etta Habegger, Thistle Community Housing, July 2004.

CREATIVE PUBLIC-PRIVATE PARTNERSHIPS

Sunset Woods

The Development:
Sunset Woods • Highland Park, Illinois

At first thought, most people would probably say that developing affordable housing in an affluent, built-out community with high land costs and housing values like Highland Park, Illinois, could not be done profitably or without building a large number of market-rate units in a dense, out-of-character development. Sunset Woods serves as impressive evidence that such thinking is untrue. Thanks to a creative partnership between the non-profit, for-profit, and public sectors, the Sunset Woods condominium development consists of 60 affordable homes servin g seniors over the age of 62. Forty-eight of the homes are affordable to seniors making less than 80% or 115% of the area median income (AMI), and twelve of the homes are owned by the city of Highland Park and rented affordably to seniors earning less than 50%-60% of AMI.

Reduced Land Costs + City or Municipal Support = Affordable Development

The Sunset Woods development was possible because of a creative but simple agreement between the developer and the city: the land was donated by the city, and the developer assembled the deal.

The Tool: Creative Public-Private Partnerships

Creative public-private partnerships rely on the innovation and commitment of public and private sector entities to create affordable housing. In most cases, these partnerships draw upon the respective assets and abilities of the public, private, and not-for-profit sectors to ensure that at least some of the housing in a particular development can be sold or rented affordably. A municipality can procure land, make public lands available at a reduced price or for free, or provide a developer with increased regulatory flexibility that decreases construction costs. Private sector developers can provide private equity (which can help leverage additional resources), real estate expertise, and a strong reputation for producing high-quality housing. Not-for-profit developers provide unique expertise in accessing public funding streams, in managing affordable housing, and in marketing to income-eligible households. With the participation of all three, the development of affordable housing becomes a reality.

"LASAGNA" FINANCING

The total cost of Sunset Woods was approximately $10 million. The funds were secured as follows:

- $7.1 million in private debt
- $750,000 from Illinois housing trust fund
- $240,000 in Lake County HOME funds
- $60,000 grant from the Federal Home Loan Bank
- $1.8 million from city of Highland Park (land cost)

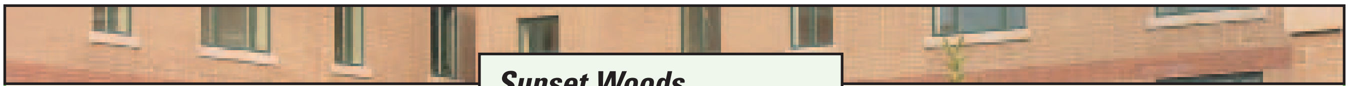
Creative public-private partnerships provide municipalities with a flexible tool that allows them to draw on the strengths of for-profit and not-for profit developers in order to create housing that meets local needs. Municipalities can determine what they wish to bring to the table and then negotiate with private and not-for-profit developers in order to structure a deal that best serves the community.

Using Creative Partnerships to Develop Senior Housing at Sunset Woods

Some partnerships begin with the city identifying its housing goals and crafting a plan to address them. In Highland Park, the city decided to make affordable senior housing a priority after reviewing its master plan and recognizing a pressing need for such housing.[1]

The city then identified funds it had acquired through the refinancing of an existing city-owned building and earmarked them towards addressing this problem. Over a few years, the city strategically invested $1.8 million to acquire seven adjacent parcels for the development of senior housing.

With the land available, Highland Park then issued a



request for proposals in 1998 for the development of senior housing on the site. The city selected the partnership of Brinshore Development and the non-profit Housing Opportunity Development Corporation (HODC) to develop the property in conjunction with the Highland Park Housing Commission. When negotiating the structure of the deal, the town and the developers agreed that the town would provide the land for the development, that all of the homeownership units would be sold at moderate prices, and that the city would receive twelve units that it could rent to seniors. Drawing upon the expertise of HODC, the city also agreed to hire HODC to manage these affordable rental units.

Sunset Woods

- 60-unit development reserved for seniors over the age of 62
- 48 of the units are condominiums affordable to seniors making less than 80% or 115% of AMI
- 12 of the units are rented at a level affordable to seniors earning less than 50%-60% of AMI
- Over 80% of the owners and renters are from or have connections to the community

With the land and ownership structure set by their unique agreement, the developer team relentlessly pursued additional funds and assembled a complex financing arrangement. The total cost of the project was approximately $10 million, and it was financed largely using private debt ($7.1 million). The developer team also secured $750,000 from the Illinois Housing Development Authority Low Income Housing Trust Fund, $240,000 in Lake County HOME funds, and a $60,000 grant from the Federal Home Loan Bank.

Construction began in 2001, and Sunset Woods opened in 2002. The 60-unit development contains 48 condominiums and 12 apartments. In order to create a seamless community, the developers scattered the rental and homeownership units throughout the building and made them indistinguishable. The building is well designed, and common areas include a meeting room, library, central dining room, sitting areas, laundry rooms, a medical screening room, and an outdoor recreation space. A beautiful and spacious park borders the back of the development.

Although 100% affordable, the development serves a variety of income levels in need of affordable housing. Of the 48 condominium units, 18 of the units are reserved for seniors making less than 80% of AMI. The remaining 30 condos are available to moderate-income seniors making less than 115% of AMI. Condos sold for between $119,000 and $129,000 for one-bedroom and $149,000 and $169,000 for two-bedroom units. Although sales prices were set at the same levels for seniors with incomes at the 80% and 115% levels, lower-income seniors were provided a second soft mortgage that effectively reduced the purchase price by $10,000 for a one-bedroom and $20,000 for a two-bedroom unit. (A soft mortgage functions largely as a deferred loan, with the Illinois Housing Development Authority providing the funds.)

In order to ensure that the community's investment in Sunset Woods provides a lasting asset, the condominium units will remain affordable for at least 40 years under a deed restriction in the condo declaration. When an owner decides to sell a unit, the resale value is restricted to the lesser of a 3% increase in the price per year, the rate of inflation, or the fair market value of the unit. The city of Highland Park has the opportunity to purchase the unit and sell it to someone on the city's waiting list of qualified buyers. The development is so popular that the waiting list currently contains over 50 names.

The rental units at Sunset Woods are owned by the city of Highland Park and managed by HODC. Nine of the units receive project-based rental assistance through the county, and the remaining three are available to other renters whose incomes are below 60% of AMI.

Sunset Woods employs a preference for buyers and renters who are current Highland Park residents, work in Highland Park, or have children in Highland Park. In the initial purchase of units, over 80% of buyers and renters were residents of or had connections to Highland Park.

Conclusion

Sunset Woods illustrates that the non-profit, for-profit, and public sectors can collaborate to produce attractive, affordable homes that fit within the character of the local community, despite high land costs and high housing values. Thanks to a creative partnership, the city of Highland Park was able to leverage a public investment of $1.8 million into 60 affordable homes for Highland Park seniors that will stay affordable for at least 40 years. Brinshore brought private equity and real estate experience to the table. HODC provided a clear understanding of public funding streams and invaluable experience with building and managing affordable housing to the partnership. These talents, combined with the political will and public resources of Highland Park, made Sunset Woods a reality.

[1] Interview with Richard Koenig, Housing Opportunity Development Corporation, September 2004. Richard Koenig provided a significant portion of the information about Sunset Woods.

REGIONAL HOUSING INITIATIVE

Various Communities in Northeast Illinois

A rendering of the Leland Apartments

The Tool: Regional Housing Initiative

The Illinois Housing Development Authority, the Metropolitan Planning Council, and the Chicago, Cook County, and Lake County Housing Authorities have come together to pilot an innovative program called the Regional Housing Initiative (RHI). RHI allows developers to use Housing Choice Vouchers as operating subsidies to make a portion of their rental units available to low-income families.

