

# OVERCOMING NIMBYISM

October 2022  
Florida Housing Coalition



# Our Thanks to The Florida Housing Catalyst Program



AFFORDABLE HOUSING CATALYST PROGRAM

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# Presenter

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CEO & President  
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# What Is NIMBYism?

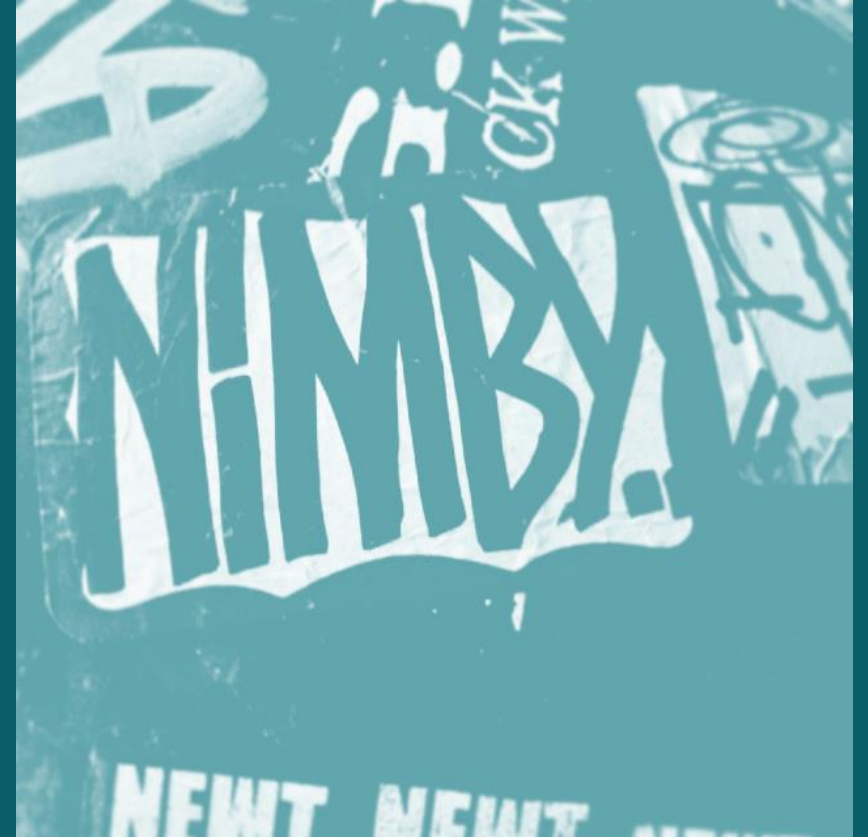
- 🏠 Historically, a positive outcry to stop the siting of toxic uses near residential uses
- 🏠 But now used to connote objections made to stop the development of affordable housing based on fear and prejudice
- 🏠 Particularly pernicious obstacle for local governments to meet housing needs

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# Consequences of NIMBYism

- 🏠 The outcry from constituents expressing concerns over the siting and permitting of affordable housing can lead to:
  - lengthy and hostile public proceedings
  - increased development costs
  - fewer development approvals
  - property rights disputes
- 🏠 **The resulting unmet need for rental units leads to severely cost burdened households and an increase in homelessness.**



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# General Education about Affordable Housing

busting  
the  
myths



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# Who Lives in Affordable Housing?



Tampa-based Sage Partners, LLC purchased the St. Paul AME Church in downtown Tampa along with some related property and converted it into affordable workforce housing in 2011. The development features two floors of parking below four floors of residential units, which totals 120 units. Metro 510's amenities include an outdoor spray park, community garden, movie theatre area, and an outdoor museum devoted to the history of the church. The 15,000 sq. ft. church was converted into a community center that houses a fitness area, computer lab, library, and a learning and play area for children. The development is located near the Marion Transit Center facility and a block from a planned high-speed rail terminal.

