



AFFORDABLE HOUSING LEGAL CONSIDERATIONS

Housing, Stabilization, & Rehabilitation

OVERVIEW OF HOUSING INITIATIVES

Orange County

- ▶ Affordable Housing BOCC Priority
- ▶ Long Term Affordable Housing Policy
- ▶ Orange County Consolidated Plan
- ▶ Coordinated Entry Housing Helpline

Wake County

- ▶ 2017 Affordable Housing Plan
- ▶ <http://www.wakegov.com/housing/Documents/Wake%20County%20Affordable%20Housing%20Plan.pdf>
- ▶ 2019 Wake County Land Disposition Policy

NEW LEGISLATION: Improvement Opportunity Zones

Three distinct tax benefits:

- ▶ Deferral of capital gain taxes
- ▶ Reduction in the amount of the capital gains tax.
- ▶ Exemption from capital gains tax on capital gains generated by the Qualified Opportunity Fund.

Tax Cuts and Jobs Act of 2017, Pub. L. 115-97

26 CFR Part 1, or via “Investing in Qualified Opportunity Funds,” Internal Revenue Service, <https://www.irs.gov/pub/irsdrop/td-9889.pdf>

“Opportunity Zones Frequently Asked Questions,”

<https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions>

Opportunity Zones Disadvantages

- ▶ Opportunity Zones disadvantage high-impact projects in four crucial ways:
 - ▶ Capital gains exemptions is structured to provide the largest financial benefit to the projects that provide the highest returns. Luxury housing in appreciating neighborhood therefore may receive larger public support than affordable housing projects.
 - ▶ Because the incentive is limited to capital gains, the program does little to democratize community investment or ownership. Thus creating a narrow pool of investors to which projects sponsors can appeal. This overlooks investments from low income community stakeholders, Community Development Credit Unions.
 - ▶ The 10 year period is not long enough for long term community ownership of assets such as affordable housing, health care centers, or schools causing equitable development project sponsors to scramble to put together refinancing plans that may not work in future interest rates or real estate market environments.
 - ▶ The financing Opportunity Zones are designed to promote are poorly suited for most equitable development uses.

The Urban Institute, *“An Early Assessment of Opportunity Zones for Equitable Development Projects: Nine Observations on the Use of the Incentives to Date,”* June 2020.

Opportunity Zone Strategies for Equitable Development

- ▶ Combining Multiple subsidies
- ▶ Partnering with Anchor Institutions
- ▶ Developing Two Round Financial Structure
- ▶ Polling funds with a philanthropic resource
- ▶ Encourage State legislation that create added benefits to QOF funds that meet specific impact investing standards. Require funds to track and report OZ investment activity.
- ▶ Encourage State to create a position for an Opportunity Zone coordinator as well as a central database of fund managers and investors.
- ▶ OZ are considered an economic initiative, local government can offer tax incentives for equitable development projects.

SELLING COUNTY OWNED REAL PROPERTY: Disposition Constraints Under NC Law

▶ NC Constitution

- ▶ Article I: Emoluments Clause-- No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.
- ▶ Article XI: “Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state.”

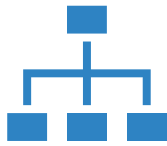
▶ NC Statutes

- ▶ G.S. 153A-176: Any procedure authorized under Article 12 of Chapter 160A
- ▶ G.S. 160A-266: Limitations & procedure for private sales
- ▶ Direct authority for Affordable Housing:
 - ▶ G.S. 153A-378 (3): Conveyance by private sale to a public or private entity that provides affordable housing. County must include covenants and conditions to assure will be developed by the entity.
 - ▶ G.S. 153A-378 (4): Conveyance by private sale to persons of low or moderate income in accordance with G.S. 160A-267 and any terms and conditions of BOC.
 - ▶ G.S. 160A-278: Lease of Land for Housing
 - ▶ G.S. 153A-376: Community development programs for persons of low and moderate income.
 - ▶ G.S. 153A-376(b): May exercise same power as those directly granted to housing authorities; see G.S. 157

SELLING COUNTY OWNED REAL PROPERTY: Disposition Constraints, Cont.

