The housing act & discrimination

By Daniel Lauber

Our federal government has done more than its fair share to encourage racial and socioeconomic housing segregation. Until Lyndon Johnson put an end to it, Federal Housing Authority policy called for the preservation of racially and socioeconomically homogeneous neighborhoods. Reportedly, a black former assistant secretary of HUD asserts that comprehensive planning assistance, 701, has paid for much of the exclusionary zoning legislation in this country. He says that now is the time to undo this damage. Apparently Congress heard him, because the Housing and Community Development Act of 1974 directs HUD to withhold community development and 701 funds from exclusionary communities. The question is, Will the Ford administration enforce this mandate?

The act certainly appears to call for an end to discriminatory and exclusionary practices. The primary purpose of Title I, Community Development Block Grants, is "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income. Consistent with this primary objective, the federal assistance provided in this title is for the support of community development activities which are directed toward the following specific objectives [including] the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income."

Locations of proposed housing for lower-income persons as identified in the required housing assistance plan (see "Some Tips on the New Housing Act," *Planning*, November 1974) must be chosen to promote a "greater choice of housing opportunities and avoid undue concentrations of assisted persons in areas containing a high proportion of low-income persons."

In order to receive comprehensive planning assistance funds, comprehensive plans must include both a housing and a land-use element by August 22, 1977. This housing element, which may be nearly identical to the housing assistance plan, must consider regional as well as local housing needs. The act directs plans and programs guiding and controlling major decisions as to where growth should take place to "take account of the necessity for expanding housing and employment opportunities."

But as explained in countlese reports and articles, exclusionary zoning practices restrict housing and employment opportunities for low- and moderate-income persons. By establishing a number of cost-elevating requirements—such as excessively large minimum lot and/or floor areas, expensive amenities like tennis courts or swimming pools—and by prohibiting generally less expensive housing such as apartments, townhouses, and mobile homes, many suburban communities effectively prevent low- and moderate-income persons from living within their borders. The continuing migration of industrial and commercial establishments to these suburbs which exclude low- and moderate-income housing reduces the employment opportunities available to low- and moderate-income central city workers. Faced with commuting as much as five hours a day, at a cost of as much as $20 a week, to a low-paying suburban job, many central city dwellers do without regular work altogether. Making commuting even more difficult is the orientation of suburban transporation toward moving suburbanites to the central city rather than moving the city dweller to industrial suburban areas.

There can be no doubt that exclusionary zoning practices obstruct the clear intent of the Housing and Community Development Act to increase employment opportunities and reduce the isolation of lower-income groups. Due to the disproportionately high number of blacks and Spanish-speaking Americans in the lower-income groups, this economic segregation is usually accompanied by racial segregation as well.

Regulations for the distribution of Community Development block grants, prepared by Acting Assistant Secretary for Community Planning and Development Warren Butler, recognize the invidious and subtle effects of exclusionary zoning: "A recipient, in determining the site or location of housing provided in whole or in part with funds under this [act], may not make selections of such site or location which have the effect of excluding

Daniel Lauber, an ASPO research associate, has been monitoring the new housing act.

individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the act."

The regulations proceed to require documentation of a fund recipient's efforts to further fair housing. Activities that indicate a community is complying with the act include the development and enforcement of fair housing laws, activities taken to prevent discrimination by lending institutions, and actions taken to assure that land-use and development programs funded by the act provide greater housing opportunities for lower-income persons.

Regulations covering the required housing element under 701 also appear to demand an end to exclusionary land-use practices. Recipients are required to "affirmatively promote equal opportunity for all citizens in the choice of housing, including an adequate supply, a variety of housing types, proximity of housing to jobs, and proper and equitable delivery of public facilities and services."

