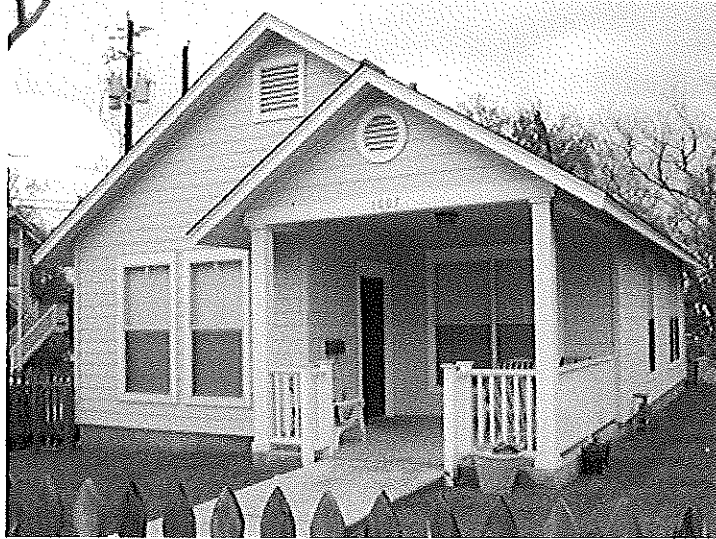


**Expanding the San Antonio Toolkit to Create
Sustainable & Affordable Housing Opportunities:
Models from Austin and Beyond**



Home built by Guadalupe Neighborhood Development Corporation in Austin, Texas

By: Heather K. Way
Attorney and Director
Community Development Clinic, University of Texas School of Law
512-232-1210; hway@law.utexas.edu

San Antonio Community Development Summit
September 16, 2009

Expanding the San Antonio Toolkit to Create Sustainable & Affordable Housing Opportunities: Models from Austin and Beyond

By: Heather K. Way
Community Development Clinic, University of Texas School of Law

Tool Set #1: Increase Land Available for Affordable Housing

The two largest resources that developers (for profit and non profit) need in order to create more affordable housing are land and funding.

1. Public Land: Public land can provide a prime resource for creating affordable housing. In Texas, the city, county, and state all own a lot of surplus and underutilized property in prime locations in urban centers. In Austin, housing advocates and other community leaders have been working to ensure that any city land that is sold or leased for redevelopment includes a minimum of 25% affordable housing. Very preliminary discussions have also taken place about a strategy to incorporate affordable housing onto underutilized government tracts, such as parking garages and surface parking lots. Several successes to date including the following:

- ❖ **Example—Mueller Airport Redevelopment:** When the City of Austin decided to move its airport and sell the old airport's 711-acre site, the City agreed to require that at least 25% of the residential units in the new development would be set-aside for affordable housing. The housing units are integrated into the new mixed-use development, which is host to 3,000 new jobs including the city's new children's hospital, a physician's office complex, and a retail complex. The affordable homes are green and within walking distance of 140 acres of parks and trails in the development. The city has adopted a TIF for the site, which uses the increased property and sales taxes to reimburse the developer for the infrastructure costs. The developer set up a foundation and partnered with a local nonprofit, People Trust, to manage a shared equity program for the homes, which provides families with an interest-free second mortgage to subsidize the sales price of the home, which is repaid when the home is sold, along with a portion of any equity in the property as a result of an increase in the appraised value. The developer also instituted a fee that is assessed upon each resale of any property, which then goes towards subsidizing the affordable housing.

- ❖ Example—Green Water Treatment Plant Redevelopment: In 2008, the City of Austin selected a developer to redevelop a former city water treatment site located on prime real estate in downtown Austin. Twenty-five percent of the rental units in the 1,177-development of four blocks will be affordable, and forty percent of the property taxes generated from the new development will be dedicated to affordable housing either onsite or within the downtown vicinity.
- ❖ Also in the works in Austin:
 - Dedication of city-owned property located in the City of Austin’s transit-oriented development districts along the city’s new commuter rail line. The City has asked staff to evaluate the city-owned land in these districts and is pursuing feasibility of relocating existing city uses on the sites and, in their place, developing affordable housing and possibly other mixed uses that will support ridership on the commuter rail line.

2. Reuse Abandoned and Tax Delinquent Properties. Abandoned and vacant infill properties are a prime opportunity for redevelopment as affordable housing. These properties are oftentimes close to job centers and mass transit, and their redevelopment can help spur the turnaround of a neighborhood. Texas has been a leader in creating innovative tools to redevelop these properties into affordable housing, such as through the state’s Urban Land Bank legislation and pending legislation that would create a community receivership tool.