Developers that participate in the program receive project-based Housing Choice Vouchers to support the funding of projects that include units for income-eligible families. Households that earn up to 80% of area median income (AMI) are eligible under the HCV program, but typically families in the program earn less than 30% of AMI. The RHI vouchers fund the difference between reasonable, market-rate rents for the units and the affordable rent that the tenant pays, thereby ensuring the owner the equivalent of a steady, market-rate rent for the unit.[1] The operating subsidy is a source of long-term funding. When awarded RHI assistance, the developer signs a contract with the partnering housing authority that guarantees the subsidy for ten years, with the possibility of renewal after that period expires.

RHI

- Provides operating subsidies in the form of Housing Choice Vouchers for up to 25% of units that are reserved for voucher-eligible families
- Participating households may earn up to 80% of AMI, but typically earn less than 30%
- Developers may receive bonus points on federal Low Income Housing Tax Credit application
- RHI supports mixed-income developments in both job-rich areas and areas close to or near jobs

In addition to an operating subsidy, RHI participation assists developers who are interested in receiving federal Low Income Housing Tax Credits. Developers securing a commitment from RHI may receive four bonus points towards their scores on the Low Income Housing Tax Credit application. This assistance can be invaluable to developers in the competitive application for limited tax credit resources. Furthermore, RHI subsidies can help developers leverage other sources of funding.

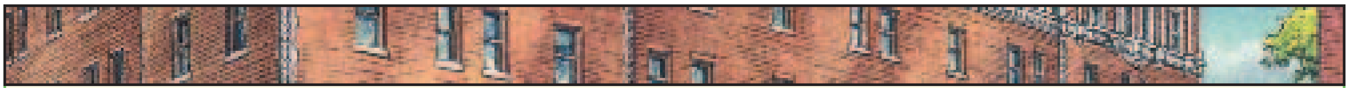
Proposals that are eligible for RHI assistance may include new construction or existing buildings needing no, little, or substantial rehabilitation. The subsidy is limited to multi-family apartments that will provide a mixed-income community, including supportive housing that provides access to opportunity. Up to 25% of the total units in multi-family projects may receive RHI assistance. Proposals for supportive housing for people with disabilities may receive assistance for up to 100% of their units. Because the program prioritizes the creation of mixed-income communities, the RHI selection panel considers the mix of incomes that will be created in the development when reviewing applications.

Potential tenants to fill the RHI-funded units are referred to property managers from participating housing authorities. Participating owners must establish a preference for tenants in assisted units who are working or in training for work within a 12-mile radius of the development. In this way, RHI focuses its resources on providing units of affordable housing in areas in close proximity to job opportunities or in areas with easy access to jobs via public transit.

Since the program was created in 2002, RHI subsidies have been committed to fund 328 apartments within mixed-income communities. The RHI partnership is considering expanding both the scope of the program and the number of participating housing authorities in the future.

RHI Facilitates Rental Assistance in New Communities

RHI has awarded subsidies to several developments that will serve a variety of populations across northeast



Illinois. Two examples of proposals that have received RHI support are:[2]

- **Leland Apartments, Chicago, Illinois**
  Fourteen RHI vouchers have been awarded to Heartland Housing for its Leland Hotel redevelopment plan. The proposal will preserve the historic nature of the building, while keeping it affordable for low-income residents. The plan will add kitchenettes, update bathrooms, and enlarge the existing units to create 137 larger, livable apartments. The development will be located in Uptown, one of the most diverse communities on Chicago's North Side. The renovation will also include offices for social workers, laundry facilities, a community kitchen, an exercise room, and storefront retail space.
- **Wentworth Commons, Chicago, Illinois**
  The Wentworth Homes proposal, a development by Lakefront SRO, has been awarded RHI subsidies for ten apartments in a 51-unit building of family supportive housing. The proposed development, located near the revitalizing Far South Michigan Avenue business corridor, includes a plan to connect residents to jobs through strong property management and supportive service provision.

Although these two developments are examples of housing that will serve extremely low-income households, RHI is a flexible tool that can be used in mixed-income developments in a variety of contexts and communities. Most importantly, RHI stands out as a resource of public funding waiting to be used to develop affordable housing.

Conclusion

Through the allocation of stable operating subsidies, RHI offers affordable rental opportunities in new communities that provide access to job opportunities for residents. The flexibility of the program allows multifamily owners across northeast Illinois to easily participate, and provides financial benefits to help ensure that the proposed housing is financially viable and stable over the long term.

[1] Metropolitan Planning Council, *Regional Housing Initiative Owner Application*, October 22, 2003, http://www.metroplanning.org.

[2] Metropolitan Planning Council, *RHI expands affordable housing options in Chicago and suburban Cook and Lake counties*, www.metroplanning.org; interview with Robin Snyderman, Metropolitan Planning Council, August 2004.

RENT SUBSIDIES

Chicago Rental Subsidy Program

The Rosemont

The Development:
The Rosemont • Chicago, Illinois

The Rosemont is a newly rehabilitated apartment building in which over 25% of the units are rented to residents with incomes at less than 30% of the area median income (AMI). The owners of The Rosemont receive a rent subsidy through Chicago's Rental Subsidy Program, which pays almost half of their eligible tenants' rent each month. With a minimal amount of administration, the Rental Subsidy Program efficiently provides a significant subsidy to owners of The Rosemont and other landlords across Chicago who serve nearly 2,000 extremely low-income households each year.

RENTAL SUBSIDY PROGRAM

- With only $7 million, the city subsidizes over 2,000 units of housing for households at or below 30% of AMI
- Landlords may choose their own tenants or receive referrals from the city
- City sends rental support checks to landlords quarterly
- Program is efficient and well-managed and maintains a landlord waiting list

The Tool: Rent Subsidy Programs

Rent subsidy programs provide financial assistance that makes otherwise market-rate housing affordable at a lower rent level. The funds allow property owners to rent market-rate units at an affordable rent level. These programs maximize the number of affordable units available because they draw upon an existing stock of rental housing. Rent subsidy programs also offer significant flexibility to communities to structure eligibility requirements, income levels served, and the amount of public subsidy provided. Unlike the federal Housing Choice Voucher program, local rent subsidies can be administered by municipalities to make rental units available to moderate-income families in their locality. Rent subsidy programs can be implemented much more quickly and efficiently than constructing new affordably priced units.

Chicago's Rental Subsidy Program

The city of Chicago's Rental Subsidy Program is one of the largest locally funded rent subsidy programs in the country. Through the program, subsidies are provided to qualified landlords who charge affordable rents to eligible households. The program is noteworthy for the efficiency with which it provides a large number of affordable apartments to extremely low-income residents with a relatively modest subsidy. For a cost of only about $7 million a year, the city provides subsidies for about 2,000 households.[1] The city has chosen to target its rental assistance to the area's neediest residents: households with incomes at or below 30% of AMI are eligible to live in the supported units. The program provides assistance for a variety of unit types, from single beds in homeless shelters to four-bedroom apartments.

Landlords apply to participate in the program. The city evaluates the landlord's application to determine whether any valid claims exist against the landlord, and buildings are inspected for safety and habitability.

Participating landlords are free to choose any tenant under the rent subsidy program, as long as the tenant is income eligible. If the landlord prefers, the city's Department of Housing will also work with landlords to match them with prospective tenants looking for units of the appropriate size and location. Landlords can then choose to contact those potential tenants or wait to be contacted by other prospective tenants.

The city's Department of Housing sets the rent and subsidy levels for each building by independently evaluating the fair market rent levels for the unit and the tenant's ability to pay.[2] Final rents are then negotiated with the landlord. Landlords receive the subsidy four times a year and are required to submit annual income verification forms for each tenant who lives in a subsidized unit. If a tenant vacates a subsidized unit, the landlord is responsible for filling the unit with any qualified tenant or with a tenant recommended by the city.

The Department of Housing inspects all units to be leased with a rent subsidy to ensure that units are habitable and the buildings are safely constructed. Participating buildings are subject to additional random spot inspections approximately once every two years.

