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FINAL REPORT

NATIONAL HOUSING STRATEGY:
Inclusionary Zoning - Domestic & International Practices

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Executive Summary

This paper examines inclusionary zoning and related inclusionary housing practices, particularly as used in these four countries: the US, England, Canada and Australia. In addition to a detailed review of the emerging practices in each, it provides an overview highlighting their main similarities and differences. It also summarizes some of the key lessons for Canada that can be drawn from this experience.

All of these practices use the planning system and development regulations to engage private developers in providing some portion of affordable housing in their market housing developments.

In all of these jurisdictions, the practices are seen as a way of capturing (and using for affordable housing) some of the enhanced land value released by development approvals. This is considered justified because much of that enhanced value can be attributed to public planning decisions and infrastructure improvements.

Inclusionary zoning (IZ) is a particular form of inclusionary housing practice used across the US. Since being introduced there in the early 1970s, IZ programs have steadily risen in number to about 500. Although most of these programs were adopted by municipalities without any state-level direction or involvement, they all adhere more or less to a common set of rules and procedures.

The paper focuses on IZ for two reasons: it has had a proven track record in providing affordable housing, and it can be readily applied in Canada due to the similarities in the two planning systems.

What particularly makes IZ effective is that it imposes a mandatory obligation to provide affordable housing on nearly all housing developments seeking a development approval, including those proceeding as-of-right.

So far municipalities in Canada have taken a different and more limited inclusionary approach. The provision of affordable housing is mainly secured by exchanging it for increased density granted through a rezoning for certain types of sites or developments.

England has an effective inclusionary system, called ‘planning gain‘, that follows many of the same practices and procedures as those in the US. But because of significant differences in the planning systems, the approach cannot be readily applied in Canada.

In Australia, the practices have been used in limited, tentative, but sometimes still instructive ways.

Potential for Canada

IZ so far has not been used in Canada. There are no inclusionary programs here that match the US model.

The main reason is that the municipalities here have generally lacked the provincial authority enabling them to require the provision of affordable housing as a condition of obtaining a development approval.

This legislative context is now changing. Manitoba passed the necessary legislation in November 2012, and Ontario more recently in December 2016. Also, Alberta is now considering draft legislation introduced in mid-2016.

IZ represents an important new tool for producing affordable housing. It enables municipalities to harness their own powers to engage private developers in the provision of affordable housing. It does this, it is important to note, without relying upon the use of subsidies of any kind from the municipalities or other levels of government.

IZ is also especially notable for producing affordable housing mixed into all market housing. Over time, that means the housing will be built widely across the community, providing residents a much greater choice and better access to services and jobs.

There are limits to what IZ has been able to do. IZ is clearly not the answer for all affordable housing needs. It represents an addition to, but not a replacement for, conventional programs.

IZ has generally not produced housing for low-income households and those in greatest need. This requires deep subsidies that can be provided and sustained only by senior government funding. IZ is best described as producing “below-market” or “workforce” housing for moderate-income households left behind by the market.

IZ operates by taking a share of what the private market is building. This means that it has tended to produce affordable ownership housing rather than affordable rental. (Having said that, there are ways of tweaking the practices to provide more rental as well as low-income housing.)

Also, because it takes a share of what is being produced, it is dependent on growth. It is not capable of producing affordable housing in communities, or in parts of those communities, where little or no market development is occurring.

Despite these limits, IZ remains an effective way of producing affordable housing that can and should be used widely across Canada.

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INTRODUCTION

This paper examines inclusionary zoning and related inclusionary housing practices. All of these practices use the planning system and related development regulations to engage private developers in some way in providing affordable housing in their market developments.

It explores particularly the experience with these practices in four countries: Canada, US, England and Australia.*

It also provides an overview of those practices that highlights their similarities and differences.

Finally, it summarizes some of the key lessons for Canada that can be drawn from this experience.

What is Inclusionary Zoning

In this paper, the terms “inclusionary housing” and “inclusionary zoning” are used with somewhat different but overlapping meanings. Inclusionary housing is the more general and inclusive of the two; inclusionary zoning (IZ) is a particular type of inclusionary housing.

The term “inclusionary housing” (or inclusionary housing programs, policies or practices) is used in reference to municipal initiatives that use the planning regulations and development approval process to engage private developers in providing a percentage of affordable housing in their otherwise market housing developments.

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* The terms of reference also called for examining those practices in New Zealand and the United Kingdom.

New Zealand has had only limited and brief experience with these practices. National legislation authorizing a form of mandatory inclusionary practices was passed in 2008, but then rescinded later that year by the newly elected government. Only one city has ever used inclusionary practices, but these have relied on voluntary compliance.

Scotland and Wales (but not Northern Ireland) in the UK have their own inclusionary practices, but these are based on and are very similar to those in England.

The term “inclusionary zoning” in this paper is reserved for the programs used widely across the US. In a sense, IZ is American-style inclusionary housing. Although different in many details, the locally-based US programs all adhere to a common set of rules and procedures. It is these common characteristics that define what inclusionary zoning is, and makes it different from what has been practised in Canada and elsewhere.

IZ as practised in the US represents a new – and, indeed, for many even revolutionary – way to produce affordable housing for Canada in these ways:

1) IZ requires private developers to provide affordable housing, generally with no or very little compensation.

   In contrast, affordable housing to date in this country has been largely provided through public subsidies coming from the federal and/or provincial governments.

2) IZ provides mainly “below-market housing” – both ownership and rental – predominantly for moderate-income households left out of the marketplace.

   In contrast, affordable housing programs in this country have focused primarily on providing low-income rental housing mainly in the form of social housing.

3) IZ is directed at creating mixed-income developments, with affordable housing combined and integrated with the market units.

   In contrast, affordable housing in this country mainly has been located on sites separate from the market units.

4) IZ are municipal initiatives that depend on local resources and powers, and have been designed and operated by them with very little or no other government input.

   In contrast, municipalities in this country generally have looked to the federal and provincial programs to fund the provision of affordable housing.

What is Affordable Housing

In Canada, the term “affordable housing” is loosely and inconsistently used. It is variously associated with one or both of two types of quite different housing – social housing and “low-end-of-market” housing. The latter is essentially government-subsidized housing. The latter is modestly-sized and no-frills market housing that can be provided by the development industry at a reasonable profit without subsidy.

All of the Canadian programs examined in this paper have been directed at securing one or both of these types of housing.

The programs in the US and England are directed at a different type of housing. That is housing that falls between social housing and “low-end-of-market” housing. More specifically, it is housing for households earning too much for social housing or other government assistance, but too little to afford new suitable market housing.

Put another way, it is housing for working households with moderate-incomes that 20 to 30 years ago could have readily afforded to buy or rent in the market, but are now being priced out as their incomes have failed to keep up with rising house prices.

It is named differently in these two countries – mainly “intermediate housing” in England, and “below-market” housing in the US. At times, it is also called workforce, gap, price-restricted (or price-controlled), discounted market, mid-range and entry-level housing. All of these serve more or less the same need.

The programs in the US, England and Australia secure this housing by using the planning system to generate a “shallow subsidy” sufficient to provide it at a price or rent significantly below that available for the equivalent housing even at the bottom of the market.

OVERVIEW

All of the inclusionary practices examined in this paper use the planning system and development regulations in some way to secure contributions from the private developers toward affordable housing.

Similarities in Genesis

While different in many ways, all of these practices were developed in response to the same pressures.

In the first place, they are a response to the very rapid rise in housing prices and rents as particularly seen in many fast-growing and affluent communities. This caused a housing affordability problem for a new range of households – namely, working households with moderate-incomes that 20 to 30 years ago could have readily afforded to buy or rent in the market, but were now being priced out as their incomes failed to keep up with rising house prices.

At the same time, many national governments were either pulling back on the funding for affordable housing, or certainly not expanding it sufficiently to meet the increasing needs. The funding that was available was increasingly focussed on the long-standing and serious problems associated with the poor, homeless and vulnerable.

This placed pressures on governments at various levels to find new solutions. Many turned to the planning system in an attempt to address the problem. England at the national level, Australia at the state level, US at the local level, and Canada in a tentative way at some provincial and local levels.

This represented a major change in thinking. The conventional view of the role of planning with affordable housing is that it should designate sufficient land at suitable densities for housing, and then expect private developers do the rest. But the private sector has failed to produce the full range of housing needs – and particularly affordable housing – in these fast-growing communities.

So, a different view emerged. While the fast growth was causing the problem, it also offered a solution. This solution involved recapturing at least some part of the massive increase in land values generated by the growth. This recapture was justified especially because much of that increased value was due to public decisions regarding land-use planning and infrastructure improvements.

Types of Programs

There are three basic ways of using the planning system to provide for affordable housing:

- Mandatory inclusionary practices (including inclusionary zoning), which require all developments to provide affordable housing as a condition on getting development approval. In this case, the developers in effect have no choice but to provide the affordable housing if they want build anything.

  In these programs, the cost of providing the affordable units is "passed back to the land". In other words, when the developers know this cost, they will bid less for the land. So, the landowners will bear the cost of the affordable housing.

  This is the approach used in both the US and England, and has proved most effective in providing affordable housing.

