

# **Affordable Housing Solutions for Metropolitan Atlanta Area**

Growth Management and Law  
CP 6016 and LAW 7242

## Group 12

*Chaunda McClain*

*Anita Kathuria*

*Yewande Robinson-Freeman*

*Jeffrey Sauser*

*Steven Simms*

*Lyubov Zuyeva*

**April 23, 2007**

## TABLE OF CONTENTS

---

---

1. Intro: Defining the Issue. <i>Lyubov Zuyeva</i>	2
2. The Scope of Affordable Housing Problem in Metropolitan Atlanta Area. <i>Steven Simms</i>	2
3. Regulatory Barriers to Affordable Housing. <i>Yewande Freeman</i>	5
4. Effectiveness of Statewide Framework Compared With Local Solutions. <i>Jeffrey Sauser</i>	9
5. Inclusionary Zoning. <i>Lyubov Zuyeva</i>	12
6. Linkage Fees. <i>Lyubov Zuyeva</i>	17
7. Tax Credits. <i>Anita Kathuria</i>	18
8. Legal Basis for Affordable Housing Tools in Georgia <i>Chaunda McClain</i>	21
- State Regulation of Local Comprehensive Planning	22
- Incentive Zoning, Mandatory Set Aside and Housing Linkage Programs	23
- Passing Constitutional Review	25
9. Conclusions. <i>Lyubov Zuyeva</i>	26
10. Bibliography	27
11. Appendix. Charts and Figures.	A

The focus of this paper is to analyze the solutions available to the Georgia state government and local governments in order to solve the issue of affordable housing shortage in the Metropolitan Atlanta Area. The issue is multi-fold and complex, in large part due to the fact that the Metropolitan Atlanta is a changing and growing entity made up of a multitude of county governments and municipalities. The Metropolitan Statistical Area now encompasses 28 counties, up from 20 counties in 1999 (See Figure 1 in Appendix). While Atlanta Regional Commission provides great research and guidance in the area, it does not have the authority to implement a region-wide affordable housing policy.

First of all, we will provide some information on the shortage of affordable housing in Atlanta region. Second, we will address the regulatory barriers that prevent the free market from providing more affordable housing. However, while recognizing that lifting the existing barriers is important, we find that additional steps will be necessary to foster affordable housing development. Therefore, we seek to find solutions through changes in state and local legislature, and through tax incentives. We will also discuss the legal aspect of enacting state and local ordinances that would support creation of more affordable housing in the area .

**The Scope of Affordable Housing Problem in Metropolitan Atlanta Area** **Steven Simms**

The affordable housing issue is complex and highly contested. When thinking about affordable housing in their communities, home builders' associations and real estate agents fear decreased property values, while neighborhood associations fear increased crime in their communities. Lower income earners fear having their rents raised and being forced to move outside of the service area of public transportation.

Metro Atlanta's rapid growth over the last thirty years has made people move farther away from the city center to find affordable housing. From Figure 1 (see Appendix) we can see the rapid expansion of urban boundaries over the past 15 years. Figure 2 illustrates that several major centers of multi-family housing are now located outside of the I-285 perimeter. Saving on housing costs comes at the price of driving longer miles to commute, and puts additional pressures on households without an access to a reliable vehicle. Finding a solution to providing more affordable housing options close to the city center is not only a matter of social justice, but also of quality of life for all residents.

As we can see from Figures 3 and 4, even Atlanta city employees are heavily affected by the lack of affordable housing in Atlanta. Three-fourths of the city employees do not live within the city limits, and probably not all of them by choice. Atlanta Neighborhood Development Partnership estimates that there is currently a need for 190,000 affordable units, which could likely grow to 300,000 with Metro Atlanta's surging population. (Sapota 2004) ANDPI also notes that 63% of all the jobs in the Metro area pay less than \$40,000 per year. Many of the new jobs are expected to pay this much or less, with most of the growth coming from service type jobs.(Sapota 2004) Many of the critical jobs in society, such as police officers, teachers and sanitation workers, fall into the income range that may need affordable housing options. As you can see from Figure 5, out of those making between \$20 and 35 thousand dollars per year, 42% end up spending more than 33% of their income on rent.

Metro Atlanta's problem is made worse by a limited public transportation system that prevents lower income earners from moving out to suburbs, and cheaper housing, without incurring much greater commuting time and expense. There is a strong need for

interrelation and linkage between the location of new job centers and new affordable housing being created.

Inclusionary zoning is one of the best tools because in creating affordable housing units it also distributes their location more evenly, in proximity to new centers of economic and job growth. The general intent of inclusionary zoning is to “promote the health, safety and general welfare” of citizens, by creating affordable housing options for low to moderate income residents.(City of Tallahassee 2006.) The benefits of inclusionary zoning are spreading affordable housing throughout an area to avoid concentrated poverty in public housing projects, promote homeownership for lower income citizens, provide affordable housing with less direct public subsidy, and allow workers the opportunity to have housing choices near their employment. If the only benefits were to lower income residents transfer payments, welfare or rent subsidies may be enough, but there are many benefits to the larger community from mixed income housing. Mixed income housing, the intended outcome of mandatory inclusionary zoning regulations, aims to create vibrant communities that can support a wide variety of individuals. Communities with a mix of apartments, town homes and single family houses in a wide range of prices are less likely to lose popularity and fall into “slum” status. These communities are also likely to draw development and investment over the long term.