The Rosemont

- 25% of units are rented to families earning less than 30% of AMI
- Rental Subsidy Program pays almost half of participating tenants' rent each month directly to the owner
- Located within minutes of Lake Michigan and Loyola University

Landlords choose to enter the program for different reasons. Many enter because they have a long-term relationship with a tenant who is no longer able to pay the rent. Some participate because they see it as a way to be in business while helping the community. Others enter simply to gain access to a large number of prospective renters.

Chicago's Rental Subsidy Program is funded by the city's Low Income Housing Trust Fund. The majority of the funding for the trust fund comes from an annual payment from the city's corporate fund.

The Rental Subsidy Program has been recognized as efficient and fiscally prudent as well as landlord-friendly and well-managed.[3] The city's Department of Housing makes timely subsidy payments and allows the landlord grace time to find new tenants and fix any reporting flaws. A waiting list of landlords seeking to participate in the program exists, providing clear proof of the program's success. The city finds it unnecessary to advertise or recruit landlords into the program because information about the program is spread effectively by word of mouth.

The Rosemont: Using the Rent Subsidy to Make Units More Affordable

A 122-unit apartment building, The Rosemont participates in Chicago's Rental Subsidy Program. Located within two blocks of Lake Michigan and Loyola University, the building was purchased in 1992 by Holsten Real Estate Development Corporation. Upon purchasing the building, Holsten spent $1.5 million to significantly upgrade its features by replacing the plumbing, heating, hot water, elevator, and electrical systems.[4]

In 1995, Holsten responded to a city advertisement for the Rental Subsidy Program. Holsten decided to participate not only out of a desire to serve low-income households, but also in an effort to maintain high occupancy in its building.

Thirty-four of the 122 units at The Rosemont are occupied by tenants who are assisted with rental subsidies. Rents paid by the tenants range from $225 to $325 a month, and Holsten receives approximately $200 each month in subsidy payments per tenant. The subsidy therefore provides a significant housing opportunity for low-income tenants earning 30% of AMI.

In addition to the rent subsidies provided for some of its tenants, Holsten receives federal tax credits to support the extremely affordable rent levels offered to The Rosemont's residents. The property also benefits from Cook County's Class 9 property tax classification, which taxes the development at 16% annually rather than the customary 26%, saving the owner approximately $66,000 in property taxes each year. With this combination of local and federal subsidies, The Rosemont offers a significant asset of affordable housing to the community.

While The Rosemont is an example of a large, city-style apartment building that uses the rent subsidy program and other public funding streams to provide affordable housing for extremely low-income families, the rent subsidy model can be used flexibly and efficiently to serve a much higher income level in smaller developments. For example, a suburban community could use a modest amount of resources to make existing apartments affordable to families at 60% of AMI.

Conclusion

The rent subsidy model allows municipalities to design a targeted program based on their own priorities, such as the level of assistance and the methods of administration. Because subsidies make existing rental housing affordable, this model offers municipalities an opportunity to quickly implement a strategy that will provide immediate results – affordable housing within their borders at limited public cost.

1 Business and Professional People for the Public Interest, *Making Rents More Affordable: An Analysis of a Statewide Rental Subsidy Program Using the Chicago Rental Subsidy Program as a Model*, 2003, at 13.

2 The city of Chicago does not rely upon the Department of Housing and Urban Development's guidelines for fair market rents for the area. Rather, it conducts its own analysis of the fair rent level for each property. *Id.* at 15.

3 *Id.* at 17-18.

4 Interview with Andrea Klopfenstein, Holsten Real Estate Development Corporation, August 2004. Andrea Klopfenstein provided a significant portion of the information about The Rosemont.

III. LOCAL FUNDING MECHANISMS

Overview

Many affordable housing developments are created without the use of public subsidy through relaxed zoning restrictions or negotiations by local officials with developers. Even though municipalities can create affordable housing without public subsidy, they may need the use of public funds to make a development financially viable if they choose to create a development that is 100% affordable or that serves families with very low incomes in order to accommodate the full breadth of a local workforce or senior population.

Fortunately, a number of methods exist by which governments can generate funds locally to support affordable housing development. In addition to drawing on numerous sources of federal and state funding, municipalities can create local housing trust funds to provide a regular and dedicated source of funds for affordable housing opportunities. Permanent funding streams for housing trust funds may be generated through a variety of policies, including the establishment of a demolition tax, the institution of a commercial linkage fee, or the creation of a Tax Increment Financing (TIF) district.

The case studies in this section demonstrate how municipalities, through the use of locally generated affordable housing funds, can support the creation of affordable housing that meets the community's needs:

- **Housing Trust Funds**
  Housing trust funds are flexible local accounts that may distribute funds to support the creation or preservation of affordable housing developments. The Hollywood Palms Apartments case study illustrates how San Diego used its housing trust fund, supported primarily through the city's commercial linkage fee, to finance the development of apartments reserved entirely for families earning 60% of area median income (AMI).

- **Demolition Taxes**
  In order to address the problem of the loss of affordable housing through the demolition of modest homes and to create a source of funds for new affordable housing development, demolition taxes generate revenue when existing residential structures are demolished. Highland Park, Illinois, has used the funds collected through its demolition tax to support the construction of six new town homes, all of which are priced affordably. Further, the city has ensured that the use of public funds will serve the community for many years to come by guaranteeing the long-term affordability of the homes using a community land trust.

- **Tax Increment Financing (TIF) Districts**
  TIF districts allow new property tax revenue to be amassed within the district and allocated to qualifying projects. These case studies show how TIF funds can help produce developments that bring numerous benefits to a community. At The Phoenix at Uptown Square in Chicago, Illinois, TIF funds helped support the renovation of three historically significant structures to include some affordably priced condominiums, as well as significant retail space, all in a walkable area. The Senior Suites development, part of a comprehensive redevelopment strategy, provides affordable rental housing for seniors in one of the fastest growing areas of Chicago, again through the use of TIF funds.

- **Commercial Linkage Fees**
  Linkage fees help mitigate the negative impact on the supply of affordable housing that can be caused by new commercial development by assessing a fee in proportion to the housing needs created by the new economic development. In the SOMA Family Apartments case study, the city of San Francisco utilized the significant amount of revenue generated by its Jobs/ Housing Linkage program to fund a large family development reserved entirely for households earning at or below 60% of AMI. Although the creation of a commercial linkage fee may require special legal consideration, the San Francisco example provides a useful illustration of the opportunity to create a development entirely affordable to low-income households through the use of locally generated funds.

HOUSING TRUST FUNDS

San Diego Housing Trust Fund

Hollywood Palms Apartments

The Development:
Hollywood Palms Apartments • San Diego, California

Hollywood Palms Apartments in the City Heights neighborhood of San Diego is a 94-unit rental development reserved for families earning 60% or less of area median income (AMI). Completed in 2003, the development has helped meet the city's need for larger family apartments, providing 44 two-bedroom, 28 three-bedroom, and 22 four-bedroom units. A key source of funding for its development was San Diego's Housing Trust Fund.

The Tool: Housing Trust Funds

Housing trust funds are accounts, like bank accounts, that may receive dedicated sources of public funds and distribute funds toward development, rehabilitation, and preservation of affordable housing units. The funds can vary widely as to the sources of their revenues, the types of projects they support, and how the funds are administered. This flexibility is one of the key benefits of housing trust funds, as it allow communities to custom fit the fund to their particular strengths, needs, and priorities with minimal administrative burden. Because housing trust funds are established locally, they are free from federal intervention and restrictions, allowing them to be a flexible tool designed to fit the needs and conditions of a particular community.

