

# Inclusionary Zoning & HB 7103

Dispelling Myths, Guidelines for Compliance, & Land Value Capture



# The Florida Housing Coalition

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- Statewide nonprofit provider of training and technical assistance
- From ending homelessness to first time homeownership
- Professional staff throughout the state
- See [www.flhousing.org](http://www.flhousing.org)



# Panelists

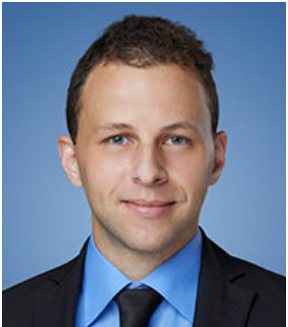
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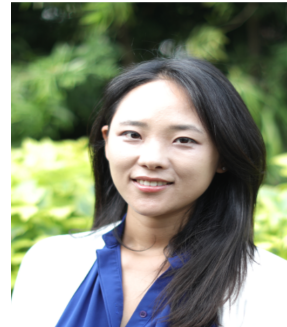
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# Agenda

## (part one of two part Webinar series)

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- What is IZ and why is it important?
- Compliance with House Bill 7103
- Concept of Value Capture
- IZ in Large Scale and New Urbanism Communities
- Local Observations on IZ
- What's Next?

# What is Inclusionary Zoning?

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- A local land use regulation (planning tool) that requires some (not all) market rate housing developers to include a percentage of affordable housing/below market rate housing within the market rate development
- Variety of forms: ordinance, overlay district, negotiated development agreement
- Flexibility: offsite, in-lieu of fee, land donation, mix of incentives





# Common Characteristics

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- **Threshold number of market rate units** that activates the IZ requirement w/a corresponding percentage of affordable units required
- Requirement that affordable units are **comparable in quality and aesthetics** to market rate units
- **Benefits or incentives** to assist the private sector in providing the affordable units
- Provision for **payment in-lieu** where nature of development makes it practically infeasible to include affordable units
- Housing trust fund as the **depository for the payments in-lieu**
- **Term of affordability**
- Policies for **administration** of the program and opportunity for appeal



# Why is IZ important?

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- **MONTGOMERY COUNTY, MD**  
Inclusionary Housing got its start in the United States with Montgomery County's Moderately Priced Dwelling Unit Program. Private, for-profit homebuilders have delivered 15,000+ "MPDUs" integrated into market rate developments of about 90,000 units.

# Why is IZ important?

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As of 2016:

- Nationally, approximately **174,000 affordable homes** have been produced with IZ ordinances. This number does not include the additional units created with the **\$1.7 billion collected from in-lieu fees**.
- 443 jurisdictions report **49,277 affordable homeownership** units
- 581 jurisdictions report **122,320 affordable rental** units

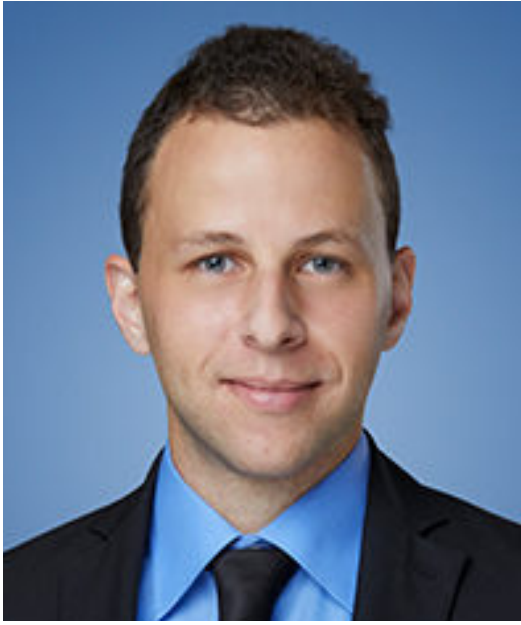




# Local Government's Role in Land Use

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- Affordable housing is necessary for a healthy economy and community and is a local government requirement in every jurisdiction under the Housing Element of the comprehensive plan.
- Government land use authority increases the value of private land (land value capture); affordable housing is the public benefit that is provided in exchange for that increase in value created by local government from actions such as up-zoning or form-based zoning