Many cities have implemented voluntary inclusionary zoning ordinances with incentives but have found that few units are ever developed because of developer’s lack of experience in creating affordable housing. (CA Affordable Housing Law Project and Western Center on Law & Poverty 2002) Mandating that local jurisdiction’s plan for

their “fair share” of affordable housing will be helpful by giving local jurisdictions legal standing to create mandatory inclusionary zoning regulations. These regulations must tread a fine line between being too restrictive and too permissive. It is important that they give builders and developers benefits to “compensate” them for the cost associated with building affordable housing units.

Properly arranged incentives and penalties can create an environment favorable to affordable housing development, while not driving developers to build outside of a participating jurisdiction:

“While research on this question shows that housing production has not declined in jurisdictions with inclusionary zoning, no studies have undertaken a comprehensive analysis of changes in developer profit once inclusionary zoning is adopted.” (CA Affordable Housing Law Project and Western Center on Law & Poverty, 2002)

The incentives, which include density bonuses, reduction in set back requirements, expedited approval processing, and etc., are critical to the success and legality of inclusionary zoning.

With a diverse approach to providing affordable housing, the Metro Atlanta area should be able to provide adequate housing options for almost all of its residents. Achieving this goal will require using a variety of strategies, a rethinking of current regulations, and dedication from public officials.

### **Barriers to Affordable Housing**

***Yewande Robinson-Freeman***

While there is a definite need for affordable housing in the greater Atlanta area, there are also barriers to it, locally, as well as statewide and nationwide. These barriers unfortunately reduce the availability of affordable housing to those households that need it. Nationally, both voluntary and mandatory inclusionary strategies are being established to make affordable housing both accessible and affordable. Some of the strategies being used focus on the removal of physical, regulatory, market, and funding barriers.

To address the physical barriers of land scarcity due to the non-availability of public land, vacant, abandoned and tax delinquent properties, structured processes that increase site availability are being implemented. For example, Greenbrier Heights in Woodinville, Washington uses publicly owned land for the construction of affordable homes. In addition, Richmond, Virginia is reusing land that had been vacant, abandoned, or delinquent in payment of taxes, for their Neighborhoods in Bloom initiative. And, in Fairfax, Virginia, rezoning has substantially increased area densities. These strategies addressing land availability make efficient use of physical space.

Traditionally used to segregate incompatible land uses, as a current application, zoning often promotes exclusionary practices that are characterized by large lot sizes, minimum floor area requirements, and the prohibition of higher densities for single and multi-family housing. But things are changing, and exclusionary regulations that did not support housing type diversity, expedite permit and review processes, address the negative effects of the impact fee on less expensive homes, or the inflexibility of existing building codes in the rehab of buildings, are now being addressed. Policies that recognize that the population requiring affordable housing are not only moderate to low income households but also those that are considered very low income and extremely low income, are crucial to the provision of affordable housing to the majority of the population. Thus, housing options that allow households to financially access these units must be made available. Density bonuses and tax exemptions that provide incentives for this type of construction are increasingly utilized by developers. These new regulatory policies are also starting to support diversity in housing types such as manufactured homes and accessory dwellings. Additionally, strategies for streamlining permitting and

review polices are also being implemented as an incentive to developers. Places like Alachua County, Florida, are setting impact fees based on the square footage rather than the type of dwelling, while in other Florida localities, fees are being waived, with the caveat that those funds must be made up from other sources. In Arizona unit use of infrastructure is being implemented as a more equitable method of levying impact fees, as compared to the state of Georgia where a homeowner of a 649 sq. ft. home pays the same as the owner of a 4,000 sq. ft. home. Finally, states and localities are getting smarter about the negative impacts of stringent building codes in the rehab of buildings for affordable housing units. In particular, New Jersey has adopted a rehab code that facilitates the renovation of older structures. The positive impacts have been an increase in the number of affordable units on the market, a significant reduction in the cost to have buildings renovated and an increase in the number of developers who are willing to take on renovation projects. Bramhall Avenue Apartments in Jersey City is just one example. However Maryland and North Carolina are also following suit with the adoption of state codes for building rehab.

Non-conventional marketing strategies are also being used. Cross-subsidies, dedicated housing trust funds, and tax increment financing are just a few of the strategies being used to take advantage of strong housing markets. In Bethesda, Maryland, cross subsidies from market rate units are being used as a strategy to support mixed income housing by reducing the rent on affordable units. In Arizona, housing trust funds are financing the actual construction of affordable housing. While in the State of Maine, entire districts are being marked for receipt of tax increment financing to fund affordable homes.