HOUSING TRUST FUNDS

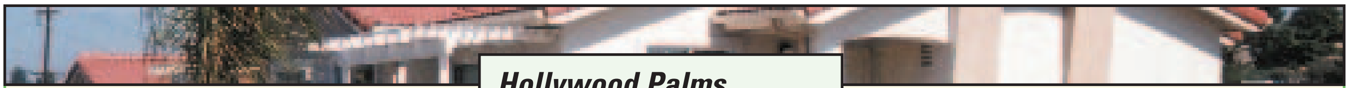
- Help leverage other public resources and private equity to finance developments
- Allow communities to custom fit funds to their particular priorities with minimal administrative burden
- Have supported the creation of over 6,500 units of affordable housing in San Diego
- San Diego's fund generates most of its revenue through a commercial linkage fee

San Diego Housing Trust Fund

In San Diego, for example, the Housing Trust Fund (HTF) is the city's most flexible source of financing for affordable housing development. The San Diego Housing Commission uses HTF dollars as a gap financing measure and to help projects meet matching requirements for other funding sources such as federal HOME funds and the State of California's Local Housing Trust Fund Program.[1] In this way, the city can leverage local HTF funds to secure additional funds for developments, make projects more competitive for Low Income Housing Tax Credits, and promote developments, such as special purpose housing, that might otherwise not receive funding.

San Diego's Housing Trust Fund program has been extremely successful. The Fund was created in 1990 to address the city's need for low- and moderate-income housing by encouraging private sector activities that advance affordable housing opportunities. The HTF has helped to transform affordable housing in San Diego from small projects initiated mainly by non-profit community development corporations to larger, more complex projects undertaken by a range of developers. Over the course of its history, HTF investments have included $27.6 million for developing 4,100 rental and special purpose housing units; $9 million for rehabilitating 1,500 owner-occupied units; $5 million for 1,100 units for first-time homeowners; $2.2 million for non-profit capacity building; and $12.5 million for transitional housing.

In general, funds can be used for the new construction and rehabilitation of rental housing, transitional housing, special purpose housing, owned-occupied rehabilitation, and first-time homeowners. By city ordinance, particular percentages of its assistance must benefit very-low-income households (at or below 50% of AMI), low-income households (between 50% and 80% of AMI), and first-time homebuyers. Rental housing developments must remain affordable for 55 years and are restricted through the use of



covenants, conditions, and restrictions (CC&Rs).

The San Diego Housing Commission awards funding through a continually open Notice of Funding Availability. Awards correspond to programmatic strategies outlined in the Annual Plan. To ensure that plans reflect community needs, conditions, and priorities, a community task force helped to design the fund in 1990, and public meetings precede the adoption of each year's Annual Plan.

> ***Hollywood Palms***
>
> - 94-unit rental development
> - All units are reserved for families at or below 60% of AMI
> - Affordable rents range from $591 to $693/month for two-, three-, and four- bedroom apartments; market rents are about $1100 to $1550/month
> - Use of Housing Trust Funds helped leverage financing necessary to complete the project

The Housing Commission awards both loans and grants with HTF funds, with most rental developments receiving loans. These loans are typically structured to be repaid through residual receipt payments or at the back end of financing, allowing the developer to repay other loans before repaying HTF loans. As loans are repaid, HTF becomes a self-sustaining resource.

While the HTF has occasionally received revenue from the sale of city-owned property, CDBG loan repayments, and from a Transient Occupancy Tax,[2] the San Diego HTF's primary revenue source is the city's commercial linkage fee. This fee is charged to commercial and industrial buildings on a square-foot basis at the time building permits are issued for new construction or renovations that change a structure's use.[3] Over $39 million has been raised for the Housing Trust Fund from the commercial linkage fee since the program's creation.

In 2003, San Diego created an Inclusionary Housing Program. The ordinance requires that developers of two or more residential units must price at least 10% of their units at levels affordable to families with incomes at or below 65% of AMI for rental developments or 100% of AMI for homeownership units.[4] The ordinance allows a fee to be paid in lieu of providing the affordable housing units.[5] This in-lieu fund has collected over $1 million since its creation, with over $3 million more expected based on permit applications currently being processed. Dollars from this fund are used to support affordable rental housing development and may supplement funds from the city's Housing Trust Fund. In addition, over 2,000 affordable units have been or are expected to be built under the ordinance.

Using the Housing Trust Fund to Develop Hollywood Palms

Construction of the Hollywood Palms Apartments, a development reserved exclusively for households earning less than 60% of AMI, originally began without support from the city's Housing Trust Fund. The project had received Low Income Housing Tax Credits, but these required that the development be placed in service by December 2000. When the developer did not meet the deadline, the tax credits were forfeited, leaving the project half-complete. When the Housing Commission learned that the project was in jeopardy, it stepped in to help restructure the financing and preserve the affordable units. A community task force was formed to give input into how the design and construction could be completed.

The Fox Hollow Limited Partnership was restructured, creating a new partnership between the non-profit City Heights Community Development Corporation, a newly added for-profit developer, Affirmed Housing Group, and the original tax credit equity investor. This limited partnership took over the development and worked with the Housing Commission to refinance the project. The Housing Commission granted the project a $900,500 HTF loan. These funds met the federal HOME funds matching requirement, allowing the project to secure an additional $1,299,500 in HOME funds. The Housing Commission also worked with the developers to help them secure $6,550,000 in tax-exempt bonds and $4,540,910 in newly issued Low Income Housing Tax Credits. The Fox Hollow Limited Partners agreed to contribute $1,321,000 of equity to complete the financing.

In this way, San Diego's Housing Commission used its Housing Trust Fund to leverage the financing needed to construct a thriving development that would serve low-income families exclusively. Opened in 2003, Hollywood Palms provides 94 affordable family units, including 21 units that are affordable to families earning 50% of AMI and 73 units that are affordable to families making 60% of AMI. In a market where two-bedroom units are rented for $1,100 a month, the maximum two-bedroom rent at Hollywood Palms is $591. Typical market-rate rent is $1,500 a month for a three-bedroom apartment and $1,550 for four bedrooms, but maximum rent for Hollywood Palms units is $651 for three bedrooms and $693 for four-bedroom apartments.

Conclusion

Because housing trust funds are locally administered, they provide cities with flexibility to meet their own community needs and priorities. Cities can determine for themselves the source of the revenue, the process for awarding funding, and the types of projects that receive assistance. While the direct assistance provided by a housing trust fund may be modest compared to the total development cost, it can be leveraged to make affordable housing units possible by attracting private equity and other public resources.

[1] Interview with Ann Kern, San Diego Housing Commission, August 2004. Ann Kern provided a significant portion of the information about San Diego's Housing Trust Fund and the Hollywood Palms Apartments.

[2] The Transient Occupancy Tax is a 10.5% surcharge on hotel rooms.

[3] San Diego's current Housing Impact Fee is $1.06 per square foot for office and comparable uses, 80 cents per square foot for research and development space, 64 cents per square foot for hotels, retail, and manufacturing, and 27 cents per square foot for warehouses.

[4] San Diego Housing Commission, *Inclusionary Housing Programs*, http://www.sdhc.net.

[5] The fee-in-lieu is currently $1.75 per square foot and will increase to $2.50 per square foot on July 3, 2005.

DEMOLITION TAXES

Highland Park Demolition Tax

Temple Avenue Town Homes; photo courtesy of Highland Park Illinois Community Land Trust

The Development:
Temple Avenue Town Homes •
Highland Park, Illinois

The Temple Avenue Town Homes consist of six affordable homes constructed in the upscale and built-out suburb of Highland Park, Illinois, where the median home value is over $430,000.[1] The units were targeted to families at different income levels ranging from below 60% to 100% of the area median income (AMI). Revenue collected from Highland Park's demolition tax and distributed through its Housing Trust Fund supported construction of the development.

The Tool: Demolition Taxes

Demolition taxes generate revenue when existing residential structures are torn down. Demolition taxes may be used to offset the negative effects of teardowns on a community. When buyers demolish an existing house, replace it with a much larger new house, then sell the new residence for a significant profit, the new structures often do not match the scale, appearance, and character of the surrounding neighborhood. As a result, many municipalities view teardowns as a negative phenomenon that disrupts established neighborhoods and may threaten the character of the community.