The act gives HUD the power to withhold community development funds from applicant governments that fail to comply with any provisions of Title I. Payments can be reduced or completely terminated. They can be limited to programs, projects, or activities not affected by the designated failure to comply. Which approach, if any, HUD will pursue in the case of communities that refuse to alter exclusionary and discriminatory zoning and housing practices is unknown. HUD is required to approve an application for community development funds unless the applicant's statement of community development needs is "plainly inconsistent" with available information, the activities proposed are plainly inappropriate to meeting the ends and objectives identified by the community in its application, the applicant does not comply with the law, or the activities proposed are ineligible under the act. Available information exists that will enable HUD to identify communities that do not comply with the law—communities that restrict employment and housing opportunities by exclusionary and discriminatory zoning and housing practices.

Title I regulations specifically require the housing assistance plan submitted to HUD to include a map showing the concentration of minority groups in the census tracts or enumeration districts that make up the applicant community. By itself, this map will enable HUD to determine if proposed housing activities locate proposed assisted housing in areas of minority concentration in violation of the Housing and Community Development Act. Coupled with readily available census figures on race and income for the applicant locality and the surrounding metropolitan area, HUD officials can easily identify possible exclusionary communities. Readily available figures on the location of industry combined with these census figures can be used to establish whether the applicant's housing assistance plan contributes to a continuation of exclusionary practices which limit housing and employment opportunities.

HUD might require a suspect community to furnish a copy of its zoning ordinance and map. Exclusionary practices are well known and easily identified; it usually does not take deep analysis to determine if a zoning ordinance is exclusionary. Such examinations are within HUD's capabilities.

HUD's task is made even easier where a regional fair share housing plan exists. Community development block grant applications are subject to A-95 review and comment prior to submission to HUD. If an applicant's housing assistance plan provides an insufficient number of units in light of the existing regional housing allocation plan, the A-95 agency would be fully justified in recommending denial of the applicant's community development grant. Complete details of the housing assistance plan's shortcomings should be communicated to HUD.

Title II of the Housing and Community Development Act, Assisted Housing, requires that applications for housing assistance be consistent with the local housing assistance plan in order to be approved. Even if the unit of general local government determines that an application is inconsistent with the local housing assistance plan, the act allows HUD to approve the application if it disagrees. Consequently, assuming HUD intends to enforce the law, a municipality that provides for lower-income housing in its housing assistance plan had best be prepared to allow its construction. Failure of HUD to enforce the law will permit municipalities to submit housing assistance plans that illustrate the immortal words sometimes attributed to John Mitchell, "Watch what we do, not what we say."

Will HUD take advantage of this opportunity to stop subsidizing communities that continue to violate federal law? The signs are mixed. Tom Patch, HUD Director of Program Standards, reports that proof of exclusionary zoning, per se, will not be a basis for rejecting community development applications. However, if HUD finds an applicant's housing assistance plan to be inadequate, community development funding will be in jeopardy. "If the housing assistant plan flunks, the whole grant goes down the tube," Patch says. The history of the Nixon-Ford administration bodes ill for the prospects of HUD's withholding community development block grants or comprehensive planning assistance funds from exclusionary communities that refuse to change their ways. The Office of Revenue Sharing has been less than zealous on civil rights enforcement. Departing HUD Secretary James Lynn has not expressed the same support for fair share plans as had his predecessor George Romney. As a congressman, Gerald Ford bitterly attacked the Miami Valley Regional Planning Commission's fair share housing allocation plan, reflecting the Nixon administration's opposition to "forced integration of the suburbs."

The entire tenor of the Nixon and Ford administration has been to serve the exclusionary suburbs at the expense of the central city. Revenue sharing was introduced, and categorical grants ended, to serve the suburbs. Unless HUD's performance review function and the application are given meaningful administration, unless all community development funds are withheld from communities violating the provisions of the act, the community development title could become special revenue sharing in the guise of a block grant. There is no good excuse not to reject applications from exclusionary communities. After all, there exists no constitutional or congressional mandate calling for the federal government to support illegal activities with tax dollars. We shall all have to wait to see what HUD's behavior will be.

The Housing and Community Development Act of 1974 gives the federal government an opportunity to use funding disincentives to help break down exclusionary land-use practices and regulations. It remains to be seen if this unprecendented opportunity will be exercised. □