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Critique of the CHBA Report on Inclusionary Zoning

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May 2010 (rev Apr 2011)

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Introduction

The Canadian Home Builders Association commissioned Altus Clayton to prepare an analysis of the ramifications of inclusionary zoning. The result was the report entitled “The Potential Effects of the Inclusionary Zoning in Canada”, released in May 2008.

Their report largely presents a rambling collection of false hypotheses, misleading statements and unfounded conjectures. No new research was undertaken; it depends entirely on existing research that is either very flawed or seriously misrepresented. Certainly none of it, when examined with a modicum of care, provides any support for its claims.

What this report displays, more than anything else, is an out-and-out hostility to examining inclusionary zoning in an unbiased and constructive way. For the authors, inclusionary zoning is all bad, and that ends the need for all discussion.

Central Conclusion

In an attempt to separate fact and fiction, this paper will focus on its central and most important conclusion.

Their central conclusion is this: “The literature from the US overwhelmingly suggests that inclusionary zoning is a relatively ineffective and inefficient approach” (see page 16 in the ‘conclusion’ to the main text).

Elsewhere, the conclusion is also presented this way: “Most research based on the US experience suggests that inclusionary zoning is an ineffective and inefficient policy, compared with other options” (see page 1 of the executive summary, and page 2 of main text).

As indicated, this critique focuses on only the central conclusion of Altus Clayton. For a critical examination of the many other inaccurate claims and distortions in the report, readers should turn to a separate paper by David Rusk¹, a noted expert from the US on inclusionary zoning.

The following assessment will show that Altus Clayton was able to muster only a decidedly underwhelming amount of literature to support its central claim. Furthermore, when that literature is examined, it is very flawed or does not actually support the claim.

Where is the “overwhelming” literature?

The report speaks of literature overwhelmingly in support of its conclusion. The main body of the Altus Clayton report cites a total of 12 reports. The appendix identifies 15 so-called “major inclusionary studies”, but leaves out one of the 12 cited in the main body. So, the “overwhelming” literature amounts to 16 citations.

This literature can be broken down this way:

- Only 4 of these reports (Reason, Vandell, Furman and Rosen) attempt to assess the impact of inclusionary zoning. As such, they carry the burden of proof for the central conclusion. These will be examined in greater detail later.
- A total of 7 of the reports are essentially descriptions of inclusionary zoning, either as practised generally or in specific jurisdictions. None of them assess the impact of inclusionary programs on price or production. All of them in some way support the use of inclusionary zoning. It would take a great stretch of the imagination to say that any of them was substantially critical of these practices or supported the central conclusion.
- Another 3 of the reports (Mills, Evans and Glaeser) are academic and theoretical critiques of zoning or density controls in general. None of them actually mention inclusionary zoning, let alone provide any empirical evidence about its impact on housing supply and prices. At best they represent a very indirect swipe at inclusionary zoning.
- The remaining 2 describe specific inclusionary housing policies in Canada. None of these policies are inclusionary zoning, and so are not relevant to any assessment of these practices.

So, the “overwhelming” literature mustered by Altus Clayton to support their claims amounts to a total of four reports. As will be shown shortly, the evidence of two of these reports does not stand up to scrutiny, while the two other reports actually refute their conclusion.

What does the conclusion really mean?

The report claims inclusionary zoning is “ineffective and inefficient”, while not being very clear about what this means. It takes a careful reading to find a possible explanation, most probably because the report is trying to imply much more than it can prove.

The best interpretation that can be coaxed from the text (see page 16 of main body) is that inclusionary zoning is considered inefficient and ineffective for these two reasons:

- It fails to deliver much affordable housing, and especially not enough to meet “social housing needs”.
- It reduces the supply and the affordability of market housing.

Note that in one version of the conclusion, the report deems inclusionary zoning to be ineffective and inefficient when “compared with other options”. The report never deigns to identify any of those options, and certainly does not make any attempt to compare them. One of these options presumably is social housing, but this would only provide an uncertain basis of comparison, as Canada has had no sustained social housing program for over 20 years.

