

LAND

NATIONAL ASSOCIATION OF HOME BUILDERS

Development

VOL. 17, NO. 4 FALL 2004

- 
- ▶ **Court Cases Advance Property Owners' Rights**
 - ▶ **TMDL Tool Kit—Builder/Developer Resource**
 - ▶ **Public Safety in TNDs**
 - ▶ **Reducing Regulatory Barriers to Affordable Housing**

REDUCING **Regulatory**



Barriers TO AFFORDABLE HOUSING

A New National Priority

By A. Bryant Applegate

Regulatory Barrier Removal as a National Priority

IN AUGUST, 2004, PRESIDENT GEORGE W. BUSH established a goal of increasing the supply of affordable housing in America by 7 million units over the next 10 years. To meet that goal, the president proposed a three-part plan that calls for a Homeownership Tax Credit (modeled after the successful Low-Income Housing Tax Credit), an explicit commitment to addressing regulatory barriers to affordable housing, and a challenge for the private sector to join with government at all levels in reducing regulation that impedes the expansion of the nation's stock of affordable housing.

A critical component of the President's strategy is entitled America's Affordable Communities Initiative, a department-wide effort established by the U.S. Department of Housing and Urban Development (HUD) in June 2003. The mission of the initiative is to bring homes within reach of hard-working families through regulatory reform. A wide range of studies over the years conclude that regulatory barriers can increase the price of homes by as much as 35 percent, effectively excluding millions of Americans from buying or renting decent and attractive homes in the communities where they work or want to live.

Recognizing that housing affordability is a problem requiring attention at the national level, President Bush has made elimination of regulatory barriers—for the first time—an explicit and necessary component of overall national housing policy. The initiative is also a top priority of HUD Secretary Alphonso Jackson who, even during his tenure as deputy secretary, encouraged the department to “think outside the box” and to lead by example in developing ways to reduce regulatory barriers to affordable housing. As Secretary Jackson has often stated, “If we’re asking states and local governments to examine their laws and regulations, then we need to do it too.”

To a homebuilding industry that confronts increasingly complex rules, codes, standards, and processes, the impact of regulatory barriers on their ability to produce high-quality affordable housing is nothing

new. Exclusionary zoning, gold-plated land development standards, excessive fees, and duplicative and excessive reviews have long constrained the ability of both market-based and nonprofit housing developers to effectively address affordable housing needs successfully.

The Nature of the Problem

The challenge to both developers and public officials is to agree on when a regulation or policy becomes a regulatory barrier. Unfortunately, no clear “bright line” can unequivocally define a federal, state, or local policy as a barrier. The best guidance for both builders and governments suggests that a policy or rule becomes a barrier when it deliberately or effectively prohibits or discourages the construction of affordable housing without sound reasons directly related to public health and safety. In other words, a federal, state or local statute, ordinance, policy, custom, practice, or procedure is a barrier to affordable housing when it excessively increases the cost of new or rehabilitated housing or imposes unjustifiable restrictions on development or the location of development without conferring commensurate public benefit.

Cities and suburbs each have their own distinct sets of regulatory barriers. Too few suburban communities allow for diverse development options, such as multifamily housing, duplexes, or

manufactured housing. The “not in my back yard” (NIMBY) sentiment plays a central role in the exclusion of these housing types. At the same time, administrative processes for development approvals continue to become more cumbersome with their protracted and duplicative approvals. Each time a community adds more substantive requirements to its ordinances, the review becomes more complicated, burdensome, and time-consuming. Many communities see little public benefit in streamlining the process, even though each day of unnecessary delay increases development costs and, in turn, housing prices and rents as well.

Unfortunately, affordable housing suffers from an image problem. Many citizen groups and other types of organizations still do not recognize that affordable housing can take the form of attractive homes for hard-working families and public servants such as teachers, nurses, firefighters, police officers, service industry workers, and returning veterans. Many organizations use the term workforce housing to describe these types of homes. Insufficient understanding of the place of affordable housing in the nation’s communities results in a deficit in the political will for needed regulatory reform.

In particular, a problem arises when policy makers create a “smart growth” climate with the underlying aim of restricting the production of affordable housing. Many smart growth principles such as expanding housing choice, increasing density, encouraging transit-oriented development, and increasing the fairness and predictability of development decisions would, if fully implemented, go a long way in expanding affordable housing. Yet, opposition to growth often compromises smart growth principles. By picking and choosing only selected parts of smart growth, such as growth limits and moratoria, communities significantly dim the prospects for affordable housing.

In central cities, the issue is not opposition to growth but rather bureaucratic inertia. Cities often rely on an assortment of building regulations that unintentionally impede development despite the demand for new in-town residential units, thus delaying rehabilitation of existing units for affordable housing. Regulatory barriers to urban development include a diverse and complex mix of building codes, labor ordinances, and local tax provisions. In urban areas, the development approval process tends toward a multilayered approach that requires coordination among a host of dissimilar agencies. Maneuvering through such a bureaucratic labyrinth adds time and expense to projects already hampered by the unique challenges associated with urban sites.

In addition, many building codes are woefully out of date. Despite the growing need to rehabilitate housing, many cities still rely on archaic

Each time a community adds more substantive requirements to its ordinances, the review becomes more complicated, burdensome, and time-consuming.

building codes that emphasize new construction instead of rehabilitation. To address this issue, HUD, working in partnership with the state of New Jersey, developed a new model rehabilitation code or “smart code.” The code established different levels of rehabilitation including repair, alteration, addition, and change of use. Each level sets different standards for determining whether existing building elements can remain intact or must be replaced to meet the new requirements.

