

Inclusionary Housing in the US and Europe

Under an Inclusionary Housing (IH), Inclusionary Zoning (IZ) or mixed-income housing program, low and moderate-income housing units are included in an otherwise market-driven development. In some cases, developers can pay in-lieu-fees instead of building the units, with the fees utilized to build affordable units outside of the development site.

A major objective of IH is not only to increase the supply of affordable housing, but to foster greater social and economic integration. This is especially important in suburban communities where high housing costs – and in some cases racial discrimination - have denied lower-income households the better jobs and educational opportunities found in newly developing areas. IH units are generally built concurrently with the market-rate units, sidestepping the NIMBY (Not In My Back Yard) problem, probably the most serious obstacle to the provision of affordable housing.

In the U.S. the drive for IH began in the 1970s as a result of high housing costs, as in California, or the exclusionary zoning practices of local governments in New Jersey and other states that used zoning to keep out minorities and the poor. IH is much more recent in Europe, the result of deregulation and, more specifically, the reduction in the role and the funding on the part of the central state of social housing. This reduction in the production of social housing has led to increasing affordability problems while increases in the influx of migrants is leading to social, economic and spatial segregation. Such processes have led to the utilization of IH in several European countries and a revival of IH in the U.S..

This paper is organized as follows: First, IH in the U.S. will be analyzed, by tracing its history and rationale, examining its economic basis and surrounding controversies, presenting its achievements and problems in the two states where IH has been applied more widely - California and New Jersey - and concluding with an examination of the most recent trends in IH. Second, IH in Europe will be discussed, placing its recent growth in the contexts of deregulation and housing market changes and examining the similarities and differences of IH programs in Great Britain, Spain and Italy. Finally, the possibility of convergence over IH in Europe and the U.S. will be explored.

The Origins of Inclusionary Housing in the U.S.

The 1960s were a period of widespread turmoil and sharp conflicts in the U.S. Civil rights demonstrations, urban rebellions, Vietnam war protests, environmental disasters, political assassinations and the discovery of a permanent poor and segregated "other America," shook the American political-economic system to its foundation. Most important for our purpose, civil rights demands were openly challenging social policies and practices that had previously gone unquestioned and black violence in the city led to a sense of urgency to address issues of poverty, affordable housing and social segregation. The Department of Housing and Urban Development (HUD) was established in 1965, and in 1968 Congress passed the Housing Act that dedicated significant resources to the construction and rehabilitation of housing for low and moderate-income households, leading to the production of approximately 400,000 units per year during the 1970s. The Civil Rights Act of 1968 prohibited all actors in the housing market from discriminating on the basis of race, color, creed or national origin (Mitchell 1985). The 1974 Housing and Community Development Act embodied socio-economic integration in federal policy. However, as Mallach (1984: 5) has pointed out, despite these legislative acts and "hundreds, if not thousands of efforts by community organizations, housing sponsors, and

developers to foster integration through the use of federal housing programs...only a small fraction were successful." Thus, the movement toward IH must be seen as a response to the issue of integration. Similarly, IH was a response to the civil rights issue of "exclusionary zoning," a mechanism that keeps racial minorities and the poor out of affluent white communities, response that matured out of the civil rights movement.

It was at the same time that environmentalism was born, part and parcel of this larger movement of protest that challenged longstanding, taken-for-granted practices including the use of economic growth and consumption as indicators of social and individual success. As part of this change, citizens repeatedly questioned the idea that urban growth is good and inevitable. Growth management was born, and several communities sought to limit growth and make it pay for its costs. Several bedroom communities clustered in the San Francisco Bay area passed growth-control measures that limited the annual number of residential building permits. To ward off possible legal challenges to their programs, cities like Petaluma and Davis passed de facto IH programs, by favoring developers who would include affordable units in their projects. Development Impact Fees (DIFs), a particular form of exaction, made developers pay for the cost of infrastructure and public facilities. In some hot downtown markets such as Boston and San Francisco, developers were made to pay "linkage fees" on office development to build housing for low-income workers.