In any case, the reference to social housing in the text reveals a misunderstanding about the purpose of inclusionary zoning. It has not been used in the US – nor is it likely to be used much in this country – to provide social housing. Inclusionary housing typically targets a different range of housing needs. So, criticizing it for not providing sufficient social housing means criticizing it for something it typically is not intended to do.

What is the actual evidence in these reports?

Altus Clayton did not undertake any original research, but based its central conclusion mainly on references to four reports. The following looks at what each of these reports actually says relevant to that conclusion, and how reliable their findings might be.

Furman Report

This summary leads with the Furman report². Although given cursory attention by Altus Clayton, this is the critical report by virtue of its recent, comprehensive, empirically-based and rigorous analysis of the impact of inclusionary zoning. Because of its importance, a somewhat fuller summary of this report is also provided in the appendix.

This report was commissioned by the Center for Housing Policy, the research affiliate of the National Housing Conference in the US, which works to develop effective policy solutions that increase the supply of affordable homes.

The study was undertaken by the Furman Center for Real Estate and Urban Policy associated with New York University. It provides objective academic and empirical research on legal and public policy issues related to land-use, housing, real estate and urban affairs.

The report examined the impact of inclusionary zoning in three major metropolitan areas where inclusionary zoning is widely used – namely, those around Boston, San Francisco and Washington DC – over a 25- year period from 1980 to 2005.

Its principal findings were these:

- In the San Francisco area, no evidence of an impact was found on either the price or production of market-rate houses.
- In the Boston area, some evidence of an impact was found, but the impact was variously described as “relatively modest” or “fairly small”.
- In the Washington DC area, where the full analysis could not be completed due to the inadequate sample*, no impact was found in the anecdotal material collected.

Altus Clayton misrepresented these findings by choosing not to report the results from San Francisco and Washington DC area, nor to refer to the marginal nature of the impact found in the Boston area.

Altus Clayton also choose to ignore other findings that qualified the principal findings in some very significant ways:

- In the Boston area, the study found that many communities with inclusionary zoning programs also used growth management policies. These policies by intent (unlike inclusionary zoning) restrict residential development. The analysis was unable to “unpack” the two, but the report did note that the adverse impact found could very well have been caused by these policies, and not by inclusionary zoning.
- In the San Francisco area, the lack of any discernible impact is notable because the programs there typically are more demanding on developers than those in the Boston area. This provides evidence that productive inclusionary zoning programs can be designed to prevent or mitigate adverse impact on price and production. Or, in the words of the report, “these results suggest that adverse price and supply effects are not inevitable consequences of IZ” (page 10 of the executive summary).
- In general, the Furman report noted that inclusionary zoning programs have been typically adopted in high-cost communities that have seen rapid increases in house prices. (Indeed, although not stated in the report, these programs are typically adopted as a way of addressing the decline of affordability caused by those rising prices.) It noted that the analysis could not reliably separate the price rise (if any) due to inclusionary zoning from price rises associated with the wider prevailing market conditions.

It is relevant to note that the Furman report also specifically dismisses the Reason report (see below). This is also something that Altus Clayton fails to report.

* In the Washington DC metropolitan area, local government is based on a few large counties. So, although inclusionary zoning is used pervasively here, the number of jurisdictions using it is too small for a proper statistical sample.

Rosen Report

This report⁶ was prepared by David Rosen, a real estate, economic and public policy consultant who has been involved for over 30 years in assessing and developing inclusionary housing programs across the US.

The report analyzed the annual new construction building permits for the 20-year period between 1981 and 2001 for 28 cities located in major growth areas across California. The sample included cities both with and without inclusionary programs, and the data included both single-family and multi-family housing starts.

It came to this conclusion: “No correlation whatsoever was found between the city’s adoption of inclusionary housing and a reduction in housing development activity ... adoption of an inclusionary housing program is not associated with a negative effect on housing production. In fact, in most jurisdictions ... the reverse is true. Housing production increased, sometimes dramatically, after passage of local inclusionary housing ordinances.”