According to data supplied by the state of New Jersey, rehabilitation investment quickly increased by 60 percent after enactment of the new model rehabilitation code. At the same time, the New Jersey data pointed to an average cost savings of 10 percent and, on certain projects, up to 50 percent. To date, however, only Maryland and a few cities have followed New Jersey’s lead.

Another regulatory issue involves infill development. The development of infill housing involves a complicated and time-consuming process of land acquisition and regulatory approval. Difficulties in acquiring a sufficient number of parcels on infill sites prevent many builders from capitalizing on the economies of scale they otherwise rely on when developing affordable suburban housing. Acquisitions are further complicated by the tedious, antiquated procedures employed by many cities in processing tax foreclosures or condemnations. These complexities can delay time-sensitive projects to the point of infeasibility.

The America’s Affordable Communities Initiative

How does the America’s Affordable Communities Initiative operate? First and foremost, HUD will never attempt to usurp state and local government authority over development matters. In fact, President Bush is encouraging state and local governments to examine their own laws and make changes that are best suited for the affected communities. HUD can, however, assist and encourage reform efforts.

HUD’s initiative team consists of senior officials representing all major components of the department. The team meets weekly to provide for a free exchange of views and ideas among senior staff who would not otherwise have the opportunity to analyze problems created by regulatory barriers. One of HUD’s top priorities is to better define the problem and to inform Americans about the challenges and opportunities of reform. However, the agency cannot hope to encourage communities to tackle this issue effectively unless HUD is prepared to do the same. Therefore, HUD has taken the following steps:

- It has published a *Federal Register* notice seeking assistance from the department’s partners and the public to identify HUD regulations that present barriers to affordable housing. In addition, Secretary Jackson established a preclearance procedure that requires all proposed

regulations, handbooks, rules, and other formal documents to be reviewed by the initiative to ensure HUD is not creating new barriers.

► Nearly all HUD competitive grant applications now include a detailed list of questions about the applicant's local regulatory environment. Higher rating points are available to applicants that choose to address these questions and are able to demonstrate successful regulatory reform efforts. In many cases, this process has led to nonprofits talking to state and local officials for the first time about how regulations affect the development of affordable housing.

► HUD supports local efforts at coalition building. The department is taking a leadership role in addressing regulatory barriers by working with organizations interested in developing solutions to such barriers and encouraging their implementation. As an initial step, the department mailed a brochure to 25,000 mayors and other elected officials describing the initiative, identifying commonly found regulatory barriers, suggesting possible solutions, and, most important, encouraging officials to conduct public forums in every community to discuss local regulatory barriers and their impact on the supply of affordable housing. The department has also hosted a series of roundtables for the benefit of HUD staff throughout the country.

► HUD is supplying technical information to housing providers on regulatory barriers and ways to address them. In August 2002, the department created the Regulatory Barriers Clearinghouse (<http://www.regbarriers.org>), a Web-based forum and searchable database that provides interested individuals and organizations with opportunities to share ideas and develop solutions to address affordable housing challenges. The clearinghouse also maintains a listserve to keep interested parties informed of current developments in regulatory reform.

► The department is announcing a series of Affordable Communities Awards to be given to those states, counties, and localities that have made significant changes in their procedures, processes, fees, and regulations to reduce barriers to the production of affordable housing. The award decisions will be based on construction and rehabilitation of affordable homes. Through this effort, HUD hopes to demonstrate the benefits that attractive affordable housing developments bring to communities.

► The department is spending several million dollars on an aggressive research program to improve understanding of the impact of regulatory barriers and to develop a methodology for state and local governments. One important project will develop new methods for housing impact analyses. The new tool will permit federal agencies, state governments, and local jurisdictions to consider fully the impact of any new law, rule, or regulation on housing affordability. Other research will examine alternatives to impact fees, the impact of current subdivision standards, and the role played by inefficient environmental reviews and processing in the development of affordable housing.

The Future

Although much has been done, the department and the initiative team will continue to work to reduce barriers at all levels of government. Achieving significant regulatory reform is a challenge that demands the participation of housing advocates, nonprofit housing providers, market-based housing providers, the business sector, and federal, state, and local governments. Resolution of the affordable housing challenge calls for persistence and long term commitment to reform by all groups concerned with housing affordability.

Further information on the initiative may be found at www.hud.gov/affordablecommunities.

A. BRYANT APPLIGATE is senior counsel and director of the America's Affordable Communities Initiative. The author would like to thank David Engel, director of HUD's Division of Affordable Housing Research and Technology for his contribution to this article.

Builders,
architects,
designers,
developers, and
land planners



*Enter Your Community for the
2004 Innovation in Workforce
Housing Awards
and Earn Recognition for Your Company!*

Despite a half century of unprecedented gains in homeownership, millions of working families are finding it increasingly difficult to purchase or rent a decent home in or close to the communities where they work. That's why the National Association of Home Builders (NAHB) is pleased to announce this new award.

Communities that exemplify "workforce housing," identified by NAHB as providing decent and affordable homes for nurses, police officers, schoolteachers, etc., near where they work, are eligible to win.

Visit www.NAHB.org/workforcehousing for entry guidelines and more information or call 1-800-368-5242, ext. 8447.

Winners will receive national recognition at the 2005 International Builders' Show in Orlando.