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## Compliance with HB 7103



# House Bill 7103 – What Happened

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- Original bill filed by Senator Lee (SB 1730) included an outright ban on mandatory IZ. House Committee Bill 7103 took up the language of SB 1730 without the prohibition on mandatory IZ
- Senator Lee heard from his constituents, including local elected officials, from Hillsborough County about the need to keep IZ as an available tool.
- House Bill 7103 reflects the compromise to keep developers economically whole and allow local governments to have mandatory IZ.



# House Bill 7103

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- Confirms that local governments can enforce mandatory inclusionary zoning ordinances.
- In exchange, a local government “must provide incentives to fully offset all costs” to a developer for its affordable housing contribution.
- For example, with a 100 unit market rate development and a 10% inclusionary requirement, local government would need to fully offset all costs associated with the 10 required affordable units.



# Dispelling Myths

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**Myth:** HB 7103 banned mandatory IZ.

**Reality:** HB 7103 confirmed that local government can enforce mandatory IZ.

**Myth:** HB 7103 banned linkage fees.

**Reality:** HB 7103 did not address linkage fees.

**Myth:** HB 7103 discourages local governments from adopting IZ.

**Reality:** HB 7103 should reduce hesitance to mandate inclusionary policies due to increased guidance.

**Myth:** HB 7103 requires local governments to pay developers.

**Reality:** Local governments can fully offset costs by providing non-monetary incentives.





# How to “fully offset all costs”?

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- Legislature provided guidance.
- Statute: Such incentives may include, but are not limited to:
  - Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation;
  - Reducing or waiving fees, such as impact fees or water and sewer charges; or
  - Granting other incentives.
- How do we offset those costs? The next set of slides is one way to begin the analysis of what the additional costs are.
- We have additional tools to help local government calculate the offset of all costs- including a housing calculator tool, which we will demonstrate in the second part of this 2 Part Webinar on Compliance with HB 7103.



# Four-Step Compliance with HB 7103

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1. Identify Costs of Required Affordable Units



2. Determine the Revenue Gained from those Units



3. Identify Which Costs Local Government Can Reduce



4. Bundle Incentives to Keep Developer Economically Whole

# 1. Identify the Costs

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- First, identify the costs of the affordable units.
- For example, if developer is required to build 30 affordable units as part of a 200 unit complex, identify the cost of the 30 units.
- Utilize a local government staff member or consultant w/development expertise to lead this analysis on a project by project basis.

# Identifying Costs

Construction Costs	Construction Materials Labor General Contractor Overhead
Land Costs	Per Acre Total Cost Cost per Unit
Parking Space Costs	Required Parking
Soft Costs	Impact Fees Architectural & Engineering Costs Planning Approval Fees Environmental Clearance Building Permit Fees Legal & Insurance Fees
Other Development Costs	Required Landscaping Outdoor & Common Area Amenities Setback & Other Structural Standards Infrastructure

## 2. Determine the Revenue Gained from Affordable Units

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- Developers still gain revenue from required affordable units.

$$\begin{array}{r} \text{Cost to Build AH Units} \\ - \text{Revenue on Sale/Rental of AH Units} \\ \hline \text{Cost to Offset} \end{array}$$



### 3. Identify Which Costs Local Government Can Reduce

Construction Costs	Construction Materials Labor General Contractor Overhead
Land Costs	Per Acre Total Cost Cost per Unit
Parking Space Costs	<b>Required Parking</b>
Soft Costs	<b>Impact Fees</b> Architectural & Engineering Costs <b>Planning Approval Fees</b> <b>Environmental Clearance</b> <b>Building Permit Fees</b> Legal & Insurance Fees
Other Development Costs	<b>Required Landscaping</b> Outdoor & Common Area Amenities <b>Setback &amp; Other Structural Standards</b> <b>Infrastructure</b>