The study found only one of the surveyed cities with an inclusionary program suffered a drop in residential permits immediately after passage, but that drop was due most likely to unique local conditions not related to the inclusionary program.

In summary, the empirical work undertaken in this report soundly refutes Altus Clayton.

Reason Report

The Reason report³ was prepared by the Reason Public Policy Institute, a libertarian think tank in California that is dedicated to opposing all forms of government regulation. The report was commissioned by the Home Builders Association of Northern California and the California Building Industry Association, which presumably were seeking evidence to be used in fighting against these programs.

The Reason findings are based on an analysis of building permit data in 33 communities in the San Francisco area, all with inclusionary programs, over the period of 1973 to 2003. In that analysis, the authors found a drop in the number of building permits issued after these programs were implemented, and concluded that the drop “could” (their word) be blamed entirely on the inclusionary zoning policies

Based upon this analysis, the report proceeded to identify and purported to quantify a number of dire impacts that were ascribed to inclusionary zoning. For example, the study estimated (their word) that inclusionary zoning caused an increase of \$22,000 and \$44,000 to the price of new homes to the median city. Among the other impacts (listed in Altus Clayton on page 3) are a massive loss of tax revenue for local governments.

The Reason report and its findings have been discredited by two other reports:

- A report by two California professors⁴ after examining the work at some length gave this damning assessment: “The study does not provide empirical evidence necessary to assess the merits or demerits of IH. The narrow scope of the research, the flawed research design, the data limitations and the weakness of the analysis are so consequential that few, if any, of their conclusions are useful” (opening paragraph of their executive summary).
- The Furman report came to a similar conclusion: “Their work relies on several questionable assumptions and is not methodologically sophisticated.... In short, the results ... [should not be taken] as proof of a causal relationship between IZ and housing market outcomes” (page 16 of their report).

Furman also spoke of “many studies reflect[ing] strong ideological biases on the part of authors”. Although it did not point directly at Reason with this comment, it most certainly applies.

Among the significant flaws found in the Reason study are these:

- The study looked only at communities with inclusionary policies, and not at those without policies. In the absence of this fundamental and crucial comparative information, it is not possible to determine if the drop in permits was specific to communities with inclusionary zoning, or a more common phenomenon caused by other factors. (The Furman and Rosen reports, which looked at both sets of municipalities, clearly indicate that a corresponding drop was found in municipalities without inclusionary zoning.)
- The study failed to explore other possible reasons for the drop in construction within these communities. For example, construction is known to be particularly affected by the state of the economy. In this regard, it is relevant that 15 of the programs in the sample (or nearly half of the total) were implemented between 1989 and 1992, or just ahead of the economic recession of the early 1990s.
- The study also overlooked that there commonly is a temporary drop-off in new building permits after the introduction of these programs. The reason is that builders rush to have projects approved before introduction, and then take time afterwards in applying for additional permits.
- The study piled up all sorts of dire numbers related to the adverse impacts attributed to inclusionary zoning. None of these figures were tested or validated by actual empirical data. They were theoretical calculations that rested upon a single and problematic data source – the drop in permit data.

Unbiased readers of the entire report will find it very hard not to believe that the authors did not first decide upon their conclusions, and then focus narrowly on

finding ways to support those conclusions. There is certainly no hint in their unrelenting and one-sided screed of any possible justification for inclusionary zoning.

In summary, as pointed out by the two damning assessments, the Reason analysis is fatally flawed and provides no credible evidence to support the Altus Clayton conclusions.

Vandell Report

The Vandell report⁵ was funded by the Wisconsin Realtors Association and the Madison Area Builders Association. It was undertaken by Professor Vandell in support of their opposition to the enactment of an inclusionary ordinance by the city of Madison in Wisconsin.

Altus Clayton points to this report – and only to this report – as providing evidence that inclusionary zoning does not provide much affordable housing. Specifically, it quotes this conclusion from this report: “Inclusionary zoning does not produce a high volume of subsidized housing – typically, only 3-7 percent of the new stock produced annually represents ‘affordable housing’ in inclusionary zoning jurisdictions” (page one of the executive summary).

