

## Housing Element Summary 5-7-03

### Background

Enacted in original form in 1969, the housing element law requires that all cities and counties in California engage in detailed planning for their residential needs by including housing as an element of their comprehensive plans. The housing element process is intended to focus the attention of policymakers on identifying land sites for housing, and on policy actions that would make it easier or less expensive to provide additional housing units.(1)

Housing and Community Development (HCD), relying on Finance Department population projections, assigns a target number or goal for additional units to each region of the state.(2) This Regional Housing Needs Assessment(RHNA) is the target that local housing elements endeavor to satisfy through a certification process. The housing element is the only part of local general plans that is subject to substantial oversight by the state and, not surprisingly, the city and county housing element updates have become a battleground for state and local policymakers.

During the late 1980's and early 1990's, when local governments were completing housing element updates, grassroots opposition to growth and development burgeoned in many parts of California, particularly in coastal regions. In this atmosphere, writing plans that focused on how to accommodate more housing became an increasingly contentious process. A variety of interest groups began an effort to reform the housing element statute. Two major legislative hearings were held, with many voices criticizing the existing policy regime. Complaints included the opinions that housing elements are strictly mechanical and do not consider local planning factors such as local growth policies, habitat preservation, clean air, and traffic congestion. Reform discussions were geared at streamlining the planning process for housing elements and making the RHNA process more attuned to local government concerns and capacity for growth. In the end, six years of reform discussions led nowhere.(3)

State funding of housing element activity was postponed during the lean budget years of the 1990's and required housing element update activity was suspended for six fiscal years. When the process started up again in 1999, however, the old disagreements quickly resurfaced, even as housing problems in much of the state had become more acute. In fact, both the League of California Cities and the California State Association of Counties opposed funding the RHNA mandate at all unless the statute was reworked. Indeed, the Southern California Association of Governments voted to oppose state funding for the RHNA unless the local jurisdictions of the region no longer opposed it. Despite the protests the process continued. One result is that some local governments sued HCD, arguing that housing unit goals assigned to them by the State were unrealistically and inequitably large.(4)

An example of the tension between the State and local governments is evidenced by the following quote from the mayor of San Luis Obispo. "I want housing in the community, but I want it to reflect the amount that can be served....I'd have to throw out all our

growth-management policies [to meet the city's assigned housing goal]...I think the voters would throw out the City Council."(5)

In 1999 planning expert William Fulton observed "most people involved in the housing element process agree that the law is ineffective: it is overly bureaucratic and exacting, has too many loopholes, and even a good housing element is not a guarantee that affordable housing will actually be built in any given community."(6)

And as Paul Lewis, author of California's Housing Element Law: The Issue of Local Noncompliance concludes, "in the 33 years since the housing element statute was enacted, the search for an adequate supply of housing in California has become only more elusive."(7) He found that during the 1990's only two-thirds of local governments were in compliance with the law but more importantly noncompliant communities were just as likely to expand their housing stock as communities that complied with the housing element law.

#### The Wider Problem

Virtually all observers of the housing element law agree that "performance" in producing housing for low- and moderate- income households depends on the availability of subsidized housing funds. In particular, units for very-low-income families are almost impossible to build without very heavy subsidies. Yet federal and state governments cut back housing assistance after a peak in the 1970's. Few communities can support housing subsidies from their own general-fund budgets. Therefore, a lack of local government resources hinders genuine local efforts at compliance.

From 1986 to 2000, the number of permits issued for multifamily housing fell from 45 percent to 25 percent of total residential permits issued.(8) This corresponds to the elimination of key incentives for private investment in multifamily housing with the enactment of the Tax Reform Act of 1986. Rather than encouraging private investment, our tax laws have created no incentive to invest in multifamily housing by eliminating the 15 year depreciation schedule for low income rental housing. Investment equity for the development and purchase of rental housing has been limited in recent years to the upper-end market where higher rents continue to make apartment development profitable.

Federal subsidies have declined dramatically. State support has fluctuated wildly depending on the State's fiscal conditions and political priorities. The lack of predictability and consistency has compromised the ability of housing officials to adequately plan for and administer programs. In some instances costly efforts to gear up for new programs have been wasted when budget cuts resulted in their premature demise. Large funding increases in 2000-01 quickly fell victim to the 2001-02 fiscal crisis.(9) For instance, HCD's budget for major housing programs in 2000-01 was originally \$538 million. Actual expenditures were cut to \$280.8 million.(10)

The process of identifying available funding sources, submitting multiple applications, and meeting the different requirements is labor intensive and costly. One developer has said that state agency application can often be 300 pages long and described the process as a "colossal waste of time for us and for the State."(11)

Construction prices have been affected by the recent passage of SB 975, the Prevailing Wage Law. The law requires all projects that receive public subsidies to pay prevailing wages. Affordable housing advocates assert that the law may drive up construction costs by as much as 30 percent, potentially outweighing the benefit of government subsidies.(12)