# 4. Bundle Incentives to Keep Developer Economically Whole

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**Cost to build AH Units - Revenue from Sale/Rental of AH Units = Cost to Offset**

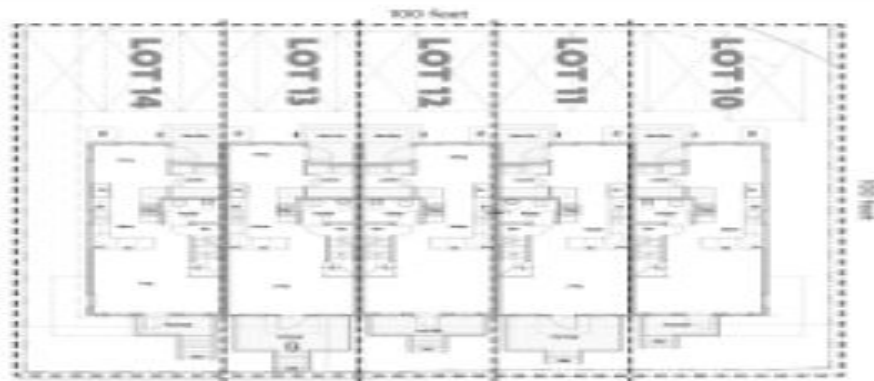
- Common Incentives: Density/Intensity Bonuses, Height Bonuses, Impact & Other Fee Reductions, Lower Parking Requirements
- Create a calculation tool to identify the value of various incentives.
- Using a development professional or consultant can be helpful – show your work!

# Example of Keeping a Developer Economically Whole

INCLUSIONARY HOUSING

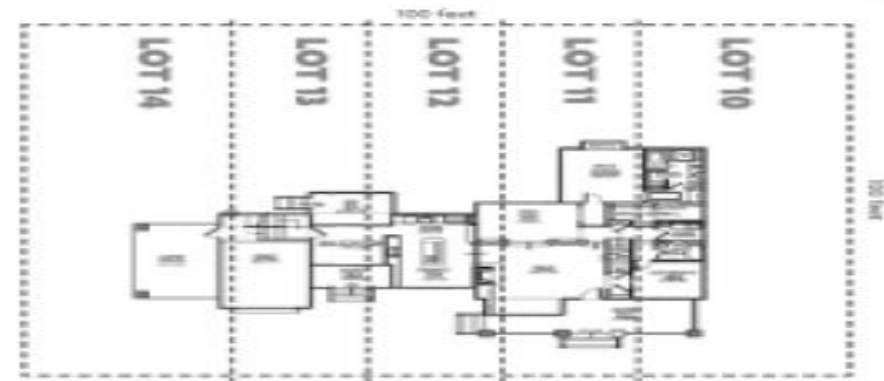


K2 - INCLUSIONARY HOUSING  
TALLAHASSEE, FLORIDA



5 inclusionary lots on 34 acre

ESTATE HOME



1 estate lot on 34 acre

# Key Points for Compliance with HB 7103












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In rural areas:

- Start with land value capture principles- upzoning of rural/agricultural areas can be enough to comply with HB 7103. Think of new highways in rural areas- map on next slide

## STUDY AREA COUNTIES

### LEGEND

-  Spaceports
-  Seaports
-  Commercial Service Airports
-  Rail
-  Interstates
-  Toll Roads
-  State Highways
-  Urban Area
-  Suncoast Connector
-  Northern Turnpike Connector
-  Southwest-Central Florida Connector



#### Suncoast Connector

- Citrus County
- Dixie County
- Gilchrist County
- Jefferson County
- Lafayette County
- Levy County
- Madison County
- Taylor County

#### Northern Turnpike Connector

- Citrus County
- Levy County
- Sumter County

#### Southwest-Central Florida Connector

- Charlotte County
- Collier County
- DeSoto County
- Glades County
- Hardee County
- Hendry County
- Highlands County
- Lee County
- Polk County



# Key Points for Compliance with HB 7103

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In urban areas:

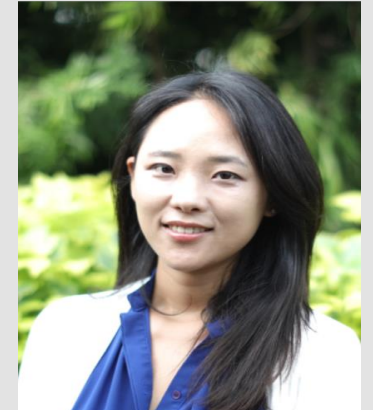
- Density/intensity bonuses are also likely to meet compliance with HB 7103. If density bonuses don't completely offset costs, then add on the other incentives, such as reduced parking and fee waivers. (More help with the details in the next Webinar)

# Value Capture for Public Benefit

How local governments can use land use control power to create and capture value from real estate developments



FLORIDA STATE  
UNIVERSITY



Minjee Kim, PhD  
Assistant Professor of Land Use  
Planning and Real Estate Development  
Florida State University



# What is Value Capture?

The idea that certain **governmental activities** lead to **increase property values** and thus some of this increment should be **recouped for public benefit**



# How Do Government Actions Raise Property Values?



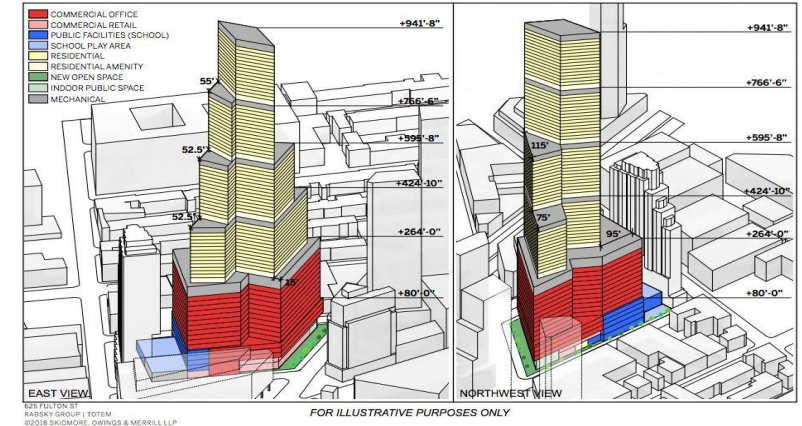
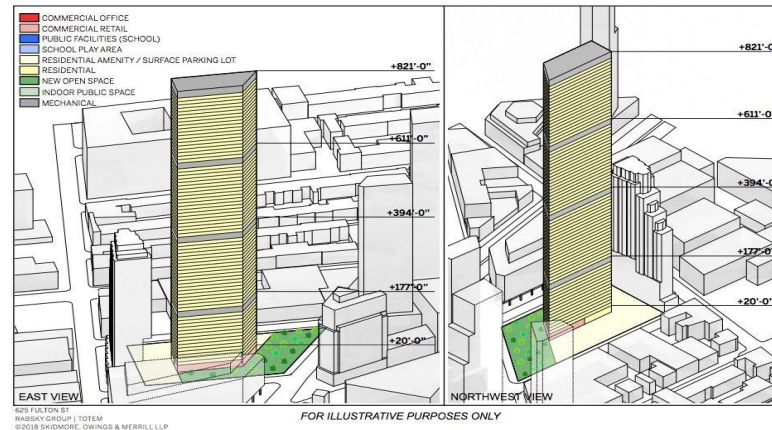
# Capital Improvements

- **Road, bridges, and tunnels**
  - Boston's Big Dig & the Silverline
    - Waterfront property in South Boston sold for \$3.5 million in 1978, the owner operated a huge swath of surface parking lot for decades and resold it for more than \$200 million in 2002.
- **Transit facilities**
  - Gatzlaff and Smith (2003) Miami Metrorail case
    - Finds that residential values were **weakly** impacted by the **announcement** of the new rail system
- **Public realm improvements**
  - Immergluck (2009) Atlanta Beltline case
    - Finds large increases in home prices **near the lower-income southside** of Beltline, which corresponded with the **announcement** of the redevelopment project