Furthermore, teardowns can have a negative impact on a community's stock of moderately priced housing. The demolition of existing older, smaller residences – which are typically more affordable – and replacement with new, larger residences may reduce the diversity of a community's housing stock and affordable housing opportunities. Teardowns may also contribute to property value increases that further the difficulty of providing affordable housing within a community, as land costs may reach a point that renders the development or preservation of affordable housing financially infeasible.

DEMOLITION TAXES

- Collected when existing residential structures are demolished
- Creates new, ongoing funding source for affordable housing
- Helps offset trend toward demolition of smaller homes and preserves community character
- Highland Park has collected $900,000 from its demolition tax in about two years

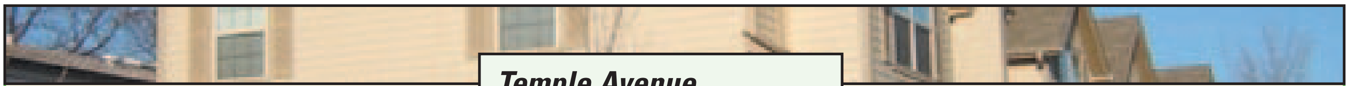
Highland Park Demolition Tax

In 2002, the City of Highland Park adopted an Affordable Housing Demolition Tax in order to: 1) offset the trend toward demolition of smaller, usually more affordable residences and 2) establish a permanent funding stream for its Housing Trust Fund. Prior to adoption of the demolition tax, Highland Park had experienced a wave of teardowns in many of the older neighborhoods within the city. Escalating land prices had also increased the number of residential teardowns, changing the character of the neighborhood.

The demolition tax is a tax on residential demolitions. For single-family homes, the tax is $10,000.[2] For multiple-family residential buildings, the demolition tax is $10,000 or $3,000 per unit, whichever is higher.[3] In addition, a demolition permit fee of $500 is required for all demolitions within Highland Park. Since its inception in 2002, the demolition tax has generated over $900,000 in revenue for the Housing Trust Fund. About 50 demolitions each year continuously finance the Fund. In fiscal year 2004 alone, the tax generated $570,000 from 57 teardowns.

In limited circumstances, the demolition tax may be waived. An exception to application of the tax may be found if: 1) the owner replaces the demolished structure with affordable housing on site or at another site or 2) the applicant for demolition has been the owner and occupant of the structure for the five years preceding demolition and continues as the owner and occupant of the replacement structure for five years after demolition.[4]

Revenue generated by the demolition tax is placed into Highland Park's Housing Trust Fund. The Housing



Trust Fund, along with other affordable housing strategies, was created as a result of the city's 2001 Affordable Housing Plan. The Plan was developed in response to resident concerns that housing market trends – including rising land and housing costs and a loss of affordable units over the years – threatened Highland Park's diversity, the character of neighborhoods, and severely limited housing options for a broad range of families currently living and working in the community.

Temple Avenue Town Homes

- Six affordable townhomes targeted to families with incomes from below 60% to 100% of AMI
- Town Homes were sold for between $110,000 and $190,000
- Funded partially with demolition tax funds
- Long-term affordability is guaranteed through placement in a community land trust
- All buyers live or work in Highland Park

Temple Avenue Town Homes: Demolition Taxes Provide Needed Funding for Affordable Units

The six affordable homes at Temple Avenue Town Homes were constructed as the result of active involvement by the city of Highland Park and the use of demolition tax revenues. The builder, Brad Zenner, first acquired the parcel as a nuisance property that was sold at public auction. He approached the city of Highland Park about redeveloping the land, and the city suggested that he work in conjunction with the nonprofit community land trust to develop affordable housing on the site. Construction on the site began in December 2003.

The Temple Avenue Town Homes were completed in August 2004. All units have three bedrooms, two and one-half bathrooms and two car attached garages. Market-rate prices for townhomes in Highland Park average over $300,000,[5] and the median home value for a single- family home in Highland Park is nearly $430,000. The cost of the Temple Town Homes ranged between $110,000 and $140,000. All of the units will remain permanently affordable through inclusion in the Highland Park Illinois Community Land Trust (HPICLT).

The units at Temple Avenue are targeted toward a mix of incomes. Two town homes were reserved for families making less than 60% of AMI, two for families at less than 80% of AMI, and two at 100% of AMI.

The town homes are priced according to the buyer's income. Each applicant must qualify for the maximum amount of mortgage that his or her income will permit through a participating lender. The HPICLT owns the land and subsidizes the home to an affordable level that the applicant can afford. The subsidy will vary, from approximately 20% to 55% of the market cost of the unit. Priority is given to low- and moderate-income homebuyers who live or work in Highland Park.

The total cost of the project was $1,475,000. Financing included $335,800 from the Highland Park Housing Trust Fund (provided by the demolition tax), $120,000 from the Lake County Affordable Housing Program, $80,000 from the Illinois Housing Development Authority, and a $30,000 grant from the Federal Home Loan Bank. The HPICLT negotiated the price of the project with the builder. Once completed, the units were sold to the HPICLT, which in turn sold the units and leased the land to the prospective homebuyers.

All of the families who have moved into the Temple Avenue Town Homes live or work in Highland Park. The families include a hospital worker, a nurse at the local high school, a family who has rented in Highland Park for 13 years, two city employees, and a schoolteacher.

Conclusion

Demolition taxes can provide a significant source of revenue for affordable housing development while also discouraging destruction of a community's more affordable housing stock. Use of demolition tax funds through a housing trust fund facilitates the city's control over development projects and allows the town to shape housing developments to meet its own affordable housing priorities.

[1] 2000 U.S. Census Data, adjusted for inflation to 2004 dollars. $431,616 is the adjusted median value for specified owner-occupied homes.

[2] City of Highland Park, *Demolition Tax Fact Sheet*, http://www.cityhpil.com/pdf/demopermits.pdf.

[3] *Id*.

[4] *Id*.

[5] Interview with Mary Ellen Tamasy, Highland Park Illinois Community Land Trust, August 2004. Mary Ellen Tamasy provided a significant portion of the information about the Temple Avenue Town Homes.

TAX INCREMENT FINANCING DISTRICTS

Lawrence/ Broadway and Near South TIFs

Top photo: The Phoenix at Uptown Square; lower photo: Senior Suites at Central Station

The Developments:

The Phoenix at Uptown Square • Chicago, Illinois

Senior Suites of Central Station • Chicago, Illinois

Completed in 2004, The Phoenix at Uptown Square in Chicago, Illinois, accommodates both ground-level retail space and 37 condominium units, eight of which were sold at the affordable price of $100,000. The financing for the project was supported by funds from the area's Tax Increment Financing District, which made possible the rehabilitation of the historically significant structure and the provision of 20% of the housing units as affordable. The Phoenix at Uptown Square demonstrates how TIF funds can be used to ensure that new redevelopment in a rapidly appreciating neighborhood can include affordably priced housing, in addition to producing vital retail establishments, all in a walkable area.

Senior Suites of Central Station consists of 96 apartments and is dedicated to housing moderate-income seniors. Constructed in 1996, it is located in the burgeoning Central Station community of Chicago's South Loop. The development serves seniors at two income levels: 40 units are reserved for seniors earning less than 50% of the area median income (AMI) and 56 are dedicated for those earning less than 60% of AMI. TIF funds were used to acquire the land and helped the developer leverage other financing sources.

TAX INCREMENT FINANCING

- Allocates new revenue from increased property value to eligible projects in a designated area
- No tax increase occurs; funds are disbursed as additional tax revenue accrues
- Funds may be used for public improvements, including affordable housing development
- Flexible standards allow many areas to qualify for TIF designation

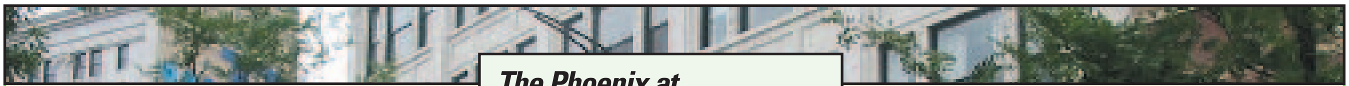
The Tool: Tax Increment Financing Districts

Tax Increment Financing (TIF) is a tool that allocates new revenue from property taxes in a designated area to pay for improvements within that area. These new revenues, also called increment, arise if new development takes place in the TIF district, or if the values of existing properties increase. Guidelines that allow for the creation of TIF districts are provided by state law. In Illinois, TIF districts are limited to lifespans of 23 years by state statute.