" Local governments that comply with housing element law and embrace low-income housing development frequently do not have the budget resources to adequately provide police, fire protection and other services to those neighborhoods. Rather, jurisdictions have a fiscal incentive to approve high-end housing, which generates enough revenue to pay for the required services, or retail developments, which generate sales tax revenue.(13)

The construction of condominiums and town homes came to a virtual halt in the State during the 1990's and much of the blame for this has been attributed to the flood of construction-defect lawsuits.(14) With dramatic increases in general liability insurance, specialty contractors -roofers, concrete and trim contractors-were laying off workers as their insurance premiums skyrocketed as much as 1,000%. In 2002, there were only three or four insurers for tract construction in California - down from 20-30 a decade earlier - with only one willing to cover condominium construction.(15)

It is not uncommon for an affordable housing project to require 10 to 12 public and private funding sources. Yet, fragmented responsibility for the administration of state housing programs means multiple applications and multiple eligibility, monitoring and reporting criteria - all of which increase time and costs to project sponsors. Three of the largest non profit developers of affordable housing in California said that fragmentation among state agencies is a "huge" problem.(16) Despite this broad array of constraints, there continues to be attempts to strengthen housing element policies and pass legislation that will put more teeth into the law. SB 910 proposed penalties for local governments that fail to comply with the housing element law including withholding funds and instituting fines. These are accompanied by calls that the State must assert itself in the best interest of California and ensure that it compels local governments to build housing.

It remains to be seen if this strategy by the State will be successful. A public opinion poll conducted by the Public Policy Institute of California may provide the answer. Sixty-six percent of Californians say they prefer to live in a low-density neighborhood where they would have to drive their car to travel locally. Seventy-seven percent feel that the voters, not elected officials, should be making local land use decisions.(17)

The Local Problem

Santa Barbara County has struggled with implementing and administering its housing element since its inception 20 years ago. At the heart of our local problem is inadequate oversight of the program created by staff shortages and lack of resources. The widespread perception that even the most basic and fundamental aspects of the program were suffering from neglect led to a Santa Barbara County Grand Jury investigation of the program. Here is an excerpt from their report.

"The county presently does not monitor the status of houses that were originally marketed as affordable. There is no assurance that affordable houses are owner-occupied as prescribed, or that houses are not resold at market prices. No county agency knows the exact number of affordable houses." And "the county has no process to monitor the required owner occupancy. Without monitoring there is the possibility that the house could be providing market rate rental income to the owner. A private study commissioned by the county suggested that this could occur on a fairly large scale."(18)

Additionally, certification of the housing element qualifies Santa Barbara County to apply for Community Development Block Grants. As a result of staffing limitations and record keeping problems the County was disqualified from competing for these grant funds from 1987-1993.(19)

Santa Barbara County's original 1981 housing element stipulated that its effectiveness should be reviewed the following year. To my knowledge, no review took place. The 1993 housing element update reaffirmed the need for evaluation and included a specific policy that "the County shall annually prepare a report documenting residential development and the effectiveness of housing programs." The first, and last, annual report was issued in January 1995. Since there was no stipulation in the housing element as to whom the report should go it was presented to the Planning Commission. Preliminary efforts were made to prepare an evaluation of the program for 1994 but they were unsuccessful due to staff shortages experienced by the County.

Fundamental controls and mandatory evaluations that have been built into the program have been beyond the scope of County staff to complete. Some may feel that these deficiencies have been identified and addressed, but it is probably more likely to expect that the County will continue to significantly struggle with this program. The Planning Division's own FY 2002-2007 Five Year Work Program admits as much. The loss of revenue from the incorporation of the City of Goleta was expected to impact the County's ability to complete the Housing Element Update in a timely fashion. These estimates do not take into consideration the State's current economic downturn and the likely necessity that County government will experience very significant reductions in staffing.(20) (It is surprising to see the County budget \$150,000 in FY 2000/01 and \$100,000 in FY 2001/02 for costs to prepare interim amendments to the housing element but make virtually no commitment to complete the reports required by the housing element itself).

Doing its best to maximize the impact of the affordable homes that actually do get built, the County has occasionally made adjustments to its housing element. For instance, lotteries are used to determine those eligible to purchase affordable homes. However,

there is a post lottery consideration that factors into the final decision and that is occupancy range. The maximum occupancy limit to purchase a home is equal to twice the number of bedrooms in the home plus one person. In other words, a four bedroom house could have 9 people.(21) This seems to contradict one of the housing elements goals of reducing overcrowding. Severe overcrowding is defined as over 1.5 persons per room.(22)

Another example is the length of the time that an affordable home is required to remain affordable before qualifying to be sold at market rates. Many years ago homes sold as affordable would adjust to market rates in 10 years. Then it was raised to 30 years. Now there is something called the 60 year rollover. A 60 year rollover provision seems to offer little incentive to a buyer since at that point it is nearly indistinguishable from a rental. It does, though, require a significant administrative commitment to monitor compliance for six decades. The 2001 housing element interim update suggested that this would be a negligible impact on the County although their reasoning was unexplained.(23)

Although both of these examples of procedural change are no doubt motivated by good intentions, at best they add an administrative burden to a program that will be hard-pressed to absorb it and at worst they contradict the very goals of the housing element.

