



Housing Assistance Council

**FAIR HOUSING,
THE ZONING PROCESS,
AND LAND USE POLITICS
IN RURAL AREAS**

\$5.50

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EXECUTIVE SUMMARY

Many affordable housing developers encounter opposition from neighbors and elected officials when they propose a new project. Since obtaining project permits or seeking rezoning usually involves some form of public hearing, the permit and zoning procedures in most communities offer residents a forum for expressing their concerns about a proposal. A good permit process should evaluate how well development proposals meet local planning goals. This would include, for example, addressing concerns that new housing or commercial projects not overtax local services and infrastructure. However, these public forums also provide “Not in My Back Yard” (NIMBY) opponents an opportunity to delay or derail affordable housing proposals. This report uses examples from four cases to illustrate choices and strategies that may be employed at different points in a NIMBY conflict. In each case, local opponents to an affordable housing project used the permit or zoning process to challenge an affordable housing proposal.

In three out of the four cases, the project sponsor was able to overcome opposition by local residents and elected officials and begin project development. In one case, a fair housing complaint is being reviewed at the U.S. Department of Housing and Urban Development, and the proposed housing project has not yet been built.

While each case of NIMBY opposition is unique because of differences in local demographics, housing markets, and zoning laws, most NIMBY struggles follow a typical pattern. Early opposition to a project proposal is often likely to arise from neighbors to the proposed site, and their early expressions of opposition are often blunt and clearly based on fears concerning living near low-income people in general and racial and ethnic minorities in particular. In some cases, neighbors may not initially have strong feelings against a proposed project, but may respond to the vocal criticisms of a few neighbors or local officials and come to oppose an affordable housing proposal. As neighborhood opposition groups become more organized and recruit support from other areas within the community, their rhetoric often shifts to concerns about the impact a project will have on traffic or community services, such as an influx of poor children in the schools. At rezoning hearings, the opposition often argues that the proposed rezoning is “inconsistent” with the zoning for nearby properties. As NIMBY struggles reach the phase of conflict resolution, advocates may pursue negotiations with local officials to obtain the necessary permits or rezoning. They may also choose to file a fair housing complaint with the U.S. Department of Housing and Urban Development, or have another organization that represents low-income residents in the area file a complaint. Finally, affordable housing advocates or the U.S. Department of Justice can bring litigation against local officials involved in opposing a project.

The cases used in this report also show that careful review of state and local planning documents is very helpful for project sponsors facing local opposition. These documents detail the types of housing needed in an area, what groups of people have the most severe housing needs, and the role local and state governments should play in supporting affordable housing development. Even if local officials do not make prejudicial statements themselves, their rejection of a project proposal in response to local opposition may be inconsistent with affordable housing priorities outlined in planning documents. State Consolidated Plans,

including the attached analysis of impediments to fair housing choice, and other planning documents adopted by county or city governments, can therefore provide the basis for bringing a fair housing complaint.

Project sponsors in each of the cases used in this report did not explicitly plan how to address potential opposition before it arose. However, planning and preparation for potential opposition can be an important component of developing an affordable housing proposal. Early planning may not avoid confrontations with neighbors and local officials, but it allows project sponsors to be better prepared to address any challenges that arise as part of the permit or zoning process. Advanced planning for marketing a project proposal can provide project sponsors with opportunities to address local opposition through persuasive means rather than through confrontation. If local opposition groups do not respond to persuasion, advanced planning can prepare project sponsors to obtain the documentation necessary to bring complaints and support litigation. While fair housing complaints and litigation may establish an adversarial relationship between project sponsors and local officials, they also offer affordable housing advocates powerful tools to leverage the support of officials who make land use decisions.

INTRODUCTION

Background

Housing discrimination is not confined to America's urban centers. Rural communities also confront racial, ethnic, sex, age and other forms of housing discrimination. The "Not in My Back Yard" (NIMBY) syndrome is a common factor in preventing affordable housing development in some communities, and NIMBY opposition may provide the basis for a fair housing complaint. NIMBY is a term used to describe residents' desires and actions to prevent certain land uses near their homes or their communities, and NIMBY opposition often takes place in the arena of local zoning and land use politics. While NIMBY attitudes may be expressed towards the development of shopping malls or waste treatment plants, the term is associated in many people's minds with actions aimed at preventing the development of low-income, affordable or special-use housing.

Each case of resident opposition to affordable housing development is shaped by the local social and political environment, the reputation and actions of the developer, and local perceptions of the population to be served by the project. In this sense, each case of local opposition to a proposed affordable housing project is unique. However, many NIMBY conflicts do follow similar, general patterns as they evolve.

Most affordable housing projects must obtain some form of building permit, seek rezoning, or respond to land use provisions. In many instances, these require some form of public hearing. Even when a public hearing is not required to obtain the necessary permits to secure property and begin affordable housing development, local officials involved in the permit process may still find the need to respond to public concerns about the proposed project. In either case, project sponsors must frequently address potential or real opposition to their project plans in a public forum. Although the normal role of this process is to ensure that new development is consistent with the long-term needs of the community, land use and zoning politics often set the stage for local opposition to affordable housing development.

The use of fair housing laws is frequently associated with individual acts of discrimination, such as landlords refusing to rent to people because of their race or low incomes. Fair housing laws also address discrimination that may arise when neighbors and other local residents oppose a proposed project, or when local officials respond to discriminatory sentiments by rejecting permit or rezoning applications. However, these cases are often difficult to prove. Instead of documenting an individual act, or obvious pattern of discrimination on the part of an individual landlord or real estate agent, it can be challenging to prove the connection between discriminatory statements by local residents opposed to a project and the actions taken by local planning, zoning or elected officials.

This study will provide an outline of common patterns in NIMBY cases, explore the circumstances that would transform a NIMBY situation to a fair housing discrimination case, and outline the grievance mechanisms available to complainants in these types of housing discrimination situations.

Methodology

Cases were chosen after consultation with national fair housing experts, local legal services staff, and local affordable housing developers. Each case reflects different uses of zoning or land use politics to support local opposition to affordable housing proposals, or to reduce the presence of low-income minority populations within town boundaries. Three of the cases involved the filing of fair housing complaints or the threat of federal litigation. In addition, three of the cases have been resolved as of August 1998, with development work completed or currently underway. The cases are geographically diverse, reflecting different housing markets and local zoning laws at work.

Case study materials were obtained through interviews, which were supplemented by documentation. Telephone interviews were conducted with individuals such as affordable housing sponsors, legal services staff, housing development technical assistance providers, board members of sponsoring organizations and Housing Assistance Council (HAC) Community Development staff involved with cases that had accessed HAC loan funds.

Documentation obtained for the cases included copies of zoning applications and minutes from zoning hearings. Copies of fair housing complaints were also obtained for the cases in which they were filed. In some of the cases, newspaper clippings and newspaper article summaries were received by HAC. Finally, HAC loan fund documents were examined for the Elizabeth Cornish Landing and Vista View One projects.

Overview of the Fair Housing Complaint Process in Zoning Cases¹

In rural areas, when an individual or organization believes that housing discrimination has occurred, a complaint may be filed with the U.S. Department of Housing and Urban Development (HUD), a state or local agency with fair housing protections similar to those under federal law, or the U.S. Department of Agriculture (USDA). Even though HUD offices serve both urban and rural areas around the country, most rural complaints have traditionally been filed with USDA when its programs are involved, because its Rural Housing Service (RHS)² works through state Rural Development offices to administer programs specifically targeting rural housing needs. In FY1997, HUD and USDA signed a memorandum of understanding (MOU) that outlines how they will coordinate investigation and resolution of fair housing complaints from rural areas.

Complaints filed with HUD are investigated by the Office of Fair Housing and Equal Opportunity (FHEO). In zoning or land use cases, if FHEO determines that there is reasonable cause to believe that discrimination has occurred, the case is reviewed by HUD's Office of

¹See this report's Appendix for a more detailed description of federal fair housing laws, the federal fair housing complaint process, and the Memorandum of Understanding outlining HUD and USDA roles in investigating rural fair housing complaints.

²RHS and state Rural Development offices were formerly the Farmers Home Administration (FmHA).

General Counsel (OGC) and forwarded to the U.S. Department of Justice (DOJ) for investigation and possible litigation. In most cases, HUD and DOJ will first try to reach a settlement with the individuals or local governments accused of housing discrimination. If a settlement cannot be reached, penalties may include punitive and civil damages payable to the U.S. Treasury, requirements for restitution, such as rezoning a piece of property, and in the case of local governments, withholding federal housing and community development funds, such as Community Development Block Grants (CDBG).

Three out of the four cases used in this report have involved the HUD fair housing complaint process. To differing degrees, the involvement of the federal government has had an impact on the resolution of each case, with one exception where the case is pending before HUD as of August 1998. In most of the cases, the fair housing investigative process itself has prompted resolution of the local opposition, rather than having to initiate litigation.

Elizabeth Cornish Landing, Bridgeville, Del.