- Rezoning-based inclusionary practices, which leverage the increased density allowed under a rezoning approval in exchange for the provision of affordable housing. The developers have an option to build without providing affordable housing under the existing as-of-right conditions, or build at a higher density with the affordable provision.

  In these programs, the cost of providing the affordable housing is taken out of the increased development value released by the rezoning.

  This is the approach used exclusively to date in Canada, to a limited extent in Australia, and also in the "big city" IZ programs in the US. The approach can be effective, but it is too often applied very narrowly to certain types of sites or developments.

- Incentive-based (or voluntary) inclusionary practices, which offer incentives to encourage developers to contribute the affordable housing. The developers have the choice to participate or build as-of-right.

  In these programs, the cost of the affordable units is covered by the incentives. The developers at the very least must be made "whole" in order for them to participate.

  Such programs in the US, Canada and elsewhere have proven to be ineffective in providing for affordable housing. So, they are not examined in this paper.

Variations in Practices

While all of the practices examined in this paper use the planning system and development regulations to secure affordable housing contributions from private developers, there are some notable differences in how they do this.

The following highlights the different approaches used by IZ generally, and the other inclusionary programs profiled later in this report in Montréal QC, Vancouver BC, Toronto ON, Richmond BC, Edmonton AB, Langford BC, South Australia, and New South Wales (NSW).

- As-of-right vs Rezoning

  In IZ, the obligation to provide affordable housing is generally applied to all new developments, including those proceeding as-of-right as well as those through a rezoning.

  The dozen or so big-city programs (out of the roughly 500 IZ programs) take a different approach by applying the obligation only to rezonings. But in these cases, the intent is still the same – to include all or nearly all new developments – because virtually all developments of any substantial size in these cities need a rezoning.

  All of the inclusionary policies in Canada and Australia are applied only to developments needing a re-zoning, and furthermore, many are selectively applied only to certain types of development. These include "large sites" in Montréal, Toronto and Vancouver; multi-unit condo and mixed-use developments in Edmonton; single-family developments in Langford; large multifamily and mixed-used developments in Richmond; and large urban renewal sites in NSW. They are also applied to government lands in South Australia. Vancouver is currently extending its inclusionary practices to a wider range of sites.

  In England, the obligation is essentially applied to all new developments. (The practice of rezoning does not apply in their planning system.)

- Rental vs Ownership Housing

  IZ provides affordable housing as ownership or rental, depending what the private developers are producing. In some programs, non-profit providers are enabled to buy ownership units and then rent them.

  South Australia provides affordable housing that can be purchased by either eligible buyers for ownership, or by approved non-profits for rental.

  Other programs are used to generate rental only. Edmonton buys the units on behalf of its municipal non-profit agency, which then owns and manages them. In Richmond, the developers are expected to own and manage the units as rental. NSW enables various non-profits to buy and rent the units.

  In England, both affordable ownership and affordable rental are provided.

- "Below-Market" Housing vs Social Housing & "Low-End-of-Market" Housing

  IZ programs target "below-market" housing, which is essentially housing for at a price or rent substantially below that available on the market for equivalent new housing. It provides housing for households falling in the gap in incomes served by social housing and market housing.

In England, the system supports the provision of both social housing and "intermediate housing", which is their equivalent of "below-market" housing.

In general, "below-market" housing is not recognized or provided in Canada. Montréal, Richmond, Langford, Edmonton and Vancouver all support social and/or low-end-of-market housing, but not "below-market" housing.

- Housing vs Fees

  IZ like most other inclusionary programs generally aim at the provision of affordable housing on the same site as the market units, but they also often allow for cash-in-lieu payments in limited circumstances.

  Richmond secures affordable units from large developments, but cash-in-lieu from small developments.

  In recent policy changes, both Langford and Edmonton have given developers the discretion to contribute cash in lieu of the units. As a consequence, they will be receiving little or no housing.

  In practices separate from its inclusionary policy, Vancouver uses part of it development charges on new developments to provide funds for affordable housing.

- Housing vs Land

  While giving priority to getting on-site housing, some IZ programs also sometimes allow for the contribution of land under certain circumstances.

  The three "large sites" policies in Canada are designed principally to secure the provision of land at a reduced cost so that it can be used for the construction of social housing. Vancouver and Toronto have required land capable of accommodating 20% of the housing as social housing, and while Montréal has required 15% for social housing (and another 15% for "low-end-of-market").

- Residential vs Non-Residential Developments

  IZ and most other inclusionary policies generally only affect new residential developments.

  The inclusionary policy in New South Wales is applied to both residential and non-residential developments. The former must provide affordable units and latter must pay fees.

  There are precedents for this in the US. In addition to using IZ, some municipalities in California, Colorado and New Jersey separately charge housing

fees (called “linkage fees”) on commercial developments to support affordable housing.

- High vs Low Set-Asides

  In IZ, the developments are generally obliged to provide 10-20% of the units at a substantially reduced price.

  In New South Wales, the set-asides are as low as 1-3%, but the affordable units must be provided entirely free of charge.

  In England, the targetted set-asides can be as high as 30% and even 50%, but these are subject to negotiation.

EXPERIENCE IN THE US: Inclusionary Zoning

Inclusionary zoning is widely used across the US. It represents the American version of inclusionary housing practices, which so far has not been replicated anywhere in Canada.

Background

The inclusionary zoning first emerged in the US in the early 1970s. The first program was adopted by Fairfax County in Virginia in 1971, but it was overturned by the state's supreme court. This was shortly followed by existing programs in Newton, Massachusetts in 1972; Montgomery County, Maryland in 1973; and Palo Alto, California in 1974.

Since then the number of programs has increased significantly, with every succeeding decade seeing more new programs than the last. Inclusionary zoning programs are now found in approximately 500 municipalities in about half of the states. The largest number of programs occur in the states of California, New Jersey and Massachusetts. The biggest concentrations occur in the suburban communities around the cities of Boston, San Francisco and Washington DC.

These programs have been long associated primarily with "greenfield", suburban and low-density types of communities. This is understandable because these programs rely on buoyant housing markets to produce the affordable housing, and large American cities have not enjoyed those conditions until more recently.

The big cities did join somewhat later, starting first with San Francisco in 1992 and then Boston in 2000. Now about a dozen of the leading US cities have adopted mandatory programs, including NYC, Chicago, Denver, San Diego and others.

The big-city programs introduced an important difference. In the main, they only impose the affordable housing obligation on developments benefitting from a re-zoning. The greenfield programs, on the other hand, typically impose it on all developments, including those proceeding as-of-right. This reflects the different development context in each. Both in their own ways are directed at getting affordable housing from all or nearly all private developments.

Historically, there have been two types of inclusionary programs – mandatory and voluntary. Mandatory programs require developers to provide affordable housing as a condition of development approval. Voluntary (also known as incentive-based or optional) encourage the provision by offering incentives in exchange for affordable housing. In the early years, the number of each was roughly the same. Now nearly 90% are mandatory, as many more of the recent programs are mandatory and some of the voluntary have been converted to mandatory.

The number of affordable housing units generated by IZ is difficult to determine. Many of the jurisdictions have not maintained reliable records of the production.

This is further complicated by the lack of information on the cash-in-lieu contributions and how the money has been spent.

According to one credible estimate, 129,000-150,000 units have been built from its inception to 2010. This would be less than the federal and provincial programs, but it would make it the most productive of the municipally-based initiatives.

Key Influences

Several factors influenced the emergence of these programs from the early 1970s and into the early 1980s.

Declining Affordability

This period saw an unprecedentedly rapid rise in house prices, despite a massive level of new housing production. This occurred in many areas of the country, but most particularly in coastal areas of California and the northeast.

The rise in house prices, taken together with a stagnation of income growth, led to an ever widening gap between the housing being provided by the market and what could be afforded by many households. The affordability crisis, which had already long affected the poor, now spread upwards, hitting for the first time many lower middle-class families with solid jobs.

The withdrawal of funding for affordable housing by the federal government over this same period only served to exacerbate the problem. Cuts were made by the Nixon administration in 1973, followed by more severe cuts by Reagan in 1982. Many state governments tried to replace this funding but never succeeded in entirely doing so.

Municipal Response

All of the initial programs, despite being adopted in such widely separated parts of the country, shared one common characteristic: they were all in relatively affluent communities facing new and unprecedented affordability problems arising from rapid growth. Rather than improving housing prospects for everyone, rapid growth made housing less affordable for a significant and expanding proportion of the population. The adverse impact of the rapid growth on housing affordability is identified in virtually all of these municipalities as the main reason for implementing these programs.

These early initiatives were often passed in response to political pressures coming from a new coalition of potent local interests. It included the working voters who found themselves or their adult children being left out of the local housing market due to rising prices. It also included many civic and business leaders who saw that the housing problem was affecting their ability to recruit essential service workers and other employees. As a result, these initiatives are sometimes seen as middle-

class housing programs because they are directed mainly at their needs rather than the more enduring needs of the homeless and the poor.

All of this put pressure on these municipalities to find new ways of providing for affordable housing. Having limited financial resources due to their dependence on property taxes, they turned to their planning powers and other less conventional means of support. This period saw the emergence of many new, innovative and locally-based tools – not only inclusionary zoning, but also affordable ownership programs, housing trust funds, community land trusts, linkage fees (i.e., fees charged on new commercial developments for affordable housing) and still others.