The Vandell report does not provide any way to verify these figures. While it does provide tabulated data for the affordable housing production from most of about 130 inclusionary zoning programs, it provides no corresponding data for the market or total housing production.

There is a significant hurdle in making this sort of assessment of productivity. The available data on completions, which come from disparate sources, are known to be incomplete and unreliable. The Furman report for one acknowledges this problem.

The Vandell figures, in any case, are most likely to underestimate the future potential of these programs for a number of reasons:

- Mandatory programs are known to produce very significantly more units than voluntary ones. The report failings to distinguish between the two, and so appears not to recognize the full potential of these programs when properly conceived.
- Fees-in-lieu and other contributions are allowed in most of these programs. Some of these programs have generated significant fees-in-lieu, but little housing. These additional contributions appear to be ignored by Vandell.
- Many of the programs had been in existence for only a few years. New programs need time to become productive; their initial output is not indicative of what they will produce when mature.

These broadly-based historic figures can at best only provide a very rough guide to the future potential of these programs. They do not reflect what the municipalities have learned from past experience to enhance their productivity. For example, they have learned to use mandatory rather voluntary provisions, and limit the use of fees-in-lieu. These lessons are being applied not only in new programs, but also through improvements to the existing.

Although likely to be an underestimate, it is revealing to apply these figures to the housing production in the City of Toronto. In the 10 years between 2000 and 2009, slightly more than 100,000 market units were completed in the city. So, based upon the Vandell figures, if an inclusionary program had been in place, the city would have secured between 3,000 and 7,000 affordable housing units. In comparison, 3,300 new social housing units were produced in the city during that time.

These figures do not seem to support in any way Altus Clayton's contention that "inclusionary zoning is an ineffective and inefficient policy, compared with other options" (none of which are not identified, but presumably must include social housing).

Finally, it must be noted that the Vandell report also briefly examines the potential impacts – both positive and negative – of inclusionary zoning. This assessment is recognizably speculative and inconclusive. The report repeatedly notes that acknowledges the lack of empirical evidence and analytically-based research. In any case, those speculative findings all indicate that the negative impacts are likely to be no more than marginal. So, these findings also do not add any credence to the Altus Clayton conclusions.

In summary, this report offers no solid or conclusive evidence to support Altus Clayton. Its single contribution, the assessment of the productivity of inclusionary zoning, provides an unreliable indication of the potential output of these programs.

References

- 1 David Rusk: *He Who Pays the Piper ... : An Assessment of Research on Inclusionary Zoning*; December 2008.
- 2 Vicki Been et.al.: *The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas*; Furman Center for Real Estate & Urban Policy, Working Paper 07-05, 2007.
- 3 Benjamin Powell and Edward Stringham: *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*; The Reason Public Policy Institute; 2004.
- 4 Victoria Basalo and Nico Calavita: *Policy Claims with Weak Evidence*, June 2004.

- 5 Kerry D. Vandell: *Inclusionary Zoning: Myths and Realities*, Center for Urban Land Economics Research, University of Wisconsin-Madison; Final Draft, 2003.
- 6 David Rosen: *Inclusionary Housing and its Impact on Housing and Land Markets*; NHC Affordable Housing Policy Review; February 2004.

Appendix: Summary of the Furman Study

This is a summary of *The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas*, written by Vicki Been, Rachel Meltzer and Jenny Scheutz for the Furman Center for Real Estate & Urban Policy in 2007.

Introduction

The study was commissioned by the Center for Housing Policy, the research affiliate of the National Housing Conference in the US, which works to develop effective policy solutions that increase the supply of affordable homes.

The Furman Center for Real Estate and Urban Policy associated with New York University was established in 1995 to provide objective academic and empirical research on legal and public policy issues related to land-use, housing, real estate and urban affairs.

This report set out to provide an objective and methodologically rigorous examination of the impact of inclusionary zoning (IZ) on the price and production of market-rate housing. It collected data on housing prices, construction permit and other relevant data for the municipalities in the three metropolitan areas around Boston, San Francisco and Washington DC for the period of 1980-2005. It then subjected this data to standard regression analyzes.

