

# BOARD OF ALDERMEN

ITEM NO. D(3)

## AGENDA ITEM ABSTRACT

MEETING DATE: April 20, 2004

**TITLE: Report on Inclusionary Zoning**

DEPARTMENT: <b>PLANNING</b>	PUBLIC HEARING: YES ___ NO <u>X</u>
ATTACHMENTS: <b>A. Resolution</b> <b>B. Freilich, et.al “Inclusionary Zoning”</b> <b>C. Adequate Public Facilities Ordinance Provisions, Davidson, North Carolina</b> <b>D. Draft Ordinance and Council Action, Highland Park, Illinois, August 2003</b> <b>E. Zoning News, August 2003</b>	FOR INFORMATION CONTACT: Patricia McGuire – <b>918-7327</b>

### PURPOSE

The 2003 Action Agenda Project List calls for a report on Inclusionary Zoning. A report on this matter has been prepared.

### INFORMATION

The Board’s Action Agenda Project List for 2003 describes this project as follows:

Revisit Inclusionary Zoning Issue/Affordable Housing as Adequate Public Facility.

1. Prepare a report on inclusionary zoning.
2. Prepare analysis/report of Davidson’s method of affordable housing as an adequate public facility.

Adopted policies or planning provisions related to inclusionary zoning are noted here:

Policy 6.18 of *Carrboro Vision2020*, adopted as the first amendment to this policy document on March 23, 2004, states as follows:

A minimum of 15 percent of the residential units in any residential development should meet the affordability criteria specified in Section 15-182.4 of the Carrboro Land Use Ordinance.

Echoing the goal for housing that would meet the needs of citizens of all income groups that was first articulated for Carrboro in the 1970s, the *Facilitated Small Area Plan for Carrboro’s Northern Study Area* includes the following:

#### GOAL 4. A VARIETY OF HOUSING TYPES AND PRICE LEVELS.

##### OBJECTIVES:

- 4.A. Explore options for establishing a legal basis for inclusionary zoning.
- 4.B. Provide strong incentives for new development to dedicate a proportion of new housing units to renters or prospective home buyers in specified income levels.
- 4.C. Explore community land trust options for the provision of affordable housing.

- 4.D. Promote village development patterns as described under Goal 1.
- 4.E. Increase density incentives not only to reduce land cost per dwelling but also to offset additional cost of designing, building, and landscaping new affordable housing so that it looks like a market-rate product rather than a government project. Such housing should be integrated physically into new subdivisions through design standards for building design and for neighborhood layout.

What is Inclusionary Zoning?

Inclusionary land use provisions typically require that new residential developments provide some homes with fixed sales prices or rents. Such prices and rents are established in relation to income levels for the locale, with the goal of providing housing that is affordable to citizens of low or moderate incomes. The need for such requirements is most apparent in areas of rapid growth where market prices are rising faster than income levels. As noted in “Guidelines for Inclusionary Housing in the Triangle Region,” an overview of the Triangle J Council of Governments Inclusionary Housing Task Force efforts in 2002-2003, inclusionary approaches can:

- 1) Significantly increase the supply of homes that are affordable to households earning between 50 and 80 percent of the median income.
- 2) Gradually disperse affordable housing units throughout all new developments.
- 3) Allow local governments to target scarce resources towards the housing needs of those who are unable to obtain any standard housing without assistance.

The Task Force efforts included an analysis of inclusionary housing programs in North Carolina and elsewhere and a guide to the viability of such approaches is to be published by the School of Government at UNC-Chapel Hill in the next month.

The topic has been of interest to housing advocates for some time and implementation is strongly encouraged by many as a means of ensuring a supply of housing for a range of income levels. Thirty years since this technique was first enacted by a local government, surveys note that inclusionary zoning programs are in use in 50 to 100 jurisdictions. Robert Burchell and Catherine Galley in their article “Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis? Inclusionary Zoning: Pros and Cons “ (National Housing Conference, 2000) offer the following pros and cons related to these programs:

Pros	Cons
Provision of affordable housing at little or not cost to local governments	Costs of providing affordable housing are shifted to other groups
Creation of income-integrated/mixed-income housing	Breaking up pockets of the poor
Reduction of sprawl	Increased development/induced growth

The authors conclude their assessment of inclusionary zoning by noting that it “is simple to understand and apply, and coupled with density bonuses and other incentives, allows higher-income communities to achieve a balanced economic composition.” In fact, inclusionary zoning

seems to work best when combined with developer incentives and when the price limits for the “included” units are closest to those appropriate to median income households. The authors also note that “[H]istorically, there has been no equivalent to this mechanism that enables a community to retain its character while accommodating affordable housing..” Yet, the practice and associated standards must be carefully developed, “with sensitivity to the locality paying for it and the population benefiting from it.”