Of course, while the aforementioned inclusionary policies are necessary, ultimately capital is what is needed to make affordable housing of all types available. Thus, strategies that include the expanded use of Low-Income Housing Tax Credits (LIHTC), increased support of housing bond issues, and employer participation in programs that support affordable housing for their workers have been proposed and in many cases implemented. With the ability of bankers and developers, to access more of the 4% LIHTC for rental housing by having the state match funds, the implementation of private activity bond caps, and the ability to handle the logistics of the transaction, LIHTC will be utilized more often. Additionally, the alteration of this incentive to also address homeownership will increase its attractiveness to developers. To increase affordable housing bond support, in Phoenix, almost \$35 million in bonds were allocated for the development of rental homes that were affordable; and in California, voters said yes to a bond in excess of \$2 billion for affordable homes. Finally, utilizing employer support can be a useful tool to promote affordable housing initiatives. As an example, in Maryland, Employer Assisted Housing (EAH) Programs have been used in public-private partnerships to get households to move back into the city. This program allows the city to provide a monetary incentive to households. The employer then matches that amount.

Bridging the gap between the need for affordable housing and access to it can be addressed with a number of strategies. That these inclusionary strategies are effective and can be addressed at both local and state level as either mandatory or voluntary policies have been proven in projects nation-wide. Thus, while there are many strategies to deal with exclusionary practices that prohibit access, best practices to achieve inclusionary affordable housing goals are dependent upon local or regional goals.

**Statewide Framework or a Local Solution to Affordable Housing?** *Jeff Sauser*

The solution to Atlanta's affordable housing shortage requires legislative revision at both the state and local levels. On one hand, localities need the freedom to adapt their codes and zoning ordinances to fit their particular local needs. On the other hand, the state needs to take the lead by introducing statewide legislation that would mandate and direct such local activity. Precedent exists for both levels of action: Fulton County recently passed a promising inclusionary zoning ordinance at the local level; New Jersey and Massachusetts have implemented broader law promoting affordable housing at the state level as a directive for local jurisdictions to work from. Georgia needs to synthesize these examples by introducing state-level legislation that provides a baseline framework that localities can build upon to generate the affordable housing the state sorely needs, both in its cities and its countryside.

To begin our search for a legislative solution to Georgia's affordable housing shortage in the face of barriers such as sprawling, uncoordinated multi-jurisdictional metropolitan sprawl and unchecked exclusionary zoning, we first need to determine which level of government is in the best position to address the problem. On the surface, action at the local level seems most appropriate; every jurisdiction is different and experiencing a unique situation. Whether rural and underdeveloped or urban and overpriced, each jurisdiction's situation needs its own custom solution.

Last year, Fulton County drafted Georgia's first such custom solution in the Genesis Housing Initiative, a voluntary, incentive-based inclusionary zoning ordinance. Hailed as a "national model for affordable housing", Genesis appears aggressive enough to catalyze a substantial affordable housing stock increase within Fulton (GPA 2006).

This should represent one locality's effective solution as tailored its unique internal conditions. Unfortunately, what works in Fulton probably will not work in Butts. How can we get all 10 of ARC Atlanta counties to agree on one course of action, much less all 28 of MSA counties? There is no silver bullet to solve affordable housing drought at the local level. Additionally, most localities are not even required to address the problem with any tenacity in the first place. Beyond helping tailor local solutions to local conditions, a statewide affordable housing solution needs to mandate that localities acknowledge and address the problem in the first place.

New Jersey's "Fair Housing Act" of 1985 demonstrates how the state can take the lead, prohibiting exclusionary zoning techniques and distributing affordable housing needs appropriately among local governments. First, the state determines statewide affordable housing need. Informed by this assessment, a state-level Council assigns each local jurisdiction an affordable housing construction requirement considered that locality's appropriate "fair share" of the greater, extra-jurisdictional state need:

In [the Council's] discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing ("Fair Housing Act", section 7.3.e)

The act considers regional need from the state perspective and mandates that localities fill this need in proportions deemed appropriate by a directing Council. The question of how to deliver this fair share of affordable housing stock is left up to the localities themselves.

Massachusetts stipulates some basic state-level baseline legislation for local action but encourages localities to take over from there, tailoring local inclusionary zoning ordinances to meet unique local needs and overcome local obstacles (Herr 2002).

Taking New Jersey's "Fair Housing Act" to the next level, this approach provides localities a legislative framework to start from but ultimately calls for each local jurisdiction to customize its individual solution to meet its individual needs.

Georgia should draw from New Jersey and Massachusetts's examples. The state should take responsibility for assessing affordable housing need and assigning localities the job of meeting their fair share of this need. The state would then provide a legislative framework to direct local compliance on a foundational level. From there, the localities would be required to draft locally relevant inclusionary zoning ordinances custom tailored to both address local needs and deliver their state-mandated affordable housing "fair share."

As it stands, Georgia's bureaucracy already possesses some capacity to get this ball rolling. Georgia's Annual Consolidated State plan includes details involving the distribution of federal housing grants to local jurisdictions. This activity includes the capacity to assess the affordable housing needs of each locality. New Georgia affordable housing law would form a directing body (like New Jersey's Council) that could draw on this capacity to determine each locality's "fair share" of the state's general affordable housing need. Further legislative detail would outline a framework localities would be required to adopt as the basis for their jurisdictional affordable housing code. What localities erect upon this framework would be up to the localities themselves; as in Massachusetts, they would be expected to consider their unique local situation and draft final legislation that most appropriately meets local conditions.