Exclusionary Zoning

Exclusionary zoning refers to the use of the land-use regulations in a way that limits the development of housing for the less well-off. The use of exclusionary zoning practices had substantially contributed to economic as well as racial segregation in the US. Civil rights activists started giving attention to these practices in the late 1960s. The NAACP in particular looked for a suitable test court case for challenging these practices, and found it in Mount Laurel, a small town in New Jersey. Their challenge eventually ended up before the New Jersey supreme court.

In 1975, the state's supreme court found that zoning laws had been used by Mount Laurel to bar lower-income households from living in the municipality, and ordered the municipality to amend its ordinances. Although the ruling was specific to this municipality, it was meant to be heeded by all developing municipalities in the state.

When neither Mount Laurel nor any other municipality mended their ways, the state's top court in 1982 followed up with a forceful and exacting landmark decision – called the "Mount Laurel mandate". It declared that all developing municipalities in the state were obliged, not only to remove exclusionary practices, but to adopt effective affirmative measures in support of providing their "fair share" of affordable housing. It also proceeded to establish specific fair share obligations for every developing municipality, and an effective means for enforcing their compliance. Among the potential affirmative measures that it approved, but notably did not actually proscribe for all municipalities, was inclusionary zoning.

The administration of the mandate was subsequently transferred from the courts to a new state agency through legislation passed in 1985.

While not binding in other states, the persuasive arguments found in this strongly worded and articulate ruling have been used elsewhere to support the use of inclusionary zoning and other pro-active interventions by municipalities into the housing market for the provision of affordable housing.

State Mandates

Roughly 75% of the IZ programs are found in just three states: California, New Jersey and Massachusetts. This is understandable because all of these were fast-growing and prosperous states hit by rapidly rising housing prices and diminishing housing affordability. But another key factor was the strong and effective affordable housing mandates established in each on these jurisdictions.

Conventional planning, as found almost everywhere else in the US and also here in Canada, only requires municipalities to plan for housing by designating sufficient land for housing and prescribe appropriate densities. These limited actions do very little to effect the actual production of affordable housing.

The mandates in these three states, although quite different, all demand much more of their municipalities. They demand the municipalities to act affirmatively by using all of their tools, resources and powers to the fullest reasonable extent to support the provision of affordable housing. The mandates also set measurable targets or quotas for their affordable housing obligation, and procedures for compelling the municipalities to meet their obligation if they do not.

It is important to note that these mandates, while authorizing the use of inclusionary zoning, do not actually require it be used. The municipalities are strongly pressed to provide for affordable housing, but are able to choose how they do so. Most do choose inclusionary zoning because it is both effective and expedient.

All of these mandates were established at roughly the same time in response to the decline in housing affordability and withdrawal of government funding. New Jersey's mandate is founded on landmark decisions of the state's top court in 1975 and 1982. California's mandate was established mainly through a series of laws passed during 1979-82. Massachusetts' mandate – also known as the "anti-snob law" – comes out its Comprehensive Permit Law enacted in 1969.

These mandates have been responsible for most of the regulatory initiatives implemented to date. Nevertheless, there are many programs in other states not having these mandates, and also many programs in California implemented before its mandates. The latter are particularly important because they are generally among most innovative and progressive of these programs, and had already set the model for later programs by the time the state became involved.

State Legislation

State law treats inclusionary zoning in widely disparate ways across the US. Very few (probably only Vermont and New Jersey) actually explicitly authorize its use, while another very few (Oregon and Texas) outright prohibit it. A large number (including California and Massachusetts) implicitly authorize and promote its use by granting their municipalities extensive other powers to address affordable housing. Still another large number – perhaps, the largest – tolerate it by giving the

municipalities wide latitude in planning matters and not intervening when they use inclusionary zoning.

This complex picture is further complicated by the “home rule” jurisdictions. These are jurisdictions that existed before the states were constituted, and so retain certain powers not bounded by the states. Many jurisdictions (for example, those in Colorado) have used these powers to enact inclusionary zoning.

While the mandates in the three states clearly influenced the take-up of these programs, with one exception, the state laws have not substantially effected how these programs work. (The exception is New Jersey, where the court intervened to establish many of the basic practices.) Inclusionary programs are very much municipal programs that were conceived, designed and developed by them without direction from the states. They continue to be run entirely independently of state and federal programs. They do not rely on federal or state subsidies, and target different housing needs than conventional funding programs.

Common Practices

IZ programs in the US have evolved over 40 years and in many different states and situations. Furthermore, they have evolved with no or very little direction or guidance from their respective states. As a consequence, the programs can be quite different and varied in their particular details.

All of these programs, nevertheless, more or less adhere to a common approach toward the type of regulations and procedures that they use. It is this common approach that in a sense defines what inclusionary zoning is, or what can be described as the “American-style” inclusionary housing practices.

The following is intended to briefly highlight the key practices shared by all or nearly all of these programs.

<u>Subject Developments</u>

The obligation to provide affordable housing is imposed across the board on nearly all residential developments, including notably those proceeding as-of-right under the approved zoning provisions.

There are two exceptions to this. In most of the dozen or so big city programs, it is applied only to those getting a rezoning. But this still captures all or nearly all developments because very few can go ahead in these cities without a rezoning.

Some programs also exclude small developments – those with less than 50, 30 or even 10 units. The rationale is that they are less able to accommodate the affordable housing than the larger developments.

Housing Set-Asides

The programs oblige every subject development to provide a fixed percentage of the total units as affordable units. Set-asides ranging from 10% to 20% are common. This set-aside is imposed on the total development, and not just on the development increment resulting from any approved additional density.

The required set-aside typically is met by simply taking the prescribed percentage of the whatever is being built by the developer in terms of unit types, sizes and tenure.

As a general rule, the same set-aside requirement is applied to all developments, but some programs allow for different requirements in particular circumstances – such as, a lower set-aside when providing housing for lower incomes, or a higher set-aside when the housing is provided off-site.

Targeted Incomes

These programs target what is widely called “below-market” housing. This is housing provided at a price or rent that is substantially below the lowest market price or rent for the equivalent new market units.

This housing aims to serve those households earning too little to afford new market housing, but too much to be eligible for social housing or government assistance. As such, it is typically directed at moderate-income households rather than low.

The actual targeted incomes vary according to the local market conditions. In general, the housing is for households earning up to 80-120% of the local median income when adjusted for household size.

Compliance Alternatives

The programs typically require the affordable units to be constructed on the same site as the market units. That is an important and fundamental objective of all inclusionary housing policies.

Most programs, nevertheless, under appropriate circumstances allow for one or more of the following alternatives provided at an equivalent value:

- payment of cash-in-lieu,
- construction of affordable units on another site,
- provision of developable land, and
- provision of upgraded existing units.

Cash-in-lieu allows the developers to buy-out their obligation through a cash payment. This option is seen as a way for small developments to contribute toward affordable housing without having to build it. It also is used as a local source of funding for special needs and other housing.

These alternatives in general provide a way of diversifying the type and range of affordable housing provided. But they are increasingly being subjected to limits, in order to ensure that they are not over used, and when used, clearly provide a greater public benefit than the on-site provision.

Cost Offsets

Many programs, but not all, provide regulatory concessions to offset the costs of providing the affordable units. These concessions are limited mainly to those available through the development regulations and approval process. They might include regulatory relaxations (to the density, height, setback, parking and other limits), fee reductions or waivers, and fast-tracked approvals. These cost offsets are provided according to fixed rules that apply uniformly to all developments.

There is a notable exception to this. The dozen or so big-city programs allow for density increases that are generally determined as part of the rezoning negotiations.

In providing these concessions, there is no obligation or intent to use these concessions to make the developer "whole" again – that is, to cover the full cost of providing the affordable housing. In most cases, these offsets can be seen as being no more than token payments by the municipality.

These cost offsets do not include government grants or other conventional financial subsidies. Inclusionary zoning does not rely upon these subsidies for meeting the basic affordable housing obligation imposed on all developments. If ever used, they are used only to achieve deeper affordability beyond this obligation.

Development Standards

The programs use various regulations to ensure that the inclusionary units are built in the appropriate way, place and time. The regulations typically address one or more of the following aspects:

- minimum floor space;
- construction quality;
- delivery timing;
- distribution and location; and
- outside appearance.

In many programs, there are regulations that prevent the affordable units from being segregated into a separate and less desirable area – particularly, by requiring them to be inter-mixed and dispersed throughout the market units, and in a way that leaves the two indistinguishable.

Affordability Controls

The on-going affordability and occupancy of the affordable units are controlled in order to ensure that they remain affordable to, and are occupied by, eligible households for a lengthy period.

To do this, the programs set price and rent ceilings for the housing, and also corresponding income cut-offs for the eligible households. Both are differentiated by type and size so that the households and units can be suitably matched. The price/rent ceilings and income cut-offs are updated at least annually

The controls are set out in restrictive covenants that are registered on title and bind the initial and all subsequent owners over the prescribed period of control.

The controls are maintained for a long period. The most widely accepted minimum is probably 30 years, but perpetuity and for the life of the units are also used.