The Elizabeth Cornish Landing project in Bridgeville, Del. was developed to meet pressing farmworker housing needs in Sussex County. Sussex County is located in southern Delaware where the major industries are agriculture and poultry processing. In 1988 both the Food and Agriculture Council and the State Department of Agriculture identified housing needs as a farmworker recruitment and retention tool for local agribusiness in Sussex County. Later that year, the Delaware Development Office and the Department of Agriculture jointly conducted a survey of farmers and growers which further attested to the need for farm labor housing, specifically in Sussex County along the western corridor.

In August 1988 the Delaware State Housing Authority invited Delmarva Rural Ministries to consider developing farm labor housing in Sussex County, with technical assistance being provided by the National Council on Agriculture Life and Labor Research Fund, Inc. (NCALL). An intense land search was undertaken by Delmarva Rural Ministries, NCALL, and the Delaware Development Office to locate an acceptable site in western Sussex County that would meet the funding criteria of the RHS Section 514/516 farm labor housing programs. The criteria included access to public water and sewer, location central to area farms, location near essential services, correct zoning, and affordability. During 1989 and 1990 a site search took place in Laurel, Seaford, and Bridgeville, Del. Delmarva Rural Ministries optioned a 10.6 acre, which was the only site that was for sale and met RHS criteria. Half of the property was within the town of Bridgeville, with the remainder of the site on Sussex County land.

Delmarva Rural Ministries proposed developing 34 units on the county portion of the site, since it was zoned for commercial use that permitted multifamily housing development. Water and sewer connections had to be secured through the town of Bridgeville, which did not appear to be a problem in the early stages of the project. In fact, town officials encouraged Delmarva Rural Ministries to develop the property because the town had excess water and sewer capacity. During the first seven months of the project, Delmarva Rural Ministries was able to garner the support of several local and state agencies, including the president of the Bridgeville town commission, area growers, county zoning and planning staff, and the Delaware Development Office.

In July 1991, Delmarva Rural Ministries submitted an extensive preapplication for financing and a market analysis to the Rural Development district office. All federal requests must also be submitted to the Delaware State Clearinghouse. The Clearinghouse then circulates such requests to the appropriate state agencies for comments. At this point initial opposition was expressed by the Delaware Housing Authority. The Delaware Housing Authority wrote a letter on behalf of the governor approving the project concept, but opposing the site because it would increase the concentration of low-income housing, an important concern in siting some affordable housing projects. However, Rural Development financing programs did not include concentration limits when evaluating applications. Because of the state's concern about the project, both the town of Bridgeville and the Delaware Development Office retracted their letters of support and went on the record as supporting the concept but not the site. As a result of the letters from the state agencies the state Rural Development office rejected the preapplication. The state office also notified Delmarva Rural Ministries of the group's right to appeal the rejection. Delmarva Rural Ministries quickly filed an appeal with the state Rural Development office, which was subsequently reviewed by appeals staff at RHS, the national office overseeing Rural Development housing programs. Delmarva Rural Ministries' appeal noted that Rural Development had no regulations addressing low-income concentration limits, that the proposed project and the existing subsidized housing near the site were all low-density developments, and that minority concentrations would not necessarily increase since it could not be assumed farmworker tenants would all be members of a single minority group.

In addition to the political opposition, residents of Bridgeville also began to express concern about the project. Residents began a letter writing campaign telling their congressional representatives and state legislators that this was a local issue that should have the approval of the community in order to move forward. Flyers were also placed throughout town asking people to attend a public hearing to discuss the proposal. Although Delmarva Rural Ministries and NCALL were not required to attend the meeting, they decided to prepare a detailed presentation to disseminate accurate information to the public. Delmarva Rural Ministries also hosted its own public meeting, which was attended by over 100 people. At both forums, very few people expressed support for the project. The majority of people in attendance questioned such things as whether the schools could support an influx of non-English speaking children and whether federal dollars should be spent on immigrants.

After a lengthy public information campaign and months of public outcry, RHS appeals staff reversed the state Rural Development office's rejection of the project application. According to project sponsors, the lack of Rural Development criteria concerning low-income concentration was the primary reason given by RHS for allowing the project to proceed with its application. The Elizabeth Cornish Landing apartment complex was completed in 1993 and was the first Section 514/516 farm labor housing project developed in Delaware. It provides affordable rental housing for both year-round farmworker residents and migrant farmworkers. Eighteen of the 34 units are occupied by year-round residents and 16 are reserved for migrants. Elizabeth Cornish Landing has won national attention as a premier affordable housing project. In 1997, the project received a Maxwell Award of Excellence from the Fannie Mae Foundation. Locally, Elizabeth Cornish Landing has been commended by local officials as an enhancement the area, and the town has annexed the county portion of the land.

While Delmarva Rural Ministries and NCALL believe that the events surrounding the development of Elizabeth Cornish Landing probably warranted a formal fair housing complaint, they were sensitive to the fact that residents of the complex would have to live and work in the community. Therefore, they wanted to exhaust all other measures before pursuing a legal remedy.

Vista View One, Bluffton, S.C.

Vista View One is the first phase of an affordable housing development being built by Vista View Development Corporation on a 50-acre site in Bluffton, S.C. Bluffton is approximately eight miles from Hilton Head Island, a world class resort area that attracts thousands to the region for vacation and recreation. Hilton Head Island has a service-based economy, wages are low, and the cost of property is extremely high. As a result, many of the people who work on the island cannot afford to live there and are forced to commute long distances, sometimes as long as 150 miles round trip. Vista View One is targeted to low- and moderate-income families who work on Hilton Head, but would be severely cost burdened if they lived on the island.

After conducting extensive market studies which confirmed that there was a shortage of affordable housing in Beaufort County in 1988, Vista View Development purchased 50 acres of land in Bluffton. The group planned to use the land for a phased development to build approximately 200 apartment units and 40 single-family homes.

Bluffton is a small community where the majority of housing structures are single-family units. At that time the town had very few zoning and development standards in place. In fact, there were no density requirements on the books when Vista View Development applied for its preliminary building and development permits. Vista View Development was able to obtain preliminary development permits from the town in 1988. However, the organization encountered vehement opposition when it was announced that the site would be used to develop affordable housing. A local residents' group called the Bluffton Area Citizens for Planned Growth (BACPG) was formed and became the chief opponent of the development. Opposition group members were initially all white, while the project sponsor was an African-American developer. As the conflict over Vista View One wore on over many years, BACPG recruited a couple of minority group members, possibly to reduce perceptions that their opposition may be racially motivated.

BACPG expressed fears that an affordable housing project would lead to decreases in property values and increases in crime and drugs in the community. Days after the preliminary permits were issued for the Vista View One project, BACPG filed a lawsuit against Vista View Development and the county, claiming that the permits had been obtained illegally, that the land had been intensely devalued, and that the approved multifamily housing proposal was not appropriate for a community with mostly single-family homes. The opposition group won the initial lawsuit and the case became entangled in a web of lengthy appeals. Eventually, the case went to the South Carolina Supreme Court where the local opponents prevailed. The case was in court for such a long period of time that the county was able to rewrite its zoning laws, and in effect zoned the project out of existence.

Feeling that it had exhausted all methods of recourse available to it at the state level, Vista View Development filed a fair housing complaint. Upon finding evidence of discrimination, HUD brought in DOJ to begin a formal investigation. DOJ confirmed that there was evidence of discrimination and informed the county that it had 30 days to offer a settlement agreement or risk suit by the federal government. In 1993 the matter was officially resolved when the county announced that if Vista View Development reapplied for the building permits, they would be granted. Construction on phase one began in November 1996 and a grand opening ceremony was held in November 1997. As of August 1998, the complex is 100 percent occupied and construction on phase two is underway. Phase one development produced 72 apartment units and three single-family homes. Bluffton residents have accepted the project, with no protest voiced as the project's first phase was completed and tenants began moving in.

Pueblo Bonito, Bonita Springs, Fla.

Pueblo Bonito is a farmworker housing project in Bonita Springs, Fla. As of August 1998, development is underway, with the first tenants anticipated to move in near the end of December 1998. Bonita Springs is in Lee County, where agriculture is a significant employer. The project is the first sponsored by Partnership in Housing, a nonprofit organization founded in 1994 to address farmworker housing needs in Lee County. The Pueblo Bonito site is located across a canal from the Imperial Harbor mobile home park for older persons.

In spring 1995, Bonita Springs experienced heavy flooding in low-lying areas, which included the Manna Christian Recreational Vehicle (RV) park, where many of the area's migrant and seasonal farmworkers lived. Hundreds of farmworkers had to stay in emergency shelters for weeks. The Lee County Board of Commissioners sought sites for emergency trailers from the Federal Emergency Management Agency (FEMA). One criterion for site selection was that the site had to be "without community opposition." No sites were found that met all of the criteria. The Pueblo Bonito site was considered, but was not recommended because of neighbors' opposition. In November 1995, the Manna Christian RV park was allowed to reopen despite remaining flood damage and a lack of potable water. FEMA never did place emergency trailers in Bonita Springs.

Partnership in Housing sought sites in the southern part of Lee county for a farmworker housing project, since that area was where most of the county's agricultural work was available. The only site meeting the environmental criteria that was not cost prohibitive was the land next to Imperial Harbor. The Pueblo Bonito site was zoned for mobile home placement, so Partnership in Housing needed to get the property rezoned in order to develop a multifamily rental project consisting of 75 duplexes with 150 units.