- ▶ Conveyance at Less than FMV
 - ▶ G.S. 160A-279: Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; provided no property acquired by the exercise of eminent domain may be conveyed under this section; provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply.
- ▶ Establish Public Purpose
 - ▶ Cite Statutory Authority & Need
 - ▶ Number of units set aside (if mult-family)
 - ▶ Eligibility criteria- income based (HUD)
 - ▶ Eligibility Process
 - ▶ Timing of construction
 - ▶ Period of affordability (typically 30-99 years)
 - ▶ Legal Covenants and Conditions (Restrictive Covenants, Right of First Refusal, Reverter Clause)

COUNTY FUNDING REQUESTS: Legal Considerations



Legal Authority



Board of
Commissioner
Approval



HUD requirements



Legal Documents

PROGRAMMATIC EXAMPLES: SF Preservation & Stabilization Programs



Manufactured Home



Eviction Diversion



Home Ownership Preservation-
Foreclosure Prevention



Rehabilitation Loan Programs

FACTORY BUILT HOUSING

- ▶ Manufactured housing is the largest source of unsubsidized affordable housing in the United States
- ▶ Manufactured homes are built to the federal building code (HUD Code) and when sited, may be placed on a permanent foundation that meets conventional lending requirements.
- ▶ The average sale price of a new manufactured home in 2018 was \$78,500
- ▶ The Manufactured Housing Institute estimates 22 million people live in manufactured housing with a median annual household income of \$30,000

Factory Built Housing Benefits/Barriers

BENEFITS

- ▶ Cost Savings and Affordability
- ▶ Energy Efficiency
- ▶ Disaster Resiliency

BARRIERS

- ▶ Zoning
- ▶ Permitting and Code
- ▶ Negative Perceptions
- ▶ Design
- ▶ Delivery Challenges
- ▶ Financing

Factory Built Housing

Addressing Challenges/Overcoming Barriers

Land-Lease Communities

- ▶ Insufficient infrastructure maintenance *
- ▶ Unaffordable rent increases or sale of property

Zoning

- ▶ Eliminate regulatory barriers

Financing

- ▶ Financing of manufactured homes with property or chattel loans

Preserve property affordability

- ▶ Resident-owned communities
- ▶ Community Land Trust

Zoning

- ▶ Expand zoning areas to allow manufactured housing and accessory dwelling units
- ▶ Allow mixture of housing

Financing

- ▶ Local gov't can provide down payment assistance and 2nd mortgages

Factory Built Homes Orange County

Manufactured Home Fund - \$2 million

- ▶ Fund to relocate tenants who are displaced when land leased communities are sold. Tenants can use funds to move their home if it can be moved, assist with purchasing a new home or renting an apartment or manufactured home in a community near the one the previously lived.
- ▶ Funds to assist owners of leased communities in upgrading the infrastructure in the community. Restrictive covenants are placed on the property that include the County's long term affordability restrictions and a right of first refusal.
- ▶ Funds can be used to purchase a leased community by a non-profit should one come up for sale.

Eviction Diversion

10,500 Eviction Pending

Orange County Eviction Diversion Program

1. Countywide Coordinated Entry through Housing Helpline
2. All financial resources of each jurisdiction is coordinated through the Housing Helpline
 - *Orange County has provided \$530,000 for rental assistance thus far (including \$250,000 Coronavirus Relief Funds) and the Towns of Chapel Hill, Carrboro and Hillsborough have also contributed
3. On Staff bi-lingual legal counsel to represent tenants in eviction proceedings, legal Housing Helpline, negotiate payment plans *(LANC)
4. Pro Bono Legal Counsel to assist with negotiating payments and evictions
5. Foreclosure Prevention - \$100,000 negotiates loan modification

Homeowner Preservation Foreclosure Prevention

- ▶ Refinance
 - ▶ Full Reinstatement*
 - ▶ Partial Reinstatement*
 - ▶ Repayment Plan
 - ▶ Forbearance
 - ▶ Loan Modification
 - ▶ Short Sale
 - ▶ Deed in Lieu
- ▶ Housing Stabilization funds can be used to pay delinquent mortgage payments and fees so that homeowners can have their mortgages reinstated.
 - ▶ * Because we now have an attorney we can reduce costs by instead getting clients loan modification instead of full or partial reinstatement, which mortgagors are willing to do when pushed.

Housing Rehabilitation Programs

- ▶ Urgent Repair Program
 - ▶ Single Family Rehabilitation
 - ▶ Home Program
 - ▶ CDBG
 - ▶ Housing Stabilization Funds
- ▶ Non-profit and Other Rehabilitation Programs
 - ▶ Habitat for Humanity
 - ▶ Rebuilding Together
 - ▶ Department of Aging - ramps
 - ▶ Social Services - Emergency Assistance
 - ▶ Community Assistance Agency - CAA - Weatherization Program
 - ▶ Human Rights and Relations - Reasonable Modifications

LAND USE TOOLS



Accessory Dwelling Units



Identification Techniques- Tracking Affordability

THE END!!

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