## SAGE PARTNERS

### METRO 510 RESIDENT PROFILE

Anthem Insurance	- Patient Care Advocate
Atlas Aviation	- Office Clerk
Barber Shop	- Barber
Burger King	- Cashier
Chick-fil-A	- Cashier
Embassy Suites	Front Desk Clerk
Finish Line	- Sales Associate
Hampton Inn	- Front Desk Clerk
Hillsborough County Schools	- Data Processor
Hillsborough County Schools	- Bus Driver
Mid Florida Commercial	- Teller
Moffitt Cancer Center	- Medical Asst
Neiman Marcus	- Sales Associate
Progressive Insurance	- Claims Admin Support
Publix	- Cashier
Richman Property	- Leasing Associate
Seminole Hard Rock	- Operations Intern
Stadium Toyota	- Sales Associate
Tampa Police Department	- Police Officer
The Florida Orchestra	- Cello
Walmart	- Sales Associate

# Who Lives in Affordable Housing?



Lofts at Jefferson Station is a 133-unit mixed-income community in Downtown Jacksonville with studio, one-, two-, and three-bedroom apartments, adjacent to the Jefferson Station skyway, providing easy access to employment, services, entertainment, and other parts of the city. Lofts at Jefferson Station is a workforce housing community with 80 units reserved for individuals making less than 60% of the area median income and 53 units reserved for individuals making less than 140% of the area median income. Funded by Florida Housing Finance Corporation, Jacksonville Housing Finance Authority, and the Downtown Investment Authority



## VESTCOR'S LOFTS LOFTS'RESIDENT PROFILE

Baptist Medical Center	- <b>Certified Nursing Asst</b>
Bartram Academy	- <b>Preschool Educator</b>
City Facilities Management	- <b>Janitorial Services</b>
Coach Warehouse	- <b>Warehouse Worker</b>
Cocentrix Corporation	- <b>Sr. Advisor, Tech Support</b>
Conviva	- <b>Medical Transport</b>
Customized Distribution	- <b>Print Shop Personnel</b>
CVS (Aetna)	- <b>Customer Service</b>
Dicks Wings	- <b>Server</b>
Duval County Schools	- <b>Educator</b>
Esquire Litigation	- <b>Receptionist</b>
Evergreen Lifestyles	- <b>Customer Service</b>
First Coast Security	- <b>Security Officer</b>
Florida Blue	- <b>Member Services</b>
Florida Care Assurance Group	- <b>Office Manager</b>
Florida DEO	- <b>Program Specialist</b>

# Affordable Housing in Florida Guidebook

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# How Affordable Housing is Produced

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- 🏠 The public sector is legally required to provide that housing is available for current and anticipated population – Housing Element requirement – section 163.3177, F.S.
- 🏠 But public sector does not build affordable housing - it uses its land use and financing tools to ensure that the private sector will produce affordable/workforce housing/ “attainable housing”.
- 🏠 **Allowing residents nearby to stop affordable housing from being built will thwart local government’s housing element requirement and exacerbate the housing crisis**

# The Difference Between Market Rate Housing and Affordable Housing : Financing

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- 🏠 Financing of the Development- subsidy brings down the cost of housing (LIHTC, bonds, SAIL, SHIP for example).
- 🏠 Financing for rental housing is provided to the developer.
- 🏠 Typically, it is rental housing that attracts the most NIMBYism.
- 🏠 Consider the reasons why....Could be misunderstanding about what affordable housing is.
- 🏠 Could be racism or classism.



# Education about Affordable Housing

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- 🏠 Once a NIMBY battle ensues it is probably too late for education
- 🏠 Local Elected officials and other community leaders can stop neighborhood opposition before it starts with education
- 🏠 Wonderful examples from around Florida of elected officials taking a leadership role as educators and advocates for affordable housing - FHC has facilitated many housing forums at the request of elected officials
- 🏠 Unfortunately, there are examples of local elected officials fueling the opposition

# Education about Affordable Housing

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- 🏠 Who lives in affordable housing- workforce and seniors
- 🏠 How affordable housing is developed- private sector
- 🏠 Amenities- indistinguishable from market rate housing
- 🏠 Property management and compliance monitoring
- 🏠 Importance to the community to have housing for its workforce and for those who without affordable housing could become homeless
- 🏠 Affordable housing is akin to infrastructure- the jurisdiction can't operate without it



# Florida Chamber of Commerce 2030 Blueprint

- 🏠 Recently, the Florida Housing Coalition took on the role of Housing Goal Leader for the Florida Chamber of Commerce for the implementation of its 2030 Blueprint.
- 🏠 The Chamber has an ambitious goal of reducing the housing burden substantially by 2030.
- 🏠 A great way for the Chamber to assist in reducing the housing burden is to stand in favor of affordable housing developments facing NIMBY opposition.