In the interest of keeping up to date, the state ordinance would also include a schedule for statewide needs reassessment and fair share re-determination to keep the

program in tune with the state's ever-shifting demographic tides. As jurisdictions satisfy their "fair share" requirements, future share determinations will inevitably lower. On the other hand, a well-timed schedule will help changing jurisdictions gradually adapt their housing stock to provide for increasing low-income population proportions (such as in Gwinnett County, where population growth has slowed and median income fallen).

To confront the affordable housing shortage in Georgia, new state legislation could grant a state-level Council the means to assess affordable housing needs statewide (a capacity that already exists to some extent at the state level). This Council would then assign each of the state's local jurisdictions a "fair share" of this need to produce. The legislation would include guidelines to provide a framework upon which localities would draft local inclusionary zoning ordinances to fulfill their "fair share" requirements given their unique internal conditions.

### **Inclusionary Zoning**

*Lyubov Zuyeva*

Within a state-wide framework of "fair share" affordable housing requirements for each locality, a municipality could use a variety of tools to generate the desired number of affordable units. Inclusionary zoning is one of the best tools available to localities to foster the creation of affordable housing, and it has been gaining national momentum. It has started out in the 70's in the high-cost housing markets on the coasts, such as Washington, D.C. area, New York City, and southern California coast. Within the past decade, inclusionary zoning has caught on in the rest of the country. The Midwest is signing on: in 2003, Highland Park, an affluent suburb of Chicago, Illinois, has adopted an inclusionary housing ordinance that applies to developments of five units or more; and in 2004 the city of Madison, Wisconsin has adopted a mandatory inclusionary zoning ordinance. (Brunick 2004)

Unlike government-subsidized housing projects, inclusionary zoning provides for a wider and more equitable distribution of affordable housing, thus favoring economic diversity rather than creating “pockets of poverty.” Inclusionary zoning brings together segments of the population that traditional zoning segregates, and reconnects the job-seekers typically confined to inner city with the job opportunities in the suburbs. In addition to favoring heterogeneous communities, inclusionary zoning usually creates affordable housing without direct costs to the local government. (Burchell and Galley 2000)

Inclusionary zoning can take either voluntary or mandated form. While voluntary inclusionary housing ordinances are usually less controversial from the political standpoint, mandatory inclusionary zoning ordinances are likely to show more positive results. According to numerous studies, mandatory programs produce higher numbers of low-income and very low-income housing, both in absolute numbers and in percentage of total housing units built. Out of inclusionary housing programs in California, the 15 most productive ones are mandated. In Cambridge, Massachusetts, a voluntary inclusionary zoning program failed to produce any significant results over 10 years, so a mandated inclusionary zoning program was introduced instead in 1999. (Brunick, Goldberg et al. 2003)

To provide affordable housing for low and very low-income categories (those making below 50% of Median Income and 80% of Median Income), voluntary inclusionary housing programs would have to rely on a very high amount of subsidies from federal, state and local governments. (Brunick 2004)

Mandatory inclusionary zoning ordinances provide more predictability both for the community and the builders. The developers benefit from a level playing field, and they know what requirements and cost offsets to expect from the beginning. Under a voluntary inclusionary zoning ordinance, developers sometimes don't know until they enter the negotiation process what will be required of them. The desire for set standards has encouraged the builders in Irvine, California, to seek the adoption of a mandatory inclusionary zoning program, after a voluntary inclusionary zoning program has been in effect for 20 years. (Brunick 2004)

Under a mandatory inclusionary zoning ordinance, a developer usually is required to provide a mandated set-aside as a condition of development permission. A mandatory set-aside means the specific percentage of units required to be set aside for sale or rent to persons of low or moderate income. Set-asides around the country range from 5 percent to 35 percent, with 10 to 15 percent being the most commonly used. Generally, a developer would be expected to build the units on site, which would provide for better integration of affordable units within the general community. Most inclusionary zoning ordinances, however, allow other options, such as building the units off-site, making an in-lieu cash payment, or even donating some land to the local government for affordable housing construction.

Time span is an important factor to consider when providing affordable housing units. Most inclusionary zoning ordinances specify deed restrictions that limit the future resale or rental of affordable units to people within the same income group for a specific number of years (20-99 years.)

Montgomery County, Maryland, has the oldest functioning inclusionary zoning ordinance in the U.S. A suburb of Washington, D.C., the county became more urbanized in the 60's and 70's. The inclusionary zoning mandated by the Moderately Priced Dwelling Unit Law, passed in 1974, applies to developments over 50 units, and requires that between 12.5 and 15 percent of the total number of units be set aside as affordable. A density bonus of 20 to 22 percent is provided to the builder, and a price control is set for 20 years. Over 13,000 affordable units have been generated since the enactment of the law. (PolicyLink)