During the early 1980s, the deregulation assault of the Reagan administration on government programs included dramatic cuts in direct-expenditure federal housing programs that left localities and states to fend for themselves to generate low-income housing. As Mallach (1984: 5) explains: "The loss of federal funds for new housing construction in the early 1980s was a significant factor in the in the growth of inclusionary housing programs: while some such programs initiated during the 1980s were seen as a means of utilizing federal subsidies more effectively for socioeconomic integration, by the early 1980s consideration was being given to inclusionary housing programs as an *alternative* to federal subsidy programs." As we will see later, cuts in central governments' housing programs was also a major factor behind the later growth of IH in Europe.

In sum, the genesis of IH in the U.S. is found at the intersection of several issues that brewed during the 1960s and 1970s, including; 1) racial discrimination in housing; 2) growth controls; 3) housing affordability problems and; 4) deregulation. The housing affordability problem is a recurrent one, and the huge housing cost increases of the past five years are the main reason behind the recent, renewed interest in IH in the United States.

Development of Inclusionary Housing

One of the earliest IH programs, the Moderately Priced Dwelling Unit Program in Montgomery County, Maryland, was established in 1973, and is arguably the most successful and largest local IH program in the country, having produced more than 10,000 affordable housing units over a period of 25 years. At the state level, only in New Jersey and California has IH had a lasting and significant impact, but for different reasons.

The origins of IH in New Jersey are tied to the use of exclusionary zoning in New Jersey municipalities to restrict development of multifamily housing in order to exclude lower-income households and protect property values. The courts in New Jersey led the attack against exclusionary zoning. With the landmark 1975 Mount Laurel decision ([Southern Burlington NAACP v. Township of Mount Laurel, 67 NJ 151](#)), the New Jersey Supreme Court declared that

zoning was being used unconstitutionally and that each municipality should provide their regional fair share of affordable housing. When the Mt. Laurel township failed to provide affordable housing, the New Jersey Supreme Court decided in 1983, with the Mount Laurel II decision, that mandatory set asides, i.e., IH, would be required and that courts would grant zoning relief and building permits to builders excluded from building low-income projects. Builders agreed, if given the opportunity to build, to make 10% of the units affordable to households earning under 50% of the area median income, and 10% to households earning between 50% and 80%.

The recalcitrant municipalities turned to the state legislature, resulting in the New Jersey Fair Housing Act of 1985. Under the act, control over zoning was transferred from the judiciary to an administrative agency, the Council on Affordable Housing (COAH). Its responsibility was to determine the regional fair-share of all localities and to certify fair-share plans acceptable to COAH, with IH the most likely tool to be included in the localities' fair-share plans (Calavita, Grimes and Mallach 1997). More recently, however, democratic Governor James McGreevey, who as mayor of Woodbridge (a large middle-class township in Central New Jersey) had successfully fought against low-income housing in his community, has attempted to gut its landmark legislation (Mallach 2004). COAH has allowed suburban communities to pay other communities - usually urban communities as Newark or Camden with large proportions of poor and minorities - to accept half of the regional fair share allocated to them (Porter 2004). Also, while many localities adopted IH after the Mt. Laurel II decision, they "now employ them on a case by case basis or have effectively shelved them" (Porter 2004:26). And the courts have effectively abandoned the judicial activism of the 1970s and early 1980s.

In California, the most important factor explaining the widespread use of IH has been the housing affordability crisis, one of the worst in the nation. It began after the recession of the early 1970s and has continued, almost unabated, ever since. This crisis has led the state to mandate that all municipalities include a housing element in their General Plans. The housing element, as in New Jersey, is supposed to indicate how a locality is going to meet its fair share of affordable housing. The State of California Department of Housing and Community Development (HCD) reviews the housing element to insure that it meets state requirements. HCD certification, however, does not guarantee that affordable units will be built. Nevertheless, incentives and disincentives linked to housing element compliance have prompted some localities to include IH as one of the mechanisms to produce affordable housing. Even though litigation has been rare, research has shown that fear of litigation is an important motivator for the adoption of IH (Calavita and Grimes 1988). Lacking a clear state mandate or a compelling court decision as in New Jersey, IH programs in California are adopted locally. Their diversity, complexity and flexibility reflect the political and economic characteristics of each locality over time.