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# Guest Developers

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**Steve Kirk**  
CEO & President  
Rural Neighborhoods



**Shawn Wilson**  
CEO & President  
Blue Sky Communities

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# Know the Law

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- 🏠 If a local government denies an affordable rental housing development due to political or other-wise irrational motives not based on rational evidence, its decision may be challenged under the **Civil Rights Act (42 U.S.C. § 1983)** for violating the affordable housing developer's substantive due process rights.
- 🏠 Courts have held that the public's negative attitude, or fear, unsubstantiated by factors that are properly cognizable in a development proceeding, are not permissible basis for land use decisions.

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# Pueblo Bonito



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# Pueblo Bonito Case - Lee County

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- 🏠 Faith based nonprofit sought rezoning for 26 acre site to build farmworker housing
- 🏠 The nonprofit developer held community meetings which resulted in a vociferous NIMBY group being formed
- 🏠 County was deluged with letters opposing the development
- 🏠 Lots of media coverage
- 🏠 Lee County Commission denied the rezoning

# Pueblo Bonito Case - Lee County

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- 🏠 Developer filed a petition using Bert Harris Private Property Rights Act - provides for quick dispute resolution
- 🏠 While Special Magistrate hearing was pending, DOJ brought suit after complaint from Legal Services based on federal fair housing act - protected by race/ethnicity
- 🏠 DOJ started interrogatories, depositions etc.
- 🏠 The special master report came in with findings that the denial of the rezoning request was unreasonable and did unfairly burden the use of the property
- 🏠 Lee County Commission wisely settled by permitting the development to proceed. DOJ closed its fair housing suit- County avoided a judgment for substantial damages, penalties, and attorneys' fees

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# Pueblo Bonito



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# The Florida Fair Housing Act

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- 🏠 In 2000, the “Florida Fair Housing Act” (the state’s substantial equivalent to the federal “Fair Housing Act”) was amended to create Section 760.26.
- 🏠 **Fla. Stat. 760.26: 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.**
- 🏠 Plain English - if a market rate development would have been approved, the affordable housing development must be approved.

# The Florida Fair Housing Act

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- 🏠 The expansion of State Fair Housing Protections to include affordable housing in Florida has found success provided local government lawyers and elected officials know about this increased statutory protection.
- 🏠 First- to avoid a bad decision– local government lawyers protect the city or county commission from violating the Florida Fair Housing Act– so it stops bad decisions before they happen.
- 🏠 In the event the bad decision happens anyway, **the success of the Pueblo Bonita Case in Lee County can be replicated without knowing if there is a protected class under federal fair housing law. Residents of subsidized housing in Florida are a protected class for land use purposes pursuant to F.S. 760.26.**

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# The Property Value Argument

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- 🏠 Neighborhood opposition is often based on fears of falling property values.
- 🏠 Yet, virtually without exception, property value and affordable housing research finds no negative effect on neighboring market rate property values.
- 🏠 In fact, in some instances, affordable housing has increased the value of neighboring property. In November 2016, Trulia released a report, *There Doesn't Go the Neighborhood: Low-Income Housing Has No Impact on Nearby Home Values*, adding fresh data to the large body of research showing that affordable housing does not decrease neighboring property values.

# The Property Value Argument

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**<https://www.urban.org/sites/default/files/2022-04/Alexandria%20Affordable%20Housing%20Brief.pdf>**

April 2022: Urban Institute

Although the impact of affordable housing on nearby property values is not the primary reason to build affordable housing, individuals often cite it as a reason to oppose such developments. This analysis adds to the current research on the topic, showing that affordable housing developments in the city of Alexandria, Virginia, not only do not reduce property values but also are associated with a small but statistically significant increase in values.

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# Consider only Legitimate Concerns

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- 🏠 The key to overcoming community opposition is addressing all the opposition's legitimate concerns.
- 🏠 Legitimate, non-discriminatory concerns around issues like traffic or project design may lead the affordable housing developer to modify plans for the proposed development.
- 🏠 Once the developer has tried to work with the neighbors and is able to report to local government that all legitimate concerns have been addressed, all that is left are illegitimate concerns.

