

10 Next Steps for Affordable Housing in a Post-Cuyahoga Environment

By Lora Engdahl, KnowledgePlex Editor-at-Large

In March 2003, the U.S. Supreme Court unanimously rejected the Buckeye Community Hope Foundation's claim that the predominantly white suburb of Cuyahoga Falls, Ohio, had acted with racial bias when it allowed a citizen-led referendum drive to delay construction of a low-income housing project. A United Press International wire report called the ruling, which reversed in part an earlier ruling by the U.S. 6th Circuit Court of Appeals, "a major defeat for direct advocates of low-income housing." Though experts interviewed by KnowledgePlex differ on the ruling's impact ([click here for full story](#)) they do seem to agree that, at the very least, the case left in place a status quo filled with barriers to affordable housing development in middle-income and suburban communities. What can the affordable housing field do? Following are experts' suggestions as well as links to related resources.

1. Preserving the Fair Housing Act

Housing attorneys have in federal courts of appeals successfully applied the "disparate impact"¹ theory used in employment law to housing cases, but the Supreme Court has not addressed this application. Efforts to amend the [Fair Housing Act](#) to codify the application of disparate impact theory would be "political suicide," says Michael Allen, co-director of the Building Better Communities Network in Washington. "If there were a bill to amend the Fair Housing Act with the intention of strengthening it, it would become a magnet for every conceivable idea to weaken it," he says. Instead, if judicial solutions are sought, advocates for stronger fair housing laws should look for and engage in cases before a friendly judicial circuit court "where there is good, strong evidence that the referendum was motivated by racial animus and where there was smoking gun evidence."

2. Developing local policy incentives for affordable housing development

California², [Massachusetts](#), New Jersey³ and Rhode Island⁴ have state laws that in some

¹The disparate impact theory holds that discrimination can exist even without intent to discriminate if an otherwise neutral action has a harsher effect on a minority group. Though it involves a case other than Cuyahoga, an article on the Find Law Web site does a good job of explaining the theory and can be accessed on the Web at <http://writ.news.findlaw.com/lazarus/20010501.html>

²Information on California's Housing Element Law can be obtained from several sources, including the [California Housing Law Project](#), the [Non-Profit Housing Association of Northern California](#), the [California Housing & Community Development Department](#), and the [Public Policy Institute of California](#). The Non-Profit Housing Association of Northern California and the Greenbelt Alliance produced a "[Housing Crisis Report Card](#)" that also explains the law and related issues.

³Information on the set of New Jersey rulings called the "Mount Laurel Doctrine" can be obtained from several sources, including the [New York Times](#), the [Land Use Law & Development Strategies](#) Web Site and [Volume 8, Issue 1, Housing Policy Debate](#).

⁴The laws text can be found on the State of Rhode Island General Assembly [Web site](#).

way mandate local jurisdictions provide affordable housing, and localities with mandates to produce affordable housing may have a greater self-interest in addressing the barriers that arise from citizen opposition, Allen says. The Oregon Metropolitan [Council's Urban Growth Boundary](#) also requires localities to consider affordable housing as part of their land-use missions, Allen says. The Association of Bay Area Governments in California created a useful compilation of local affordable housing policies in its [Blueprint for Bay Area Housing, 2001](#), says Timothy Iglesias, associate professor of law at the University of San Francisco Law School. The Fannie Mae Foundation's *Housing Facts & Findings* newsletter also recently covered innovative [state and local solutions](#).

3. **Targeting affordable housing resources at truly low-income people**

Without close scrutiny, definitions of "affordable" can spread to include segments of the population that aren't in dire need of government assistance, says Marty Mellett, director of the Community Development Support Collaborative in Washington. As an example, Mellett cites the area median income (AMI) of the Washington metropolitan region — about \$94,000. A project producing units affordable to those at 80 percent of the AMI would benefit families earning about \$75,000, whereas in a particular neighborhood, the true median within that neighborhood might be much lower. The District of Columbia's recently revitalized [Housing Trust Fund](#) specifies in detail what kinds of projects it will support and who will benefit, Mellett says.

Once legislation is approved, someone has to keep an eye on it to make sure changes taking place in the process of construction don't effectively boost real costs beyond the desired level of affordability. Legislation that requires real (vs. paper) nonprofit partners can enhance oversight, Mellett says.

4. **Building community support for affordable housing**

Local zoning officials often have sufficient discretion to make rulings based on the pulse of the local community rather than code, Mellett says. Developers need to organize would-be residents of affordable housing so their voices are heard alongside opponents. Well-known organizers include the Industrial Areas Foundation, whose Nehemiah Housing method has worked in a number of jurisdictions including the South Bronx, Mellett says. [Tim Iglesias](#), an associate professor of law at the University of San Francisco Law School, has developed several community organizing tools, including a program on managing the local government/citizen approval process called "[Six Steps to Getting Local Government Approvals](#)." He also designed "Building Inclusive Community," a technical assistance tool published by the San Francisco-based [Homebase](#) public policy group.