TIF districts operate on the assumption that assessed values of properties within the district will increase, thereby generating additional property tax revenue to fund improvements within the district. TIF districts do not impose new taxes; they only re-allocate how supplemental tax revenue will be spent.

Additional tax revenue that is allocated to the TIF fund may be created a few ways. New development on vacant land could generate new taxes not paid while the land was vacant. Improvements on an existing parcel, such as an addition to a house, factory, or store, could increase the taxable value of the parcel. Or, the taxes on existing properties could go up, either because of inflation or because of increased property values in the neighborhood. All of this new tax revenue would be allocated for qualifying projects (e.g., infrastructure, housing) within the TIF district.

Illinois's TIF law was amended in 1999 to increase the availability of TIF funds for use in affordable housing development. Although most TIF-funded developments are not allowed to use TIF funds to pay for brick-and-mortar costs of new construction, the new law makes an exception for affordable housing developments, allowing up to 50% of these costs to be paid with TIF funds.[1]



The Phoenix at Uptown Square

- 8 of 37 condominium units priced affordably
- Affordable units sold for $100,000; market-rate units for up to $400,000
- TIF funds supported historic renovation as well
- Development combines retail and condominium ownership

In addition, up to 75% of the interest costs of financing affordable housing developments – an increase from 30% – may be paid for with TIF revenues.

The criteria under Illinois law for TIF district creation are very broad and subject to much interpretation.[2] Nearly every property in Illinois is a potential TIF district, depending on the wishes of the municipality. State law allows TIFs to be established in areas that are "blighted" or in danger of becoming blighted (called "conservation areas").[3] There are 13 specifically enumerated factors to be considered when determining whether an area qualifies as "blighted" or a "conservation area," such as deterioration, vacancy, overcrowding, lack of community planning, or inadequate utilities. Five of these factors must be met for an area to qualify as "blighted," while only three factors plus the presence of structures over 35 years old are needed for an area to be termed "conservation."

To determine if an area is eligible to become a TIF district, a city usually hires a consultant to conduct an eligibility study. If the area meets state standards, the city creates a redevelopment plan and project budget. These documents provide a roadmap to locally designated priorities and a plan for how the TIF dollars will be spent over the life of the district.

Without outside funding, it usually takes a few years of property value increases after a TIF district is created before revenues are sufficient to fund public projects. To cover the gap between TIF creation and availability of funds, many communities choose to jump-start the TIF by issuing municipal bonds to cover initial improvements. Typically, the bonds are secured by projected TIF revenues.

The city of Chicago has one of Illinois' most active TIF programs, with nearly 130 TIF districts. The city of Chicago's Mayoral Affordable Requirements Ordinance requires that when a developer receives TIF funds to develop housing, at least 20% of the units must be priced as affordable to families earning up to 60% of AMI for rental units or earning up to 100% of AMI for homeownership units.[4] In this way, the city ensures that when TIF funds are used to revitalize a neighborhood, long-time residents, seniors, and the local workforce are able to remain. As of 2002, TIF dollars had helped to create over 1,800 units of affordable housing in Chicago.[5]

The Phoenix Uses TIF Financing to Rehabilitate Historically Significant Structure

The Phoenix at Uptown Square utilized a TIF district to rehabilitate and reconstruct three historically significant buildings and to sell 20% of the new housing units affordably. The development incorporates a mixture of retail space and 37 condominium units, eight of which are affordable.

The Phoenix developer, Joseph Freed and Associates, was interested in undertaking a project that involved a mix of residential and retail.[6] In planning the project, the developer engaged in negotiations with the city concerning the condition of the buildings, the cost of the land, and the feasibility of the project.

From the beginning, Freed and Associates identified the parcel as a potential candidate for inclusion in a TIF district. Because of its interest in the potential development, Freed funded the studies that laid the foundation for creating the district. Created in 2001, the Lawrence/Broadway TIF district that encompasses The Phoenix consists of 74 acres of commercial and residential land in Chicago's Edgewater and Uptown communities. The total projected budget for the TIF district over its 23-year life is $35 million. In its first two years, the TIF district accumulated over $1 million in increment for projects in the district.

TIF assistance to The Phoenix helped create more than affordable housing. The project also included a significant retail development as well as the preservation and restoration of three buildings as historic structures. Two of the buildings were built around 1915, and the third was constructed in 1930. They had served as banks, department stores, and hotels, but had fallen into disuse when Freed and Associates approached the city about developing the site. During redevelopment, two of the structures were rehabbed and the buildings' terra cotta exteriors were restored. The third was completely reconstructed. Residential units occupy two of the buildings, while the third is now home to a large bookseller.

The Phoenix also benefited from participating in the city's Chicago Partnership for Affordable Neighbor-

hoods (CPAN) program. The development received CPAN funding support, and prospective affordable homebuyers were provided homebuyer assistance and screened by the city's Department of Housing.

The project was completed in 2004 for a total cost of $24 million. With the exception of $6.9 million in TIF dollars and $320,000 in CPAN funds, the project was privately financed.

The sales price of the affordable units represented a significant savings for affordable buyers compared to the price of the market-rate units. With the assistance of the local aldermen, affordable units sold for $100,000, compared to market-rate sales prices between $200,000 and $400,000.

Over 400 people initially expressed interest in purchasing the eight affordable units. Following income qualification tests and the required homebuyer training courses, over 100 hopeful buyers participated in a lottery for The Phoenix's eight affordable units.

Senior Suites

- All units reserved for seniors earning at or below 60% or 50% of AMI
- Affordable apartments rent for prices between $623-$762/month
- Market-rate homes in the neighborhood sell for up to $1.7 million
- Development made possible by use of TIF funds and other federal funding sources

"Lasagna" Financing

The total cost of the Senior Suites development was $9.6 million financed as follows:

- $5.1 million loan from the city of Chicago backed by HOME dollars
- $2.5 million in Low Income Housing Tax Credits
- $1.0 million in private loans
- $960,000 in TIF funds

Senior Suites Utilizes TIF Financing to Construct Senior Apartments

In the mid-1990s, Chicago's mayor recognized the need to address the city's ongoing shortage of affordable housing for seniors. The Senior Suites Chicago Corporation, an affiliate of the Senior Lifestyle Corporation (SLC), agreed to partner with the city to produce affordable senior housing across the city that would allow seniors to remain in their neighborhoods. Relevant city agencies, including the Departments of Housing, Aging, and Planning and Development, and local aldermen, all gave the Senior Suites project priority status. To ensure the development would address the community's needs, SLC met with local seniors and neighborhood groups, and consulted with outside experts.

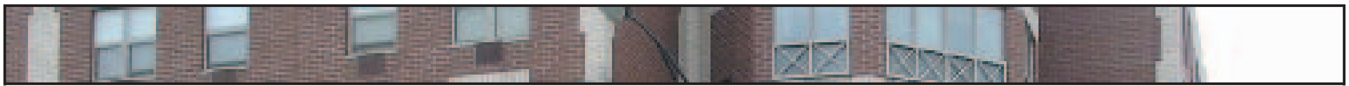
The first Senior Suites community opened in April 1995 on the city's northwest side. Senior Suites at Central Station, constructed in 1996, followed shortly thereafter. All of the apartments in the 96-unit development are affordably priced. Fifty-six of the units are set aside for seniors earning at or below 60% of AMI; the remaining 40 units are reserved for seniors earning at or below 50% of AMI.