Residents of Imperial Harbor formed two opposition groups, the Concerned Citizens of Bonita Springs (CCBS), and the Imperial Harbor Civic Association (IHCA). These groups led rallies against the project, raised money to hire lawyers to oppose the rezoning, and generated a letter writing campaign to local newspapers and elected officials. Racially inflammatory rhetoric was typical in early letters published in local papers. Inflammatory rhetoric was also prominent at the zoning hearing in September 1995, but the hearing examiner recommended the site for rezoning in November 1995. The Lee County Board of Commissioners rejected the

hearing examiner's recommendation and denied the rezoning in December 1995. This was only the second time they had overruled the hearing examiner in over 300 cases.

Following the rejection of the site's rezoning, a fair housing complaint was filed with HUD by Florida Legal Services, Inc. on behalf of two organizations representing farmworkers statewide and in the Bonita Springs area. HUD and DOJ investigators came to Bonita Springs, toured sites that had received approval for similar rezoning requests, and began preparation for litigation against the Lee County Board of Commissioners. Concurrently with the HUD/DOJ investigation, Partnership in Housing filed a request for relief under a Florida pro-development land use law. The statute provides an appeals process for landowners seeking relief from regulatory burdens that they believe are onerous in the sale or development of their property. It has typically been used in cases where such things as wetlands regulations may impede development proposals. With pressure from HUD and DOJ, and the request for relief from Partnership in Housing providing an avenue for negotiations, the Lee County Board of Commissioners worked with Partnership in Housing to revise the project proposal. This led to another rezoning hearing where the project was approved, albeit with conditions such as additional buffering between the site and Imperial Harbor.

Multifamily Housing Moratorium, Tulare City, Calif.

Tulare City is located in Tulare County in California's Central Valley, one of the largest agricultural regions in the United States. In November 1996, Opportunity Builders, a nonprofit housing organization, sought a design review approval from the city council for a 42-unit multifamily apartment complex. The property was already zoned for multifamily rental housing development, and Opportunity Builders had already received all the required permits for the project and approval of its design plan from the city's planning commission. Vocal opposition to the project was expressed at the hearing, with residents expressing fears of increased crime and a concentration of low-income rental units in their neighborhood. The city council responded by rejecting the design review application and adopting an ordinance imposing an interim moratorium on multifamily housing applications and development within the city.

The moratorium ordinance was renewed in December 1996, and extended until October 1997, the state's statutory time limit for this kind of development moratorium. When the ordinance lapsed, a new ordinance was adopted requiring a conditional use permit for implementing a multifamily rental development project. This meant that multifamily housing was no longer a permitted use as it was before adoption of the ordinance, and that additional requirements can be imposed on a project as part of the process of obtaining the conditional use permit. Local affordable housing advocates note that the additional public meetings required to obtain the conditional use permit, and the opportunity to impose significant additional requirements that can add to project costs, such as more ornate facades or additional buffering between properties, present more opportunities for NIMBY opponents to pressure local officials and add costly conditions that may delay or derail projects. They also noted that no other type of

development proposal is required to meet these additional conditions as part of the approval process.

In November 1996, shortly after the multifamily housing moratorium was imposed, the National Farmworker Service Center, Inc. sought land in Tulare for a rental project to meet the housing needs of area farmworkers. The National Farmworker Service Center is a subsidiary of the United Farmworkers Union (UFW), and is an experienced affordable housing developer. The National Farmworker Service Center has developed nine projects with approximately 1,500 units. National Farmworker Service Center staff were unaware of the moratorium ordinance. The National Farmworker Service Center went to the city's planners to introduce them to the project proposal and seek information on the permits necessary to develop the project. It was only at this time that the organization was informed about the moratorium, after the group had already paid for an option on the property.

The National Farmworker Service Center learned about a multifamily rental housing project which had received approval prior to the moratorium, but which could not proceed because the project sponsor was not able to secure Low Income Housing Tax Credits (LIHTC), and therefore could not finance its project. Local officials were asked if the group could substitute its farmworker rental project for the one that could not proceed, since both were multifamily rental projects. However, local officials stated they would only approve this move if the National Farmworker Service Center developed the exact same project as proposed by the original developer. Since the projects were substantially different designs, the National Farmworker Service Center was not able to proceed with its project under the prior approval the city had granted the other developer. A new proposal for that particular site could not be submitted, since the multifamily housing moratorium was still in effect at the time of this request was made to the city by the National Farmworker Service Center.

National Farmworker Service Center staff were informed by local officials that the moratorium might be lifted in June 1997. However, the moratorium ran its full term, and by the time it lapsed the National Farmworker Service Center had lost the property to another bidder. The organization was not able to proceed with its farmworker housing development in Tulare City.

A fair housing complaint was filed by California Rural Legal Assistance, Inc. on behalf of an individual farmworker who would have qualified to live in the proposed farmworker rental project, as well as the National Farmworker Service Center and the National Association for the Advancement of Colored People (NAACP).³ The complaint was filed in April 1998, and as of August 1998 is still being considered by FHEO at HUD. The basis for the complaint is that the combination of the multifamily housing development moratorium and subsequent requirement of a conditional use permit are a discriminatory impediment to meeting the housing needs of the city's very low-income residents, and conflict with the goal of affirmatively furthering fair housing. The state Consolidated Plan, including the analysis of

³*Fair Housing Complaint, City of Tulare, California*, filed by California Rural Legal Assistance, Inc., on behalf of Mr. Francisco Ventura, National Farm Workers Service Center, Inc., and the Fresno branch of the National Association for the Advancement of Colored People, April 29, 1998.

impediments to fair housing choice, and the housing element for Tulare County note the need for affordable rental housing, and for farmworker housing in particular, and affirm that local governments shall place no impediments to meeting these needs.

While each of these cases involves the use of the zoning process by local opposition to affordable housing development, each also illustrates a variety of opposition tactics. Also evident in each case are a wide range of strategies employed by affordable housing sponsors and advocates to respond to local opposition and the concerns of local officials.

Patterns in the Development of NIMBY Opposition

While each NIMBY case is unique, local opposition to affordable housing proposals does tend to follow a general pattern. The same is true of the strategies pursued by affordable housing sponsors and advocates. Although a variety of measures may be employed to reduce local opposition and secure the support of local officials, certain strategies are more likely to be used effectively at particular stages of a NIMBY conflict. Examples from the cases will therefore be used to illustrate the different choices that may be made in the stages of conflict most common in NIMBY struggles.

Early in the development process, experienced affordable housing sponsors often undergo a planning process where choices are made about how to announce the project to the public and address potential opposition from neighbors and local officials. This planning often involves developing a media strategy, a political strategy, a legal strategy, and a strategy for smoothly negotiating the local zoning and permit process.

Initial opposition often arises from immediate neighbors, and the tone of their opposition can be inflammatory. Early expressions of opposition to a project are often crudely made, with racial and ethnic fears prominently voiced. Rallies and petition drives in the immediate neighborhood are also commonly undertaken by newly formed opposition groups. Without careful planning, public forums where project sponsors inform neighbors about a project may become tense and hostile.

As neighborhood opposition groups mobilize their resources, they will often adjust their criticisms of a project proposal in order to attract support from residents in other parts of the community and local elected officials. As the opposition expands, opposing arguments become expressed in more development-oriented terms, such as impacts on traffic, public services, and property values. A frequent public venue for influencing local leaders is a public hearing required to secure the permit or zoning necessary to build the project.

As these struggles reach the conflict resolution stage, options for engaging local officials include negotiation, filing fair housing complaints, or litigation. In most cases, affordable housing sponsors will support more than one of these efforts at the same time to secure approval for their project. In many instances, an affordable housing developer will prefer to pursue negotiation with local officials rather than file a fair housing complaint or bring litigation, since it will often be necessary to have the cooperation of these officials on future

projects. One common tactic is for another interested party, such as a prospective tenant, to file a complaint, while the affordable housing developer negotiates with officials.

The end results of NIMBY conflicts are rarely good, and quite a few NIMBY struggles derail affordable housing projects. Even when affordable housing sponsors are able to develop their projects, local opposition may exact a significant price. Delays increase the carrying costs of holding property, and design changes or conditional use provisions agreed to in order to secure a zoning permit can add significantly to development cost. However, NIMBY struggles may also play a role in revising zoning ordinances to make it easier to develop affordable housing in an area, or in establishing lasting working relationships with local elected and planning officials.

PROJECT PREPARATION

Community Outreach and Mobilization

Unless an organization has already encountered NIMBY problems with a prior project, even an experienced affordable housing sponsor may not commit many resources to planning for possible local opposition to a development proposal. Many organizations equate the presence of a great need for affordable housing with community acceptance. In other cases, planning for possible opposition does not occur because local or state officials have requested that the organization propose a project to meet a local or regional housing need. Despite the appearance of need or support from local officials, though, neighborhood opposition may still be intense. Although no amount of planning guarantees that NIMBY opposition can be eliminated entirely, early planning can prepare most groups to productively respond to the worst pitfalls associated with combating NIMBY opposition to an affordable housing project.⁴

In the Bluffton case, both the state of South Carolina and Hilton Head Island had created task forces to examine the housing needs on the island. Three studies had confirmed the lack of affordable housing for those working in Hilton Head's service industry. Thus, when Vista View Development began planning for its project in Bluffton, the organization believed the proposal would be well received locally, since it would meet a documented need. By equating "need" with "support," Vista View Development was surprised by the vigorous opposition that arose against the project proposal. The organization also did not consider the fact that a project serving low-income households working in a neighboring community, rather than in Bluffton itself, might reinforce resident perceptions of Vista View Development as an "outsider" making inroads into their community.

