

Removing Regulatory Barriers to Affordable Housing in Development Standards, Density Bonuses, and Processing of Permits in Hillsborough County, Florida

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Abstract

A recent project to evaluate comprehensive plans and development regulations and to review procedures to remove regulatory barriers to affordable housing in Hillsborough County, Florida, examined the use of 15 strategies. This article focuses on 3 strategies that were part of the larger study and that relate to removing barriers in connection with (1) subdivision/development standards; (2) density bonuses; and (3) the processing of permits, plans, and reviews. Recommendations relating to development standards address excessive requirements for lot size, lot width, yard setbacks, offstreet parking, and width of sidewalks and planting strips. Recommendations relating to density bonuses address an existing system crippled by rules that are confusing, contradictory, and of questionable economic value. Recommendations relating to processing of permits address unclear responsibilities and standards, insufficient advance planning and zoning, lack of waivers and uniformity, and an excessive number of hearings.

Introduction

The unincorporated area of Hillsborough County, Florida, which surrounds the city of Tampa, has an estimated population of 785,000 and an area of 923 square miles. In 2007, the county government undertook an initiative to identify and eliminate regulatory barriers to affordable housing and retained a consultant team to draft recommendations.¹ At the direction of the county's Affordable Housing Office (now called the Affordable Housing Department), the authors and other members of the consultant team evaluated more than a thousand pages of official documents, including the county's comprehensive plan, land development code, building code, and development review procedures; interviewed approximately 75 individuals involved in the development or regulation of housing; prepared a series of 15 discussion papers on a broad array of barrier-removal strategies that were circulated to stakeholders; and participated in approximately 15 meetings, including regular meetings with the county's Affordable Housing Advisory Board.² The entire process took approximately 16 months to complete. The final report, including more than 100 recommendations, was approved by the county's Affordable Housing Advisory Board, accepted by the county's governing body in December 2008, and submitted by the county to the state of Florida in fulfillment of the requirements of Florida Statute 420.9076(4). Amendments to the county comprehensive plan and the land development code have not yet occurred as of this writing (The Planning Authority et al., 2008).

This article reports on three strategies that were part of that study to remove regulatory barriers in connection with (1) subdivision/development standards; (2) density bonuses; and (3) the processing of permits, plans, and reviews. Development standards, such as minimum lot size, can drive up the cost of housing by requiring an excessive amount of land or additional construction expense. Density bonuses are incentive tools that are failing in their goal of promoting affordable housing in Hillsborough County. Processing of permits is a source of applicant complaints, despite the best efforts of the staff who issue them.

The authors believe that reporting their experience in Hillsborough County can be useful to others who may be seeking to understand similar issues elsewhere, by helping to identify where problems may be found and what solutions might be applied. We understand and caution that specific recommendations may not apply everywhere but may apply where the underlying circumstances are similar.

Literature Review

An extensive body of descriptive and empirical literature evaluates the impact of administrative processes, land use regulations, and building codes on housing costs and production, in addition to technical manuals that detail how to conduct assessments of local plans, policies, and regulation. Many of these reports, including self-assessments carried out by local governments, are available at

¹ The county's initiative was guided by the University Partnership for Community and Economic Development (2006).

² The topics of the 15 discussion papers are listed in appendix A. Other authors of the discussion papers were Daniel Mandelker, Arianne Aughey, David Hattis, and Daniel Lauber.

the U.S. Department of Housing and Urban Development's (HUD's) Regulatory Barriers Clearinghouse on the HUD USER website (<http://www.huduser.org/rbc/>). In addition, several national commissions concerned with affordable housing have examined this topic (Advisory Commission on Intergovernmental Relations, 1966; Advisory Commission on Regulatory Barriers to Affordable Housing, 1991; Millennial Housing Commission, 2002; National Commission on Urban Problems, 1968).

Two comprehensive literature reviews are available. The first, by Quigley and Rosenthal (2005), surveyed the empirical literature on the effects of regulation on housing prices, finding that the literature varied widely in the quality of research method and strength of result. They observed that when local regulators effectively withdraw land from buildable supplies, the land factor and the finished product "become pricier." The literature failed, however, to establish a strong, direct, causal effect, "if only because variations in both observed regulation and methodological precision frustrate sweeping generalizations." A substantial number of land use control studies show little or no effect on price, "implying that sometimes, local regulation is symbolic, ineffectual, or only weakly enforced" (Quigley and Rosenthal, 2005: 69).

The second literature review, by Knaap et al. (2007), was completed to support a study on the qualitative and quantitative impacts of zoning as a barrier to multifamily housing development. Although the review covered some of the same territory as the Quigley and Rosenthal (2005) article, it was concerned more with the underlying motivations and policies that affected the production of multifamily housing. Knaap et al. (2007) divided the literature into five parts: (1) when zoning is exclusionary, (2) the building blocks of exclusionary zoning ordinances, (3) the motivations or reasons for exclusionary zoning, (4) housing density in the exclusionary zoning context, and (5) the remedies for exclusionary zoning. The review describes the nature of the literature but makes no conclusions about it.