The study was undertaken to examine empirically three key questions: 1) what kinds of jurisdictions have adopted Inclusionary zoning; 2) how much affordable housing have they produced, and what influenced that production; and 3) what has been their impact on the price and production of market housing. Of these, only the third question was really addressed to any substantial extent, and that is the focus of this review.

As noted in the report, there are arguments that inclusionary zoning programs could have an adverse impact on supply and price by 1) driving developers to build where there are no inclusionary zoning programs and/or 2) having them increase prices to cover their losses incurred in providing the affordable units. The study represents the first major effort to examine the validity of these hypotheses in an objective, comprehensive and analytical way.

* One of the shortcomings of this study is that it looked only at single-family housing, and so could not account for the effect of any switch toward building more multi-family housing as a way of providing affordable housing.

The report points to the paucity of rigorous empirical data as the key reason for lack of good studies in the past. As a result, it noted most of the existing studies are descriptive case studies, and many reflect the strong ideological biases of the authors.

In this context, it specifically dismisses the two studies* by the Reason Foundation. It notes that “their work relies on several questionable assumptions and is not methodologically sophisticated.... In short, the results of the two studies [should not be taken] as proof of a causal relationship between IZ and housing market outcomes” (page 16).

Key Findings

The study’s key findings regarding the impact on price and production are summarized here, using as much as possible the (sometimes obscure) words of the report. The findings are taken from both the full report and the executive summary.

Executive Summary

The main finding, as highlighted in the executive summary, is this: “In the San Francisco area, there is no evidence that IZ impacts either the prices or production of single family homes. In suburban Boston, IZ seems to have resulted in small decreases in production and slight increases in the prices of single-family houses” (page 8).

There is also this telling finding: the results from the San Francisco area “suggest that adverse price and supply effects are not inevitable consequences of IZ ... it seems likely that the details of the policies – particularly the inclusion of effective cost offsets – matter considerably” (page 10).

Main Body

The main body of the report provides additional findings specific to the three areas.

* Altus Clayton makes reference to only one study by Reason, but there are two – one for San Francisco area and the second for Los Angeles area. The difference is no consequence because they used the same methodology and came to the same conclusions.

Boston

The analysis provides “some evidence that IZ constrains new development, but the results are not conclusive. The simplest model ... suggest[s] that the presence of IZ is associated with roughly 10 percent fewer single-family permits per year ... [and] that adopting IZ is associated with just under a three percent increase in prices” (page 63)*.

The report adds to important caveats to this finding:

- “These results [could] imply ... changes in housing market conditions that are correlated with the adoption of IZ, rather than the effects of IZ itself” (page 63).

In other words, this caveat is raising the possibility that inclusionary zoning is a response to certain housing market conditions (like rising prices) and not the cause of them. As noted elsewhere in the report, inclusionary zoning is typically adopted in high-priced and fast-growth communities to address the affordability issues caused by the already rapidly rising house prices.

- In the Boston area, “adopting IZ is positively correlated with having several other types of regulations” (page 67), including specifically growth management policies. “These results are consistent with a situation where the adoption of the IZ is correlated with other regulatory changes and those other changes, rather than IZ, produced the previously estimated constraint on supply” (page 63).

In other words, inclusionary zoning in the Boston area is typically found in communities using other land-use regulations, including most notably growth management policies. So, it is possible that these other regulations might be causing the constraint on supply rather inclusionary zoning.

San Francisco

“The analysis shows no evidence of a statistically significant effect of IZ on either single-family permits or single-family housing prices in the San Francisco area... Based on the data available, it does not appear that the adoption of IZ among jurisdictions in the Bay Area has produced systematic effects on either housing production or housing prices” (page 64).

* Although not mentioned in the report, two additional clarifications can be made. First, the 3% increase in house prices that might be attributed to inclusionary zoning is for a 17-year study period, and so averages less than 0.2% per year. Second, the 10% drop per year in building permits is for single-family units, and not total units. A drop in single-family permits is quite understandable because these programs require the development of affordable housing, much of which will be provided in multi-family forms.