Successful planning should include development staff as well as local housing and community services advocates. Strong planning is a collaborative process that taps into the expertise of a variety of community organizations. Planning should initially assess a number of variables, including the organization's reputation with local officials and in the community, what approvals will be required and what is the process for obtaining them, and assessment of the neighborhood proposed for the project and the concerns neighbors are likely to express. Another important effort is to identify community leaders, some of whom are likely to be elected officials, with other leaders being prominent or vocal residents. Once these factors have been discussed, subsequent planning should address the major outreach avenues available for confronting potential NIMBY opposition.

Many groups consider community outreach and mobilization issues when they first propose an affordable housing project. Strategies considered can include door-to-door canvassing, or public meetings to inform neighbors about the project. Obtaining vocal support for the project from local residents is a tremendous asset, and experienced groups will make an effort to

⁴This discussion of NIMBY planning is loosely structured on "Six Steps to Getting Local Government Approvals," a publication prepared by the Non-Profit Housing Association of Northern California (NPH). NPH is located in San Francisco, and has extensive experience addressing NIMBY conflicts.

identify local supporters before confronting those likely to oppose a project. Providing potential supporters with tours of other projects already completed or background information on the project proposal are ways to solidify local support.

Many project sponsors will schedule an informal public meeting if they feel that neighbors will have concerns about a project. Small meetings are often more effective than large, community-wide meetings, since larger gatherings are more prone to get “out of control” and allow opponents to monopolize the proceedings. This happened with the Bonita Springs, Bridgeville, and Bluffton cases.

In the Bonita Springs case, Partnership in Housing held an open meeting in May 1995 to address the concerns of Imperial Harbor residents and other neighbors. The meeting was held at Hope Lutheran Church, located near the Pueblo Bonito site. Partnership in Housing hired deputies to provide security at the meeting on the advice of a Fort Myers planner familiar with other lawsuits that had been brought in the past by Imperial Harbor residents. Partnership in Housing had many experts ready to do presentations on the need for the project, show pictures of successful farmworker housing developments in nearby communities, and answer questions. However, the crowd became so raucous that the speakers were unable to be heard, and a number of people opposed to the project had to be escorted out by the deputies.

In the Bridgeville case, Delmarva Rural Ministries and NCALL staff attended a public hearing concerning an elderly housing project in order to become familiar with how local hearings were carried out and assess resident responses to affordable housing proposals. They were surprised at the level of opposition to the project, since elderly housing complexes are often popular developments. With this meeting in mind, they had a community resident who supported the Elizabeth Cornish Landing project begin canvassing residents in Bridgeville. She worked to disseminate facts about the project proposal, calm neighbors fears and concerns, and recruit more support for the project.

In Bluffton, Vista View Development decided to hold a press conference to announce its Vista View One project plans. However, the press conference marked the first time that many Bluffton residents had heard of the development proposal, and the conference sparked the formation of a residents’ opposition group, the Bluffton Area Citizens for Planned Growth.

Media Strategy

One of the things an affordable housing sponsor should decide is whether or not media exposure is desirable, and if so, what kind of media exposure would be most beneficial. Many groups will designate particular staff to be spokespersons, who then field any inquiries concerning the proposed project. Following their meeting at the Lutheran Church in Bonita Springs, Partnership in Housing designated individual board members to play this role, rather than have conflicting information about the project presented to the public.

An effective media strategy requires that target audiences be identified, and the organization’s staff should develop the messages most appropriate to convey to each group. Probably the most important target audience in any media strategy is decisionmakers who will ultimately

have an impact on project approval. Brief fact sheets about the project and the needs it will address are helpful media tools, and tours of similar projects for local reporters may help to generate sympathetic portrayals of the project in the press. In many cases, local newspapers and radio stations echo the most vocal opinions concerning a project proposal, and these are frequently the opinions of opponents. A project sponsor may therefore develop a media strategy that is designed to present a balanced portrayal of their project in the public eye.

The Bridgeville case illustrates how project sponsors may try to balance the press a project is receiving. Delmarva Rural Ministries and NCALL recognized the influence that the media would have in shaping public opinion about the Elizabeth Cornish Landing proposal. They were concerned that many articles in the local newspaper focused on the fact that the housing would be built for migrant farmworkers, and that the project would have a negative impact on the community. In order to present a more balanced message about the project, Delmarva Rural Ministries and NCALL provided local newspapers and television stations with press releases and fact sheets with accurate information about the project. They also produced a video showcasing the success of another rental project developed by Delmarva Rural Ministries, which included statements from law enforcement officials about how well the project has become part of its community.

In Bonita Springs, Partnership in Housing did not develop a media strategy prior to announcing the Pueblo Bonito project, but the group did address media issues. In addition to the neighborhood meeting they sponsored, the group also sent letters to local papers and tried to present the merits of the project in other forums, such as at church talks. As the November 1998 completion date nears, Partnership in Housing has indicated that the group would be reluctant to heavily publicize any future project, so that local opposition would have less time to mobilize and disrupt the development timetable.

Some housing organizations, anticipating some resistance to their proposal, will think carefully about how they describe the project to neighbors. Although Delmarva Rural Ministries and NCALL always publicly acknowledged that some of their proposed units would serve migrant farmworkers, in their public information concerning Elizabeth Cornish Landing they emphasized how local farmworkers would benefit from the affordable housing. Many local residents, in expressing their opposition, were particularly concerned about “outsiders” being drawn to the project, and the term migrant was seen as inflammatory.

Political Strategy

From a development perspective, it is important for affordable housing organizations to know who is involved in securing permits and approving requests for rezoning. Groups need to identify what permits will be required, what rezoning will be necessary to build the proposed project on the property, and the timetables and procedures necessary to secure required permits and zoning. In addition, affordable housing sponsors should plan ahead for any public hearings that are needed to obtain permits or rezoning. Preparing project documentation, designating primary speakers, and recruiting supportive residents to come to hearings are important preparations that can help make the case for project approval.

From a political perspective, it is just as important to get to know staff and elected officials involved in the planning, zoning and permit process. In each locality's permit process, there are key personnel, and in the context of public hearings, there are usually key community leaders whose opinions carry weight with other decisionmakers. Affordable housing groups need to identify key leaders, assess their support or resistance to the proposed project, and develop a media strategy to enlist their support. Developing a political strategy may also involve thinking about how to minimize the impact of officials who oppose the project. The support of state officials, for instance, may solidify wavering support among local leaders, and sway local officials who oppose a project to at least take a neutral stance towards the development proposal. For example, smaller rural communities must apply to state governments for important sources of infrastructure and development funding, such as CDBG. Maintaining good working relationships between local and state governments may often provide a strong incentive for local officials to at least consider the feelings of state officials about a project proposal.

In Bridgeville, Delmarva Rural Ministries and NCALL made a concerted effort to meet regularly with the president of the Bridgeville town commission, who signaled his support for the project in its early stages. Delmarva Rural Ministries and NCALL also spoke with people in the Delaware Development Office, which had initially shown support for the project. While the president of the town commission later opposed the development of Elizabeth Cornish Landing, and state government support waned, these efforts established a relationship with local and state officials that helped facilitate the development process.

A related strategy is for project sponsors to consider familiarity with local officials when hiring legal counsel or other experts to assist in obtaining permits or rezoning. For example, Delmarva Rural Ministries hired a lawyer for its appeal to Rural Development who also had strong ties with many local officials in Sussex County. Even after the Rural Development appeal was successful, opposition to the project was still being expressed by local residents. Delmarva Rural Ministries' lawyer was able to use his reputation within the community and contacts with local officials to assess the basis and intensity of neighbors' concerns. These efforts were a valuable contribution as NCALL and Delmarva Rural Ministries tried to respond to local criticisms of the project and line up support among local officials. Familiarity with Rural Development regulations concerning minority concentrations and siting projects was also helpful when discussing the project's prospects with local officials.

Of course, in some cases local officials may express support for a project in principle but be particularly sensitive to local fears about a project. The Bonita Springs case illustrates how this may happen. The Lee County Board of Commissioners actively sought sites on which to place FEMA trailers for displaced farmworkers following the flooding in Bonita Springs. On the other hand, they resisted recommending the Pueblo Bonito site for placement of trailers or permanent housing because of fears about neighborhood opposition.

Sometimes project sponsors will be wary of aligning themselves with local officials out of concern that their actions will be perceived by opponents as politically motivated. In the Bluffton case, Vista View Development was advised by local NAACP staff to hire a local consultant to work on the project so that it would be more palatable to the local community.