Listokin and Hattis (2005) completed a detailed evaluation of a variety of empirical studies on the impacts of building codes and housing codes, concluding that "the more rigorous quantitative analyses indicate that codes increase housing costs by 5 percent or less" (Listokin and Hattis, 2005: 21) and had much less impact on housing costs compared with zoning and subdivision regulations.

May (2005) examined the literature surrounding regulatory processes for zoning and subdivision reviews. In particular, he evaluated the potential offered by electronic permitting and "one-stop permits," delegation of permit reviews to third parties and third-party certification, and administrative reorganization of regulatory agencies, including "permit czars" who can cut through regulatory red tape. He found that the effectiveness of all three of these techniques had not been studied adequately or systematically. Administrative simplification or coordination, May observed, "is necessary for reducing delays," but does not "guarantee that delays or other problems will be eliminated." May reasoned, "[R]earranging the organizational boxes does not necessarily reduce turf considerations and other bureaucratic hurdles. A transformation of organizational cultures and routines is necessary to overcome those constraints" (May, 2005: 217).

Vranicar, Sanders, and Mosena (1980) completed what is perhaps the earliest guidance document on regulatory simplification for HUD's Office of Policy Development and Research. This guidebook focused on how to streamline the local permit review process at three points: the preapplication stage, the staff review stage, and the lay review stage. It recommended how to revamp zoning

and subdivision regulation to lessen problems with discretionary reviews. Finally, it explored three alternatives to launching regulatory reform: hiring a consultant, establishing a task force or independent commission, and using inhouse staff.

The NAHB Research Center (1987), a subsidiary of the National Association of Home Builders, addressed similar issues in a guide for local government and developers based on a series of demonstration projects. The guide recommended, among other things, more extensive use of planned unit development, revisions in local zoning ordinances to increase residential density, increases in density in exchange for more site amenities, more flexibility for mixed-use development, allowance for density transfers, and a series of techniques to evaluate and reengineer the local approval process.

White (1992) described a set of proactive and reactive planning strategies for affordable housing, including inclusionary zoning, linkage fees, the promotion of infill, the preservation of existing affordable housing, and administrative and procedural reforms. Among the administrative and procedural reforms White identified were procedural manuals, master forms, interdepartmental reviews, ombudsmen/permit expeditors, and fast-track procedures for small or noncontroversial projects. In addition, White listed joint reviews, the delegation of responsibilities to a planning commission or staff, the imposition of deadlines, and “deemed approved” provision (where applications are automatically approved after a certain period of time) to reduce delays in project approval. Finally, he advocated consolidating inspections by cross-training inspectors or arranging for inspections from different departments to occur simultaneously.

The Council of State Community Development Agencies and the National Conference of States on Building Codes and Standards (1994) prepared a self-assessment guide for states to break down regulatory barriers. In addition to the topics covered in the reports previously described, this report examined building codes and standards and infrastructure. In particular, this report advocated the use of a single statewide building code for single-family, multifamily, and modular housing and facilitation of manufactured housing.

Morris (2000) evaluated zoning incentives for affordable housing in four states (California, Florida, New Jersey, and Oregon) as part of a broader report on incentive zoning for a variety of public purposes. She concluded the following:

What is clear from looking at the most extensive state programs is that provision of density bonuses and regulatory waivers of fees or development standards—while two of the most common tools used to implement mandatory housing plans—are not sufficient incentives in and of themselves to get developers to build affordable housing. What does work well are carefully crafted packages of financial and regulatory techniques that remove barriers to affordable housing but also meet the overall community planning objectives. (Morris, 2000: 44)

A study of subdivision requirements as a regulatory barrier that the NAHB Research Center (2007) conducted for HUD attempted to quantify, on a nationwide basis, the costs of excessive site development regulations on housing. The study calculated the following benchmarks for the most important development standards: lot size, floor space requirements, lot width, roadway width, sidewalk requirements, and curb and gutter drainage. The study found that the average

cost of excessive regulation resulting from subdivision standards for one dwelling unit was about 5 percent of the average cost of a new home. For the land development standards studied, the average regulatory barrier cost for one dwelling unit was \$11,910. Lot size, lot width, and floor area accounted for the largest percentage of total costs. Excessive lot size regulations accounted for the largest percentage of costs (65 percent), followed by floor area (17 percent), and lot width requirements (9 percent). The report noted that because the cost of land is a major component of the cost of housing, “it should not be surprising that regulations mandating excessive lot sizes result in such a finding” (NAHB Research Center, 2007: 2).

Subdivision/Development Standards

Subdivision/development standards in a conventional zoning ordinance typically regulate the size and dimensions of residential lots and the size and placement of dwellings, accessory structures, pavements, and open space on the lot. When these standards are excessive, lots are larger and more costly than is needed. Excessive standards can also add to construction costs, as when extra parking spaces and wider sidewalks are required.

A 2007 study sponsored by HUD (NAHB Research Center, 2007) found that development standards required for the subdivision of land can have an effect on the cost of housing. The most significant effects were found to arise from minimum lot size, minimum lot width, and minimum floor area. Other standards that were found to have some effect on cost of housing included yard setbacks, off-street parking, open space, and the width of street rights-of-way, pavements, planting strips, and sidewalks.

