RESEARCH HIGHLIGHTS

Socio-Economic Series Issue 46

MUNICIPAL REGULATORY INITIATIVES: PROVIDING FOR AFFORDABLE HOUSING

Introduction

Municipal governments in the United States are using various regulatory initiatives associated with their development approval powers to encourage, enable, or require for-profit developers and builders to provide affordable housing.

The most common of these regulatory initiatives falls into three categories: inclusionary zoning, exaction programs, including linkage fees, among others, and density bonusing. These initiatives are used both on other own and sometimes in combination with each other, in a wide variety of ways.

Increasingly, these initiatives have been used by American municipalities ever since the deep cuts in federal funding that started in the early 1980s in that country. To date, regulatory initiatives have been used only to a limited extent by Canadian municipalities; however, with the recent withdrawal of federal funding for new social housing projects, municipalities, too, are facing similar pressures to consider locally based ways of supporting affordable housing.

This report focuses on initiatives providing for "affordable housing." Across the U.S., this term is generally accepted as meaning housing affordable to low- and moderate-income households – "lower-income households," for short. These terms, in turn, are tied to specific income levels in the local housing markets.

In many areas, this type of housing is also called "below-market housing." This term is apt because it reflects that the housing is provided, using some form of subsidy, at a price or rent below that otherwise available in the private market.

Research Program

The report draws upon the recent experience with 23 initiatives in both the United States and Canada. It incorporates information from past studies and surveys, current literature, municipal ordinances and reports, as well as extensive interviews with housing officials and experts. Telephone interviews were held with at least one representative for each of the profiled programs, to present, as much as possible, the current situation as of mid-1998.

Findings

A. Inclusionary Zoning

Inclusionary zoning typically as used in the U.S. requires or encourages developers of market residential projects to construct some proportion — generally from 10 per cent to 25 per cent — for affordable housing. Fees-in-lieu, land, and other contributions of an equivalent value are sometimes accepted.
Inclusionary zoning is the most prevalent of the regulatory initiatives used by U.S. municipalities to provide for lower-income housing. There are probably 200 or more programs in the U.S. — 75 in California, a similar number in New Jersey, and the rest spread across 11 or more other states.

Like the other initiatives examined in this report, inclusionary zoning depends on a buoyant housing market to capture the affordable housing; therefore, mostly growing suburbs and towns use it. Some urban areas have also implemented these measures, but they are more likely to use density bonusing and exaction programs to provide for affordable housing.

Inclusionary zoning can be either mandatory or incentive-based. In mandatory programs, the builders are required to contribute affordable housing as a condition of development approval. Density bonuses and other concessions like fee waivers, fast-tracked approvals, and reduced development standards — but not financial subsidies — are generally given as cost offsets. In incentive-based programs — sometimes also called discretionary or voluntary — the builders are offered the density bonuses and other incentives as inducements to contribute the housing on a voluntary basis. In both

CMHC SCHL

HOME TO CANADIANS
Canada

cases, the amount and type of housing contributions, the density bonus, and other concessions are all governed by established rules.

Incentive-based programs are attractive to municipalities because they are less likely to generate developer opposition and legal challenges than mandatory programs. Unfortunately, all of the evidence collected for this report — which includes various surveys and the anecdotal input of many experts — shows that incentive-based programs produce significantly much less affordable housing than mandatory ones. For this reason, this report mainly profiles mandatory programs.

The affordability of the inclusionary below-market units is controlled to ensure that the public subsidy provided by the density bonus and other concessions is not lost. The initial price or rent is set by the terms of the program, and first occupancy is limited to income-eligible households. Restrictions are also placed on subsequent occupants, on rent increases, and on resale prices, but these vary widely. In most jurisdictions, these controls rely upon covenants registered in the deeds, and typically run for 30 years or longer.

Strictly speaking, there are no equivalent inclusionary zoning programs in Canada. A number of Canadian cities — namely, Toronto, Vancouver, and Burnaby — have successfully used a variation of inclusionary zoning through a comprehensive rezoning process for major private redevelopment sites. These programs differ from conventional inclusionary zoning in the U.S. in that they are directed at securing developable land for non-profit housing to be built with government funding rather than at obtaining below-market units constructed by for-profit developers.

B. Exaction Programs

As a condition of development approval, these programs essentially require developers of certain types of development — mainly, but not only, commercial — to contribute fees towards the provision of affordable housing. No cost offsets, such as density bonuses, are given in exchange.

These fees are typically paid into trust funds dedicated to affordable housing and are used in combination with grants and loans from federal, state, and other sources to provide mainly non-profit and low-income rental housing.

The best known of these exactions is linkage fees. What characterizes linkage fees is that they are seen as mitigation measures to offset the adverse impact of major new commercial and other job-generating developments on the local housing conditions. As various reports have shown, these developments directly and indirectly create many new low-paying jobs, which in turn can attract new households often unable to find affordable housing. The fees are intended to recover part of the cost to the municipality in providing the needed additional housing.

Linkage fees are most strongly identified with the two major pioneering programs in San Francisco and Boston, programs that impose fees on new major downtown office developments. These two programs remain the most successful examples of all of the regulatory initiatives in terms of fees generated and housing produced.

At least 12 other jurisdictions, all in California, now also use linkage fees. Where these programs differ from the two downtown programs is that the fees are imposed on a wider range of new job-generating developments, and generally at lower rates graduated according to the low-wage jobs associated with the various uses.