They also suggested that the project sponsor meet with the two African-American county council members prior to announcing the project. It was thought that this meeting would give Vista better insight into the county's development process and any potential stumbling blocks they might encounter. Vista View Development decided not to use this strategy for fear of creating the perception that they were garnering political favors or promoting racial division in the community.

Legal Strategy

Most project sponsors would like to avoid filing fair housing complaints or pursuing litigation because of delays, cost and a desire to maintain good relationships with local officials. But seeking legal counsel and preparing early for filing complaints allows a sponsor to fully document and respond to local opponents. None of the affordable housing sponsors in these cases made detailed preparations for the eventuality of filing a fair housing complaint or bringing litigation. Sometimes, however, an organization may tap into the expertise of its board of directors to obtain advice on local zoning or fair housing issues. In Bonita Springs, Partnership in Housing used the expertise of lawyers on its board of directors when planning for public hearings, but did not explore litigation options until after the rezoning request for Pueblo Bonito had been denied.

Many organizations resist filing fair housing complaints or pursuing lawsuits because they need to maintain positive working relationships with local officials. Lawsuits are expensive and confrontational, and even if the housing organization wins a suit against local officials, it will find it difficult to enlist their cooperation on future projects. Lawsuits also almost always set back a project's development timetable, which can add significant costs to the project.

A housing organization may threaten local officials with a complaint or lawsuit, hoping that the threat alone will be enough to elicit cooperation. However, groups should never bluff when threatening a complaint or lawsuit, but should always be prepared with the documentation necessary to follow through on the complaint if officials are not responsive.⁵ A housing sponsor can take steps to document opposition to a project by designating a staff person to collect newspaper clippings about the project, and making sure that notes are taken at all community meetings and public hearings. If a staff member lives in the neighborhood, he or she could also attend civic association meetings and document the feelings of local residents towards the project.

Project preparation that involves other affordable housing advocates may provide project sponsors with greater options to address local opposition. For example, groups may avoid an adversarial relationship with local officials by coordinating with a legal services organization. The legal services group could then take the lead filing a complaint, instead of the housing organization having to make charges against the officials with whom it is negotiating. In Bonita Springs, Florida Legal Services, Inc. took the lead in filing a fair housing complaint,

⁵Tim Iglesias of the Non-Profit Housing Association of Northern California made this point in a telephone conversation on July 16, 1998.

leaving the project sponsor in a better position to continue working with the Lee County Board of Commissioners. In Tulare City, a legal services organization also took the lead in filing a fair housing complaint. This strategy will be covered in greater detail in the discussion concerning different ways that NIMBY conflicts may be resolved.

State Consolidated Plans

The planning documents adopted by local and state governments can be a valuable resource when affordable housing sponsors begin preparation of a project proposal. In order for a state or local government to receive funding from a number of HUD programs, including HOME and CDBG, it must prepare a Consolidated Plan. Since the state government administers these HUD programs in small rural communities, the state Consolidated Plan is generally the focus of rural affordable housing advocates. The Consolidated Plan identifies housing and community development needs, needs for all segments of the population, and the long-term strategy for meeting the affordable housing needs identified. A state or local jurisdiction receiving HOME or CDBG funds is obligated to certify that they will affirmatively further fair housing choice (AFFH). Since February 1995, the Consolidated Plan has had to include an Analysis of Impediments to Fair Housing Choice (AI), an important requirement for approval of the AFFH certification by HUD.

Public input is required in the preparation of a Consolidated Plan, including preparation of the AI. Affordable housing sponsors and advocates can use the public comment process to identify local impediments to fair housing choice, and identify prominent housing needs. In this sense, the public input required for development and revision of a state's Consolidated Plan offers rural advocates a proactive step in preparing for potential NIMBY scenarios in their communities.

The AI assesses a number of areas where impediments to fair housing choice may be present. It requires a comprehensive review of the jurisdiction's laws, policies and procedures, and how those laws affect the location, availability and accessibility of housing. The AI also requires an assessment of the public and private conditions affecting fair housing choice for all protected classes, and the availability of affordable, accessible housing in a range of unit sizes. Impediments to fair housing choice include any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status or national origin which restrict housing choices or the availability of housing choices. Impediments also include any actions, omissions or decisions which have the effect of restricting housing choices for these protected classes.⁶ The AI attached to a state Consolidated Plan may therefore provide a basis for challenging decisions by local officials that have the effect of impeding fair housing choice.

It should be noted that although a jurisdiction's obligation to affirmatively further fair housing is based on its receipt of HOME and CDBG, this fair housing obligation is not restricted to the

⁶U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, *Fair Housing Planning Guide, Volume 1*, prepared by the Fair Housing Information Clearinghouse, revised June 1, 1998, pp. 2-7 through 2-8.

design and operation of the federally funded programs. The obligation to affirmatively further fair housing extends to all housing and housing-related activities in the jurisdictional area, whether publicly or privately funded.⁷ The Consolidated Plan therefore provides affordable housing supporters with an important blueprint of area affordable housing needs, and the AI provides an outline of potential impediments to furthering fair housing choice.

⁷*Fair Housing Planning Guide*, p. 1-3.

INITIAL OPPOSITION

In many cases, the first opposition to an affordable housing proposal will come from residents who live near the proposed site. There are, of course, exceptions to this pattern. For example, local officials in Bridgeville initially supported Elizabeth Cornish Landing, and Bridgeville residents did not oppose the project early in the development process. The first serious opposition to the project was expressed by Delaware's State Housing Authority director. Identifying potential supporters and opponents is an important step to preparing for local opposition, but it can often be difficult.

In order to generate support, local opposition groups will often employ tactics similar to those used by affordable housing advocates to garner support for the proposed project. The group opposed to the project in Bonita Springs held rallies with over 300 people attending, set up a letter writing campaign to local newspapers and elected officials, and held bake sales and other fundraising events in order to hire attorneys. One enthusiastic opponent of Pueblo Bonito, a teacher in the local public schools, was reprimanded by the state's Department of Education for having her students write letters to local papers against the project. In Bridgeville, opponents mounted a petition drive against Elizabeth Cornish Landing. The petition was inspired by a petition drive initiated by Delmarva Rural Ministries and NCALL to recruit support among residents favoring the project's development.

Early statements by opponents are often blunt, and advocates have used letters to newspaper editors and minutes from public hearings to demonstrate that opposition to a project proposal may be motivated by prejudice. Letters included in the hearing examiner's record of Pueblo Bonito's first rezoning hearing illustrate typical statements made by opponents in the early stages of a NIMBY conflict. "This will encourage more migrants to come creating an even larger housing problem. . . It is common knowledge this group of people will bring with it social problems such as alcohol, crime, vandalism and all the rest."⁸ "If we had wanted to live with Hispanics, we would have moved to Latin America."⁹ Minutes from the Design Review hearing in Tulare City, California, reflect similar concerns among residents opposed to the housing project. A common expression of neighbors' fears is that low-income tenants will increase crime in the neighborhood. "She wanted to know what is going to happen when the money stops with the changing of welfare reform? She said that she is concerned about the number of police calls that are made. She said that in low income, multifamily residences, they are classified as high police call areas."¹⁰

⁸"Letters from Bonita Springs Citizens," Memo with excerpts of letters to Hearing Examiners Files, January 1996, Partnership in Housing.

⁹Quotations from letters to local newspapers, cited in Housing Discrimination complaint filed by Florida Legal Services, Inc. on behalf of Comitè Hispano Pro Vivienda de Bonita Springs and the Farmworker Association of Florida, Inc., January 12, 1996.

¹⁰Minutes of Design Review Hearing, November 19, 1996, State of California, County of Tulare, City of Tulare.

One way many housing groups will try to inform neighbors about a project proposal is to hold a public meeting. In some cases, these meetings provide a good forum for making presentations to neighbors. At other times, the meetings can become hostile, with opponents dominating the proceedings and presenters unable to provide detailed information about the project. In each of these cases project sponsors had a meeting with local opponents that went awry. In Bluffton, when Vista View Development held a meeting with the residents' group opposed to the project, they were not able to pursue any compromises that might address the group's concerns. Opposition group members would not retreat from a demand that any project developed on the property be confined to single-family housing. In Bridgeville, the case of Elizabeth Cornish Landing project's county permit hearing went very smoothly. However, when Delmarva Rural Ministries and NCALL held an informative meeting to make presentations to neighbors, tensions were high. Presenters had difficulty making their case for the project because very vocal opponents tried to monopolize the proceedings.

In some cases, opponents may use the fact that sponsors did not hold neighborhood meetings as a point against a project. The minutes of the design review hearing in Tulare City show that some neighbors were upset that they had not been contacted earlier about the project. Opportunity Builders, the project sponsor, did canvass the neighborhood to distribute information about their project proposal, but neighbors attending the design review hearing denied having been visited.

Identifying a project's supporters and opponents can be very difficult, but it is an important step for generating the support needed to get a project built. Still, project sponsors can improve their prospects of approval if they have a diverse base of support from state and local officials. In many instances, elected officials will be sensitive to opposition expressed by their constituents. A state agency invited Delmarva Rural Ministries and NCALL to propose a farmworker housing project, and the president of the town commission also supported the proposal at first. However, the president of the Bridgeville town commission and state government offices changed their positions in response to opposition from the State Housing Authority.