To help communities adopt more cost-effective standards, the HUD study convened a panel of experts to establish two sets of benchmarks: one appropriate to “more dense” development and the other to “less dense” development. *More dense* was defined as a median lot size of 7,000 square feet (which would be similar to development in the RSC-6 single-family district in Hillsborough County). *Less dense* was defined as a median lot size of 22,000 square feet (which would be similar to the RSC-2 district).

For the study to eliminate regulatory barriers to affordable housing in Hillsborough County, the authors used the benchmarks in the HUD study as a reference point for amending the county’s existing standards. First, the standards in Hillsborough County’s RSC-6 district were adjusted to be relatively close to standards in the more dense benchmark, and RSC-2 was adjusted to be close to the less dense benchmark. Then, all other zoning districts were adjusted to be roughly proportional to the new standards for RSC-6 and RSC-2. The result was a set of tables similar to those in appendixes B through E that accompany this article, showing suggested standards next to the current standard. The authors then circulated these suggested standards to county staff, the affordable housing advisory board, and other stakeholders in the housing field and development industry in Hillsborough County, seeking comment.

The result was a recommended set of minimum standards that offer substantial reductions from the existing standards in Hillsborough County. Across a range of 12 residential zoning districts, including single-family, two-family, and multiple family districts, minimum standards can be reduced by an average of—

- 37 percent in lot size.³
- 45 percent in lot width.⁴
- 48 percent in front yard setback.
- 37 percent in side yard setback.
- 42 percent in rear yard setback.⁵

Reductions in offstreet parking can exceed 20 percent when applied to dwellings having fewer than four bedrooms.⁶ (The standard for four-bedroom dwellings would be unchanged.) The minimum width of planting strips can be reduced by about 16 percent, and minimum width of sidewalks can be reduced by about 20 percent.⁷

Density Bonuses

An affordable housing density bonus program is described in detail in Hillsborough County's comprehensive plan and land development code. Barriers to the use of density bonuses for affordable housing in Hillsborough County's official documents, however, are numerous and varied. Among the barriers are the following.

Rezoning requirements. The comprehensive plan requires an official request to rezone to a site plan-controlled zoning district, which generally increases the time and cost of the development and creates a risk that opposition to affordable housing or density will surface to defeat the proposal.

Limited application outside of large-scale planned developments. The comprehensive plan defines density bonuses to apply only to large-scale planned developments.

Limited application in newly developing areas. The comprehensive plan appears to discourage use of density bonuses in conjunction with U.S. Department of Agriculture self-help housing.

Difficult site criteria. The comprehensive plan requires certain density bonuses to be used only where the surrounding area contains at least two of the following conditions: (1) substandard housing; (2) resident households of very low, low, or moderate income; (3) initiatives to create farmworker housing; or (4) proximity to an economic development that creates employment opportunities for project residents. The first two of these conditions can needlessly rule out integration of affordable housing into standard, middle-income neighborhoods.

³ Appendix B breaks out the minimum lot size in each zoning district.

⁴ Appendix C breaks out the lot width minimum in each zoning district.

⁵ Appendix D breaks out the minimum yard setbacks in each zoning district.

⁶ Appendix E breaks out the offstreet parking requirements by dwelling size.

⁷ Minimum width of planting strips ranges from 6 feet to 5 feet, and minimum sidewalk width ranges from 5 feet to 4 feet.

Disproportionately smaller bonus in smaller developments. In the floor-area ratio (FAR) density bonus, a mixed-use development is permitted a .005 increase in the maximum FAR for every housing unit reserved for very low-income households, up to a maximum FAR increase of .10. This formula works to offer less commercial square feet per affordable dwelling to smaller mixed-use projects. For example, a project on 1 million square feet of land would be eligible for an additional 5,000 square feet of commercial floor area for each affordable dwelling unit (that is, $1,000,000 \times .005$). But a project on 200,000 square feet of land would be eligible for only an additional 1,000 square feet of commercial floor area for each affordable dwelling unit (that is, $200,000 \times .005$). This example raises a larger question of whether the incentives have been tested economically.

Arbitrary minimum thresholds. Affordable housing density bonuses can be used only when at least 20 percent of the total dwelling units are reserved for low- or very low-income households. This threshold eliminates incentives to opportunities to add smaller percentages in market-rate developments.

Lack of proportionality in the bonus formula. As written, the bonus formula provides a density bump-up when 20 percent of the units are affordable, but no further density bump-up if more than 20 percent of the units are affordable. A proportional formula would provide some additional density for each affordable unit up to whatever proportion of affordable units is considered maximal.

Inconsistent guarantees of affordability. Hillsborough County's comprehensive plan requires that rental units, but not owner-occupied units, created through a density bonus be reserved for eligible households for a period of at least 12 years, "or for some other time period as determined by the County." In an apparent inconsistency, the county's land development code requires a 15-year assurance for affordable housing, making no distinction between rental and owner-occupied units.

Inconsistent or competing housing bonuses. In addition to offering three affordable housing density bonuses, the comprehensive plan offers density bonuses for traditional neighborhood development (TND) and infill development. The TND density bonus offers incentives that are as large as or larger than those available for affordable housing but does not explicitly require affordable housing.