The controls establish a way for setting the resale price when the affordable units are subsequently resold during the control period. In nearly all of these programs, the resale price is based on the change in the median income for each local jurisdiction.

The controls primarily limit eligibility by setting maximum income cut-offs that are differentiated by household size and adjusted over time. These cut-offs are applied both to the initial buyers as well as the subsequent buyers.

Main Strengths and Limitations

IZ has been proven in the US to be a very effective way of producing affordable housing. But the tool has its limitations as well as its strengths.

The most significant strengths of IZ are these:

- It uses the planning system and development regulations to oblige that private developers provide affordable housing. Furthermore, and most importantly, it does so without relying on the use of government subsidies.

- It produces affordable housing that is mixed into the market housing. Over time, that means the housing will be built everywhere across the community, providing residents a much greater choice and better access to services and jobs.

On the other hand, IZ is clearly not the answer for all affordable housing needs because of these major limitations:

- IZ has not been shown to be capable of producing housing for low-income households. Low-income housing requires the deep subsidies that can be provided on a sustained basis only by government funding. IZ might be best

described as a “shallow-subsidy” program capable of producing housing for moderate-income households.

- IZ has tended to produce affordable ownership housing rather than affordable rental in most market areas. This is because in most markets ownership is being produced rather than rental, and IZ takes a share of what is being built. Having said that, there are ways of tweaking the system to provide more rental housing.

- IZ is only productive in growing communities, or at least in the growing parts of those communities. Again, because IZ takes only a share of what the private market is building, if nothing or little is being built, then it will be taking a share of nothing or little.

Essential Features

The experience in the US with IZ programs clearly shows that to be effective they must incorporate the following features:

- Make the provision of affordable housing mandatory

  The programs must be mandatory in order to produce affordable housing at a worthwhile and on-going rate. Voluntary programs can no longer be considered to be a credible option. They have been far less productive than mandatory ones, as developers have shown little interest in voluntarily providing affordable housing in exchange for incentives.

- Apply the obligation as universally as possible

  In order to achieve the greatest output, the obligation must fall on as many developments as possible. They should include developments proceeding as-of-right, as well as those getting a re-zoning. Also, they should include small developments, which typically represent a very significant proportion of the total housing production.

  Applying the obligation as widely as possible is also important for a second reason: it is necessary for treating all developers in a consistent and fair manner.

- Use fixed and non-negotiable rules

  The rules should be fixed, non-negotiable and set out in advance. This applies most particularly to those rules determining the cost of the affordable housing obligation, and of the value of any concessions (if any) provided by the municipality.

  Having fixed rules is entirely consistent with having a mandatory obligation; there can be no mandatory obligation if it can be negotiated away.

Furthermore, having fixed rules is important for treating all developers consistently and fairly. It is particularly important for them to know the cost of the affordable housing obligation ahead of time when purchasing the land for development.

- Target "below-market" housing

  The programs must be directed at extending the affordability range of the housing being built. This means specifically providing housing at a price or rent below what the market is providing. The programs will serve little or no public purpose if they are only used to encourage developers to produce more of what they can do already.

  At the same time, the obligation should not overreach. These programs on their own have not been proven capable of providing social housing.

- Maintain affordability "permanently"

  There must be controls ensuring that the affordable housing remains affordable, and also occupied by income-eligible households, over a long and enduring period. In the absence of effective controls, the affordable housing will be lost to the market place.

- Provide limited flexibility

  The regulations must provide some flexibility in how the affordability housing obligation is met – particularly, by allowing the use of cash-in-lieu or off-site development. But that flexibility should operate within strict parameters that leave the use of these alternatives to the discretion of the municipality, and only allows these alternatives only when they demonstrably produce a greater public benefit than the on-site obligation.

What is not needed

It is relevant also to note what is not needed in these programs to be effective. IZ does not rely upon conventional financial subsidies to provide the affordable housing, nor does it really need regulatory concessions. Although it is true that most programs do provide regulatory concessions, many others do not and still are productive. Whenever subsidies or concessions are offered, they should be used only to achieve more units or units at greater affordability than the baseline obligation.

The key to successful programs lies not in providing concessions to the developers, but in setting reasonable affordable housing obligations, and then using fixed rules so that cost burden can be passed back to the purchase price of the land.

Impact

Developers

The developers almost always have opposed the adoption of inclusionary zoning. They argue that the affordable housing obligation will impose a cost burden that they will have to absorb by reducing their profits, driving up the price of housing for other consumers, and/or even curtailing production.

IZ programs do not expect the developers themselves to absorb this cost burden, nor particularly to take a loss in their profits. It is unreasonable to expect developers to take this hit. Although the municipalities under IZ can mandate the provision of affordable housing, they have no power to compel developers to build anything. Developers can and will stop building when suffering an undue financial loss caused by the inclusionary requirements.

Their ability to pass the cost burden on to the other consumers is tightly constrained by the inelasticity in the housing market. Buyers, especially those at the low end of the market, are very limited in what they pay for housing. Developers, who it can be safely assumed already charge the top price, cannot hike them higher without suffering a loss of sales.

The developers over time will deal with the cost burden by passing it back to the land costs. In other words, knowing ahead of time the cost of providing the affordable housing, they will offer less for purchasing the land. So, the cost burden of providing the affordable housing under IZ will be absorbed mainly by the landowners, and not the developers nor the municipalities or other homebuyers

The effect of IZ on price and production has been rigourously examined by two studies (see Furman 2007 and Smart Growth 2008) done by non-partisan and university-based organizations. They did statistical analyses of multiple jurisdictions with and without IZ over long periods, and independently came to the same conclusion: namely, that IZ has had little or no impact on the overall price and production of housing in communities where it is used.

The empirical evidence show that the developers are not hit unreasonably by IZ. They do not stop production in municipalities with IZ. They appear to be able to accommodate to the affordable housing requirements, and to continue to build without significant damage to their bottom lines.

Municipalities

Municipalities have three fundamental concerns of IZ: what will be the cost to them of providing the affordable housing, and will it adversely affect the production and prices of housing generally.

The impact on production and prices has just been addressed. As noted, the empirical evidence shows that there is no or little impact on output or prices. In other words, there is no adverse impact on the community as a whole. And the other buyers are certainly not cross-subsidizing the provision of affordable housing.

Regarding the cost to the municipality, IZ is not reliant on funding either from the municipalities, nor any other level of government, to provide the affordable housing. IZ can and does successfully operate without the use of any financial subsidies.

Having said that, it must be noted that funding is often used in particular circumstances – namely, to reach a lower level of affordability than that required by the standard obligation. But this represents an exception rather than the rule; it is an add-on to the conventional practices.

Many municipalities offer regulatory concessions in exchange for the affordable housing. These typically allow for relaxing certain regulations (particularly, density and height limits), waiving fees and charges, and using fast-tracked approvals. All of these concessions have an economic benefit, but they do not involve an actual cash outlay.

While this is common, there are also successful programs that offer no such concessions whatsoever. This indicates that the provision of the affordable housing under IZ can be obtained without using these concessions.

Concluding Comments

Inclusionary zoning as practised in the US has proven to be a successful way of providing affordable housing. While not replacing the need for government funding, it does provide another effective tool – particularly one that can be used by municipalities without relying on that funding. It is based upon a set of common practices that have evolved and been well tested over many years. Because of the similarities between the two planning systems, these practices by and large can be applied in this country as well.

EXPERIENCE IN ENGLAND: 'Planning Gain'

Under the 'planning gain' provisions of the national planning systems in the UK, local authorities are able to require market housing developers to provide affordable housing.

Three of the four countries making up the UK – England, Scotland, and Wales – use these provisions under similar but not identical rules and guidelines. The following write-up focuses on England because it is the largest country and leading proponent.

The planning system in England operates under national legislation, regulations and advisories, while relying on delivery by the local governments. The central provisions leave scope for local interpretation and considerations.

The term ‘planning gain’ is used in reference to the increase in land value resulting from government action, including a development approval and other planning decisions. (The term is also synonymous in the country with the concept of “betterment”.) It does not include increased value caused by wider and more general forces like population growth or economic expansion.

The system is essentially directed at transferring the planning gain from the landowner via the developer to the local authority. Under this system, developers are expected to contribute a substantial part of that gain towards mitigating the costs to the community caused by their developments in the form of additional schools, parks, roads, and so on – as well as, most notably, affordable housing.

Planning Differences

While there is much of interest in the English system, and many parallels in the thinking and practices in the US, their particular approach – unlike that used in the US – cannot be transferred to Canada because of two key differences in the planning systems.

First, development rights have separated from land ownership. Since 1947, development rights in England in effect have been nationalized. The government owns the development rights to land, but not the land itself. Land owners can obtain the existing-use value from the sale of land, but not the additional or incremental value associated with any higher or better use.

Second, and consistent with this, there is no zoning in England. That means the planning system does not grant pre-approved or as-of-right development permissions. All development applications start with a clean state, and are treated case-by-case in a comprehensive development approval process.

Policy Evolution

Into the 1980s, all affordable housing was social housing provided by the local governments and non-profit providers, while relying on capital subsidies provided from the central government. It was also characteristically built on separate sites, using public lands when available but also lands purchased on the private market.