During community hearings for specific housing projects, advocates have to "redouble their efforts to listen very closely, to take good notes, to videotape meetings and record meetings, to make sure that they build a meticulous case and identify comments, statements and other actions that can be used to prove racial intent," says attorney John Relman of Relman and Associates, who helped file a friend-of-the-court brief for the National Fair Housing Alliance in the Cuyahoga Falls case.

5. **Taking a regional view of affordable housing needs and solutions**

Most community development corporations (CDCs) and other affordable housing developers work in limited areas and aren't equipped, trained, or given the incentive to step back and

take a wider look at the region, says Chip Bromley, director of the Housing Research and Advocacy Center in Cleveland. "Somebody needs to get up and take a look at the forest," he says. Groups with a wider geographic vision could look at the patterns of development of low-income housing across the region and work with schools and other constituencies affected by housing development. Regional organizations and coalitions also would be better equipped to fight for fair share plans across metropolitan regions.

6. Educating the community about the value of affordable housing

Affordable housing is a community asset, the same way schools and parks and roads are — part of the infrastructure of a healthy city, says Alan Arthur, president of the Central Community Housing Trust in Minneapolis. The [Urban Land Institute](#), the [Center for Urban Land Economics Research](#) at the University of Wisconsin, and the [Harvard University Joint Center for Housing Studies](#) have produced reports arguing the asset theory and addressing sometimes false notions, such as the idea that low-income or multi-family housing necessarily lowers property values.

7. Examining state laws that limit local revenue-raising

State laws that limit local governments' revenue-raising abilities can encourage NIMBYism. Fiscally strapped municipalities often are wary of admitting more families with children because of the presumed financial burden they put on schools, Allen says. (Multi-family housing units are presumed, though not always correctly, to bring more children into a neighborhood.) Therefore any attempts to encourage local jurisdictions to build more affordable housing must take into account the fiscal barriers.

8. Using existing resources to promote fair housing

Community Development Block Grants (CDBG) and HOME come with strings attached that could be enforced more effectively, namely that users of funds must not only avoid discrimination but also take steps to undo damage caused by past discriminatory policies, even if the policies were created by the private sector, Allen says. "Close to \$7 billion a year goes out in CDBG and HOME. For any locality that has a zoning law or practice that restricts the development of affordable housing or is likely to have harsh effects on people of color or families with children, [the claim] that they are affirmatively furthering fair housing is probably false, which mean those funds should be terminated. They may also be in violation of the [False Claims Act](#)."

9. Understanding employers' interests in affordable housing

Suburban employers whose lower-paid workers are unable to live close to their job sites are likely supporters of ways to build more affordable housing. William Sullivan, executive director of the Rocky Mountain Mutual Housing Association in Denver, says the [Southeast Business Partnership](#), a group of employers who view worker housing as a critical resource, is changing the way Denver communities view affordable housing. A similar recognition by Silicon Valley companies a couple years ago produced a [partnership](#) with local government that spawned several innovative programs, including the [Housing Trust of Santa Clara County](#) (Calif.). Other news and journal reports indicate suburban employers are starting to recognize the need for work force housing. For example, the July 13 edition of the *Los Angeles Times* reported on the rising number of employers offering housing incentives in

Southern California.

10. **Strengthening the connection between affordable housing, other community issues**

Work force development is just one of many public goals dependent at least in part on the ability to provide decent and affordable housing to a community's residents. For example, "[Hardship among the Uninsured](#)," a recent report from the Urban Institute, explores the difficulty many families have paying for health insurance when their housing costs are high, and visa versa. Welfare reform watchers also are recognizing affordable, decent-quality housing may provide additional tools to help families succeed in the workplace.

Because housing issues cross administrative boundaries, housing promoters should develop problem-solving approaches that transcend "silo" cultures and engage those in other related areas. An example of this cross-disciplinary approach is emerging in the transportation area. According to a report on the California Surface Transportation Policy Project Web site, counties across California are realizing their traffic congestion problems are partially due to the lack of affordable housing close to jobs. A bill in the California Legislature would use a portion of transportation capital funding to reward local governments that build compact infill housing. A recent issue of [Housing Facts & Findings](#) explores the linkages between housing and transportation, and features efforts by the San Francisco Bay Metropolitan Commission to link transportation and land-use planning.

Environmentalists can at times work at odds with affordable housing advocates, as "smart growth" limits can clash with affordable housing goals. Policies that limit the density of developments drive up the cost of developing and thus home sale and rental costs. But the two camps are creating forums for coming together around issues of housing and land use. The National Neighborhood Coalition and Smart Growth Network have produced a [compendium](#) of policies and programs that simultaneously address smart growth and affordable housing goals. Many other groups are tracking these issues, including the [Brookings Institution](#), [National Association of Realtors Common Ground initiative](#), the [American Planning Association](#) and [Rural Voices](#), the quarterly magazine of the Housing Assistance Council.

Editor's Note: Since his interview for this article, William T. Sullivan left Rocky Mountain Housing Association. He remains in Denver, where he is now consulting in the community development and housing areas.