As part of the recent update of its land use regulations, the Town of Chapel Hill considered this topic. A discussion paper “Inclusionary Zoning: Discussion Paper, Town of Chapel Hill Development Ordinance Update” (Freilich, Leitner, and Carlisle, 2001) was prepared for this purpose (*Attachment B*). This paper focuses on the legal issues associated with the implementation of inclusionary zoning. The authors conclude

- 1) Authority to establish inclusionary zoning requirements appears to be within the purview of established land use precedents
- 2) Exaction or fee-based programs should be grounded in a study that documents the need for affordable housing that is created by new development
- 3) A study to document the need could utilize a sensitivity analysis of housing price and household fluctuations in relation to new residential and non-residential development
- 4) Any inclusionary zoning requirement must be reasonable and based either on a jurisdiction-specific study or typical provisions enacted in other jurisdictions.
- 5) Inclusionary zoning programs should avoid restricting rental price increases until the North Carolina Supreme Court rules otherwise.

The paper does note that constitutional limitations related to takings are not a concern where units are included voluntarily. In particular, statutory provisions associated with site specific development plan approval, such as those that pertain to conditional use permitting, “can be used as a basis to negotiate housing conditions without implicating takings restrictions.” It appears that adoption of formal inclusionary zoning requirements, perhaps in conjunction with considerable expedition of the development review process (or other incentives), despite somewhat uncertain legal underpinnings, would appear to be the most fair, correct, and defensible approach for a municipality to consider. Other approaches that rely on policy statements and processes may not to be in keeping with the Town’s actions in all other areas or in keeping with the manner in which it seeks to interact with citizens.

#### Davidson Adequate Public Facilities Ordinance

The Town of Davidson enacted adequate public facilities requirements pertaining to the inclusion of affordable housing units on July 1, 2001 (*Attachment C*). In conjunction with this action, the Town has funded the Davidson Housing Coalition to qualify buyers, manage properties and develop affordable housing and has allocated other funds through its Capital Improvements Programming. Since 2001, approximately 150 affordable units have been approved as part of other residential developments, 50 of which were developed by the Town. The ordinance requires that 12.5 percent of new housing units be affordable, that the units be dispersed, not clustered. A payment-in-lieu option is provided for developments with less than eight units and bonus density is allowed if open space is dedicated for public use. The Town is refining the ordinance provisions

and amendments are in preparation to clarify the income limits for renters and buyers of the affordable units, to establish minimum size requirements, to specify how the properties will be managed and how long-term affordability will be insured. By establishing expected levels of service, Davidson's approach can be characterized as a use restriction associated with its police power to uphold the community's general welfare. An example of an inclusionary zoning ordinance from Highland Park, Illinois, based on a community standard but not utilizing the notion of adequate public facilities, is provided for comparison (*Attachment D*). "Zoning Affordability: The Challenges of Inclusionary Zoning" (*Zoning News*, 2003) is a helpful resource that summarizes the practical and legal issues associated with implementing such programs.

Either the adequate public facilities approach or the affordable housing inclusion requirement would appear to be consistent with the Town's goals as they are expressed in both *Carrboro Vision2020* and the *NSA Plan*. Data collection that would allow the Town to establish target percentages of inclusionary units either independently or indexed to those in other locale, would be appropriate in association with either approach and critical to developing a program that was practically beneficial and not overly burdensome.

### **FISCAL IMPACT**

None noted.

### **ADMINISTRATION'S RECOMMENDATION**

The Administration recommends that the Board of Aldermen adopt the attached resolution (*Attachment A*) that accepts this report.