There is also a variety of similar other fees — variously called development fees, development levies, excise taxes, and voluntary contributions. They differ principally in how the fees are justified and what uses are charged.

The largest number of exaction programs occurs in New Jersey. In order to meet their state-mandated affordable housing obligations, more than 85 municipalities there charge development fees on both new residential and non-residential projects according to their assessed market value.

In Canada, three municipalities in British Columbia and one in Alberta currently collect fees of some type for affordable housing. Two of these — Whistler and Banff — could be considered as types of linkage fees. In Vancouver, there is a development charge for various capital improvements, including low-rent housing. Richmond has collected fees through comprehensive development agreements for large residential projects.

C. Density Bonusing

Density bonusing — also known as incentive zoning in some places — encourages developers of new commercial and residential projects to provide for affordable housing and various public amenities on a voluntary basis in exchange for increased developable floor space.

Density bonusing is generally associated with downtown and similar intensively developed areas, where additional revenue-generating space can be offered and also where increased building size will not impose upon the surrounding environment or infrastructure.

This category also could include incentive-based inclusionary programs. In both, density bonuses are essentially traded for affordable housing. Nevertheless, the two are conventionally seen as being different because of the type and scale of development with which they are associated.

This report focusses only on municipal programs that provide for affordable housing in structured and sustained ways. In the case of density bonusing, that typically means bonuses offered as-of-right according to some established and standard rules across broad classes of sites. Many municipalities use density bonusing on a negotiated and ad hoc basis on individual sites, but these efforts are outside the scope of this report.

Few cities in the U.S. appear to use density bonusing on a programmed basis to provide for affordable housing. Only one residential bonusing program — that in New York City — was identified. Although there are many commercial bonus programs, most are used to obtain various public amenities, and only a few for lower-income housing. Of these, only the program in Seattle has been productive, and then only to a limited extent.

In Canada, only Toronto has used commercial bonusing on a sustained basis to provide for affordable housing. Strictly speaking, this was not a formal program because the bonuses were provided on a negotiated basis without prescribed rules and limits. Nevertheless, it merits attention because the process was used regularly on many sites. Furthermore, it also appears to be the single most successful example of density bonusing in both countries.

As noted earlier, Vancouver, Toronto, and Burnaby have had significant success in securing non-profit housing sites through a comprehensive rezoning process for major private residential developments. Although not density bonusing in the conventional sense, this process is similar in that it does rely essentially upon trading increased density for the affordable-housing provision.

Vancouver and Toronto also have tried various as-of-right density bonuses aimed primarily at encouraging private developers to incorporate government-assisted units within their projects. They were frequently by the non-profit sector, but seldom by the private sector.

While there are too few examples from which to draw firm conclusions, one significant pattern appears to emerge out of the experience to date. Negotiated bonusing, in which the bonuses and amenities are determined site-by-site, has been very successful in providing for affordable housing. On the other hand, programmed bonusing, in which the bonuses and amenities are determined by fixed limits and other rules applied generically, so far has not proven itself capable of producing affordable housing to any notable extent.

Response of the Building Industry

The building industry has consistently opposed the implementation of mandatory initiatives, including specifically mandatory inclusionary zoning and fee-based programs. At the very least, they are considered to be additional and unnecessary red tape. At the very worst, they are considered an unfair cost burden.

The building industry, whenever faced with the prospect of these programs, favours as an alternative the use of discretionary incentive-based programs. As noted in the report, the incentive-based programs so far have failed to produce much affordable housing, especially when compared with the mandatory programs.

In the face of that opposition from the building industry, some municipalities have attempted to soften the burden wherever possible. In the case of inclusionary zoning, they offer concessions — mainly through density bonuses — that offset the cost of providing the units and, in some cases, allow for a profit. They also provide as much flexibility as possible by permitting various compliance alternatives. In the case of the fee-based programs, they reduce the recovery rate to as little as possible — sometimes to only 10 per cent of the development's cost impact upon the municipality. While these efforts reduce the opposition, they cannot be expected to totally eliminate it.

Who pays for these housing programs, in any case, remains a moot issue. The question has not been empirically answered, and it may not be, because the pricing process in the development industry does not lend itself to precise analysis.

Project Manager: David Scherlowski

Research Report: Municipal Regulatory Initiative: Providing for Affordable Housing, 1999.

Research Consultant: Richard Drdla Associates Inc.

A full report on this project is available from the Canadian Housing Information Centre at the address below.

Housing Research at CMHC

Under Part IX of the National Housing Act, the Government of Canada provides funds to CMHC to conduct research into the social, economic and technical aspects of housing and related fields, and to undertake the publishing and distribution of the results of this research.

This fact sheet is one of a series intended to inform you of the nature and scope of CMHC's research report.

The **Research Highlights** fact sheet is one of a wide variety of housing related publications produced by CMHC.

For a complete list of **Research Highlights**, or for more information on CMHC housing research and information, please contact:

The Canadian Housing Information Centre
Canada Mortgage and Housing Corporation
700 Montreal Road
Ottawa, ON K1A 0P7

Telephone: 1 800 668-2642
FAX: 1 800 245-9274

OUR WEB SITE ADDRESS: http://www.cmhc-schl.gc.ca/Research

NHA 2266