No bonus formula in the land development code. The land development code does not include the formula for calculating an affordable housing density bonus, although the formula is in the comprehensive plan and the land development code references the comprehensive plan. This arrangement is not user friendly and could be remedied easily.

Inconsistent policies regarding neighborhood appropriateness. The land development code and the comprehensive plan take differing positions on administrative review of the appropriateness of affordable housing to the neighborhood's character. The comprehensive plan appears to require that density increases be compatible with surrounding development. The land development code appears to rule out administrative review of the appropriateness of the affordable housing

unit to the neighborhood's character. These policies can be confusing and are potentially a source of contention.

Comprehensive Plan Revision

A user-friendly density bonus can benefit enormously from a comprehensive plan that has already addressed the economic value of the bonus, sorted out the options, and articulated policies that can succeed in the marketplace. The following goals, objectives, and policies are suggested in revising the comprehensive plan and incorporate the recommendations previously listed.

Density Bonus Goal 1

An effective system of affordable housing density bonuses. Effectiveness requires density bonuses to be financially feasible in a wide variety of circumstances, barrier free, easy to use, monitored against benchmarks, and adjusted as necessary.

Objective 1.1. Make affordable housing density bonuses economically feasible in a wide variety of circumstances.

Policy 1.1.1. As part of the planning process, conduct an economic analysis to determine the level of incentive necessary to achieve the county's affordable housing goals.

Policy 1.1.2. Offer density bonuses in which the number of affordable housing units created is proportional to the economic value of the increased density.

Policy 1.1.3. In developments in which location presents severe practical difficulties to affordable housing (such as a lack of jobs or public transit nearby), offer density bonuses in exchange for "in lieu of" contributions to an affordable housing trust fund or for prior construction of affordable housing at offsite locations.

Objective 1.2. Make affordable housing density bonuses barrier free in concept and execution.

Policy 1.2.1. Coordinate the comprehensive plan with the land development code so that the comprehensive plan provides effective strategies and policies and the land development code implements those policies with clarity, completeness, and a minimum of legal barriers.⁸

⁸ Examples of the division of labor between comprehensive plan and land development code are as follows:

The comprehensive plan can establish policies for computing a density bonus. The land development code can include a specific density bonus formula.

The comprehensive plan can include policies addressing guarantees of affordability, such as whether the guarantee will apply for a number of years or in perpetuity. The land development code implements those policies by including specific terms and procedures for implementation and monitoring.

The comprehensive plan can discuss the strategic issues relating to the appropriateness of affordable housing to neighborhood character and set out a general policy. The land development code can implement that policy with specific language governing if, when, and how the county's development procedures may consider the appropriateness of affordable housing to neighborhood character.

Policy 1.2.2. In the land development code, communicate density bonuses using simple, direct formulas.⁹

Policy 1.2.3. Do not limit density bonuses (and affordable housing) to disadvantaged areas or low-income housing developments. Encourage affordable housing in a wide range of neighborhoods, including market-rate developments.

Policy 1.2.4. Do not require a minimum number of affordable housing units where a minimum would result in none at all. Building 10 or 15 percent of the housing as affordable housing in a development is better than building none.

Policy 1.2.5. Do not limit density bonuses to large-scale planned developments. Offer density bonuses in any size development. Density bonuses can be more attractive to smaller developments if they include reduced lot sizes and setbacks.

Policy 1.2.6. Allow an affordable housing unit as an addition to a single house for situations in which the total square footage of both units will be within the size allowable for a single-family house and one unit will be owner occupied.

Objective 1.3. Ensure that affordable housing density bonuses are monitored against benchmarks and adjusted as necessary to achieve affordable housing goals.

Policy 1.3.1. As part of the comprehensive planning process, develop quantitative goals for affordable housing production through density bonuses. Establish yearly benchmarks to measure future effectiveness of density bonuses.

Policy 1.3.2. Develop a set of uniform affordability documents.¹⁰ The objective of affordability controls is to conserve affordable housing created through subsidies or density bonuses and, when appropriate, to partially recapture value from units that may leave the affordable inventory for replacement housing. Uniform documents may include, but are not limited to, deed restrictions and covenants and, when created, need to be audited on a regular basis for continued compliance. Uniformity can reduce the cost of drafting documents individually for each development and can make auditing more efficient.

Policy 1.3.3. When helpful in achieving affordable housing goals, use development agreements to coordinate density bonuses with other incentives.¹¹

Policy 1.3.4. Allow an affordable housing bonus in addition to any other density bonuses available to TNDs.

Policy 1.3.5. Monitor affordable housing production and the use of density bonuses, and periodically recommend adjustments to maintain the effectiveness of density bonuses. It is critical that the adopted monitoring and adjustment schedule is followed.

⁹ An example (and only an example) would be “one market-rate unit for each moderate-income dwelling unit; two market-rate units for each low-income unit; and three market-rate units for each very low-income unit.”

¹⁰ An example would be New Jersey’s Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., which is available at <http://www.state.nj.us/dca/affiliates/coah/regulations/uhac/uhac.pdf>.

¹¹ Development agreements are used in Tallahassee’s density bonus program for similar purposes.

