

A GOOD NEIGHBOR POLICY

SANTA BARBARA COUNTY'S INCLUSIONARY/ AFFORDABLE HOUSING MONITORING PROGRAM

Throughout the County and in this report, the terms inclusionary housing and affordable housing are used interchangeably. This report refers to home ownership only and does not include rental units or their monitoring.

Introduction

An inclusionary housing program addresses the fact that housing for low and very low income residents would not be built if left to natural market forces. The California State Government requires that communities plan for housing for all segments of the population. The County's Inclusionary Housing Program requires developers to include some housing units in new projects that are affordable to moderate, low, or very low-income residents. The County gives incentives for building such housing by allowing for greater densities and imposing fees when affordable housing is not included in developments. The County of Santa Barbara has had this type of affordable housing program since 1981. There are approximately 700 homes in the County's affordable housing ownership program.

When revisions to the Inclusionary Housing Program were debated before the Board of Supervisors during the summer and fall of 2004, some members of the public complained that the County's Housing and Community Development Department was neither monitoring its housing program nor enforcing housing contracts. Critics also argued that the Department did not follow through on reports of violations by homeowners in the program. Violations are an abuse of taxpayer money and of the public trust.

The Housing and Community Development Department had developed formal procedures for a monitoring and enforcement program, but it did not receive funding for the program until October 2004. In May 2005, the Department gave a progress report to the Board of Supervisors. An immediate reaction from some Board members was that the monitoring program was inadequate. The Supervisors formed a project team consisting of the Auditor-Controller, the County Administrator and the County Counsel's office. This team will do an audit of the program, conduct a management review and, by extension, look at the efficacy of the Inclusionary Housing Monitoring Program. A report from this project team will be issued sometime in the summer of 2005.

The Santa Barbara County Civil Grand Jury looked at the troubled history of the Housing and Community Development Department's Monitoring Program. The Jury then compared the County's monitoring program with that of the City of Santa Barbara and found potential areas for improvement.

Investigation

The Grand Jury received several complaints regarding the Inclusionary Housing and its Monitoring Program. In its investigation, members of the Jury:

- Attended the Board of Supervisors meetings in which the Inclusionary and Monitoring Programs were debated
- Interviewed four County Supervisors, past and present
- Interviewed a deputy director and two planners in the County Planning and Development Department
- Interviewed the County Administrator, the Auditor-Controller and the County Counsel
- Interviewed the Director of the Housing and Community Development Department and the Affordable Housing Coordinator for the County
- Interviewed the Housing and Redevelopment Manager, the Housing Programs Supervisor and the Housing Programs Specialist for the City of Santa Barbara
- Interviewed a member of the Board of the County Housing Authority
- Spoke with two officials at the Santa Barbara County Association of Government
- Attended neighborhood meetings and interviewed several spokespersons from neighborhood watch groups
- Reviewed the 1997-1998 Grand Jury report on affordable housing

Program History

Originally, Santa Barbara County's affordable housing program, including the Inclusionary Housing Program, was part of the County Planning and Development Department. A portion of the program was later given to the County Treasurer's Department with the thought that it could better manage the financial dealings of the County's housing program. The Treasurer's Department did not, however, monitor compliance of existing housing covenants¹. The monitoring and enforcement program remained with the County's Planning and Development Department. Several County officials agreed that prior to 2004 monitoring of the covenants was haphazard.

In August 2001, the County created a Housing and Community Development Department (HCD) for central control of County housing programs. A director for the

¹ Covenants are clauses within the homeowners' contracts with the County; the major requirements are that the housing units must be owner occupied and that sales of units be restricted. The two main restrictions are that only certified applicants can purchase the property and that the sales price cannot go over the limit for affordable housing.

new department was not hired until December 2002, nor was an employee to specifically manage the affordable housing ownership program hired until August 2003. HCD took over monitoring and enforcement from the Planning and Development Department at that time.

County of Santa Barbara - Housing and Community Development

When hired, the new director of the Housing and Community Development Department began working with the County Counsel's office to standardize contracts and provide language that would allow stronger enforcement of the covenants. HCD also began working with the County Counsel's office to create a formal monitoring program. The County Counsel's office advised that written notification procedures must be in place before HCD could proceed with rigorous monitoring and enforcement. County Counsel and HCD continued systematizing contracts and regulations until March 2004. The Department then presented a formal monitoring and enforcement program to the Board of Supervisors. When funded in October 2004, HCD began implementing its monitoring and enforcement program.

During this interim period when HCD's monitoring and enforcement programs were being developed, homeowners in the program and members of the public saw no increased program supervision. This long delay in enforcing program regulations gave the impression that no action was being taken on complaints. When criticized in public meetings, the response from HCD officials was that there was no formal process in place to monitor and investigate alleged violations.

The new formal process involved sending letters to 261 homes, asking to re-certify home occupancy and verify any sales of property. These letters are mailed with "Owner Signature Only" and "Do Not Forward" directives. Another 377 letters were sent to advise South County residents of possible random inspections. Of those 377, a contracted employee of a law firm, accompanied by a security guard, visited forty homes randomly selected by a computer. Roughly half of the \$37,000 budget for the monitoring program was expended in these first letters and site visits. HCD promotes this new process as pro-active, hoping that letters announcing random visits will prevent violations.