# If concerns are not legitimate, the development must be approved

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- 🏠 Once all legitimate concerns are addressed, if opposition persists, it can be stated with certainty that the opposition is illegitimate and is therefore inappropriate, arbitrary, capricious, or unlawful for the local government to consider in making its land use decision.
- 🏠 Local officials must have some rational police power-based (public health, safety, or welfare) purpose for their development decisions. Individuals have a fundamental right to fair and non-arbitrary land use decisions



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# The Opposition is not the only one with Property Rights

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- 🏠 The owner of the property that is under contract to be sold for the development of affordable housing or the purchaser/developer has the same property rights as the neighbors.
- 🏠 Ch. 70, Florida Statute- Bert Harris Property Rights Act
- 🏠 Creates a lower standard than a constitutional taking - local government-unfairly or inordinately burdening the use of private property
- 🏠 Florida Legislature amended the comprehensive planning act to require a property rights element. F.S. 163.3161(10)

# Political Will

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Time to say **YES!** to the affordable housing development and no to the NIMBY opposition – this could be described as “political will” especially when faced with an angry group of constituents, but it is local governments’ only option to avoid potential legal liability.



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# Tools for Success

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- 🏠 The more land use and development approvals requiring a vote by an elected body, the more opportunities there will be for neighborhood opposition.
- 🏠 HB 1339 passed in 2020 “zoning and land use override”
  - Residential, commercial, and industrial zoned land does not need to be rezoned for affordable housing

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# Missing Middle Housing

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- 🏠 Missing Middle refers to the type and tenure of the housing, it is not used in this context to denote “middle income housing”.
- 🏠 Lifting the highly restrictive single-family zoning to permit small scale rental development such as ADUs, duplexes, triplexes, for example.
- 🏠 HB 1339: Remove the obligation for an affordable housing developer to seek land use changes on a case-by-case basis- the more you can reduce rezoning applications, the more you can avoid NIMBYism thwarting development.
- 🏠 If clear and predictive development standards are implemented from the outset, there will be less NIMBYism on the back end.

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# Improving the Commission Meeting

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- 🏠 Rezoning- quasi-judicial-opposition make far fewer outlandish claims if under oath
- 🏠 Exparte communications should be same for the opposition as developer/applicant.
- 🏠 Require substantial competent evidence.
- 🏠 If opposition claims traffic impacts and the applicant has a reliable traffic study that shows de minimis traffic impacts and the opposition offers no reliable traffic study to rebut the applicant's traffic study, they have offered no substantial competent evidence for you to accept.
- 🏠 Allow the applicant time to respond to all the opposition after all the opposition has spoken.

# “Takeaways”

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- 🏠 If all legitimate concerns of the opposition are addressed, a no vote will be based on illegitimate concerns which does not pass legal muster.
- 🏠 Failure to approve the affordable housing development could result in legal liability under the Federal and Florida Fair Housing Act and deny property rights.
- 🏠 Succumbing to NIMBY opposition has substantial negative consequences for meeting the housing need and could lead to an increase in homelessness. **If there is a housing crisis - act accordingly.**

# About the Florida Housing Coalition

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- 🏠 Statewide nonprofit provider of training and technical assistance on everything from ending homeless to first time homeownership.
- 🏠 Housing Summits
- 🏠 Drafting policies and ordinances
- 🏠 CLTs – Disaster Recovery – if it involves housing, we can help you!
- 🏠 **PLEASE CONTACT US IF YOU ARE HAVING A NIMBY PROBLEM**

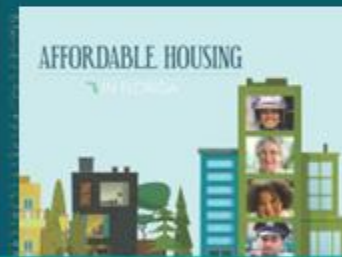
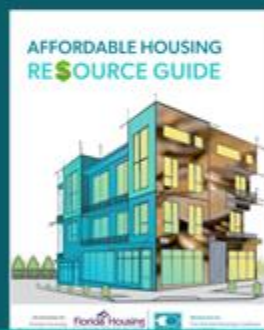


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# Florida Housing Coalition Publications

Access these valuable resources  
and more under the Publications  
tab at [Flhousing.org](http://Flhousing.org)



# Questions?



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