

Avoiding and Overcoming Neighborhood Opposition to Affordable Rental Housing

By Jaimie Ross, President and CEO, Florida Housing Coalition

The extraordinary need for rental units has caused an increase in homelessness notwithstanding the successful implementation of the housing first model. HUD's 2017 Annual Homelessness Assessment Report to Congress reports an increase in homelessness for the first time in seven years. A hepatitis outbreak in San Diego in 2017 is linked to the homelessness caused by a lack of affordable rental housing; it is a cautionary tale for what can happen if local governments continue to deny development approvals for affordable rental housing in deference to neighborhood opposition.

Not in My Backyard (NIMBY) connotes objections made to stop the development of affordable housing for reasons such as fear and prejudice. NIMBYism presents a particularly pernicious obstacle to meeting local housing needs. The outcry of constituents with concerns over the siting and permitting of affordable housing can lead to lengthy and hostile public proceedings, frustrated Consolidated Plan implementation, increased costs of development, and property rights disputes. The consequence is the development or preservation of less rental housing at a time when the country is in desperate need of more rental housing. Advocates need to generate support for affordable rental housing and fight NIMBYism.

TOOLS FOR LOCAL SUCCESS

Education Campaign. Increased understanding about affordable rental housing and the positive impact it has on individuals, families, and the community at large is instrumental to gaining wide support. The more informed the public, local government staff, and elected officials are about the need for affordable rental housing and the benefits of avoiding housing insecurity and homelessness, the more leverage advocates will have to advance the development of affordable rental homes. Advocates should make use of credible research and local data to support their message.

Anecdotal information about particular residents and the success of previous developments goes a

long way in a public education effort. There are many resources available to help in an education campaign. The ALICE Report (Asset Limited, Low Income, Constrained Employed) by United Way, which busts the myths about who needs rental housing, is based upon research that full-time low income employed workers do not make enough money to pay for market rate apartments. Reports from credible entities that are not in the business of affordable housing can be used in addition to the Out of Reach Report, Make Room Report, and Home Matters Reports, for example, to attract the attention of news outlets and provide allies for the cause.

Garner Support from a Broad Range of Interests.

Advocates should ask members of the business community, clergy, social service agencies, and others who would be well received, to stand with them in advancing affordable housing goals. These supporters can be helpful in making the connection between housing development and other community concerns. For instance, members of the local school board or parent advisory committees can attest to the imperative of stable rental housing for children to succeed in school. Potential beneficiaries of the development, such as future residents, may also be effective advocates. The media can be a crucial ally; whenever advocates foresee a potential NIMBY problem, it is best to contact the media right away so that they understand the development plans, the public purpose, and the population to be served before they hear neighborhood opposition.

Educate Elected Officials. Once a NIMBY battle ensues, it is often too late to educate. Advocates should anticipate the value of and the need to build relationships with elected officials and their staff members before a NIMBY issue arises. It is imperative to underscore the importance of affordable housing and the consequences of not having enough rental housing, which results in homelessness, so that elected officials make the connection between adequate rental housing and the economic health of the entire community.

Advocates should include allies in the education process. Learning about the elected officials'

interests will help to inform the advocates about which of its allies are best to bring to the meeting. For example, a particular elected official may be more inclined to hear from a local business about the need for employee housing, while another may be moved by hearing from local clergy about the needs of homeless veterans, elders, and those with disabilities. Whenever possible, advocates should invite elected officials to visit completed developments, and should share credit with them at ribbon cuttings and when speaking with the media. Whether advocates can meet with elected officials in regard to a pending approval, depends upon the ex parte rules in each jurisdiction. If advocates discover that community opposition is meeting with elected officials about a development, advocates should try to do the same.