Boston, Massachusetts, is another locality that has successfully implemented inclusionary zoning. With population of 600,000 and metropolitan area population of about 4.4 million, Boston matches Atlanta in size. Housing-wise, Boston metro area ranks as fifth least affordable in the nation. The city has a shortage of buildable lots for "Greenfield" development. The inclusionary zoning implemented in February 2000 requires a mandatory set-aside of 13 percent for affordable housing. The ordinance applies to any project that includes over 10 housing units and requires zoning relief, as well as any residential project financed by any agency of the City of Boston or the Boston Redevelopment Authority (BRA), or any project with over 10 units to be developed on a property owned by the city or the BRA. Given the tight residential zoning, virtually any multi-family development would fall under the ordinance. Of the 13 percent affordable housing units required, at least half must be units affordable to those making less than 80 percent of Area Median Income (AMI.) Only half of the affordable units can be dedicated to households making 80-120 percent of AMI. The affordability restriction is written into the deed for 99 years. The builder has an option to build units off-site or to make in-lieu



cash payments. Both the cash option and the build-off-site option are set up to require a higher expenditure of funds under most circumstances. Between 2000 and February 2005, 339 affordable housing units were created as a result of the ordinance.

(PolicyLink; Katz 2005)

If inclusionary zoning works so well, and has been around since the 70's, why do we not see it implemented in more localities around the U.S.? Of course, some areas might claim that they don't have a pressing affordable housing issue. Atlanta metro area, while cheaper than some metropolitan areas, struggles with providing adequate affordable housing that would be in proximity to the job locations. So what is preventing Metropolitan Atlanta area counties and the city from passing a mandatory inclusionary zoning ordinance?

The issue generally raised in discussing inclusionary zoning is whether it is appropriate to shift the burden of providing affordable housing, which is a wide societal issue, to private developers. There is always the ghost of "takings" issue lurking in the background. However, it is hard to come up with another solution that would match the wide distribution of affordable units throughout the community that inclusionary zoning can ensure. And it is feasible to create enough cost-offsets through density bonuses and expedited permitting process so that the builders could actually be better off as a result. A well-designed mandatory inclusionary zoning ordinance should provide builders with enough benefits and certain flexibility to choose options other than building units on-site, especially in cases where a builder could prove that building the units on-site would impose an especially heavy economic burden.

To summarize the arguments for and against inclusionary zoning, it is a very effective tool in creating a high number of widely dispersed affordable housing units. Inclusionary zoning has been used in the U.S. over the course of thirty plus years, and we have a number of successful examples of its implementation. Mandatory inclusionary zoning is more effective than voluntary inclusionary zoning, but raises some legal questions and would be easiest to implement in the greater Atlanta area if there was state legislature requiring that each locality produce its fair share of affordable housing. Whether voluntary or mandatory, inclusionary zoning works best when it provides the builders with a number of cost offsets and a variety of ways to meet the affordable units requirement.

**Housing Linkage Fees** *(Lyubov Zuyeva)*

Linkage fees assessed on commercial developments and directed towards affordable housing are another useful tool available to local governments in seeking to optimize the affordable housing options. In Boston, Massachusetts, the city collects a fee (\$7.18) per square foot of commercial property built towards affordable housing construction fund. (Blaesser, Bobrowski et al. 2002) Generally, a planning agency can make a strong case that commercial developments generate a need for affordable housing. Employees from the chief executive officer to the receptionist and the cleaning staff will need housing. The linkage fee, in essence, becomes another development impact fee. However, in the state of Georgia, the Development Impact Fee Act strictly regulates the purposes for which an impact fee can be assessed, and affordable housing is not one of them. Therefore, a locally adopted housing linkage fee program in Metropolitan Atlanta area, as anywhere in Georgia, might spark some controversy and

even a few challenges in court without an amendment to the DIFA by the state legislature.

**Tax Incentives for Affordable Housing**

***Anita Kathuria***

While mandatory inclusionary zoning and linkage fees might raise some questions in the state of Georgia as to their legality, using tax credits is fairly non-controversial and can generate positive results. As the distribution process of tax incentives is done at the state level, municipalities have a smaller say in deciding where those incentives should be directed.

Tax credits are government incentives authorized under the Federal Internal Revenue Code and under certain state tax codes. They are issued to aid in the implementation of public policy. Congress, in an effort to encourage the private sector to provide a public benefit, allows participating taxpayer-investor tax credits, which reduce tax liability in exchanges for their participation in housing properties.

In the 1986 Tax Act, the federal government created an incentive program for developers to build privately owned apartments in locations where market rate rents have exceeded the level many individuals could afford. Under this program the United States Treasury Department allocates tax credits to each state based on that state's population. These credits are then awarded to real estate developers who develop and maintain apartments as affordable units. Developers, in turn, may resell these credits to investors to provide equity capital for property development. Investors obtain a dollar-for-dollar reduction in their federal tax liability. Thus, one dollar of tax credit reduces taxpayers' liability by an equivalent dollar, saving the taxpayer that dollar.

The Internal Revenue Service (IRS) and State Housing Finance Agencies jointly administer the low income housing tax credit. Tax credits are allocated annually by the IRS to each state in an amount equal to \$1.25 per state resident.

The cost to the government in lost tax revenue is far less than its cost if it were to develop these properties. By providing the tax credits, the government is able to cost effectively support its policy to build much needed housing in markets where the gap between supply and demand continues to widen. Investors of tax credits enjoy the benefits of the predictability of the ten-year stream of credits and benefit from tax reduction.

