

Speedy Resolution for NIMBY-Driven No Votes

By: Jaimie Ross,
President & CEO of the Florida Housing Coalition

Creating Inclusive Communities in Florida is a comprehensive guide to affordable housing, written to assist local elected officials and their key staff in overcoming constituent opposition to affordable housing developments. Most of the guidebook provides an education about affordable housing in Florida. The guidebook also includes a section on an important law in Florida — the Florida Fair Housing Act. This law is specifically intended to resolve opposition that results in a “no vote” and stops affordable housing developments from getting the local government approvals needed to move forward.

The Florida Fair Housing Act contains a provision not found in the Federal Fair Housing Act; it provides greater protection from discrimination.

Section 760.26, Florida Statutes:

Prohibited discrimination in land use decisions and in permitting of development. —It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.

This means that it is unlawful for a local government to deny land use approval for an affordable housing development if that same development would have been approved had it been a market rate development (not using financial subsidies related to affordable housing). The Statute does not require that you serve one of the federally protected classes, such as race. Therefore, if you are developing affordable housing, you are protected by this statute.

The beauty of this law is how it works in tandem with Florida’s Property Rights laws to provide a quick dispute resolution process



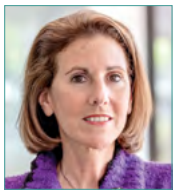
From left to right, Presenters David Smolker and Jaimie Ross, and Moderator Jeff Kiss.

in front of a local magistrate rather than having the expense and delay of bringing a court case.

The value of Section 760.26, Florida Statutes is more often seen when a city or county attorney simply advises elected officials that they cannot deny an approval without running afoul of this law. Approval generally follows when the law is brought to the attention of the city or county commission, but that doesn't always happen. If a local government denies a land use approval in violation of 760.26, a simple petition can be filed within 30 days for a special magistrate to hear the case. That's just what happened this Spring. When

faced with the prospect of losing an expensive lawsuit, the Macclenny City Commission approved a previously denied planned unit development (PUD) request made by a nonprofit affordable housing developer, using FHFC HOME funds to provide much-needed affordable housing.

David Smolker, the attorney who represented the nonprofit, used the combination of Florida's Fair Housing Act and Florida's Property Rights law to bring a swift and successful resolution for the affordable housing developer. At the Florida Housing Coalition's 2017 Statewide Conference, Smolker explained the process. HNN



JAIMIE ROSS

Jaimie A. Ross is the President & CEO of the Florida Housing Coalition. She initiated the Sadowski Coalition in 1991 and continues to facilitate the Sadowski Coalition today. Ms. Ross served as the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit smart growth organization, from 1991-2015. Prior to her tenure at 1000 Friends of Florida, Ross was a land use and real property lawyer representing for profit and nonprofit developers and financial institutions with a law firm in Orlando. Ross is the past Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

TABLE OF CONTENTS

2	CHAPTER ONE	What is Affordable Housing?
9	CHAPTER TWO	Who Lives in Affordable Housing?
15	CHAPTER THREE	Why Include Affordable Housing in Your Community?
19	CHAPTER FOUR	How is Affordable Housing Developed?
28	CHAPTER FIVE	How Should Neighbors Be Included in the Process?
33	CHAPTER SIX	What Role Does Design Play?
45	CHAPTER SEVEN	What is the Connection Between Affordable Housing and Fair Housing?
50	CHAPTER EIGHT	How Can Local Government Avoid Legal Liability from NIMBYism?
57	APPENDIX ONE	William E. Sadowski Affordable Housing Act
59	APPENDIX TWO	Plans, Land Development Regulations, and Development Orders
61	APPENDIX THREE	Bibliography of Property Value Studies
65	APPENDIX FOUR	Glossary of Terms and Acronyms



More about Aqua pictured above: Over forty years ago, a teachers' association used HUD Section 236 funding to develop the Tampa-based 197 unit CTA River Apartments to house retired teachers, living on fixed incomes. With its HUD Section 236 loan maturing, it was in a real danger of being converted to a market rate development which would displace over 200 low income senior residents. Sage Partners stepped in and gutted the old, dilapidated high-rise, transforming it into Aqua - a Hillsborough Riverfront beauty. In addition to providing residents with new kitchens, bathrooms, and appliances in every apartment, common area amenities include community, fitness and yoga rooms, an arts and crafts center, computer lab, and library.

A FLORIDA HOUSING COALITION PUBLICATION PRODUCED IN PARTNERSHIP WITH THE FLORIDA HOUSING FINANCE CORPORATION 1



Access the Creating Inclusive Communities in Florida Guidebook along with several more valuable resources under the Publications tab at www.FLhousing.org