EXPANSION OF OPPOSITION

As opposition groups become more organized, they often will adjust their criticisms of an affordable housing proposal and focus on zoning-related problems. Rather than express their fears in racial or ethnic terms, neighborhood organizations will express concern about such things as increased traffic or lower property values. This is necessary when opposing rezoning or permitting, since proposals must be contested in terms of “improper” zoning or negative zoning impact.

Sometimes, criticism of a project on zoning issues clearly masks resident concerns about an influx of low-income or minority people to the area. With the Bluffton project, Vista View Development had to appear before the Joint Planning Commission in order to receive its preliminary building and development permits. In opening the meeting, the chairman of the commission noted the local opposition to the project, but stated that the “kind of people who are going to live there and where they work” was immaterial to development decisions made by the Joint Planning Commission. He asked that all comments focus on how the project proposal did or did not meet the county’s development standards ordinance. Even though opponents criticized the project mostly in terms of development standards, minutes from the meeting note that commission members acknowledged that opponents primarily objected to Vista View One project because of their concern it would attract low-income residents to the area. The commission approved the preliminary permits, with the chairman of the commission observing that even though most criticisms were made in reference to development standards, “sometimes other things are said when in reality the honest to goodness feelings do not come out.”¹¹

In the Bridgeville case, the State Housing Authority director’s principal criticism of the Elizabeth Cornish Landing project was that it would increase the concentration of minorities in the area, since there were two low-density subsidized housing developments nearby. In the Bonita Springs case, the lawyer hired by the group opposed to the Pueblo Bonito project advised them to choose their words carefully at the rezoning hearing. “Don’t get into migrant workers, public housing or racial issues. It will only hurt you,” he said. The lawyer was also cited in a local newspaper saying his case was designed to prevent a successful appeal of the decision and limit the possibility of federal litigation.¹² At the rezoning hearing, most opponents made their objections in terms of increased traffic, an adverse impact on the schools, and zoning that was inconsistent with other uses in the area. Nonetheless, some opponents at the hearing still expressed their concerns as fearing an influx of Latinos to the area.

If a project has received all of its preliminary approvals from local government, it can be difficult for opponents to halt it by making claims the project is inconsistently zoned or would have an adverse impact on the area. Sometimes project opponents will try to overturn permit

¹¹Minutes: Beaufort County Joint Planning Commission, Wednesday, September 7, 1998.

¹²Alison Gerber, “Commentary May Haunt Opponents of Pueblo Bonito if Case is Appealed,” *Naples Daily News*, December 12, 1995.

approvals on procedural grounds, which was the case in Bluffton. Opponents tried to halt the Vista View One project with a lawsuit, claiming that permit procedures were not followed properly, and that the preliminary permits obtained by Vista View Development were therefore illegal.

It is important for affordable housing sponsors to organize carefully for public hearings. Each person's testimony should be coordinated, so that the project's contribution to the community will be clear. Partnership in Housing designated speakers to testify at the rezoning hearing for Pueblo Bonito, and also recruited area farmworkers who would be prospective tenants to attend the hearing. Since CCBS and other groups opposed to the project were planning to have many supporters attend the hearing, project proponents also needed to make sure that their supporters attended. In some cases, zoning and appeals will require a large number of public hearings before a decision is reached to approve a project. Between permit hearings, zoning hearings, neighborhood association meetings, and litigation in the Bluffton case, Vista View Development staff attended over 30 public meetings. In many cases, planning for these meetings included the attendance of lawyers or other organizations supporting the project. For example, as a lender involved with the proposed project, HAC staff attended some of these meetings to support Vista View Development's proposal.

Sometimes, even significant preparation for a public hearing cannot ensure project approval. In Tulare City, Opportunity Builders prepared for a design review hearing after having obtained the necessary preliminary permits for their project. The minutes of the hearing show that because the property was already zoned for multifamily housing development, and planning staff had already recommended adoption of the design proposal, the city council could not reject the proposal within the context of a design review hearing. There was no way, in preparing a presentation for a design review, that Opportunity Builders could have anticipated the interim ordinance placing a moratorium on multifamily housing development by the City Council.

Often, the professional planning staff for a city will recommend a project in the early project stages, and county commissions, zoning boards or city councils will reject a project later in the permit or zoning process. Planning staff are often more likely than elected officials to support permit or rezoning requests. The positions of elected officials depend more on voter support than do those of city or county employees. In the Bonita Springs, Bluffton, and Tulare City cases, professional planning staff approved or recommended approval of permit or rezoning requests. In each of the cases, elected officials rejected the permits or rezoning.

When planning for public hearings, the reelection needs of local officials can be an important factor to consider. For example, in Bonita Springs, the initial request for rezoning was rejected by the County Board of Commissioners by three votes to two. The three commissioners voting against Pueblo Bonito were up for reelection that year, and one represented an area that included Imperial Harbor. Neither of the two commissioners supporting the rezoning application were up for reelection.

Early discussions with elected officials involved in the zoning process can help prepare them to support a project proposal when neighbors begin to object, although strong opposition to a

housing proposal may still sway officials a housing group had counted as supporters. Other avenues may have to be used to provide elected officials with a justification for supporting a project against the wishes of neighborhood opponents.

CONFLICT RESOLUTION

NIMBY conflicts are often resolved by affordable housing sponsors pursuing a number of strategies simultaneously. Negotiation, filing fair housing complaints, and litigation are the three primary means available to project sponsors for countering NIMBY opposition.

In many cases, local officials may support a proposal if the project sponsor is willing to make changes in response to neighborhood concerns. In Bridgeville, Delmarva Rural Ministries and NCALL agreed to pay taxes on the Elizabeth Cornish Landing property rather than seek a tax abatement, which is a common practice in Delaware. They also noted to local officials that they had built fewer units than the property's zoning would allow in an effort to reduce the perceived impact of the project on the neighborhood.

Negotiations also led to a revised project proposal in Bonita Springs. Partnership in Housing negotiated with the Lee County Board of Commissioners concerning the details of the Pueblo Bonito proposal. When the County Board approved the second rezoning request in August 1996, they included a number of restrictions on the project. It was capped at 150 one-story units, with no other buildings on the property except a clubhouse for residents. This is a density of a little more than four units per acre, while other nearby properties with the same zoning had been granted density bonuses allowing them to build up to 10 units per acre. Partnership in Housing was also required to include a 15-foot vegetative buffer next to the canal bordering the Imperial Harbor mobile home park. In both these cases, flexibility by the developer allowed elected officials to defend their support for a project, since the project sponsor had made efforts to respond to neighbors' criticisms of the project.

In other cases, negotiations still may not allow a project to go forward. In Tulare City, the National Farmworker Service Center tried to negotiate a compromise with local officials that would allow them to proceed with their farmworker housing proposal. For example, National Farmworker Service Center tried to convince local officials to allow them to substitute their proposal for a rental development that had received approval from the City Council prior to the moratorium on multifamily housing applications and approvals. In this case, even though the developer who had received approval did not secure the financing necessary to develop the project, city officials would only allow National Farmworker Service Center to proceed with their project if it were done exactly as the original proposal. National Farmworker Service Center could not develop its farmworker housing project with these restrictions, due to its own funding restrictions and design needs.

One of the most important resources available to groups facing opposition from residents or local officials is the state Consolidated Plan, including the analysis of impediments to fair housing choice. Many counties also have their own land use and development plans. These plans, particularly the state Consolidated Plans, document affordable housing needs on a statewide and county-by-county basis. They also often include statements concerning the role of local government in supporting affordable housing initiatives. For example, in Lee County, Florida, and in California, the analysis of impediments to fair housing choice included in the Consolidated Plans required that local governments place no impediments to affordable housing development. When filing fair housing complaints or bringing fair housing suits,

affordable housing advocates can use these planning documents as the basis for challenging adverse zoning or permit decisions made by local officials.

Filing fair housing complaints often provides the leverage needed to convince local officials to approve a project in the face of local opposition. However, if an affordable housing sponsor has plans for other projects in the area, filing complaints may lead to an adversarial relationship with planning staff and elected officials whose support will be needed to secure future permits. Although Delmarva Rural Ministries and NCALL were prepared to file a fair housing complaint, they decided not to do so because they felt that more would be gained by developing working relationships with Bridgeville and state officials. However, Delmarva Rural Ministries and NCALL did challenge the Rural Development decision to reject the preapplication for Elizabeth Cornish Landing. Without funding from the RHS Section 514/516 farm labor housing programs, it would be impossible to build the project, even if the issues in Bridgeville were resolved.

One strategy that may be effective is for the project sponsor to pursue negotiations with city or county officials, while other advocacy groups file fair housing complaints. This occurred in the Pueblo Bonito case, where two organizations representing Florida farmworkers filed a fair housing complaint with HUD, and Partnership in Housing continued to discuss the project proposal with planning staff and the County Board.