As previously mentioned, states have also developed state housing tax credits. Fortunately, the state of Georgia is one of those states. Developers and investors (or owners) compete for the state low income housing tax credits. The Georgia Department of Community Affairs administers the competitive process and assures compliance throughout the 15-year mandatory owner-participation period. In return for an award of a state tax credit, the property owner must offer a majority of the units at rent levels significantly below market rates for properties of comparable quality. Rents are capped so as to be approximately 30% of the income of tenants.

The Georgia Department of Community Affairs annually administers the awarding of low income housing tax credits. Upon receipt of an award of tax credits, the developer will sell them to outside investors and use the net proceeds to reduce the net effective cost of building the apartment property. Because of the rent restrictions, the property's fair market value is less than the cost of construction and the funds raised by selling the tax credits reduce the "net effective cost" to equal the lower fair market value.

This lower “net effective cost” enables the developer to rent the units at below market rental rates over the entire 15-year compliance period.

Low income housing tax credit properties are built throughout the state of Georgia in inner cities, large towns, and rural communities. However, the earn tax credits, the developer must be sited in a community where the commercial market is not meeting the housing needs of working families or where the local wage scale cannot support market-rate units. The passage of the state low income housing tax credits in 2000 led to a specific 30% set-aside by the Georgia Department of Community Affairs for “rural” projects which would not be feasible without the state credit.

The low income housing tax credit program requires cooperation from many parties. Developers, investors, the Georgia Department of Community Affairs staff, and local officials must agree on the need for such residential properties and how to maintain the quality and financial viability of the development over the long term. Local assessors can play a key role in helping maintain the viability of the developments by using the “income” approach to determine property valuation. This income approach yields a fair market value that automatically reflects the deed restrictions that the low income housing tax credit program places on the property.

There is a need to provide high quality housing for those non-welfare, working families whose wages are so low that they could not otherwise afford decent quality housing. These “working poor” are in many cases the backbone of our economy (teachers, firefighters, public employees, etc.), providing the goods and services that sustain our daily lives. Providing quality housing for this segment of our workforce improves the quality of life for them and their children and also helps Georgia compete

for the new jobs needed to keep our state economy growing in today's highly competitive environment.

The low income housing tax credit program is the largest federal initiative to stimulate the production of affordable rental housing nationwide. The program was recently amended to give states \$5 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to low income households. As a result, the Georgia Department of Community Affairs awards about \$15 million each year for ten years in state tax credits for this purpose.

This program provides a huge incentive for developers and investors in the construction of affordable housing. We may observe more development if the allocated tax credit amount is increased. However, there would be a need for more cooperation and coordination among the various parties to ensure that the developed housing is in locations where there is a need. Additionally, it would require coordination with other state agencies to make sure that the affordable housing program is not adversely affecting other state programs, such as transportation.

**Legal Basis for Affordable Housing Tools in Georgia** *Chaunda McClain*

In *Smith v. City of Atlanta* the Georgia Supreme Court struck down the first zoning legislation in Georgia as unconstitutional. In 1921, the General Assembly granted zoning power to the City of Atlanta. 161 Ga. 769 (1926). Atlanta acting under this delegation of authority passed an ordinance dividing the city into zones of restricted use. In *Smith*, the plaintiff wanted to build a retail store in a residential district. The court held that the plaintiff's right to open a retail store in a residential district was protected by the due process clauses of the state and federal constitutions.

In concluding that the police power of the state did not extend to allow zoning, the court relied on the federal district court opinion in *Amber Realty Co. v. Euclid*, which held that the challenged zoning ordinance violated the Due Process Clause of the Federal Constitution. 297 F. 307 (1924). After the decision in *Smith*, the *Euclid* case reached the United States Supreme Court, which held zoning to be a valid exercise of the police power under the Federal Constitution. The Georgia Supreme Court allowed the City of Atlanta to reargue the *Smith* case, but refused to overrule its prior decision. In response to *Smith*, a 1927 constitutional amendment allowing the General Assembly to empower specific cities to zone was approved by the Georgia electorate.

The next major case in the development of Georgia zoning law was the 1936 case of *Commissioners of Glynn County v. Cate*. 187 S.E. 636 (Ga. 1936). The Georgia Supreme Court found that the 1927 constitutional amendment, which referred only to certain cities, did not allow the General Assembly to provide zoning power to Glynn County. The Georgia Supreme Court in *Commissioner of Glynn County* held that the power to zone derives only from express constitutional grant.

In 1945, a new constitution was ratified in Georgia. This constitution gave the General Assembly the authority to delegate the power to zone to all counties and municipalities. The Georgia Supreme Court continued to hold that an express constitutional grant was required in order to zone. However, the legal basis for zoning in Georgia was again changed by a 1966 constitutional amendment providing for home rule for counties. This amendment gave the governing authority of each county self-executing power to plan and zone. A 1972 constitutional amendment granted the same authority to

municipalities. The need for zoning enabling legislation from the General Assembly was thus removed.