# Zoning changes

- **Density and height increases**
  - 625 Fulton St case, Brooklyn, New York
    - Without upzoning, narrow tall tower of 78 stories and 821 feet could be built, which would include 889 market-rate apartments, ground-floor retail, and a plaza
    - With the upzoning, the project will double the square footage, which is estimated to worth \$152 million dollars (figure presented by the developer)
- **Zoning reliefs**



# Subsidies

- **Financial subsidies**
  - Grants/loan assistance from TIF Districts and BIDs
  - Fee waivers
- **Land**
  - Below-market cost of publicly-owned land



# Sources of Power for Value Capture

## Land Use Regulation Power

- Upzoning
  - Zoning negotiations
  - Incentive zoning
- Zoning reliefs
- Impact fees
- Linkages
- Inclusionary zoning

## Taxing/Fiscal Power

- Taxation schemes that separates land from improvements on land
- Tax Increment Financing
- Special Assessments
- Infrastructure/Business Improvement Districts

## Public/Private Development Projects

# Differentiating Value Creation and Value Capture

## Value Creation

- Upzoning (i.e., density and height increases)
  - Negotiated (PUD, development agreements, conditional text/map amendments)
  - Incentive program (standalone or as part of a special/overlay district)
- Myriad of zoning reliefs

## Value Capture

- Developer concessions extracted as part of zoning negotiations
- Public benefits asked for in incentive zoning programs
- Inclusionary zoning programs
- Impact fees and linkages

# Applications in practice

- Analysis of how five major U.S. cities—Boston, Chicago, New York, San Francisco, and Seattle—use land use regulation to create and capture value
- Entitlement processes of 20 largest ground-up developments in each city
- Most upzoned (90 out of 100 projects) and asked for public benefits as a condition (79 out of 90 projects)
- However, wide variation and non standardized practice for how much value to capture and for whom, suggesting room for improvement
- Also, wide variation across cities regarding the value creation and capturing strategies, which were reflective of their legal, institutional, and political contexts, indicating that value capture strategy can be designed and implemented to suit the specific needs and conditions of each community



**Jaimie Ross**, President & CEO  
Florida Housing Coalition

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IZ, Large Scale Development, and New Urbanism



# Large Scale, New Urbanism, & Form-Based Codes

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- Florida is a large development state. New towns are created from formerly rural lands.
- Affordable housing is a principle of New Urbanism
- Large scale and New Urbanism communities should include long term or permanent affordable housing
- Form Based Codes are increasing among progressive planning departments, but without an inclusionary requirement, affordable housing will be lost.



# Creating New Towns

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# Seaside, Florida – the Original New Urbanism Community

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# Baldwin Park, Orlando



# Celebration, Osceola County





**Suzanne Cabrera**, President & CEO  
Housing Leadership Council of Palm  
Beach County

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## Local Observations on IZ : The Palm Beach County Experience







## WHP to Date...

More than 1300 WHP units approved

- 900+ rental units built or developing
- 140+ for-sale units built or developing
  - 34 sold
  - 29 under contract
- 250 units sale/rental/in lieu TBD
- 80 units paid in lieu

# What's Next

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- We will have one more Webinar in this two part series
- The next Webinar will:
  - (1) Demonstrate a free tool to help you calculate the value of housing incentives, like density and parking reductions etc.;
  - (2) Share the experiences from one or more Florida communities who have started or completed the process of evaluating their inclusionary requirement for compliance with HB 7103



# What's Next

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- The Florida Housing Coalition will email the answers to the questions in the chat box from this Webinar or if you prefer a phone call, please let us know. We are happy to follow up.

## The Florida Housing Coalition can assist you to:

- Review your land use policies to evaluate compliance with HB 7103
- Help write a new inclusionary housing policy/ordinance

## Contact:

Kody Glazer [glazer@flhousing.org](mailto:glazer@flhousing.org)



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