- ❖ Example—Land Banking: In 2003, the state adopted a pilot “Urban Land Bank Demonstration Program” for the City of Dallas, which allows the city to bypass the public auction in a tax foreclosure sales and directly acquire tax delinquent, vacant properties for affordable housing development.¹ Nonprofit housing developers have a right of first refusal. Since 2005, the City of Dallas has acquired 391 lots for redevelopment as affordable housing through the land bank program, with another 1098 working their way through the tax foreclosure process. The land bank legislation has since been extended statewide.² Receipt of federal Neighborhood Stabilization Program funding has opened up new opportunities for acquisition and redevelopment of these tax foreclosed properties, along with mortgage foreclosed properties.
- ❖ Example—Community Receivership: A new law passed by the Texas Legislature this past spring gives nonprofit housing organizations the ability to file a community receivership action against dangerous properties.³

¹ Tex. Local Govt Code, Chapter 379C. Houston also had an active land bank program, but is not utilizing the special tax foreclosure tools provided the Urban Land Bank legislation.

² The different Urban Land Bank Program statutes are located in the Texas Local Government Code, Chapters 379C-E, available at <http://www.statutes.legis.state.tx.us/>.

³ Texas Senate Bill 1449, 81st Regular Session, available at <http://www.legis.state.tx.us/>.

Modeled on laws in Baltimore and Ohio, when a rental or vacant property is creating a serious safety hazard and the owner refuses to address the hazard, the legislation allows a city-certified nonprofit to file suit in state district court and ask for a receiver to be appointed to fix up the property or, if appropriate in limited situations, to demolish the property and rebuild on the site. For single family properties, the nonprofit can also serve as the receiver. For all properties, the receiver holds a priority lien on the property for the receiver's expenses. At the termination of the receiver action, the court has the authority to sell the property, and the receiver is paid first out of the sales proceeds; liens not covered by the sales proceeds are extinguished.

Tool Set #2: Increase Local Funding for Affordable Housing

Texas state and local governments have limited ability to raise money for affordable housing and other services, with no income tax and with caps on property and sales taxes. As a result, in developing local financial resources for affordable housing, Texas cities have two primary avenues: general obligation bonds and tax increment financing.

1. General Obligation Bonds. In three Texas cities, voters have approved city-issued general obligation bonds for affordable housing. Houston: \$18 million (2006), Dallas \$23.8 million (2003), and Austin: \$55 million (2006). The Austin bond initiative was the first of its kind in the city approved by voters. Houston and Dallas voters had each passed prior general obligation bond initiatives for affordable housing.

2. Tax Increment Financing. Through tax increment financing (TIF), local governments dedicate a percentage of increased tax revenue arising out of appreciating property values in a redevelopment district. The taxes are typically dedicated to funding infrastructure improvements in the redevelopment, which in turn fuel the increased property values. Yet, in some instances, governmental entities have required a dedication of a certain percentage of the tax increment towards affordable housing and other community benefits.

Texas has seen at least four policies in this regards:

- ❖ **Houston 30% TIF requirement:** Via mandate of state law, when the City of Houston adopts what is called a "petition" TIF under state law, 30% of property tax increment from the TIF district (called the "tax increment refinancing zone," or TIRZ) has to be spent on affordable housing. This law has generated well over \$20 million for affordable housing.
- ❖ **Austin public land TIF:** City Council has adopted via resolution a requirement that 40% of the tax increment from any city land that is sold or leased for redevelopment will be dedicated to affordable housing, with the anticipation

that such a requirement will eventually result in a dedicated stream of ten million dollars a year for affordable housing.

- ❖ Dallas TIF policy: A joint county-city policy in Dallas requires that a certain percentage of the tax increment in new TIFs be spent on affordable housing.
- ❖ Homestead Reinvestment Zone: The Texas Legislature has allowed Dallas and Austin to create a special Homestead Reinvestment Zone,⁴ which is a special TIF that can be created in certain gentrifying neighborhoods near downtown. The city and county can elect to dedicate a certain percentage of tax increment from these neighborhoods to preserve and create affordable housing within the same neighborhoods. The Austin City Council recently approved creation of a Homestead Reinvestment Zone in Austin, which is now awaiting approval of the county.

3. Tax Abatements.

Many cities around the country are using tax abatements and exemptions to incentive preservation of affordable housing. Models include the cities of Chicago and New York which utilize tax abatement to incentivize the preservation of affordable housing. Austin is utilizing tax exemptions through public-private partnerships whereby the City acquires the land interest in a development which is built by a private developer. Because the City owns the land, the land is 100% tax exempt, which then subsidizes the inclusion of affordable housing in the development.

4. State Tax Credits.

Another promising tool (although more statewide in scope) is the creation of state tax credit to give Texas cities the ability to provide deeper subsidies in federal low income housing tax credit developments. North Carolina has a model program whereby the state offers tax credits in conjunction with the federal tax credit program, allowing developers to target more families at the 30% mfi levels. In Texas, the credit would need to be based on the business margins tax since Texas does not have an income tax.