Address All Legitimate Opposition. The key to overcoming community opposition is addressing the opposition's legitimate concerns. Legitimate, non-discriminatory concern around issues like traffic or project design may lead the affordable housing developer to make adjustments to a proposed development. For example, modifying the location of the entrance driveway or modifying the design of the building to ensure the affordable rental development fits within the aesthetics of the existing community may be changes worth making, even if they come with an increase in cost. It is always wise for the affordable housing developer to work with the neighbors and be able to report to the local elected body that they have done their best to address the concerns of those in opposition. Property values are often the root of neighborhood opposition. Yet, virtually without exception, research about property values and affordable housing finds no negative effect on neighboring market rate property values. And, in some instances, affordable housing has increased the value of neighboring property. In November, 2016, Trulia released a report; *There Doesn't Go the Neighborhood: Low Income Housing Has No Impact on Nearby Home Values*, adding fresh data to the large body of research that shows affordable housing does not decrease neighboring property values.

The critical point is this: once all legitimate concerns are addressed, if opposition persists, it can be stated with certainty that the opposition is illegitimate and is therefore opposition that would be inappropriate, arbitrary, capricious, or unlawful

for the local government to consider in making its land use decision. The unlawfulness of the opposition may be a violation of fair housing laws, as explained below.

Know the Law and Expand Legal Protections. The Federal Fair Housing Act is not new. However, it was substantially elevated by the Affirmatively Furthering Fair Housing rule adopted by HUD. Advocates should view neighborhood opposition through the lens of fair housing. If all legitimate concerns have been addressed it is likely that thwarting the affordable rental development violates federal fair housing law. As advocates, we can help local elected officials avoid potential liability by providing education about the protections provided by fair housing law, and the affirmative duty that government has to further fair housing. Advocates can work for state or local laws that make it harder for NIMBYism to prevail. For example, in 2000, the Florida Fair Housing Act (the state's substantial equivalent to the federal Fair Housing Act) was amended to include affordable housing as a protected class (Section 760.26, Florida Statutes). In 2009, North Carolina adopted a similar statute to add affordable housing as a protected class in its fair housing law. Decision makers and their staffs must be aware of the law if it is to be helpful to the cause. The expansion of the state fair housing act to include affordable housing in Florida has been successful because housing advocates have been conscientious about ensuring that local government lawyers know about the statutory change. It is now commonplace in Florida for a city or county attorney to inform the elected body during a heated public hearing that they would run afoul of the state's fair housing law if they deny the affordable housing developer's application.

Avoid unnecessary approvals. The greater the number of land use and development approvals that require a vote by the elected body, the more opportunities there will be for neighborhood opposition. Two ways to avoid unnecessary approvals are (1) "by right" development and (2) approvals made at the staff level rather than in a public hearing. In Los Angeles, neighborhood opposition for siting supportive housing led advocates to push for a local code change to permit supportive housing on property that is zoned for public facilities, removing the requirement for a zoning change in certain circumstances, and thereby reducing the threat of neighborhood

opposition.

FOR MORE INFO:

Managing Local Opposition through Education and Communication:

- <http://nonprohthousing.org/resources/the-original-nph-toolkit>
- <http://www.hcd.ca.gov/community-development/community-acceptance/index.shtml>
- <http://www.hcd.ca.gov/community-development/community-acceptance/index/docs/mythsnfacts.pdf>

Property Value Studies:

- There Doesn't Go the Neighborhood: Low-Income Housing Has No Impact on Nearby Home Values — See more at: <https://www.trulia.com/blog/trends/low-income-housing/>
- http://www.hcd.ca.gov/community-development/community-acceptance/index/docs/prop_value.pdf
<https://www.nar.realtor/effects-of-low-income-housing-on-property-values#>

Additional Examples of State Laws:

- California law bars state-sponsored discrimination in residency, ownership, and land use decisions based on the method of financing and the intended occupancy of any residential development by persons who are very low, low, moderate, or middle income. CA: Cal Gov. Code S. 65008 (1984).
- Washington law provides that “A city, county, or other local governmental entity or agency may not adopt, impose, or enforce requirements on an affordable housing development that are different than {sic} the requirements imposed on housing developments generally.” WA: RCW 36.130.020 (2008)

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