Faced with an inadequate supply of public lands, rising market land values and limited capital funding, a number of English local authorities in the late 1970s started tying planning permissions to private developers delivering affordable housing. This was done without any direction and sanction from the central government.

Making developers contribute affordable housing was an extension of prevailing practices. Using planning gain to recover the costs of providing various externalities generated by private development had been already well-established, but until then not for affordable housing.

The central government subsequently endorsed the use of planning gain for affordable housing in a policy statement in 1981, and then codified the basic provisions in the country's planning legislation – specifically, in section 106 of the 1990 *Town and Country Planning Act*, and then amended in 1991. The system has evolved and developed since then through changes to the legislation and associated advisories. (While this specific section number has not survived in subsequent legislation, references to the "s106 system" and "s106 housing" still persist.)

In 1992, the provision of affordable housing was identified as a "material consideration" in planning decisions. This meant that the lack of affordable housing in a development was explicitly made valid grounds for refusing a development application.

In 1998, government strongly linked this system to its emerging support for social inclusion and mixed income communities. This had the effect of giving clear preference to on-site development over off-site provision or cash-in-lieu payments. While these latter options have not been ruled out, they now must be "robustly justified".

In 2006, intermediate housing was introduced. This is housing provided at a price or rents above that for social rented housing, but at below the market rate. It can be both rental and ownership, and has become increasingly important to government because it does not typically require the use of capital grants.

In 2008, the 'planning gain supplement' brought a major reform. Up to this time, all of the various developer contributions had been negotiated case-by-case. Through the supplement, the national government set a single and standard formula-based charge on all developments to pay for the most common externalities. Left out of the supplement are affordable housing and certain site-related matters, which are still treated as separate obligations to be determined by negotiation. These changes

were intended to speed-up the negotiation process, make it more transparent, and also provide greater certainty about the level of contributions.

Support System

England now principally uses two ways of supporting the provision of affordable housing – conventional capital subsidies provided by the central government, and developer contributions provided through the planning gain system. The two are used both together and separately, depending upon the type of housing and local conditions.

The grants are administered locally by 'registered social landlords' (RSLs). These are mainly non-profit housing associations, but also include housing trusts, co-operatives and approved private companies. They are generally large organizations operating across many jurisdictions, and independently of those jurisdictions. They are responsible for overseeing the construction of the affordable housing as well as managing it. They are often called upon to use their own resources – their equity, rental income or borrowing capacity – to support this housing.

The developer contributions are predominantly made through the provision of land at a reduced price. The price is reduced to the extent necessary to enable the developers to provide the required housing at the prescribed price or rent and within the subsidy limits. In many cases, there is a significant write-down, and often it is given at no cost.

The contribution of land has become the main objective so that the housing can be constructed on-site. Other types of contributions – providing land or units on another site, "commuted" contributions (i.e., cash-in-lieu), and even existing units – had been once permitted and widely used, but are now limited to exceptional circumstances.

The central government has been pushing local authorities to maximize developer contributions, rather than relying on housing subsidies to deliver the housing. But how much the two are used depends largely on local house prices. In the higher-priced areas – particularly, London and the South-East – social rental housing is dependent on capital grants as well as developer contributions. In places elsewhere, this housing can be produced solely through the developer contribution.

Co-ordinating the two has not always been successful. Social rental units have been lost because grants were not available at the appropriate time.

Housing Types

Affordable housing, which includes ‘social rented’ and ‘intermediate’ housing, is defined as housing provided to households whose needs are not being met by the market. It must meet the needs of eligible households at an affordable cost reflecting local incomes and prices. It also must be subject to controls ensuring that

it remains affordable for future eligible households, or for the subsidy to be recycled to other affordable housing.

‘Intermediate’ housing is housing provided at a price or rent above that for social rented housing, but below the market rate. It can be both rental and ownership.

The system is now producing three types of affordable housing:

- 'Social rented housing' is essentially social housing. It is provided through a government grant, and the rents are determined through the national rent system. It is owned and operated in most cases by RSLs, but also possibly by the local authorities or other entities under an approved rental arrangement.

- 'Shared ownership' housing, which is a type of intermediate ownership housing, is provided sometimes with a grant and sometimes without. It is managed and co-owned by a RSL. The households buy a share of the property and pay rent on the remaining unowned share. They then can gradually buy the outstanding share until they own the unit outright

- 'Discounted market' housing, another type of intermediate ownership housing, is provided without a grant. These units are sold at a below-market value – usually 20% below, but maybe 30% or more – using resale controls that maintain this price differential whenever resold.

The private developers are responsible for the development of all three types of housing. The developer contributions are involved in all three cases, along with capital subsidies for the social rented housing and sometimes the shared ownership.

The priority of most local authorities is to produce social rented housing. The majority have policies stipulating 75% social rental and 25% intermediate.

The mix of housing types being provided varies across the country. This is a consequence of many factors: local land prices and housing costs, the availability of government subsidies as well as local priorities and politics.

Key Provisions

Size Thresholds

The central government has advised local authorities to seek developer contributions for affordable housing only in housing developments of 25 or more dwellings, or residential sites of 1 ha. An exception has been made for Inner London, where the figures are 15 units or 0.5 ha. They are able to use lower thresholds, but must justify them by showing there is an exceptional need for affordable housing.

Setaside Targets

Before using these provisions, local authorities are required to set either community-wide or site-specific affordable housing targets. Most use the former.

The targets have been raised significantly over time. Initially, the norm was 5-10% of the total units. By mid-1990s, it was 25-30%. Currently, 40% and even 50% are used in certain jurisdictions, especially in parts of London.

These targets are generally treated as the starting point for negotiations over the developer contribution, and not as fixed requirements. Nevertheless, over time, in addition to raising these targets, the authorities have been able to get closer to achieving the targets on most sites.

Negotiations

The developer contribution toward affordable housing is still subject to development-by-development negotiation. Negotiations are used to determine a wide range of matters associated with the contribution – including the amount, tenure, size, location, and level of integration of the affordable housing, and also in some cases, the quality and design.

The negotiations have been lengthy and complex. They typically take at least 18 months, but sometimes much longer. (To be fair, this problem is not solely attributable to affordable housing. The contributions to affordable housing are only one aspect settled by these negotiations.)

Much of this complexity has been due to the difficulty of meeting the sometimes competing agendas of different agencies; providing affordable housing with fostering economic regeneration or providing community facilities.

Affordability Controls

The developer contributions are protected by legally binding agreements specifically authorized by legislation. These agreements are private contracts operating alongside the statutory planning permissions, and are used to control such matters as future tenure and price. The agreements are registered as local land charges that bind the successors in title to implementing and maintaining the terms of the contract typically for perpetuity.

Overall Assessment

The developer contributions provided through the planning gain system have now become a crucial and pervasive component of England’s delivery of affordable housing.

The number of affordable units supported by these contributions has steadily increased over the years. In large part, this is due to the growing capabilities of the local authorities. Their targets have been more demanding as they became more familiar with the process and certain of their powers. Also, they have held to these targets as they have become more experienced as negotiators. Finally, they also have learned to tighten loopholes and specifications in their agreements.

Local market conditions have a strong influence in how the targets are set and met. In general, authorities in high-demand areas for market housing – like London and the South-East generally – have been able to impose and achieve far higher targets than authorities elsewhere.

Various reasons are given for this. The developers can use rising market conditions to help in meeting their obligations because rising demand generally leads to higher prices and wider profit margins. The authorities in high-demand areas also are in a stronger negotiating position because more than one developer is competing to meet demand. Also, these authorities typically are able to develop stronger negotiating skills through their involvement in many projects.

The reliance on local delivery has raised some problems. Some local authorities are not setting appropriate targets, or meeting them when they do. In many places, the latter could be due to a lack of expertise when negotiating the development agreements.

But there is also evidence of NIMBYism in the local politics that has frustrated delivery of affordable housing. In some places, there is resistance to the provision of social rental housing, and in others to intermediate housing because it is not social rental housing. Still other places are resistant to all new housing development, which serves to scuttle affordable housing that is dependent on market housing.

The policy emphasis on providing affordable housing in mixed-income developments has significantly changed where affordable housing is built. Formerly it might have gone to peripheral sites; now it must go to where market forces want to build, and that is typically in high-demand but high-priced areas.

The upside to this is that affordable housing is being built where it is most needed – in places where housing markets are under the most pressure and market housing is least affordable. But, because the land there is expensive, the development needs higher capital grants than that for the lower-priced sites where the housing previously might have been directed.

So, while the central government has been pushing local authorities to maximize developer contributions, rather than relying on housing subsidies to deliver the housing, these efforts are being frustrated by rising house prices, and also the extra subsidies associated with these market-driven developments.

Concluding Comments

England has an effective nation-wide inclusionary system founded on national legislation and guidances. There are many parallels with IZ, and their experience holds many relevant lessons for Canada. But, because of fundamental differences between the English and Canadian planning systems, the approach used there cannot be readily replicated here.

EXPERIENCE IN CANADA: Inclusionary Rezoning Practices

Municipalities in Canada have used a variety of inclusionary housing practices, but they all share one feature. They rely on rezonings – and particularly, density increases granted under these rezonings – to secure the contribution of affordable housing. Where these practices differ is in the type of developments targetted and the contributions expected.