The Department will follow up on those homeowners that did not respond to the first letter (20 out of 261) and on those sites thought not to be in compliance (4 out of 40). This initial 10% rate of possible non-compliance caused alarm among Board members. Of the four cases the law firm's employee submitted for review, the affordable housing coordinator already knew of two from neighbors' complaints. Historically, the program has relied on neighbors to lodge complaints about violations. Typical complaints have been owners exceeding occupancy limitations, transferring the title of the house to another family member, illegally renting out parts of the house such as the garage, subletting the house, or refinancing at market rates. The director reported receiving 10 such complaints in 2004 and 4 more from the beginning of 2005 to the time of the May presentation to the Board.

HCD has been understandably cautious in enforcing regulations. The County Counsel's office advises that it is very difficult to force homeowners to lose their property. A bank may foreclose on a homeowner within the program in the event of default of payment. However, the County must proceed more carefully in forcing sale of property by violators of covenants. Even though the covenants have always outlined regulations regarding owner occupancy and resale, covenants distinguishing renting from subletting and refinancing from resale have not been uniform or clear over the years. The County Counsel's office has been reluctant to prosecute homeowners in violation of those covenants. Up to this point no homeowner in the County's program has been forced to sell as a result of covenant enforcement.

The County Housing and Community Development Department is a relatively new department. It inherited a mosaic of housing units and covenants, all under previously lax supervision. In defining a stronger monitoring and enforcement program, County Counsel and HCD looked to the City of Santa Barbara's housing program as a model for its own and borrowed much of its language. It will take more time for the County to develop the expertise necessary to make its program as successful as is the City of Santa Barbara's program.

A Comparison Model

City of Santa Barbara - Community Development Department, Housing & Redevelopment Division

There are 107 cities in California, Santa Barbara among them, that have some form of inclusionary housing program. The City of Santa Barbara's Inclusionary Housing Program also began in the early 1980s and now has about 320 homeowners. Its program and contracts were skillfully developed by someone in the Housing and Redevelopment Division who had experience as an attorney and real estate broker. The current Housing Programs Specialist was formerly an escrow officer. There exists a built-in working knowledge of the language of the contracts. More than this legal knowledge, however, the Housing Programs Specialist emphasizes regular interaction with the homeowners. Communication is vital to the program. For example, the lottery to draw names of successful applicants is held during a public reception, rather than the impersonal random computer drawing of the County. Greater contact at the beginning of homeownership also comes through meetings and phone calls. Before signing the ownership contract, the City's program specialist goes over it with the new homeowner. The covenants merit detailed discussion with the new owner. The County's HCD program, on the other hand, holds a class regarding home purchasing once a year and does not consider it to be the Department's duty to train occupants in the responsibilities of home ownership. Both City and County Departments send out yearly recertification letters. However, if letters are not received back, the City's program specialist makes phone calls or personally goes to the home. Because of the acquaintance with homeowners, there has been little reluctance to visit homes and thus little reliance on third party observers.

Moreover, the City of Santa Barbara's Housing and Redevelopment Division finds the affordable housing component important enough to staff with an affordable housing

program specialist and two clerical support positions. The clerks are able to do the time-consuming work of sending letters, verifying responses, and receiving phone calls. They also are occasionally sent to look at requests for notice, deeds of trust and other recorded documents that would show that a housing unit has been sold, refinanced or transferred. Extra staff ensures that they are able to follow up on all complaints. In fact, the City Administrator receives a report saying which staff member is working on the complaint. Staff can commit such time to constant supervision of affordable housing only if there are enough people to do the work.

The Housing and Community Development Department at the City of Santa Barbara feels it has a responsive legal department. It is in contact with legal counsel as much as is the County HCD. Yet there is a significant difference. The City has foreclosed on three violators of the inclusionary housing program covenants, in addition to bank foreclosures. A City official called such foreclosures "key to the credibility of the program."

Conclusion

The Housing and Community Development Department is an advocate for affordable housing, bringing into Santa Barbara County housing for all segments of the population and funding for that housing. In promoting affordable housing, the Department has had problems with public relations. These problems have overshadowed the good work of the Department. The Housing and Community Development Department has now set up its monitoring program and should be able to focus on its implementation. Of the many homeowners in the inclusionary housing program, a large majority complies with the covenants. In time, the County's affordable housing program officials should come to know those homeowners in the program and be able to provide the service and the supervision that the program needs. The County's Inclusionary Housing Monitoring Program needs to be enforced in order to gain credibility in the eyes of the public.

Findings and Recommendations

Finding 1

The Board of Supervisors directed a project team comprised of the Auditor-Controller, the County Administrator and the County Counsel's office to review the County's Housing and Community Development Department, in particular its monitoring and enforcement program.

Recommendation 1a

The project team and the Housing and Community Development Department should look beyond formal monitoring processes. Processes that include communication with homeowners should be implemented.

Recommendation 1b

The Housing and Community Development Department needs more staff dedicated to the monitoring program. The Board of Supervisors should fund sufficient support staff positions.

Finding 2

The City of Santa Barbara appears to have a successful monitoring program.

Recommendation 2

The Housing and Community Development Department should consider adopting similar program initiatives.

Affected Agencies

Board of Supervisors

Finding 1
Recommendation 1b

Santa Barbara County Housing and Community Development Department

Finding 1, 2
Recommendation 1a, 2

City of Santa Barbara Community Development Department

Finding 2