Senior Suites at Central Station was developed as part of the larger Central Station planned community. This 80-acre community is being constructed on the site of the abandoned tracks of the former Illinois Central Railroad, which dominated Chicago's near south side for more than a century. The $3 billion Central Station development will ultimately consist of 14 million square feet of new construction, including 8,000 new rental and for-sale homes, retail space, hotels, offices, and space for commercial uses. Mere minutes from Chicago's downtown business district, the community is close to the city's Museum Campus, Soldier Field, Grant Park, the Universities of Chicago and Illinois, and the Lake Michigan shore line.

An important component of the Central Station development was the designation in 1990 of a TIF district encompassing the area, including portions of Chicago's Loop and South Loop areas. Between 1990 and 2002, this TIF district earned over $86 million in increment.[7] As the real estate market of the South Loop burgeoned, the TIF reaped additional benefit, earning over $25 million in increment during 2002 alone.[8] According to Gerald Fogelson, chair of one of the corporate partners in the Central Station development, "the original Central Station TIF, which now is called the Near South TIF, was absolutely vital to the success of this project."[9]

Rents in the Senior Suites development range from $623 to $635 for studio apartments and from $707 to $762 for one-bedroom apartments. Rents include heat, electric, and air conditioning, monthly housekeeping service, weekly transportation to the grocery store, and use of laundry machines and exercise equipment.

The total cost of the development was $9.6 million.



TIF funds in the amount of $960,000 were used to acquire the land for the development. In addition, SLC used $2.5 million in Low Income Housing Tax Credits, a $5.1 million loan from the city backed by HOME funds, and $1 million in private equity to fund the development.

The Senior Suites model has been so successful that today, 12 Senior Suites communities have been built in Chicago, with three more in various stages of production. All Senior Suites developments are committed to providing affordable rental housing to seniors.

Conclusion

Created in accordance with state law, TIF districts can generate significant revenue for affordable housing development, providing a useful tool to municipalities interested in including affordable units in private construction projects. Revenue generation through TIF districts does not require the assessment of new fees or an increase in tax rates. Instead, it provides a funding alternative for communities searching for creative ways to support affordable housing development.

1 65 ILCS 5/11-74.4-3(q)(11).

2 Illinois law regarding TIF creation is set out in the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*

3 TIFs may also be established for industrial park conservation areas in locations with 1) high unemployment rates, 2) land zoned as industrial, and 3) vacant land suitable for industrial use and an adjacent blighted or conservation area. In some cases, vacant land that qualifies as a blighted area or an industrial park conservation area and also satisfies additional criteria may qualify for TIF designation.

4 Chicago's ordinance also requires that development on land purchased from the city at a reduced price must include at least 10% affordable housing. CHICAGO, IL., MUNICIPAL CODE, ch. 2-44-090.

5 Neighborhood Capital Budget Group, *TIF Almanac*, 2003, at 32.

6 Interview with Dennis Harder, Joseph Freed and Associates, July 2004. Dennis Harder provided a significant portion of the information about The Phoenix at Uptown Square.

7 Neighborhood Capital Budget Group, *TIF Profile: Near South*, http://www.ncbg.org/tifs.

8 *Id*.

9 Deborah Johnson, *The New Face of Chicago's South Loop*, URBAN LAND, April 2002, at 1. Fogelson is the chair of Fogelson Properties, which is one of the partners in the joint venture to develop Central Station.

COMMERCIAL LINKAGE FEES

Jobs/ Housing Linkage Program of San Francisco

SOMA Family Apartments

The Development:
SOMA Family Apartments • San Francisco, California

The SOMA Family Apartments, 74 units of affordable housing constructed in San Francisco's South of Market neighborhood, were developed in part using funding from the city's commercial linkage fee. When combined with the studio apartments next door, this 100% affordable, community-oriented development provides the neighborhood with housing, childcare, education and services, and a new grocery store.

COMMERCIAL LINKAGE FEES

- Generate affordable housing funds by assessing new commercial or industrial development
- Help ensure that new economic development leads to growth of balanced communities
- Has raised $38 million in San Francisco and led to construction of 4,600 units of affordable housing

The Tool: Commercial Linkage Fees

New commercial development benefits localities in several ways, but it can also have an impact on the availability of affordably priced housing. Commercial development can increase housing costs by driving up property values and generating increased demand for moderately priced housing from workers in newly created jobs. Linkage fees can mitigate these effects by generating affordable housing resources in proportion to new economic development. In most linkage strategies, a fee is assessed to a new commercial property, and the funds are used to support affordable housing initiatives. This program works to correct the jobs/ housing imbalance created when there are insufficient housing opportunities for workers to live close to their jobs.

A linkage fee is generally established by local legislation and typically administered by city staff. The local agency that issues building permit applications and zoning variances typically collects the fees. The revenue generated is directed into a housing trust fund. Once the fee is in place, the program will generate funds without any further need for action.

"LASAGNA" FINANCING

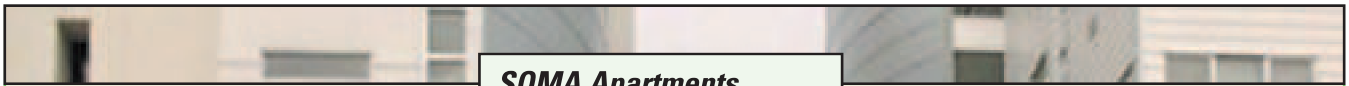
The total cost of SOMA Apartments was approximately $23.7 million. The funds were secured as follows:

- $11.3 million in commercial linkage fee revenue
- $9.7 million in tax credit and private construction loans
- $2.5 million in Tax Increment Financing funds
- $200,000 in bond funding

In most cases, linkage fees are charged per square foot of the new development and vary depending on the use of the land. To determine the amount of the fee, officials must decide how many new affordable units are needed due to the new development and then determine the difference in cost between developing affordable units and market-rate units.[1] Often, there is a proximity requirement incorporated into the linkage program to ensure that the affordable housing is built in the area affected by the commercial development.

Municipalities designing commercial linkage fee programs can tailor the program to fit their city's needs. Considerations might include: which types of development will pay the fee, how much each type of development will pay, and what the geographic boundaries of the policy will be.[2] Most commercial linkage fees apply to commercial development, including office, retail, and hotel space, and some also include new industrial development. Many exempt small businesses under a certain minimum square footage from the fee.

Rates established by cities with linkage fees range from 50 cents to $14.00 per square foot. The rate of the linkage fee should relate to the increase in the need for affordable housing created by the new commercial development. For example, in the Chicago metropolitan area, it has been estimated that for every 100 jobs added to an area that is already short on affordable



SOMA Apartments

- 74 units of moderately priced housing
- Units affordable to families at or below 50%-60% of AMI
- Rents range from $500 to $1,600
- Community includes commercial space, childcare facility, grocery store, computer center, and courtyard

housing, a need for 15 additional affordable housing units within reasonable commuting distance is generated.[3]

Linkage fees require special legal considerations. In order to implement a fee, proponents must demonstrate that the linkage fee is connected to the impacts of the proposed development and that it is proportional to the nature and extent of those impacts. In Illinois, courts have held that exactions such as linkage fees are permissible only if they meet needs that are "specifically and uniquely attributable" to the developer's activity and are directly proportional to those needs.[4] In other words, the commercial development incurring the fees would definitely introduce new employees into the locality that the current housing market could not support, creating a lack of affordable housing. Municipalities should therefore work carefully with their legal counsel when enacting this tool.[5]

Jobs/ Housing Linkage Program of San Francisco

San Francisco – one of many cities that has a commercial linkage fee – first employed this strategy in 1981, when it linked the development of office space to incentives to develop affordable housing as an informal planning commission policy. In 1985, the city formally enacted a program requiring all office developers to make a monetary contribution for affordable housing based on the size of the development. The scope of the ordinance was expanded in 2001 to apply to entertainment, hotel, office, research and development, and retail projects over 25,000 square feet. All revenue collected through the linkage fee is deposited in an Affordable Housing Fund, which is administered by the Mayor's Office of Housing.