These practices are not the same as those used in inclusionary zoning across the US. There are many differences between the two but the key and most fundamental is this: IZ requires virtually all developments – not just those selectively getting a rezoning – to provide affordable housing.

Legislative Context

Municipalities in Canada have not been able to use IZ because they have generally lacked the authority to require or oblige – as opposed to encourage or incentivize – private developers to deliver affordable housing as part of their otherwise market housing developments. But the legislative provisions regarding inclusionary zoning has started to change in this country.

The province of Manitoba passed legislation expressly authorizing inclusionary zoning through amendments to its *Planning Act* and *The City of Winnipeg Charter*. The provisions were passed in November 2012 and came into effect in December 2013. So far, no municipality in the province has adopted these provisions, nor has any formally considered doing so.

Ontario also passed authorizing legislation in early 2016. The provisions are found in the *Promoting Affordable Housing Act, 2016*, and were enacted through various amendments to its *Planning Act*. The legislation will not come into effect until the impending release of the associated regulations.

Alberta also have recently introduced draft authorizing legislation in May 2016. The provisions are set out in its *Modernized Municipal Government Act*, and will be part of a comprehensive overhaul of its current *Municipal Government Act*.

<u>British Columbia</u>

Legislation passed by BC in the early 1990s is the first provincial legislation in Canada to address the use of the planning system to secure affordable housing. The relevant legislation – called “Housing Opportunities through Local Planning” – was passed in 1995 through changes to its *Municipal Act* (now, the *Local Government Act*) and *The Vancouver Charter*. While not authorizing the adoption of inclusionary zoning, it did set out rules and procedures for securing the housing through the rezoning process.

The key provisions are found in section 904 of the legislation. They authorize local governments to exchange higher densities for 'community amenity contributions' – namely, affordable housing, special needs housing, and other community amenities. The contributions can be made in the form of the amenities themselves or cash toward them.

The provisions, which are generally referred to as 'density bonus zoning', involve the local governments zoning for two permitted densities on any specific site. Developers then have the option of building at the lower base density while providing no community amenities, or at the higher density while providing the prescribed amenities. The permitted densities are preferably set through pre-zoning, but they also can be determined through negotiation at the time of development application. The prescribed amenities are also set at this time.

These provisions provide the basis for all of the inclusionary housing programs used in BC. At their core, they allow for leveraging the increased density granted through a rezoning to secure an affordable housing contribution from private developers. In doing so, they use the uplift in the land value released by the rezoning to compensate for the cost of providing the affordable housing.

There are other legislative provisions that deal with development charges (also called development cost levies) These allow local governments to impose development charges on new developments for the installation of certain specific facilities either on-site or immediately adjacent. Under these provisions, Vancouver is the only jurisdiction able use them for affordable housing.

Large Sites Policies

Three major Canadian cities – Montréal, Toronto and Vancouver – have formally enacted inclusionary housing policies. While different in many ways, they share a number of notable practices that add-up to an identifiable model for providing affordable housing.

The following practices are shared by at least two, if not all three, of these policies.

- imposing the affordable housing obligation as a condition of getting a major rezoning – such, as a change of use or increase in density;

- imposing the obligation only on developments large sites capable of accommodating a separate building for affordable housing;

- securing the developer's contribution for affordable housing principally in the form of a developable site at a reduced price; and

- relying upon financial subsidies from the senior governments to fund the actual construction of the affordable housing as social housing.

Vancouver BC: *Inclusionary Housing Policy*

The city introduced this policy in 1988. It was initially called its *20% Core Housing Need Policy*, then its *Non-Market Housing Policy*, and more recently its *Inclusionary Housing Policy*, or even simply the *20% Policy*. The changes in name reflect shifting priorities and practices over time.

The policy was initially designed to provide sites that would be developed for social housing through funding from the federal and provincial governments. It was applied to large privately-owned industrial lands seeking a change of use to residential. Only developments of more than 200 units were affected because they were considered capable of accommodating a separate and reasonably-sized social housing building.

These developments were required to provide a parcel of land large enough to accommodate a minimum of 20% of the units as family-oriented social housing. The city was given an option to buy the land at 60% of its market value. The developers were not obliged to build any affordable housing.

This policy was productive in its early years when government funding was available, but became ineffective when federal funding declined and provincial funding was re-directed to other housing priorities.

Recent Changes

Two significant changes have been recently made to this policy. Starting in 2010, the 20% policy has been extended to include other “large developments” – specifically, those larger than 8000m^2 (2 acres), or having more than 45,000m^2 of new floor area.

Since 2012, consideration will be given to the delivery of a wider range of affordable housing. The priority will be still to secure at least 20% of the units as social housing for low income households, whenever funding is available. When not, the city will look at taking 20% as low-end-of-market rental housing (owned and operated either by non-profit or private providers), affordable homeownership, and other options. So far, the city has not identified “below-market” rental or ownership housing as a possible option, but is expected to do so.

In separate but related policy developments, the city is also starting to use rezoning approvals to secure affordable housing through its neighbourhood plans and in one-off site-specific applications. Again, the goal is to get social housing whenever possible, and low-end-of market rental when not

To support the provision of this housing, the city will be drawing extensively on its own resources – particularly, the discounted land, development cost levies and community amenity contributions either in cash or the units themselves. As a standard policy, the city is taking back through its community amenity contributions

75% of the market value uplift produced by the rezoning approvals, and of that 20-50% goes to affordable housing depending upon local needs and priorities.

Montréal QC*: Inclusionary Housing Strategy*

This strategy – formally called a "strategy for inclusion of affordable housing in new residential projects" – was adopted by the city in 2005.

This approach is called a strategy because it must operate within Montréal's two-tier municipal government. Established by the city-wide government, its implementation depends upon the constituent boroughs that control planning and development.

The strategy's goal is to provide at least 30% of the new units as affordable units in large residential developments. Half of those are for social housing, and half for "low-end-of-market" affordable rental or ownership housing. In many cases, this goal is exceeded.

The strategy was designed to provide suitable development sites for the social housing that would be built through government funding, and the provision of the "low-end-of market" affordable housing built by private and possibly non-profit developers without subsidy.

It is applied to developments of 200 and more units because they are considered capable of accommodating a mix of housing, and including a viable social housing project specifically.

The strategy is applied mainly to developments needing a major change to the planning and zoning provisions, such as a change to the permitted land-use, density or height. It is used on privately-owned lands, as well as lands owned by governments and public agencies when released for residential purposes.

Toronto ON: *Large Sites Policy*

The framework for this inclusionary policy is set out in the so-called "large sites policy" of the city's Official Plan. The policy was approved in 2002, but did not come into effect until mid-2006, after it was challenged by the developer industry to the Ontario Municipal Board and a negotiated re-wording of the policy was mutually agreed.

The policy has been designed to make use of section 37 of the Ontario Planning Act. Under its authority, the city is able to offer an increase in the permitted height and/or density in return for the provision of various "facilities, services or matters", which can include affordable housing.

This policy is to be applied to residential developments on sites greater than 5 ha, when an increase in the permitted height and/or density is sought by the developers. Under these circumstances, the provision of 20% of the additional permitted

residential units (not the total permitted units) as affordable housing will be the city's "first priority" under s37.

The policy identifies alternative ways for meeting the affordable housing obligation. The obligation most likely will be met by the conveyance of separate development parcels on the large sites, and not the actual construction of the affordable housing. Also, the housing provided will be either social housing when sufficient government funding is available, and possibly affordable rental when it is not.

Beyond this, it is hard to understand how it will be used. The language of the policy under the negotiated re-wording lacks clarity. The city has not developed any standard guidelines and procedures. And it has been applied only once in an one-off way on public lands.

Comparison with IZ Practices

The inclusionary practices followed in the US are different from this set of policies in a number of significant ways:

- These policies target only large sites seeking a significant re-zoning. (IZ imposes the affordable housing obligation across-the-board to virtually all new private residential developments.)

- They expect the developers to provide separate sites for the affordable units, which are often built at a later time. (IZ oblige private developers to construct the affordable units mainly on-site, at the same time, and mixed within the market units.)

- They rely on funding from federal and provincial governments for the construction of the affordable housing in the form of social housing. (IZ relies on the price or rent reduction that can be achieved through the development regulations and approval process to achieve the affordable units.)

- They target mainly rental housing for low-income households. (IZ targets below-market housing – both ownership and rental – for moderate-income households.)

Other Policies

Richmond BC: *Affordable Housing Strategy*

Richmond adopted this strategy in May 2007, and revised it as recently as September 2015. The strategy is currently under review.

The strategy is directed at providing a full range of affordable housing options in the city. The priorities, which will change over time, currently include these:

- subsidized rental housing,
- 'low end market rental' (LEMR) housing, and
- entry-level homeownership.

The strategy imposes an affordable housing obligation on all residential developments receiving increased density through a rezoning. The permitted density increases are set out in the zoning bylaws, and are not negotiated.

In exchange for the increased density, new developments are obliged to make these contributions:

- All multifamily or mixed-use developments with more than 80 units are to build at least 5% of the total units as LEMR units;

- All multifamily or mixed-use developments with less than 80 units are to make a cash contribution at a rate of $6 per buildable ft^2.