The Georgia Supreme Court interpreted the 1966 amendment to reduce the powers of the General Assembly in the arena of zoning and planning. In *Johnston v. Hicks*, the court held that the amendment removed the power of the General Assembly to enact local law concerning planning and zoning. In a 1974 unofficial opinion, the Attorney General, relying on *Johnston*, stated that the General Assembly could not by local or general law limit, restrict, or interfere with local zoning powers.

In 1976, Georgia adopted a new constitution which defined state and local roles in land use regulation. The new constitution retained self-executing zoning authorization for counties and municipalities and further stated: "The General Assembly shall not, in any manner, regulate, restrict or limit the power and authority of any county, municipality, or any combination thereof, to plan and zone . . . ." GA. CONST. of 1976, art. IX, section 4, paragraph 2.

In 1983, Georgia again ratified a new constitution. This current constitution contains only one provision which addresses zoning: "The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power." GA. CONST. art. IX, section 2, paragraph 4.

The current constitution allows both the General Assembly and local governments to play a role in zoning and planning. This constitutional framework will allow for the implementation of inclusionary zoning techniques in Georgia.



## **State Regulation of Local Comprehensive Planning**

The General Assembly has the authority to adopt a comprehensive planning statute requiring counties and municipalities to assess their housing needs and plan to provide for those needs. The restriction on the land use regulation powers of the General Assembly announced in *Johnston v. Hicks* (*supra*) should not prevent the General Assembly from enacting general comprehensive planning legislation. The Johnston court held that the General Assembly may not interfere with the zoning powers of the local governments by local legislation; therefore, the case does not bar the enactment of general laws affecting zoning.

The language of the current Georgia Constitution also supports the power of the General Assembly to regulate land use through general legislation. The 1976 constitution explicitly provided that the General Assembly did not have the power to interfere with the planning or zoning of any county or municipality. However, the 1983 constitution does not contain this language. Therefore, the likely intent of the current constitution is to permit the General Assembly to adopt general laws affecting planning and zoning. The fact that the current constitutional grant of zoning power to counties and municipalities explicitly grants the General Assembly authority to regulate the procedures of such zoning also supports the ability of the General Assembly to adopt legislation which requires local governments to plan for affordable housing.

## **Incentive Zoning, Mandatory Set Aside and Housing Linkage Programs**

Incentive zoning, mandatory set-aside ordinances, and housing linkage programs are implemented through a direct exercise of zoning legislation. The General Assembly is not able to utilize these inclusionary techniques under the current constitutional scheme.

The line of Georgia Supreme Court cases holding that the power to zone must come from an express constitutional grant has never been overruled, and the current constitution does not provide authority for the General Assembly to exercise the power to zone.

The constitution does provide a broad grant of zoning power to counties and municipalities such that the governing authority of each county and municipality may create geographic zones and regulate the use, development, and improvement of the zoned land. *See Brown v. City of Brunswick*, 83 S.E.2d 12, 14 (Ga. 1954). Thus, each county and municipality in Georgia has the ability to use its zoning power to create incentives for developers of affordable housing or to adopt mandatory set aside or housing linkage programs which require developers to provide for affordable housing.

### **Passing Constitutional Review**

Despite the broad ability of the General Assembly under the Georgia Constitution to allow for inclusionary zoning, when a municipality is considering inclusionary zoning, it must carefully craft a program that passes a constitutionality review. A strong constitutional precedent will not only permit local government to adopt progressive inclusionary measures, but will also entice communities to adopt strict mandatory inclusionary programs. Developers will often challenge inclusionary zoning ordinances characterized as a traditional land use ordinance as a denial of due process, or a taking of private property.

The legislature is provided broad deference in relation to due process concerns; the law is up-held so long as it is to "achieve a legitimate public purpose ... and ... the ordinance [is] a reasonable means to accomplish this purpose." In practice, any due process concern is likely satisfied because the creation of affordable housing has been

approved by the courts as a legitimate state interest. More important, developers argue that the ordinance is a transfer of property from the developer to lower income individuals and, therefore, is a taking. To avoid this challenge, the legislation must advance a legitimate state interest and the developer must not be denied substantially all economically viable use of the property. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Bd. of Appeals v. Hous. Appeals Comm.*, 363 Mass. 339 (1973).

### **Conclusions**

**Lyubov Zuyeva**

It's clear that to solve the issue of affordable housing shortage in the greater Atlanta area, no single governing body and no single regulation would be sufficient. By lifting the zoning restrictions on high-density residential development in areas where the jobs are clustered, we could take full advantage of the free market forces. However, as the market is skewed towards building more housing with a higher profit margin, other measures are necessary. Inclusionary zoning, tax incentives and commercial development fees could all be effectively used at the local level to generate affordable housing units. However, a wider state-wide legislative framework that would require each locality to create their "fair share" of affordable housing would greatly encourage and simplify the local efforts. In addition, state-level legislature would reduce the fear of "takings" cases due to an inclusionary zoning ordinance or a commercial linkage fee. The process of creating sufficient affordable housing for Metropolitan Atlanta area will require a lot of concerted effort from various jurisdictions, as well as the regional planning agencies and possibly the state government. In addition, cooperation between the public and the private sector is necessary, as well as greater openness and dialogue on the issue.