Washington DC

The study could not complete the analytical exercise for the Washington area because the sample of jurisdictions was too small, but the report did provide a descriptive review of what was found there. (In the Washington area, local government is based on large counties. So, although used pervasively, there are only a small number of jurisdictions using inclusionary zoning.)

“The analysis of IZ in the Washington DC area also reveals no effects of IZ on permits or prices, although it is impossible to determine whether this reflects the true impacts of IZ or simply the severe data limitations” (page 65).

The report also points out this relevant finding. The data in some of the jurisdictions “show changes in housing permits and prices that are difficult to explain solely as a result of adopting IZ”. More specifically, in some communities after implementing inclusionary zoning, there was a drop of prices or an increase in production – just the opposite of the claims made by Altus Clayton.

Follow-Up Point

The findings of the report contain a telling anomaly that is not fully addressed, and so merits additional attention.

The results for the Boston and San Francisco areas, if anything, are the opposite of what might be reasonably expected. If there was an adverse impact from inclusionary zoning, it should have been felt in the SF area rather than Boston. The report offers possible reasons for this, without making this particular point.

First of all, it must be noted that the data from the SF area are more reliable than that for Boston. The SF programs generally have produced far more housing, and produced it over a much longer time. Nearly all of the SF inclusionary zoning programs have produced some affordable units, while slightly more than half (57%) in the Boston area reported having done so. The median length of time for the programs in the SF sample was 12 years, while the corresponding figure for the Boston area was 2 years.

Putting this another way, the finding that the SF programs have no impact is based on a greater weight of evidence than the finding that the Boston programs have had an adverse (albeit marginal) impact.

The programs in the San Francisco area are more likely to have an adverse effect than those in Boston. Most of the SF programs (93%) are mandatory, and furthermore, are applied to nearly all developments. In contrast, only about half (58%) in the Boston area are said to be mandatory, and in many cases these provisions only apply to limited areas or types of development (like cluster developments). As the report correctly says, “compared to mandatory programs,

voluntary programs should be less likely to lead to increased prices and decrease production of market-rate units” (page 12).

The report points to two possible and very relevant reasons for this anomaly:

- The programs in the San Francisco area are more flexible in how they allow developers to meet their obligation, as they allow for fees-in-lieu and land dedications as alternatives to on-site construction. At the same time, they are more likely to offer density bonuses and other cost offsets to mitigate any impact. This indicates that inclusionary zoning programs can be designed to mitigate any adverse impact on price and production.
- The inclusionary zoning programs in the Boston area have a “positive correlation” – that is, are commonly associated – with growth management policies. By their very nature, these policies restrict new housing development. This indicates that the growth management policies could be causing the negative effects attributed to inclusionary zoning. The report acknowledges this possibility, but states that it could not “unpack” the two effects.

Overview

This report presents important and seminal research. It is the first to apply a rigorously analytical approach to the available empirical data about the impact of inclusionary zoning. As such, it represents a much more credible study than the two earlier studies upon which Altus Clayton principally relied to support its claims.

The findings of the study cannot in any way be interpreted to support the assertion that inclusionary zoning must adversely impact the price or supply of market housing in communities where it is adopted.

The report found only a marginal impact in one of the three study areas, while also pointing to two alternative reasons for that impact:

- Inclusionary zoning has been typically adopted in fast-growing and high-cost communities in response to already rapidly rising house prices. The study was unable to determine whether the price increases after the adoption of inclusionary zoning were caused by inclusionary zoning or the other prevailing conditions.
- Inclusionary zoning was often found in communities that have adopted other regulatory measures, and particularly growth management policies that are known to restrict new housing production. The study again was unable to distinguish the impact of these regulations and impact of inclusionary zoning.

The report also presents evidence, but without exploring in sufficient depth, that the impact of inclusionary zoning could be mitigated or overcome through the provision of cost offsets and compliance alternatives.