

NIMBYism: Overcoming Community Opposition to Affordable Housing




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The Not in My Backyard syndrome (NIMBYism) connotes objections made to the siting of affordable housing for reasons such as fear and prejudice. This is in contrast to objections over the real threat of an incompatible neighboring use, such as the siting of a hazardous waste facility near a residential area.


NIMBYism presents a particularly pernicious obstacle to producing affordable housing. Local elected officials are regularly barraged by the outcry of constituents with concerns over the siting and permitting of affordable housing. Consequences of NIMBYism include lengthy, hostile, and unpleasant public proceedings; frustrated consolidated plan implementation; increased costs of development; property rights disputes; and an inability to meet local housing needs. There are tools advocates can use to avoid or overcome these objections, usually to the eventual satisfaction of all parties.

 **Know the law.** When discrimination against an affordable housing development is in fact discrimination on the basis of race, color, national origin, religion, familial status or disability, it violates the federal Fair Housing Act (42 U.S.C. Sec. 3601-Sec. 3631). Litigation is usually not a meaningful remedy because housing funding cycles are short and court cases can take years to resolve. Often, all advocates need in order to benefit from the protections of civil rights statutes is a working knowledge of the law and a willingness to make the law known to local elected officials and government attorneys. In those cases where discrimination is clear and local elected officials act in disregard of that discrimination, advocates may request that the U.S. Department of Justice take the case. When the plaintiff is the

United States of America, the defendant takes notice and it tends to make future dealings with local opposition much easier.

Florida affordable housing developers and advocates have the additional legal advantage of a state fair housing law protection: In 2000, the Florida Fair Housing Act (the state's substantial equivalent to the federal Fair Housing Act) was amended to include affordable housing as a protected class (Section 760.26, Florida Statutes). Decision makers and their staffs must be aware of the law if it is to be helpful to the cause. The expansion of the state fair housing act to include affordable housing in Florida has been successful when housing advocates have been conscientious about ensuring that local government lawyers know about the statutory change. It is now commonplace in those jurisdictions for a city or county attorney to inform the elected body during a heated public hearing that they would run afoul of the state's fair housing law if they deny the affordable housing developer's application.

If nonprofits are reluctant to challenge a local government over land use issues because the local government provides funding to the organization, a local legal services office or other advocate for the public interest can argue on behalf of the future tenants or residents who would be directly impacted by the land use decision. Developing relationships with such organizations before problems arise can be an effective way to fight NIMBYism.

 **Educate elected officials.** Once a NIMBY battle ensues, it is often too late to educate. Advocates should anticipate the value of and the need to build relationships with elected officials and their staff members before a NIMBY issue arises. Education should include the importance of affordable housing in general and in particular its importance to the health of the entire community. Advocates

should include allies in the education process. Learning about the elected officials' interests will help to inform the advocate about which of its allies are best to bring to the meeting. For example, a particular elected official may be impressed from hearing from a local business about the need for employee housing, while another may be moved by hearing from local clergy about the needs of homeless veterans or the elderly and disabled. Whenever possible, advocates should invite elected officials to visit completed developments and should share credit with them at ribbon cuttings and when speaking with the media.


In regard to a pending development, whether advocates can meet with elected officials depends upon the ex parte rules in each jurisdiction. If advocates discover that community opposition is meeting with elected officials about a development, advocates should try to do the same.

 **Garner allies from a broad range of interests.**

Too often, the only proponents of the affordable housing development are the developers themselves. Whenever possible, advocates should ask members of the business community, clergy, and social service agencies to stand up for an affordable development. Potential beneficiaries of the development, like future residents, can also be effective advocates.

The media can also be an important ally throughout the process of development approval. Whenever advocates foresee a potential NIMBY problem, it

is best for them to contact the media first so that they understand the development plans, the public purpose, and the population to be served.

 **Address all legitimate neighborhood and community opposition.** Key to overcoming community opposition is addressing the opposition's legitimate concerns. Legitimate, non-discriminatory concern around issues like traffic or project design may lead advocates to make some adjustments to a proposed development.

Concern over property values are often the root of neighborhood opposition. The full article published in the 2012 NLIHC Advocates Resource Guide contains a bibliography of property value studies based on statistical and empirical analysis and covering hundreds of case studies from throughout the nation. Virtually without exception, affordable housing developments have been found to have no negative effect on neighboring market rate property values, and in some instances have increased the value of neighboring property. Local government elected officials and their staffs can use these studies as evidence to counteract homeowner fears about loss of property value. See <http://nlihc.org/library/other/guides/2012>

The key point is this: once all legitimate concerns are addressed, if opposition persists, it can be stated with certainty that the opposition is illegitimate and is therefore opposition that would be inappropriate, arbitrary, capricious, or unlawful for the local government to consider in making its land use decision.

Inclusionary housing policies assist in overcoming neighborhood opposition because those policies require a certain percentage of the housing within a particular geography to be affordable. In other words, the not in my backyard argument fails because the law requires affordable housing in that backyard. An inclusionary housing ordinance provides local elected officials and affordable housing advocates a clear public interest directive to weigh against neighborhood opposition. In that balance, the proponents of preservation or development of affordable housing should be able to overcome the opposition. HNN