## BIBLIOGRAPHY

- Advances. American Planning Association. <http://www.planning.org/resources-k/>  
Retrieved March 27, 2007.
- Blaesser, B., M. Bobrowski, et al. (2002). Inclusionary Zoning: Lessons Learned in Massachusetts. NHC Affordable Housing Policy Review. 2.
- Brunick, N. (2004) "The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs over Voluntary Programs." Zoning Practice. September 2004
- Brunick, N., L. Goldberg, et al. (2003) "Voluntary or Mandatory Inclusionary Zoning? Production, Predictability and Enforcement." Business and Professional People for the Public Interest
- Burchell, R. W. and K. C. Galley (2000) "Inclusionary Zoning: Pros and Cons." Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis? Accessed from [www.ginsler.com/documents/NHC-2.html](http://www.ginsler.com/documents/NHC-2.html)
- California Affordable Housing Law Project and Western Center on Law & Poverty, "Inclusionary Zoning: Legal Issues". December 2002. p.21.
- Considerations for Density Bonus Ordinances. Volume 2, Issue 4. Regulatory Barriers Clearing House. Content update October 6, 2004. Retrieved April 1, 2007. <http://www.huduser.org/rbc/newsletter/vol2iss4more.html>
- Degrove, John M. (2005). Planning Policy and Politics: Smart Growth and the States. Massachusetts: Lincoln Institute of Land Policy.
- FFY 2005-FFY 2010 Consolidated Plan of the State of Georgia*. Prepared by Georgia Department of Community Affairs. [http://www.dca.state.ga.us/housing/Homeownership/publications/Consolidated\\_Plan\\_FFY2005-FFY2010.pdf](http://www.dca.state.ga.us/housing/Homeownership/publications/Consolidated_Plan_FFY2005-FFY2010.pdf)
- "Fulton County's Inclusionary Zoning Ordinance Considered National Model for Affordable Housing". Georgia Planning Association, May 4, 2006. [http://www.georgiaplanning.org/news.php?news\\_id=108&start=0&category\\_id=3&parent\\_id=0&arcyear=&arcmonth=](http://www.georgiaplanning.org/news.php?news_id=108&start=0&category_id=3&parent_id=0&arcyear=&arcmonth=)

- Herr, Philip B. "Zoning for Affordability in Massachusetts: An Overview". *NHC Affordable Housing Policy Review*. Volume 2, Issue 1, January 2002.  
[http://www.mhp.net/uploads/resources/inclusionary\\_zoning\\_lessons\\_learned.pdf](http://www.mhp.net/uploads/resources/inclusionary_zoning_lessons_learned.pdf)
- Homes for Working Families: Increasing the Availability of Affordable Homes (2006).  
Center for Housing Policy. (2006)  
[http://www.nhc.org/pdf/pub\\_hwf\\_solutions\\_01\\_07.pdf](http://www.nhc.org/pdf/pub_hwf_solutions_01_07.pdf)
- Georgia Department of Commercial Affairs.  
<http://www.dca.state.ga.us/housing/HousingDevelopment/>
- American Planning Association.  
<http://www.planning.org/conferencecoverage/2006/monday/impactfees.htm>
- "Inclusionary Zoning: Legal Issues". California Affordable Housing Law Project and Western Center on Law & Poverty, December, 2002. Fox and Rose. *Expanding Housing Opportunity in Washington, D.C.* pp. 15-16.; Brown, *Expanding Affordable Housing*, p.13.
- Juergensmeyer, Julian C. and Thomas E. Roberts (2003). Land Use Planning and Development Regulation Law. Massachusetts: Lincoln Institute of Land Policy.
- Katz, A. (2005). "City Limits' Guide to Inclusionary Zoning: Decoding Rezoning." Retrieved March 29, 2007, from  
[http://www.citylimits.org/images\\_pdfs/pdfs/CityLimitsZoningGuide.pdf](http://www.citylimits.org/images_pdfs/pdfs/CityLimitsZoningGuide.pdf).
- "Low Income Housing Credit." Internal Revenue Code. Title 26, Section 42.
- Morgan, Jennifer M. Comment: Zoning For All: Using Inclusionary Zoning Techniques To Promote Affordable Housing. 44 Emory L.J. 359 (1995)
- New Jersey "Fair Housing Act" L. 1985, c. 222, s. 1, eff. July 2, 1985, operative July 2, 1985. [http://people.cornell.edu/pages/rjp17/NJ\\_fairhousingact.htm](http://people.cornell.edu/pages/rjp17/NJ_fairhousingact.htm)
- PolicyLink. "Inclusionary Zoning." Equitable Development Toolkit: Building Regional Equity Retrieved 3/17/2007, from  
<http://www.policylink.org/EDTK/IZ/Success.html>.
- Saporta, Maria. "Atlanta: Affordable Housing Need Seen at Last" Atlanta Journal-Constitution, 11/21/04. <http://www.npach.org/21nov04.htm>.
- Stromberg, Meghan (2006 Conference Session). Impact Fees and Housing Affordability
- Tallahassee-Leon County Planning Department, "Inclusionary Housing Ordinance: Ordinance No. 04-O-90AA". City of Tallahassee, 2006.  
<http://talgov.com/planning.2/22/2007>.