When enacting the ordinance, the San Francisco city council explained that "there is a causal connection between [commercial] developments and the need for additional housing in the City, particularly housing affordable to lower and moderate income.... Due to this shortage of housing, employers will have difficulty in securing a labor force, and employees, unable to find decent and affordable housing, will be forced to commute long distances, having a negative impact on qualify of life, limited energy resources, air quality, social equity, and already overcrowded highways and public transport."[6]

San Francisco's linkage fee rate is currently $13.95 per square foot for entertainment space, $11.21 for hotel, $14.96 for office, $9.97 for research and development, and $13.95 for retail.[7] The levels of the fees were determined by a nexus study completed by the city's planning department that estimated the demand for affordable housing created by various land uses. Instead of paying the linkage fee, a developer may choose to construct affordable housing units based on a formula that obligates it to construct approximately one to three affordable units for every 10,000 square feet of space, depending on the use of the space.

San Francisco has raised approximately $38 million in commercial linkage fees since it adopted a linkage strategy in 1981. These funds, in turn, have resulted in the creation of more than 4,600 units of affordable housing.[8] Fees collected in the Housing Trust Fund are distributed through a Request for Proposal process and have funded a variety of projects, including affordable rental units for families, affordable homeownership units, and single room occupancy units. Rental rates in affordable developments created by the Fund are limited to those affordable to families earning 60% of area median income (AMI) or less.[9]

Using Linkage Fee Revenue to Create Affordable Units at SOMA Family Apartments

The SOMA Family Apartments were made possible by the San Francisco commercial linkage fee. The building, which contains 74 units of family housing, is entirely reserved for low- to moderate-income households. Approximately two-thirds of the development's units are targeted to families below 60% of AMI and one-third are in place for households below 50% of AMI. Rents range from $500 to $1,600, depending on the size of the unit and the income of the applicant.

The SOMA Family Apartments, located in the South of Market neighborhood of San Francisco, are connected to the SOMA Studio Apartments, another affordable development. Together, the developments provide 162 affordable units and represent the largest affordable housing development in San Francisco in a decade. The complex also includes 22,000 square feet of com-

mercial space with a childcare facility and a large grocery store, computer-learning center, large community kitchen, and 10,000 square feet of courtyard space.

The parcel of land for the apartments was purchased in 1999 by the Tenderloin Neighborhood Development Corporation and the Citizens Housing Corporations, two local CDCs that developed the family and studio units simultaneously. The total cost to construct the Family Apartments was $23.7 million. Nearly half of the funding for the project, $11.3 million, was provided by linkage fee revenues.[10] An additional $2.5 million in assistance came from TIF funds, and $.2 million in bond funding was contributed. The remainder of the financing was provided through tax credit and private construction loans.

Conclusion

Commercial linkage fees can provide substantial funding to support affordable housing developments with minimal administrative burden. The fee helps ensure that the moderately priced housing needs created by new economic development are addressed in order to maximize the growth of healthy and diverse communities. Municipalities can structure the fee in a way that best ensures their affordable housing needs are met.

[1] Generally speaking, a municipality will first determine the number of new affordable units needed as a result of a particular type of commercial development. Next, it will estimate the gap between how much a household earning a moderate income can afford to pay for housing and the cost of constructing a new unit. With these figures, a municipality can calculate the fee to be assessed for each category of commercial development.

[2] Policy Link, *Commercial Linkage Fees*, http://www.policylink.org.

[3] *Id*. Estimation performed by the Northeastern Illinois Planning Commission in 1990.

[4] *Pioneer Trust & Savings Bank v. Mount Prospect*, 22 Ill. 2d 375, 380 (1961).

[5] Some municipalities have chosen to enact housing excise taxes rather than commercial linkage fees. Similar to linkage fees, excise taxes collect revenue when a specific act occurs. For example, the city of Boulder applies an excise tax on all new residential and commercial construction. Policy Link, *Community Housing Assistance Program: Boulder, Colorado,* http://www.policylink.org. The tax is currently 21 cents/ square foot for new residential development and 45 cents/ square foot for new commercial development. BOULDER, CO., CITY CODE, §53-9-1. All funds collected from the tax go to the Boulder Community Housing Assistance Program, which creates permanently affordable units for low- and moderate-income households.

[6] SAN FRANCISCO, CA., MUNICIPAL CODE, art. III, §313.2.

[7] *Id*.

[8] Policy Link, *Commercial Linkage Fees*, http://www.policylink.org.

[9] "Area median income" is determined based on income levels in the primary metropolitan statistical area (PMSA). The San Francisco PMSA includes Marin, San Francisco, and San Mateo counties. HUD USER, http://www.huduser.org.

[10] Interview with Joe LaTorre, City of San Francisco, August 2004.

CONCLUSION

The case studies in this book demonstrate the many opportunities for local governments to create affordable housing. Several lessons emerge:

Affordable housing can serve a mix of incomes and create housing for people who live and work in a community. Avalon at Newton Highlands, constructed in suburban Boston, met the town's need for a rental community to serve its young professionals and empty nesters while simultaneously creating 74 apartments affordable to families with incomes from 50% to 80% of the area median income (AMI). Many other developments across the country have provided affordable housing for families living or working in their local community. For instance, in Chapel Hill, North Carolina, all of the community land trust homes in the Larkspur subdivision have been sold to families living or working in the county, including employees of the local university and medical center and a dental hygienist. The Sunset Woods development in Highland Park, Illinois, provides a mix of condominiums affordable to households earning up to 80% or 115% of AMI and apartments affordable at 50 to 60% of AMI, while serving the community's need for senior housing. The large majority of seniors who own and rent at Sunset Woods were residents of or had connections to Highland Park.

Even built-out communities can encourage the development of affordable housing. Even where little undeveloped land is available, a significant number of affordable units can be created through the rehabilitation of existing parcels. In the examples of rehabilitation at 1116 Washington Boulevard and The Phoenix at Uptown Square, property tax incentives and tax increment financing helped make the development of affordable units possible. Further, tools such as rent subsidy programs build upon the existing stock of rental housing to provide affordable units. At The Rosemont, use of rent subsidies created 34 affordable apartments. Additionally, a community that adopts an inclusionary zoning program will ensure that any future residential development within its borders will result in the production of affordable housing.

Municipalities can stimulate affordable development without spending public dollars. Most simply, a municipality can relax zoning restrictions while still creating a development that will fit within the character of the community. By clearly providing for the construction of multifamily developments within its borders, a town may encourage previously reluctant developers to propose rental or ownership developments with affordable components. Further, municipalities may consider modifying density limitations or providing other zoning concessions to allow slightly higher levels of density. By granting modest increases in density or providing other concessions in zoning or development standards, a municipality can help a developer to gain increased revenues from additional units or decrease the developer's cost. In doing so, the municipality can encourage, negotiate for, or require the inclusion of affordably priced units in the development. Developments in Montgomery County, Maryland; Chicago, Illinois; Chapel Hill, North Carolina; and across Massachusetts showcase successful communities with significant affordable components, all constructed privately without the use of public funding.

Affordable housing can be successfully built in low-density developments in affluent communities without a decline in real estate values. Many case studies in this guide feature developments located in affluent or gentrifying areas. In the prosperous, low-density community of Westwood, Massachusetts, the city, through negotiations with a private developer, created 25 affordable single-family homes as part of the new, 100-home Chase Estates subdivision. The presence of affordably priced homes has not hampered real estate values in Chase Estates; today, market-rate homes there sell for up to $800,000. In the same vein, in Boulder, Colorado, where the median home price is about $500,000, the Buena Vista subdivision includes 49 permanently affordable homes reserved through a community land trust. And the Temple Avenue Town Homes in Highland Park, Illinois, provided affordable ownership town homes selling for between $110,000 and $140,000, while the median value for a single-family home in Highland Park is nearly $430,000.

Communities can use a wide range of tools to encourage the creation of affordable housing. All communities can create attractive affordable housing for families of all incomes through the creative application of resources and policy tools.

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