Land Development Code Revision

Ordinarily, a land development code's role is to regulate development; however, voluntary density bonuses *encourage* rather than mandate affordable housing and therefore must be written in a way that is easier to understand; must communicate a clear, complete process that facilitates implementation by being as barrier free as possible; and must minimize administrative delays or costs, whether real or perceived.

Implementation of density bonus ordinances would benefit from a policy of advance consultation and pretesting. Pretesting should involve a sample of those who are likely to refer to the density bonus ordinance for information and guidance during planning and development of affordable housing (for example, developers, architects, builders, housing economists, housing advocates, and others involved in the development of housing) and would seek to verify the bonus's clarity, flexibility, proportionality, and freedom from perceived barriers or delays. In this connection—

Clarity refers to whether the intended users find the bonus to be free of language or illustrations that are confusing, ambiguous, incomplete, or inconsistent.

Flexibility refers to whether the intended users find the bonus to be useful in varying locations and circumstances.

Proportionality refers to whether the intended users find the bonus's incentives to be pragmatic and calibrated to serve as an effective inducement to the development of affordable housing.

Perceived barriers and delays refer to whether the intended users find the bonus to be excessively narrow, restrictive, time consuming, or onerous.

Recommendations

The following policies are recommended to improve affordable housing density bonuses and allow increased flexibility in densities that will promote affordable housing in Hillsborough County:

- Conduct an economic analysis to determine the level of incentive necessary to achieve the county's affordable housing goals.
- Offer density bonuses in which the number of affordable housing units created is proportional to the economic value of the increased density.
- In developments in which location presents severe practical difficulties to affordable housing (such as a lack of jobs or public transit nearby), offer density bonuses in exchange for "in lieu of" contributions to an affordable housing trust fund or for prior construction of affordable housing at offsite locations.
- Coordinate the comprehensive plan with the land development code so that the comprehensive plan provides effective strategies and policies and the land development code implements those policies with clarity, completeness, and a minimum of legal barriers.

- In the land development code, communicate density bonuses using simple, direct formulas.
- Offer density bonuses in a diverse range of neighborhoods, including market-rate developments. Do not limit density bonuses (and affordable housing) to disadvantaged areas or low-income housing developments.
- Offer density bonuses in any number that will result in affordable housing production. Do not require a minimum number of affordable housing units where a minimum would result in none at all. Building 10 or 15 percent of the housing as affordable housing in a development is better than building none.
- Offer density bonuses in any size development. Do not limit density bonuses to large-scale planned developments. Density bonuses can be more attractive to smaller developments if they include reduced lot sizes and setbacks.
- Allow an affordable housing unit as an addition to a single house for situations in which the total square footage of both units will be within the size allowable for a single-family house and one unit will be owner occupied.
- As part of the comprehensive planning process, develop quantitative goals for affordable housing production through density bonuses and establish annual benchmarks to measure future effectiveness of density bonuses.
- Develop a set of uniform affordability documents to conserve affordable housing created through density bonuses, and audit them on a regular basis for continued compliance.
- Use development agreements to coordinate density bonuses with other incentives when helpful in achieving affordable housing goals.
- Allow an affordable housing bonus in addition to any other density bonuses available to TNDs.
- Monitor affordable housing production and the use of density bonuses, and periodically recommend adjustments to maintain the effectiveness of density bonuses.
- Pretest the density bonus ordinance with a sample of those who are likely to refer to it for information and guidance during planning and development of affordable housing. Pretesting will seek to verify the following:
 - Clarity.
 - Flexibility in varied locations and circumstances.
 - Proportionality and effectiveness as an inducement to affordable housing.
 - Freedom from perceived barriers or delays.
- Implement a cottage housing development program (that is, attractively designed small homes on very small lots) that includes affordable units, by amendments to the comprehensive plan and land development code.

Expediting Processing of Permits, Plans, and Reviews

This type of examination is intended to identify the potential for “regulatory streamlining,” which refers to a collection of approaches to simplify and accelerate the review process for permits, plans, and reviews for development. These approaches have the following purposes:

- Containing administrative costs by reducing the number of steps for development approval.
- Controlling the factors that increase the price of new housing by reducing the delay and uncertainty in the development review process. This is particularly important for affordable housing projects, in which a delay in the project or unreasonable conditions imposed on it can affect whether it remains affordable.
- Saving time for public officials by reducing the volume of projects they must consider and allowing time for planning and policymaking.
- Establishing better working relationships between applicants for development approval and reviewers.
- Making the regulatory system more accountable for the timeliness of its decisions.
- Ensuring fairness in the consideration of applications for development (Arimes, 2003; Vranicar, Sanders, and Mosena, 1980).

The authors present 14 recommendations for expediting processing of affordable housing permits, plans, and reviews. Although these recommendations relate specifically to the plans, regulations, and procedures in place in one county, they may help other jurisdictions identify where problems can be found and how to address them.

1. Amend the Development Review Procedures Manual (DRPM) to establish a single formal policy for the consideration of applications for affordable housing development.