#### Conclusions

Obviously it is impossible to know what the future will bring but it seems safe to expect that the population of California will continue to grow, the need for additional housing will also grow and resistance to this growth will stiffen as the growth increasingly is seen as a threat to local land use decisions. It is likely that most local governments will continue to prepare housing elements with the full understanding that they will not have measurable impacts on creating housing in their communities but will protect them from lawsuits and potential penalties from the State. This reflects the widespread realization that the housing element statute is a failure.

However, I believe more can be accomplished and there are two specific issues I feel should be addressed by Santa Barbara County in its Housing Element update.

1. Use the document to communicate to the State the larger issues that are inhibiting our chances of local success in building housing. Tax law, class action lawsuits, uneven funding and bureaucratic red tape at the State level should be highlighted. It seems only reasonable to point out the lack of support and poorly thought out policies that we have no control of locally but dramatically impact our ability to address the problem. In conjunction with this I would like to know what efforts our elected officials are making to work with other local governments to ensure that housing element law will continue to respect the role of local governments to balance State growth projections with local land use decisions, traffic congestion, etc.

2. Use the document to establish a commitment to the residents of the County to provide comprehensive analysis of the true costs of building affordable housing in order that the best possible choices can be made.

For instance, many people have a sense that building affordable housing requires heavy subsidization and can have long term impacts on a community's financial health. As an example, a development was built in Summerland two years ago with 24 homes. The County required that four of them be sold as affordable. The following numbers are approximations but give an example of the economics of affordable housing.

Type

Cost

Annual Taxes

Over 30 years

Over 60 years

Market rate home

1,000,000

12,500

375,000

750,000

Affordable home

76,000

950

28,500

57,000

Loss of taxes on 4 affordable units

1,386,000

2,772,000

In this example the loss of tax revenues to the County will be \$346,500 per affordable home over 30 years or \$693,000 over 60 years. Can our community afford to provide housing like this?

The goal is not to stop building affordable housing but we should do our utmost to ensure that our short-term decisions don't create long-term problems. As we assess a development's environmental impact, let's also measure its fiscal impact. Fiscal responsibility is of great concern to residents of the County but the current housing element in no way allows these concerns to be addressed. I believe this is to the detriment of getting broader community support for affordable housing.

The State's long history of financial boom and bust results in the situation where governmental assistance for affordable housing occurs substantially only during the flush years of the State's economy, corresponding to when the affordability gap is at its most extreme. And yet, according to Santa Barbara County's Housing and Community Development's website, the County's strategy will be to focus "on resource development through federal and state programs" to "enable us to provide a range of housing opportunities for our residents." I am convinced this approach will be unsuccessful. Funds are becoming scarcer while competition for them intensifies and responsible administration of them requires staffing levels that the County has never been able to provide and certainly won't be able to do so given the current fiscal climate.

A stable and consistent approach to the problem is necessary and is more likely to be successful if governmental support is not relied upon. Many communities, including Santa Barbara County, are turning to housing trust funds as a possible solution. This offers a real possibility for establishing long-term resources to address the problem. I would like to see efforts made to better capitalize a trust fund so that it can have a measurable impact while at the same time explore partnerships with local lenders to keep administrative costs to a minimum. There is a tremendous amount of talented people in our community that can provide insight, guidance and wisdom in suggesting new ways to tackle this problem. I'd like to see the Board support such an effort.

## REFERENCES

1. Paul G. Lewis, California's Housing Element Law: The Issue of Local Noncompliance. 2003 page v.
2. Ibid, page 2
3. Ibid, pages 21-24.
4. Ibid, pages 27-28.
5. Ibid, page 41.
6. Ibid, page 27.

7. Ibid, page 90.
8. Little Hoover Commission, Rebuilding the Dream: Solving California's Affordable Housing Crisis, page xi.
9. Ibid, page xiv.
10. Ibid, page 15.
11. Ibid, page xvii.
12. Ibid, page 19
13. Ibid, page 9.
14. The San Diego Union-Tribune, Condo Bill goes to the Senate for Vote Today, August 31, 2002.
15. California Builders Magazine, November/December 2002.
16. Little Hoover Commission, Rebuilding the Dream: Solving California's Affordable Housing Crisis, page 53.
17. Public Policy Institute of California, Special Survey on Land Use, November 2002.
18. Santa Barbara Grand Jury, Affordable Housing Process in the County of Santa Barbara, 1997-98, page 7.
19. Santa Barbara County 1993 Housing Element, page 24.
20. Santa Barbara County Comprehensive Planning Division FY 2002-07, March 26, 2002, page 11.
21. Santa Barbara County Affordable Housing Program Public Information Package, June 2002, page 6-6.
22. California's Housing Markets 1990-1997, Department of Housing and Community Development, 1998, page 98.
23. Santa Barbara County Interim Housing Element Amendments, April 3, 2002, page 9.

Read the Housing Element Response