In at least two of the cases presented in this report, the threat of federal litigation played a major role in prompting local officials to approve the affordable housing proposals. In Bluffton, DOJ threatened a lawsuit over the Vista View One project. County officials invited Vista View Development to resubmit its rezoning request, and in so doing informed the group that the county would rather approve the request than face a federal lawsuit. This was also the situation in Bonita Springs with the Pueblo Bonito development. Partnership in Housing's use of a negotiating process that gives property owners an opportunity to challenge what they feel are burdensome government regulations offered the county government a mechanism to reverse its decision on Pueblo Bonito. Rather than admitting fault by reversing the earlier rezoning decision, the negotiating process allowed the county to consider a "new" proposal for the site. A local newspaper quoted the Lee County community development chief as saying that the agreement worked out with Partnership in Housing would offer the county a way out of the investigation begun by HUD and carried forward by DOJ.¹³

Lawsuits may be confrontational, and may antagonize local officials, but litigation and complaints do allow other parties interested in affordable housing to lend their support to a project. In each of the cases covered, affordable housing advocates supported the project sponsors whose proposals were in jeopardy. In Bluffton, HAC provided technical assistance and funding for the attorneys and other experts needed to challenge the rejection of permits for the Vista View One project. In Bonita Springs, Florida Legal Services, Inc. and two farmworker organizations took the lead in filing the fair housing complaint with HUD that put pressure on

¹³John F. Berry, "Officials Reach Deal on Pueblo Bonito," *Fort Myers News-Press*, Thursday, June 20, 1996.

officials to reach a compromise agreement over the Pueblo Bonito project proposal. Partnership in Housing was also aware that some opponents were concerned that they could be named in a DOJ suit if it were documented they made prejudicial statements concerning Pueblo Bonito and its prospective farmworker tenants. Pueblo Bonito opponents noticeably reduced their criticisms once DOJ began investigating the case. In Tulare City, California Rural Legal Assistance, Inc. took the initiative to file a fair housing complaint with HUD, and letters of support were necessary in the Bridgeville case for Delmarva Rural Ministries and NCALL to successfully appeal the RHS decision to deny the preapplication for funding the Elizabeth Cornish Landing project.

Ultimately, though, litigation is both costly and confrontational, and most affordable housing sponsors will try to address local opposition through negotiation before filing a complaint or bringing suit. Nonetheless, as these examples illustrate, even the threat of litigation brings enormous pressure to bear on local officials to remove impediments to affordable housing developments. It seems that in many cases, having one or more groups pursue complaints while the affordable housing sponsor maintains a dialogue with local officials, by combining anti-NIMBY strategies, increases the prospects that the project will get built.

PROJECT IMPACTS

Even though NIMBY struggles may bring affordable housing advocates together, or may even foster better communication between project sponsors and local officials who must negotiate together, the consequences of NIMBY conflicts are almost always costly, and rarely positive. At worst, local opposition may delay a project to the extent that funding is lost or something else occurs and the project remains unbuilt. At best, even if a project does get developed, project costs are almost always increased by delays or additional restrictions accepted in order to receive project approval.

Tulare City offers an example of a project that became infeasible because of local opposition. Because the group had to wait until the moratorium on multifamily rental projects lapsed, National Farmworker Service Center was unable to purchase the property on which it had an option. When National Farmworker Service Center returned to the property owners to renew their option on the parcel, the group was informed that the property would go to another bidder. National Farmworker Service Center was not able to build their proposed farmworker housing project in Tulare City, and even if they could, the additional requirement to obtain a conditional use permit for multifamily housing developments would significantly increase the cost of such a project.

Project delays through the permit process in Bluffton also endangered the financing for the Vista View One project. Because of the delays it faced, Vista View Development was unable to secure RHS Section 515 funding for the multifamily component of its development proposal. The project proceeded because Vista View Development was able to use LIHTC funding. However, this means that the project will not be able to serve clients with the lowest incomes. The deeper subsidies of the Section 515 program would have made it easier to serve very low-income residents in the Bluffton area.

When local opponents successfully delay a project through the permit and rezoning process, development timetables are disrupted and carrying costs for maintaining site control are increased. Vista View Development's project costs were more than doubled because of delays. Vista View One had an initial budget of \$7 million, but as of August 1998, Vista View Development estimates that it will take approximately \$15 million to complete the project. While a housing organization may win the battle to secure rezoning or permits required for a development to proceed, if it cannot obtain financing to cover the increased project costs resulting from delays, the project still may not be completed.

In other cases, project sponsors will accept additional conditions and requirements for their development proposal in order to obtain the necessary permits or rezoning from local officials. Partnership in Housing had to add a large buffer zone between the Pueblo Bonito site and the Imperial Harbor mobile home park. The additional landscaping and design work needed to meet the compromise plan added significantly to project costs. They also had to accept caps on the number of units they could put on the property, constraining Partnership in Housing from expanding the project in the future. In order to gain approvals from Bridgeville officials,

Delmarva Rural Ministries and NCALL agreed to pay taxes on the Elizabeth Cornish Landing site, even though it is common for projects in Delaware to seek and receive tax abatements.

NIMBY cases can also have an adverse impact on zoning laws and the permit process in the long run. In Tulare City, the City Council has adopted a number of additional conditions that multifamily housing development proposals must meet in order to receive approval. The conflict over Vista View One led to the adoption of new zoning laws that have conditions much more difficult and costly to meet. In addition, developers now have only a two-year window to obtain all of the necessary preliminary development and building permits. Developers must also pay for water and sewer service in advance, rather than getting a letter of commitment for extension of these services, as was the case before the Vista View One conflict.

There is no way to plan for every possible strategy local opponents may use to halt an affordable housing project. However, extensive planning when first conceiving a project will help project sponsors to address local criticisms more effectively. Affordable housing developers need to incorporate planning for NIMBY into the process for planning a project's financing, design and development timetable. Project sponsors should also familiarize themselves with the federal fair housing complaint process, and prepare themselves to file a complaint or lawsuit, even if it appears there is local support for a project. Even if litigation is not preferred because of the confrontation that results with local officials, having the documentation of prejudice ready will give weight to the threat of a suit.

Even though NIMBY conflicts are always costly, early planning and collaboration with other area affordable housing and low-income community advocates can limit the costs of fighting local opponents. A coordinated response to neighborhood complaints may help project sponsors avoid costly and confrontational litigation. However, the Bonita Springs and Bluffton cases also illustrate that an affordable housing sponsor should be prepared to file complaints when other avenues for resolving disagreements with local officials have been exhausted. Fair housing law provides affordable housing developers with a powerful tool, so that even the threat of federal involvement in a case is often enough to garner project approval from local leaders.

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APPENDIX: FAIR HOUSING LAW AND THE FAIR HOUSING COMPLAINT PROCESS

Overview of Federal Fair Housing Law

The two primary pieces of legislation providing recourse for victims of housing discrimination are Title VI of the Civil Rights Act of 1964 (Title VI) and Title VIII of the Civil Rights Act of 1968 (known as the Fair Housing Act), as amended in the Fair Housing Amendments Act of 1988 (Title VIII).

Title VI prohibits the denial of benefits and discrimination by any program or activity receiving federal financial assistance. It covers discrimination in the siting and occupancy of subsidized housing. As originally enacted, Title VIII prohibited discriminatory housing practices based on race, color, religion, and national origin in the sale, rental, advertising or financing of housing. It provided a means of judicial review of discrimination cases on the basis of protected classes, and a system of administrative enforcement involving the federal government, state and local fair housing agencies. In 1974, Congress expanded Title VIII protections to cover sex discrimination as well, and in 1988, amendments to the Fair Housing Act created administrative procedures and strengthened anti-discrimination remedies, and included as protected classes familial status, which means families with children, and people with mental and physical disabilities.

The U.S. Department of Housing and Urban Development (HUD) is responsible for enforcing the Fair Housing Act through administrative hearings. This means that HUD is required to investigate allegations of housing discrimination, attempt conciliation of fair housing complaints, and determine whether there is reasonable cause to believe discrimination has occurred under the Act. Facts in a case which would prompt a reasonable person to believe that discrimination has occurred provide the basis for making a reasonable cause determination. However, it can be difficult to prove a connection between the prejudice expressed by project opponents and the zoning decisions made by elected officials. When this occurs, HUD and DOJ investigators will often examine the body of similar zoning cases ruled on by local officials and statistics on the availability and location of affordable housing to support a reasonable cause determination. Upon finding reasonable cause, HUD files a charge with an administrative law judge, or if any party elects to have claims or complaints decided in a civil action, HUD must refer the complaint to the Department of Justice for prosecution in U.S. District Court.

The Fair Housing Act's enforcement provisions were originally limited to "conciliation powers," which encouraged the parties to reach voluntary conciliations of complaints. The law did not authorize HUD to investigate and prosecute complaints, which made enforcement difficult and limited. The 1988 Fair Housing Amendments Act provided HUD with additional authority to combat housing discrimination, allowing HUD to sue for violations of the Fair Housing Act, and seek injunctive and monetary relief on behalf of the victims of discrimination. Approx-

imately 89 percent of fair housing complaints processed by HUD originate in metropolitan areas.¹⁴

While HUD's programs operate throughout both urban and rural America, the U.S. Department of Agriculture (USDA) is the primary federal department meeting the affordable housing needs of low-income rural residents. Section 808 of the Fair Housing Act and Executive Order 12892 require USDA to administer its programs and activities relating to housing and development in a manner affirmatively to further fair housing. In addition, it is recognized that USDA, under Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and the Rehabilitation Act of 1973, is responsible for ensuring that recipients of federal financial assistance through USDA do not discriminate. In so doing, USDA under Title VI and Section 504 is required to investigate and conciliate complaints of discrimination and to refer unresolved complaints to the Department of Justice for appropriate action. Although failure to comply with Title VI nondiscrimination provisions or to correct discriminatory actions can lead to suspension or termination of federal financial assistance, USDA's primary avenue of seeking Title VI compliance is through conciliation.