The DRPM, which synthesizes the steps and requirements for the development approval process in Hillsborough County, needs to be amended to clarify the process by which the county considers applications for affordable housing projects. Although the policy may exist informally in the minds of the reviewing officials, it does not exist on paper. At a minimum, the policy needs to identify the roles of the county’s Affordable Housing Office, the Planning Commission, the Planning and Growth Management staff, time limits, forms by which the approval of an affordable housing development can be affirmed (including the possible use of a stamp denoting that it is an affordable project, as described previously), and procedures to obtain design exceptions and other departures from county rules.

It is important that the DRPM encompass the process to obtain design exceptions and shorten the process to incorporate bona fide affordable housing projects. According to Robert Campbell, director of the Transportation and Land Development Review Division, the design exception process currently works as follows:

All design exceptions for any type development must stand on the merits of the exceptions. Affordable housing projects are treated the same as other projects for design exceptions to transportation and stormwater requirements. These issues involve safety and welfare considerations.

The determination to authorize a design exception is based on a licensed design professional's formal written request, which includes a description of the specific exception and a professional evaluation of safety and operational factors. The request is thereafter evaluated by the appropriate county licensed design professionals and a formal determination is issued. (Campbell, 2008)

Thus, under the current procedures, market-rate and affordable housing projects are treated identically in terms of timeframes for a determination.

2. Amend the Hillsborough County Comprehensive Plan to clarify appropriate standards for consistency reviews in rezoning and applications for development.

Florida legislation (Ch. 163.3194) contains language that deals with the relationship of the comprehensive plan to the land development regulations and decisions flowing from it:

[In subsection 2] After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred either to the local planning agency or to a separate land development regulation commission created pursuant to local ordinance, or to both, for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan, or element or portion thereof. Said recommendation shall be made within a reasonable time, but no later than within 2 months after the time of reference. If a recommendation is not made within the time provided, then the governing body may act on the adoption.

[Subsection (3) (a)] A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

[Subsection (3) (b)] A development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

It is not clear from reading the county comprehensive plan, particularly the future land use element, or the land development code itself, what the formal system is for the assessment of development proposals against the backdrop of the plan. Nor is it clear how the Planning Commission staff is to determine the consistency of development proposals when applying mapped policies on location,

use, intensity, and density and on written goals, objectives, policies, and criteria. It is also unclear, when discretion is involved in the selection and weighting of certain policies, how that discretion is to be employed.

Several people the consultant interviewed made it clear that they had a problem with being bargained down over density, which was important to the feasibility of an affordable housing project, even though such density was authorized by the land development code. A clear statement in the comprehensive plan of how the plan is to interact with development decisions would enhance certainty predictability and ensure accountability in how recommendations on consistency are made.

3. Revise the methodology by which the need for affordable housing is projected in the comprehensive plan to reflect employment growth as well as population growth.

As noted, the comprehensive plan does not contain any economic projections. It does, however, influence decisions regarding job-related land use, such as commercial, office, and industrial land use. Job growth from such land uses in turn influences the demand for housing in Hillsborough County. Focusing on population growth as the only driver in land use change may understate the need for housing, or may result in housing projections that are aimed at the income groups that are not reflective of the job market in Hillsborough County. A variety of techniques exist for forecasting economic growth and relating it to land use.¹²

4. Establish production goals for affordable housing in the housing element of the comprehensive plan that are revisited on an annual basis, and assign the responsibility for tracking provision of affordable housing to the Affordable Housing Office.

Currently, the housing element does not contain any express production goals for affordable housing, only recognition of need. Establishing goals would provide Hillsborough County with a mechanism for monitoring how well it is doing with respect to needs identified in the housing element. Moreover, no single agency is responsible for tracking and reporting on the production of affordable housing in the county.¹³ The assignment of this responsibility would eliminate any ambiguity and provide better information on progress.

5. Establish a standard template for community plans that would include an analysis of housing affordability, specific goals, objectives, and policies and the selection of areas where affordable units should be located.

The consultant's review of the community plans for subareas of the county indicated haphazard, weak, or nonexistent consideration of affordability issues, despite the importance given to them

¹² See Berke et al. (2006), especially chapter 6; Econsult Corporation (2008); Greenberg, Krueckeberg, and Michaelson (1978); and Nelson (2004) for discussion of allocation of statewide population and employment projections to municipal levels.

¹³ The Consolidated Impact Assessment Ordinance calls for a quarterly report by the administrator on the "number of housing units sold in the county which qualified as affordable housing" but only for the purposes of relief from impact fees. Hillsborough County, Florida, Consolidated Impact Assessment Ordinance, Ordinance No. 96-29, as amended by No. 96-36, as amended, Article 8, Section O, Subsection 7a (Quarterly Review).

in the housing element. It is important that the policies in the housing element with respect to housing needs for low- and moderate-income people be reflected in the community plans and that these plans do not frustrate broader communitywide policies.

6. Initiate advanced zoning of areas to higher residential density to facilitate development of affordable housing.

This action appears to be supported by the following policy in the previously discussed land use element:

Policy 1.2.6: The County shall designate land areas available for housing opportunities on the Future Land Use Map (FLUM) and provide incentives that will encourage the production of housing units for very low, low and moderate income households in unincorporated Hillsborough County.