⁴ Tex. Local Govt. Code, Chapter 373 A. For a presentation on this specific tool for Austin, see http://www.ci.austin.tx.us/housing/downloads/homestead_pres_112008.pdf.

Toolset #3: Adopt regulations and planning practices that stimulate production and preservation of affordable housing in high opportunity areas

Lessons learned from Texas and other areas around the country are that, without local government action and utilization of a broader set of planning and regulatory tools, affordable housing will typically not be built in high opportunity areas.

1. Opportunity Mapping.

Texas cities need to be more strategic about where new affordable housing opportunities are created to ensure that the residents of these properties have access to transit, jobs, good schools, and safe neighborhoods. One way to identify these areas is through an opportunity mapping project. Green Doors, an Austin housing organization, has developed a report and set of maps identifying high opportunity areas in Austin, which could serve as a model for San Antonio. See www.greendoors.org.

2. Link Transit and Affordable Housing.

When San Antonio engages in transit planning, the city should also incorporate planning for affordable housing, especially in the creation of any transit-oriented development districts. The market will rarely provide affordable housing in new transit-oriented developments, and the creation of new transit opportunities such as light rail will drive up the surrounding land values and can result in the loss of existing affordable housing opportunities. Cities like San Antonio should consider including funding for affordable housing in any funding initiatives for mass transit to help subsidize the creation of affordable housing in the transit zones, and to also consider land banking in areas where rail transit is going to be built.

One model is the City's planning efforts to create transit-oriented development districts (TODs) along the City's new commuter rail line. As part of the plans, the City Council adopted an ordinance setting a goal that 25% of all new residential units in the TODs will be affordable. The City hired a consultant to create an affordable housing strategy to reach these goals, which includes the density bonus and the public land policies mentioned above.

3. Density Bonuses and Other Land Use Incentives.

Restricted by the ability to adopt a comprehensive and mandatory inclusionary zoning ordinance, the City of Austin has been experimenting with a series of voluntary inclusionary ordinances to incorporate a small percentage of affordable housing units into market developments. These programs provide developers with an increase in density and zoning entitlements, in exchange for providing affordable housing onsite or, in some instances, paying an in lieu fee that goes into the city's housing fund. These voluntary programs are by and large located in high opportunity areas of the city, where there is high market demand for more density.

These programs include the downtown incentives ordinance, the University Neighborhood Overlay ordinance (UNO), the Vertical Mixed-Use Ordinance, and the Station Area Plan ordinances for three of the City's transit-oriented development districts (TODs)

4. Inclusionary Zoning.

Inclusionary zoning ordinances have been adopted all across the country and require developers to include a certain percentage of affordable housing (typically 10-15%) in each new residential development over a certain size. In Texas, the Legislature has made inclusionary zoning illegal, with a few minor exceptions. A new law that would have allowed for inclusionary zoning in transit districts passed the Legislature but was vetoed by the Governor this year. Cities and advocates need to make more attempts at the Legislature to get back this important tool so that cities have the local control to decide what types of inclusionary zoning ordinances would be appropriate.

5. Comprehensive Planning.

The City of Austin is embarking on an ambitious long-range, comprehensive planning initiative which will include an affordable housing component. This initiative is huge because the city has not adopted a comprehensive plan since 1979. While just in the initial stages, an initiative of Austin HousingWorks, the Urban Land Institute, and other local stakeholders have worked together to start formulating a strategy to ensure that the affordable housing component in the comprehensive plan sets targets and creates planning and regulatory tools that will create ranges of affordable housing throughout the city, but especially near high opportunity areas such as job centers and transit corridors.

6. Reduce Regulatory Barriers.

While regulations can play an important role in increasing the availability of affordable housing, regulations such as zoning restrictions and impact fees can also deter affordable development. For almost ten years, the City Of Austin Texas has utilized a S.M.A.R.T. (Safe, Mixed-income, Accessible, Reasonably-priced, Transit-oriented) Housing Policy Initiative to limit regulatory barriers for affordable housing. Through the initiative, developments can qualify for waivers from local development fees and receive expedited review for development and building permits. To facilitate the development of affordable infill development in existing neighborhoods, the city also amended the city's development code.

7. Comprehensive Preservation Policy.

San Antonio needs a preservation policy to target at risk affordable properties in high opportunity areas. Examples of successful tools of how to preserve affordable multifamily properties are available in a paper called "Preserving Austin's Multifamily Rental Properties."⁵ Another tool is the Homestead Preservation District,

⁵ <http://www.utexas.edu/law/academics/clinics/community/workhighlights.php>.

which currently applies to just Dallas and Austin; San Antonio could ask the Texas Legislature to extend this tool to San Antonio. The district allows cities to create special TIFs to fund the preservation of affordable housing. San Antonio could also support the creation of a community land trust to support the long-term preservation of single family affordable housing. PeopleTrust in Austin has set up one of the first community land trusts in Texas, but other successful models of CLTs exist around the country.