In FY1997, HUD and USDA signed a Memorandum of Understanding (MOU) to coordinate the investigation and resolution of complaints alleging violations of the Fair Housing Act. Previously, while HUD could act on rural fair housing complaints, most were filed with USDA, and retained for processing under USDA's Title VI authority. The MOU establishes a process whereby USDA will forward fair housing complaints to HUD for review and processing, which will allow the complaints to be resolved under the stronger provisions of the 1988 Fair Housing Amendments Act governing HUD's fair housing discrimination resources. USDA generally receives between 240 and 260 housing related complaints each year.

Other statutes also provide fair housing remedies. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against individuals with disabilities in programs receiving federal funds. Available remedies include reimbursement for losses, an end to the discriminatory practices, and attorney's fees. Title II of the Americans with Disabilities Act requires that government services and facilities be accessible to people with disabilities, and remedies are similar to those under the Rehabilitation Act.¹⁵

Programs receiving CDBG funds must comply with Section 109 of Title I of the Housing and Community Development Act of 1974. Protected classes under Section 109 include race, color, national origin, sex, or religion. The complaint procedures and remedies are similar to those under Title VI and the Rehabilitation Act.¹⁶ CDBG grantees must complete an analysis of impediments to fair housing choice, and are required to affirmatively further fair housing. Rural communities most often receive CDBG funding through state agencies administering the

¹⁴"USDA Joins Forces with HUD to Fight Housing Discrimination," PRNewswire, March 20, 1998.

¹⁵National Law Center on Homelessness and Poverty, *Using the HUD Conplan Process and Federal Civil Rights Laws on Behalf of Homeless People: A Handbook*, April 1996.

¹⁶*HUD Conplan Process*.

program for small cities and rural areas. Complaints under Section 109 could encourage state governments to prompt local government acceptance of an affordable housing project that meets a documented need.

Another federal fair housing tool concerns applicants for federal grants and loans. Grant or loan applicants with certain outstanding civil rights violations are not eligible to apply to HUD for funding under any Notice of Funds Availability (NOFA). This consequence of failure to comply with federal civil rights statutes can encourage compliance with fair housing judgments and conciliation agreements.

One of the primary differences between rural and urban areas is in the types of relief that have been provided through HUD's fair housing process. There are four primary forms of relief, which include access to the denied housing, injunctive relief, other forms of relief and monetary compensation. Fair housing decisions in metropolitan areas have been more likely to favor affirmative action measures or monetary compensation, the stronger penalties available to HUD, than is the case in nonmetropolitan fair housing decisions. One possible impact of the HUD/USDA MOU may be to make the stronger sanctions of affirmative action measures and monetary damages more common in rural fair housing cases.¹⁷

The Federal Fair Housing Complaint Process

When an individual or organization believes that housing discrimination has occurred, a complaint may be filed in person, by mail, or by phone with the U.S. Department of Housing and Urban Development (HUD), or with a state or local agency that has a substantially equivalent fair housing complaint process and sanctions. An individual or organization may also file a private civil action. In rural areas, complaints may also be filed with USDA through its local or state Rural Development offices, especially if housing involved in the complaint is sponsored through USDA's Rural Housing Service (RHS).¹⁸ The complaint must be in writing and signed by the complainant, and must contain the name and address of the person or group claiming injury, the name and address of the respondent accused of discrimination, a description of the dwelling or property involved in the complaint, and a brief description of the facts in the case. After the complaint has been filed, HUD will then notify the complainant(s) and respondent(s), and inform the parties that a lawsuit may be filed within two years after the alleged discrimination occurred.

Once HUD has accepted a complaint, the Assistant Secretary of Fair Housing and Equal Opportunity (FHEO) initiates an investigation, which must be completed within 100 days after the complaint was received, unless it is impracticable to do so. Two outcomes are possible

¹⁷Housing Assistance Council, *Fair Housing Violation Cases in Nonmetro and Metro Counties*, December 1998.

¹⁸For purposes of simplicity, this description of the fair housing complaint process will refer to HUD's role, although complaints may be filed with and investigated by state or local agencies with substantially equivalent fair housing provisions. USDA's role in receiving and investigating fair housing complaints will be covered in the discussion of the HUD/USDA MOU.

from the investigation. Either a determination is made that there is not reasonable cause that discrimination occurred and that further action is unnecessary, or a conciliation agreement is sought between the parties involved. Conciliation is always sought throughout the investigative process, and this effort is not confined to the early phases of the investigation. If a conciliation agreement is not reached, then FHEO must determine whether reasonable cause exists to believe that discrimination occurred. Cases that involve zoning or land use issues must be referred to the U.S. Attorney General at the Department of Justice (DOJ) if HUD makes a determination of reasonable cause. Other types of cases, such as discrimination by a real estate agent or individual landlord, may instead be filed with an Administrative Law Judge.

The Attorney General must file suit within 30 days after a case has been referred by HUD's General Counsel in election cases, or within 18 months of the last incidence of discrimination in zoning cases. Relief through the courts may include punitive damages as well as sanctions available through the conciliation agreement process or administrative law judge proceedings. The relief available through administrative law judge proceedings includes the possibility of civil penalties payable to the U.S. Treasury, which can range from \$11,000 to \$55,000, depending on a variety of factors. When a unit of state or local government is the target of a complaint, Title VIII can be used in conjunction with Title VI and Section 109 to change the local government's behavior by conditioning the receipt of federal housing and community development funds on compliance. DOJ reached a settlement in a case against the Village of Addison, Ill., where the local government was accused of selectively demolishing housing in a predominantly Hispanic area without relocating or compensating Hispanic residents. DOJ obtained a \$3.9 million settlement by threatening to withhold CDBG funds from the community until it resolved the matter.¹⁹

The MOU between HUD and USDA was designed to coordinate the investigation of rural fair housing complaints, and to bring HUD's greater investigative and punitive resources under Title VIII to bear on rural fair housing cases. Essentially, the MOU requires HUD and USDA to notify each other when complaints are received from rural communities. If USDA is the recipient of the complaint, it will forward a copy of the complaint to the HUD Fair Housing Hub in the region where the alleged discrimination took place. At this time, USDA will also include an initial determination concerning whether the complaint should be handled solely by HUD, due to the nature of the complaint, or whether it will investigate the complaint under its Title VI or other relevant authority concurrently with the HUD investigation. As is the case with the HUD fair housing complaint process, USDA then mails a letter to the complainant notifying him or her that the allegation has been forwarded to HUD and is being reviewed for investigation by both HUD and USDA. The letter also explains the complainant's rights under the Fair Housing Act. If it is determined that HUD has jurisdiction over the case, then it too notifies the complainant that the case is being reviewed and investigated.

¹⁹U.S. Department of Housing and Urban Development, *30 Years Later: A Fair Housing Report*, April 1998. The year of this settlement is not provided in the report, although most initiatives covered in the report have occurred since 1997.

The MOU does reach beyond each department notifying the other about fair housing investigations. The MOU states that to the greatest extent possible, HUD and USDA shall cooperate in investigations of Fair Housing Act violations. Joint investigations may include notice to the other department of any site visit, consultation regarding approaches to investigation, forwarding copies of complaints and notes from investigative interviews, and technical assistance provided by USDA concerning how its programs operate. It should also be noted that under the MOU, HUD cannot investigate allegations where USDA is accused of fair housing violations. This issue is awaiting consideration in a future MOU between HUD and USDA.

When a case pending before USDA makes allegations covered under both Title VI and Title VIII, HUD must consult with USDA as to whether the resolution sought by USDA can be included in a conciliation or settlement agreement, and what the terms should be. On the other hand, if USDA is investigating a case under its Title VI authority that is also pending before HUD, USDA shall consult with HUD about including its terms in a conciliation or settlement agreement. HUD cannot resolve a complaint under Title VI without USDA's consent, although HUD may conciliate cases or settle complaints under the Fair Housing Act involving allegations of discrimination by a participant in USDA programs or activities assisted by USDA without USDA's express consent. These terms allow both departments not only to coordinate their investigations, but also to bring the full range of sanctions under both Title VI and Title VIII to bear in rural fair housing cases.

When proposals for zoning changes or development permits bring affordable housing developments to public attention, neighbors or elected officials may voice “not in my back yard” reactions. Fair housing laws can help rural affordable housing developers to overcome this community opposition. Using examples from four real NIMBY struggles in rural areas, this report outlines some common characteristics of community opposition and some creative, effective responses. It highlights ways that fair housing issues may be raised throughout land use or zoning cases.

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