If areas can be designated for “housing opportunities” on the FLUM, they should be zoned for such opportunities as well, at suitable densities. Advanced zoning would eliminate the need for applicants to petition the county for zoning map changes (and relieve them of the cost) and therefore eliminate the 4- to 6-month wait that such requests entail. Moreover, rezoning for affordable housing developments in advance would be added insurance that county production goals for such housing can be satisfied. Consequently, rezoning should take into consideration lands and structures of developers who have expressed a commitment to provide low- and moderate-income housing.¹⁴

7. Closely monitor the \$800,000 appropriation level for affordable housing impact fee waivers to maximize its effectiveness.

Nonprofit housing providers indicated that the current appropriation level for fee waivers by the county for low- and moderate-income households was insufficient and that impact fees (as well as offsite improvements) are a major roadblock to affordability. The current version of the Consolidated Impact Assessment Ordinance dates from 1996, and the appropriation figure, which is \$800,000, apparently unchanged from that date, appears in Article 8, Section 0. Information from the Planning and Growth Management Department indicated that, in fiscal year 2007, the total amount expended for impact fee relief was \$799,069, and, as of April 2008, \$333,046 had been expended (Perrine, 2008). Monitoring this appropriation will facilitate future adjustments in response to changing needs and resources.¹⁵

¹⁴ On October 6, 2008, a member of the Affordable Housing Advisory Board commented that county-initiated zoning map changes for affordable housing might result in segregation of affordable housing into those areas. This comment points to the necessity of making such map changes in a way that (1) integrates affordable housing into areas of higher cost housing and (2) encourages a mixture of affordable and higher cost housing within proposed developments. In effect, advanced zoning should be a technique for assisting the developer who otherwise may have to face strong opposition for attempting to integrate affordable housing into higher cost communities.

¹⁵ Discussion among the Affordable Housing Advisory Board on November 3, 2008, clarified the Affordable Housing Advisory Board's recommendation relating to impact fee waivers.

8. Commission the preparation of architectural plans for entry-level housing that would be preapproved for building permits and offered to builders/developers free of charge.

In Portland, Oregon, a similar program, which has been under way since 2004, has permit-ready plans (resulting from a design competition sponsored by the city) available (City of Portland Bureau of Planning, 2006, 2004). Having such plans available in Hillsborough County would reduce both time and cost for applicants who are building affordable housing.

9. Waive performance bond requirements for affordable housing projects in which the county has invested monies.

This recommendation, which came from the nonprofit housing groups and the Hillsborough County Affordable Housing Task Force, would require an amendment to the land development code, Sections 10.01.05.C.4 (Subdivision) and 10.01.06.E (Site Development) and possibly to other places.

10. Develop a set of uniform affordability controls to conserve affordable housing created through subsidies or density bonuses.¹⁶

The objective of affordability controls is to conserve affordable housing created through subsidies or density bonuses and, when appropriate, to partially recapture value from units that may leave the affordable inventory and use those funds for replacement housing. These controls may include, but are not limited to, deed restrictions and covenants and, when created, need to be audited on a regular basis for continued compliance. Uniformity can reduce the cost of drafting controls individually for each development and can make auditing more efficient.¹⁷

11. Revise design standards for affordable housing development.

Subdivision development standards are addressed elsewhere in this article, where specific recommendations are made. A policy in the previously discussed housing element supports annual review of land development regulations:

Policy 1.2.4: The County shall continue annual review of ordinances, codes, regulations and the permitting process to eliminate excessive requirements, and amend or add others in order to increase appropriate private sector housing production.

¹⁶ An example would be New Jersey's Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., which is available at <http://www.state.nj.us/dca/affiliates/coah/regulations/uhac/uhac.pdf>.

¹⁷ On October 6, 2008, a member of the Affordable Housing Advisory Board commented that there should be no affordability restrictions because they can discourage maintenance and they destroy the financial rewards of home ownership. Another member, however, pointed out that shared-equity provisions are commonly in use and those provisions make it possible for homeowners to reap a reasonable share of housing equity growth. These comments point to a need for additional discussion in Hillsborough County regarding the term of affordability restriction in years, but, whatever term is finally adopted, standard covenants and deeds will make their enforcement less costly and more uniform.

12. Amend the land development code to allow affordable housing projects “as of right” on nonconforming lots.

The planning commission staff originally recommended this amendment, which would eliminate a barrier to development by removing the requirement for a variance and would take advantage of the resource presented by nonconforming lots. This change would require an amendment to land development code, Section 11.03.03. The procedure for processing development applications on nonconforming lots could be combined with the procedure for processing affordable housing applications in the Land Development Procedures Manual, described in recommendation 1.

13. Eliminate the second noticed hearing before the Board of County Commissioners on rezoning that involves affordable housing projects only.