- All single family and townhouse developments are to provide a secondary unit in up to 50% of the units, and contribute cash for the remainder at a rate of $2 per buildable ft^2 for single family and $4 for townhouses.

The cash contributions go to the city's Affordable Housing Reserve, and are used primarily for the development of subsidized rental housing. This represents the City's effort to replace declining senior government funding.

In very limited and exceptional cases, developments larger than 80 units have been allowed to pay cash-in-lieu of building the LEMR units. The payment was based the construction cost of the foregone units.

Subsidized rental housing refers to housing for low-income households, provided in partnership with non-profit organizations and sometimes regional or provincial agencies, but without subsidies from senior governments. In a sense, it is social housing developed through municipally-based funding.

LEMR units are modestly-sized low-end-of-market units provided by the developers with no subsidy or any concessions. They are rented at 85-90% of current average market rents. The affordability of these units is permanently protected by a housing agreement registered on title. There are minimum size standards for these units. The type and location of these units are agreed upon through negotiation.

The private developers continue to own and manage these rental units. This was not the initial intent of this strategy, but a result of the local non-profit providers not wanting to manage small numbers of scattered units.

Although identified as a priority, neither entry-level homeownership nor any other affordable ownership has been supported by this program.

There are some significant differences between this strategy and inclusionary zoning:

- The obligation to provide affordable housing applies only to certain large multifamily and mixed-used developments obtaining a rezoning. (In IZ, it applies to virtually all developments, even those proceeding as-of-right.)

- The obligation of all other developments obtaining a rezoning (small multifamily and mixed-used developments, and single family and townhouse developments) is to contribute cash. (IZ gives priority to getting inclusionary units built by the developers.)

- The strategy generates considerable funding for the construction of subsidized rental units – loosely speaking, a form of social housing. (IZ does not provide for social housing.)

- It provides inclusionary rental units in the form of "low-end-of-market" rental and secondary units. (IZ provides "below-market housing", which can be ownership or rental.)

Edmonton AB: *Developer Supported Affordable Housing Policy*

This policy was officially adopted in September 2015. It is based on an earlier informal policy – formally called the *Cornerstones Inclusionary Affordable Housing Program*, but sometimes also just the *5/85 Program* – that had been used since 2008. These policies are essentially the same (with two notable exceptions noted below). The adoption mainly clarified certain aspects and made it subject to standard procedures and monitoring.

The policy applies to new multi-unit market condominiums in residential or mixed-use developments of 12 or more units that benefit from a rezoning providing a density increase. In these developments, the developer must commit to selling 5% of the units as affordable rental to the city for 85% of the market value.

The density increase allowed is determined by case-by-case negotiation. The 5% obligation applies to the entire development, and not to just the density increase.

When the city buys these units, they are managed by homeEd, the city's arms length non-profit housing provider. In some cases, other non-profit providers – like Habitat for Humanity – have been allowed to purchase and manage the units.

Developers at their discretion now have the option to pay cash-in-lieu to an amount representing 15% of the sale price of the designated units. (Under the initial informal policy, cash-in-lieu was not allowed except under special circumstances.)

While affordable housing is a priority, other public purposes (like heritage preservation) might take precedence.

The units will be retained as permanently affordable. (Under the initial policy, the developers retained ownership and were committed to maintaining affordability for 20 years.)

Eligibility for the units is generally limited to households earning less than the median income for their household size in the city. The rents for these tenants are set at below the average market rent. (The units might be rented at higher rates to tenants with higher incomes, but in this case the net rental increase will be used for affordable housing.)

The units must be interspersed through out the development, and indistinguishable from the market units on the outside.

The policy formally applies only to condo developments. The city is exploring ways to obtain similar contributions from rental developments.

This policy is different from IZ in these ways:

- The policy is applied only to multi-unit condo and mixed-use developments receiving a density increase through a re-zoning. (IZ is applied across the board to all deveIopments with and without a rezoning.)

- The policy commits the city to purchase the units. (In IZ, the city is not directly involved in purchasing them. The developers are responsible for renting the units or selling them to eligible buyers.)

- It now allows unfettered use of cash-in-lieu by the developers. (In IZ, the use of cash-in-lieu is being increasingly limited.)

- The reduced rent in all probability provides for a “low-end-of-market” rent level. (IZ is directed at reaching “below-market” rents.)

Langford BC: *Affordable Housing Program*

Langford adopted this program in early 2004, and has revised it at various times since then, most significantly in 2011.

When first developed, the program was directed at providing affordable entry-level units principally in the form of modestly-sized three-bedroom units on small lots. They were sold at 60% of their market value, or roughly their estimated construction cost without land. The minimum permitted lot size was 220m^2 (reduced from 300m^2), and minimum gross floor area was 83m^2 (down from 91m^2)

Single-family developments of 10 or more units (later changed to 15 or more) built through a rezoning or new land subdivision were required to provide one affordable unit for every 10 (later 15) market units. In exchange, the developers received a density bonus in form of the permission to build on an additional small lot for each of the affordable units.

The affordability of the units is protected by a housing agreement registered on title for 25 years. The resale price is limited for 5 years to the original sales price. After five years, the resale price can increase by $2,000 every year, until after 25 years, when it can be resold for its full market value.

The income and assets of the eligible buyers must be below certain caps. They must also have resided in the city for at least 2 years.

Current Program

As of 2011, all new residential developments using a rezoning – not just the single family developments – are required to make community amenity contributions. Out of these contributions, $660-1000/unit (depending on unit type) goes to the city's Affordable Housing Reserve Fund, and are used to fund non-profit housing.

Since this time, the provision of affordable housing by the developers is no longer mandatory. While the provision still remains an option for them in lieu of the cash contribution, this is an unrealistic option considering the cash contributions are so much lower than the cost to the developers of providing the affordable units. As might be expected, no affordable units have been provided since the change in policy.

Since this program is now not capable of directly producing affordable housing, it no longer can be considered to be an inclusionary housing program.

Concluding Comments

Inclusionary zoning has not been used in Canada, but other inclusionary practices have started to emerge. In general, most have used the rezoning process to secure support (mainly in the form of land or cash, and not the actual units) for affordable housing (mainly in the form of social housing) in exchange for density increases. With the exception of Vancouver and Montréal, most municipalities have applied these provisions in a limited and tentative way.

EXPERIENCE IN AUSTRALIA: Miscellaneous Inclusionary Practices

In Australia, the states and territories are responsible for setting planning and housing policy and regulation, and the local governments with implementing it.
The national government has no formal on-going involvement in affordable housing and land-use planning, except the provision of funding under tax-sharing agreements.

The experience with inclusionary housing practices in this country has been very limited. Only two of the states – New South Wales (NSW) and South Australia (SA) – have noteworthy programs, and even those are conservative in their approach.

The practices introduced by SA have been followed by four other jurisdictions: Australian Capital Region, Northern Territory, Queensland, and Western Australia. But the local governments there have been only allowed to use them on government-owned lands.

In general, authorizing the use of mandatory practices continues to be resisted by most state governments, despite requests by many local governments and prominent housing organizations.

The term inclusionary zoning is used in the country but what is practised there is comparable in only a limited way to that in the US. The inclusionary practices seen in Australia are not inclusionary zoning as defined in this paper.

The practices in this country are sometimes associated with, or justified by the concept of "value sharing". This refers to the public having a right to get back some of the enhanced land value resulting from public planning decisions and infrastructure improvements.

South Australia

The SA government imposes mandatory affordable housing targets on certain residential developments. The use of these targets was first raised in a 2005 housing strategy called *Housing Plan for South Australia*. The targets were then brought into effect in 2007 through amendments to the state's planning law, the *South Australia Development Act 1993*.

Under these provisions, all "significant new developments" are required to provide 15% of the housing as affordable housing. Of that 1/3 (5%) must be housing for "high need" groups, which includes but is not limited to social housing. "Significant new developments" are developments on private lands rezoned for residential or higher density, and government lands that are redeveloped for housing.

Separate from these mandatory provisions, local governments also are expected (but not required) to consider these targets when preparing their other

development plans, and especially those near transit and employment opportunities. In this case, the targets are applied on a voluntary and negotiated basis. To meet the targets, they are encouraged to offer incentives, including density increases.

State Involvement

The state maintains a central and prominent influential role in the provision of this housing, particularly through two agencies.

The delivery of the housing is overseen by Renewal SA (formerly SA Housing), which has multiple responsibilities. It certifies that the housing is affordable housing. It markets the affordable homes, manages the eligibility process, and provides advice to the private developers – especially on funding and programs to assist affordable rental providers when buying the units. It also has been active in promoting innovative design and financing approaches.

The South Australian Trust is responsible for annually setting the eligible price and income limits for all of the local governments. (Their methodology is based upon a nationally-accepted approach to defining affordable housing.) It sets two price limits: one for the major cities (including Greater Adelaide), and another for the rest of the state. It also sets different prices for the sale of house with land, and for the land only. Finally, it provides income limits for three types of households: singles, couples and families.

Affordability Provisions

The developers must create and submit housing plans to the local governments addressing a wide range of matters: the staging and distribution of the affordable units; their design and appearance; house forms and tenure; energy and water efficiency; and prices and any variances.

The affordable housing must be offered for sale to eligible buyers at or below the specified price. Eligible buyers include individual homebuyers earning at or below the income limit, and also specified rental providers – including not-for-profit organizations, community housing providers, approved private rental investors and the states' housing trust.

The affordable units must be made available to eligible buyers for at least 30 days. After that, they can be placed on the open market, but still only at the controlled price.

The provision of the "high need" housing in the privately-owned sites has typically depended upon government funding in addition to the density increases. On government lands, it can be achieved with the density increases only.

The purchase of the units by non-profit and other rental providers also is typically contingent upon some form of government funding and assistance from one or

sources. The financing and purchase of these units are generally arranged in the planning stages and become part of the approved housing plan.

The affordable housing is bound by legal agreements to ensure the affordability requirements are met. But these legal agreements are only with the developers and last only to the first sale.

Affordable units can be sold at a price up to 15% above the set price point when they include features that will reduce on-going living costs. The price variances are determined case-by-case upon application. Affordable units eligible for the higher price include those that:

- are more energy or water efficient, or otherwise more environmentally sustainable;
- are built at higher density and in close proximity to transit;
- include an accessory unit; and
- are sold through a financial product that increases the buyer's purchasing capacity.

Comparison with IZ

There are some relevant differences between this mandate and typical IZ programs:

- This mandate applies only to developments on re-zoned and government-sold lands. (While this is consistent with the "big-city" IZ programs, the vast majority of these programs also apply as well to as-of-right developments.)

- The mandate allows for and facilitates the purchase of the affordable units by qualified rental providers. (While this occurs in certain IZ programs, this is not a widely used feature.)

- The mandate requires a standard setaside for social housing, but the delivery of this housing appears to be reliant on government funding. (IZ as a general rule does provide for social housing.)
- The mandate does not provide long-term protection of the affordability of the ownership units. (In IZ, this is a fundamental and critical feature.)

New South Wales

NSW planning law allows local governments in limited circumstances to require private developers to provide for affordable housing.

So far, only two local governments – the cities of Sydney and Willoughby – have used these provisions. In Sydney, they are being applied currently in two large renewal areas, and in the past have been applied in 2-3 other smaller areas. In the city of Willoughby, they have been used just once.

Legislative Context

The legislative authority for these provisions has a complicated history and uncertain future. The state government has not given strong or consistent policy and legislative support for these provisions, and this has limited their adoption.

The initial authority for these provisions was contained in 1998 legislation, but this legislation was challenged and ruled invalid by the courts in 2000. The provisions were then re-instated later that year by new legislation – the *Environmental Planning and Assessment Amendment Act (Affordable Housing) Act of 2000* – but this Act expired in 2002. In 2005, the state planning ministry allowed for the continued use of these provisions in certain circumstances through a policy statement – *State Environmental Planning Policy 70 – Affordable Housing (Revised Schemes*).

The two local governments were given permission to use the provisions in the late 1990s, but since then there has been a change in attitude by successive state governments. While kept alive, the provisions have not been allowed elsewhere, despite requests by other local governments.

The use of these provisions has been primarily limited by a state regulation that allows their application only in "an area with a need for affordable housing". The state must make this designation, and so far, has chosen to do so very sparingly.

On top of that, by state regulation, the local governments are only able to use the provisions in developments that:
1) need a rezoning; or
2) "will or is likely to reduce the availability of affordable housing; or will create the need for affordable housing."

These constraints do not appear to rule out its application to developments not needing a re-zoning, but so far the provisions have been associated with rezonings in renewal schemes.

In the 2005 policy statement, there are separate policy provisions for an incentive-based and negotiated approach using voluntary planning agreements. Local governments are able to enter into agreements with developers for any public purpose, which includes the provision of affordable housing.

Inclusionary Example

How these provisions are used in NSW can be seen by looking at the Green Square urban renewal scheme, one of the two active renewal schemes in Sydney.

Green Square is a large-scale and planned urban renewal scheme for a 278-ha inner-city area containing manufacturing and working-class housing. Based on a 1997 master plan, the renewal was formally launched in 1999, and is on-going.

The planned renewal was initiated because the area was facing substantial pressure for redevelopment, and there was concern that the pressure would drive up land values, and drive out the existing lower-income residents. Hence, the affordable housing provision was conceived as a way of maintaining the existing social diversity of the area as it underwent renewal, and not as a way addressing wider shortages of affordable housing in the city more generally.

All private developments in the area – both residential and non-residential – are required to contribute towards affordable housing. This is because they are all seen as benefitting from the infrastructure investment and public decisions.

Excluded are other affordable housing or public housing, community facilities, public undertakings and small developments – specifically, residential developments of less than 200m^2 in gross floor area, and non-residential of less than 60m^2. (This applies to the total floor area and not to just the increase.)

The affordable units must be provided at a rate of 3% of the total floor area for residential areas, and 1% for non-residential. (In the other active scheme, the corresponding rates are 0.8% and 1.1% respectively.)

The units must be contributed by developers free of cost.

The non-residential developers are expected to pay cash-in-lieu. The rates, which are annually adjusted, are based on the equivalent construction cost for the units.

The affordable rental units will be owned and managed by one dedicated non-profit agency. They will serve a range of different low-and-moderate income levels, and be maintained as affordable housing permanently. (Their definition includes affordable ownership, but this particular scheme does not include any.)

<u>Comparison with IZ</u>

These inclusionary practices have some key differences with IZ:

- They are applied in very limited areas, and then only to rezonings. (IZ is applied to nearly all developments across the entire jurisdiction.)

- They target the loss of affordable housing caused by renewal. (IZ addresses the shortage of affordable housing generally.)

- They demand a relatively low set-aside, but the units must be provided at no cost by the developer. (IZ sets a higher set-aside, while requiring the units be provided at a below-market cost.)

- They impose the obligation on both new residential and non-residential developments. (IZ applies only to residential.)

Concluding Comments

Australia has had very limited experience with inclusionary housing programs. No widely-used common approach has emerged for the country. While some noteworthy practices have developed, in general their programs have been applied in a narrow and tentative way.

FUTURE FOR CANADA

Inclusionary zoning represents an important new tool that can be used by Canadian municipalities to produce affordable housing. It has been proven to be very effective in producing affordable housing in numerous communities across the US. Because of the similarities in the two planning systems, most of the practices used there can be replicated here.

Potential

IZ enables municipalities to use their local planning and regulatory powers to oblige private developers to provide for affordable housing. It does this without relying upon government subsidies. Rather it principally does this by using the cost reductions that can be achieved through the regulatory process.

Its other important feature is it produces affordable housing that is mixed into the market housing. Over time, that means the housing will be built widely across the community, and provide residents a much greater choice of housing and better access to services and jobs.

On the other hand, IZ is clearly not the answer for all affordable housing needs. It has not been shown capable of producing housing for low-income households or the homeless and those in greatest need. These require deep subsidies that can be provided on an adequate and sustained basis only by government funding.

IZ might be best described as a “shallow-subsidy” program capable of producing housing for moderate-income households. Where it has been particularly successful is in providing “below-market” housing for working families that no longer can afford new market housing, and also are not eligible for social housing or government assistance. These have been increasing in number, but overlooked by most current programs.

One other notable limitation for IZ is that it is only productive in growing communities. This is because it takes a share of what the market is building for affordable housing. So, without growth, there is nothing to take.

Also, because it takes a share of what the private market is building, it has tended in most markets to produce affordable ownership housing rather than affordable rental. Having said that, there are ways of tweaking the system to provide more rental housing.

Impact

These programs have had no substantial adverse impact on the communities adopting them. The empirical record clearly shows that they have caused little or no change to the overall housing prices or housing production. Furthermore, this

evidence shows that other buyers are not cross-subsidizing the provision of affordable housing.

IZ is not reliant on subsidies either from the municipalities or any other level of government. While some municipalities have chosen to offer regulatory concessions, these programs are capable of producing affordable housing without them.

IZ programs do not expect the developers to absorb the cost burden, nor to take a loss in their profits. The developers over time will deal with the cost of providing the affordable units by passing it “back to the land”. In other words, the developers will respond by offering less when purchasing the land.

Impediments

IZ so far has not been used in Canada. There are no inclusionary programs here that conform to the US model.

What makes IZ effective is that it imposes a mandatory obligation to provide affordable housing on virtually all new residential developments. This is different to the most comparable practices here, in which the affordable housing is “voluntarily” exchanged for increased density granted through a rezoning process.

Canadian municipalities need, and have generally lacked, the provincial authority to enforce a mandatory obligation.

But this is changing. Manitoba passed authorizing legislation in 2012, and both Alberta and Ontario have introduced draft legislation in mid-2016. Clearly, the other provinces will need to follow if it is to be applied across the country.

There is another impediment that might be more difficult to address. Most municipalities in Canada have shown little interest in using their own powers and resources to provide for affordable housing. There are very few exceptions, with Vancouver being the most notable.

The prevailing attitude in Canada seems to be that affordable housing is a problem that can be addressed solely by federal and provincial dollars. This stands in strong contrast to the US where many (but certainly not all) municipalities have been very active in using locally-based initiatives like inclusionary zoning as well as many others.

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