The land development code, Section 10.03.04, allows the Board of County Commissioners to conduct what amounts to a second noticed hearing to review the record and recommendation created by the land use hearing officer. Specifically, Section 10.03.04D allows the board to take additional evidence and hear oral argument. Technically, this is not a public hearing, but nonetheless it requires notice. It seems unnecessary, however, to have a hearing officer conduct a hearing, take evidence, and prepare written findings and a recommendation if another hearing will be conducted, on the theory that it is necessary to correct the record. Although the use of a hearing officer is a commendable way of making land use decisions, the presence of these provisions encourages applicants and others to participate in the creation of a record that later needs to be modified or supplemented to correct, in the land development code’s terms, “mistakes” and ambiguities” and introduce “additional evidence.”¹⁸ Modification of this section to eliminate the second hearing, at least as it applies to affordable housing projects, would eliminate a potential source of delay.

14. Establish and implement a separate track for construction code enforcement for affordable housing.

The county should formalize the unwritten administrative policy to expedite the processing of building permit application and code enforcement for affordable housing. This separate track could include several independent features that could reduce the costs of code enforcement to the applicants and/or the county.

First, the building permit fee for affordable housing, currently based on occupancy and building area, could be reduced. This change may require an amendment to Section 104.6, Fees, of the Hillsborough County Construction Code.

Second, the practice of using cross-trained combination inspectors (reportedly used on occasion in the county) could be formalized for application to affordable housing projects. This revision could result in the reduction of the number of separate inspections from a maximum of 19 (7 building and 3 each of electrical, plumbing, mechanical, and gas inspections) to as few as 7 to 10, and may require amendment to Section 102.2, Employee Qualifications, of the Hillsborough County Construction Code.

¹⁸ For a discussion of this problem, known as “supplementation of the record,” see Mandelker (2003: 664–666).

Appendix A

This article was preceded by 15 discussion papers that evaluated local policies and recommended actions to remove barriers to affordable housing. The discussion papers provided an opportunity for review and comment by Hillsborough County’s Affordable Housing Advisory Board and by the county’s planning and affordable housing staff. The topics covered by the discussion papers included the following:

- Mixed-use development.
- Zero lot line development.
- Manufactured housing (mobile homes).
- Small lots and small lot districts.
- Adaptive reuse.
- Performance/impact zoning.
- Modular, panelized, and steel housing.
- Subdivision/development standards.
- Planned developments.
- Rezoning vacant land.
- Accessory dwellings.
- Methods to expedite processing of permits.
- Density bonuses.
- Infill development.
- Resolving concurrency issues.

Appendix B

Exhibit B-1

Minimum Lot Size per Dwelling Unit (Current and Suggested)
Hillsborough County, Florida

District	Minimum Lot Size (square feet)		Percent Reduction
	Current	Suggested	
RSC-2	21,780	10,000	54.1
RSC-3	14,520	10,000	31.1
RSC-4	10,000	7,000	30.0
RSC-6	7,000	4,300	38.6
RSC-9	5,000	3,500	30.0
RDC-6	7,260	4,300	40.8
RDC-12	3,500	2,700	22.9
RMC-6	7,260	4,300	40.8
RMC-9	4,840	3,500	27.7
RMC-12	3,630	2,700	25.6
RMC-16	2,725	2,100	22.9
RMC-20	2,180	1,800	17.4
Average	7,475	4,683	37.3

Appendix C

Exhibit C-1

Minimum Lot Width (Current and Suggested)
Hillsborough County, Florida

District	Minimum Lot Width (feet)		Percent Reduction
	Current	Suggested	
RSC-2	100	60	40
RSC-3	75	50	33
RSC-4	75	50	33
RSC-6	70	40	43
RSC-9	50	30	40
RDC-6	60	40	33
RDC-12	40	30	25
RMC-6	70	30	57
RMC-9	70	30	57
RMC-12	70	30	57
RMC-16	70	30	57
RMC-20	70	30	57
Average	68.3	37.5	45.1

Appendix D

Exhibit D-1

Minimum Yard Setbacks (Current and Suggested)
Hillsborough County, Florida

District	Current Yard Setbacks (feet)			Suggested Yard Setbacks (feet)			Percent Reduction		
	Front	Side	Rear	Front	Side	Rear	Front	Side	Rear
RSC-2	25	10	25	20	8	20	20	20	20
RSC-3	25	7.5	25	20	5	20	20	33	20
RSC-4	25	7.5	25	15	5	15	40	33	40
RSC-6	25	7.5	25	15	5	15	40	33	40
RSC-9	20	5	20	10	5	10	50	0	50
RDC-6	25	7.5	20	10	5	10	60	33	50
RDC-12	20	5	20	10	5	10	50	0	50
RMC-6	25	10	20	10	5	10	60	50	50
RMC-9	25	10	20	10	5	10	60	50	50
RMC-12	25	10	20	10	5	10	60	50	50
RMC-16	25	10	20	10	5	10	60	50	50
RMC-20	25	10	20	10	5	10	60	50	50
Average	24.2	8.3	21.7	12.5	5.3	12.5	48	37	42

Appendix E

Exhibit E-1

Suggested Offstreet Parking Requirements Hillsborough County, Florida

Residential Dwelling Size	Required Parking Spaces		
	Current	Recommended	Percent Reduction
Efficiency and one bedroom	1.25	1.00	20.0
Two bedrooms	1.50	1.25	16.7
Three bedrooms	2.00	1.50	25.0
Average	1.58	1.25	21.1

Note: Four-bedroom dwellings currently require two parking spaces and would remain at two.

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