In California, high housing costs have prompted localities to adopt IH programs in large numbers, especially during the late 1990s and early 2000s. Between 1994 and 2003, the number of IH programs increased from 64 to 107, a 50 percent increase. Over 34,000 affordable homes and apartments had been built over the past 30 years (California Coalition for Rural Housing & Non-Profit Housing Association of Northern California. 2003). The California system is marked by change and plasticity, as localities respond to shifts in the economy and the state's policy-making environment. But ultimately, it is at the local level that the unique characteristics of an IH program take shape, explaining the wide variation in the distribution and characteristics of inclusionary programs in California. This variation reflects the highly political nature of any public policy response to the affordable housing shortage, and

indicates both the differences between local power structures and the ingenuity of local planners in successfully negotiating obstacles in their path.

As mentioned above, the policy and regulatory climate at the state level, including a legislatively mandated housing element and fair-share doctrine, has also influenced the passage of IH programs in California (Calavita and Grimes 1998). In that respect New Jersey and California are very similar, with higher levels of government influencing local decision-making, on the basis of fair-share requirements. Still, in New Jersey localities have been brought in kicking and screaming and have worked hard to water down the court-inspired mandate, while in California IH has been a local response to affordability crises and shifts in the state's policy-making environment (Calavita, Grimes and Mallach 1997).

In Massachusetts, the 1975 Zoning Act, popularly known as the "anti-snob zoning" law, allows developers to sidestep zoning and other regulations when proposing affordable projects in communities that have failed to produce their "fair share" (10%) of such housing. This provision has helped provide affordable housing, but not as much as "true inclusionary housing could have provided" (Ziegler 2002).

Much more recently Illinois passed legislation similar to that of Massachusetts, the Affordable Housing Planning and Appeal Act. This 2003 law requires all municipalities and counties in Illinois with less than 10% affordable housing to produce an affordable housing plan by April 1, 2005. If a community does not reach its goal by January 1, 2009, developers may appeal local decisions affecting proposed affordable housing developments to a State Housing Appeals Board that can overrule the local decision and allow the development to be built. Only 49 communities in the state of Illinois are affected by this law. All of these "non-exempt" communities are located within the Chicago metropolitan region and over 90% of them are located in the job-rich northern and western suburbs. As a result of this law and broader organizing efforts, Highland Park and Wilmette – two affluent North Shore communities – have passed an inclusionary zoning ordinance and many others are in the process of doing so (Brunik 2005).

Economic and Political Aspects: The Inclusionary Housing Controversy

Under IH programs developers are required to dedicate a small portion of their new development to housing affordable to low and moderate-income households. The percentage of units required (usually between 10 and 20%), the target population, the length of affordability, the minimum project size, the option for and the amount of an in-lieu-fee, the availability and types of incentives and "cost-offsets", all vary among localities; and they all affect the cost of the inclusionary units to the developer. A requirement to build a large percentage of units affordable to very-low income families is obviously much more onerous than paying a nominal in-lieu-fee. So the adoption of IH is contentious and conflict-ridden in two ways: First, when IH is proposed, the development and building industry will fight it with all its might. IH proposals in Los Angeles, Chicago, New York and Baltimore, for example, have been stalled because of developers' and land-owners' opposition. Second, once the decision has been made to enact IH, the conflict turns to the requirements of the proposed IH ordinance, with opponents attempting to water down, and proponents to shore up its requirements.

Opponents' main points of attack are two. They argue that: 1) The costs of IH are shifted to the buyers and renters of the market rate units, thus decreasing their ability to afford market-rate

housing (the so called "incidence controversy" or who pays the costs of IH, and that; 2) IH discourages market rate production. Such positions, however, are highly controversial.

1) While developers maintain that the consumers bears the cost of IH, economists point out that the developer and/or the seller of raw land to the developer can, under various circumstances, absorb parts, or all, of the costs of IH. If the demand for housing is elastic, i.e. sensitive to changes in price, then developers will be unable to pass down the cost increases to home-buyers or renters and will have to reduce their profits. However, there seems to be agreement in the literature that "in the long run...most of the cost will be passed backward to the owners of land (Mallach 1984). If this is true, then, land markets should be given time to adjust to the new IH requirements, one reason why the in-lieu fees in San Diego, for example, are being phased in over a period of four years.

An additional argument that is often made in support of the position that it is the landowner who "in the long run" pays for additional costs of development, is that developers already charge the maximum housing sale price that the market can bear. When new exactions increase the cost of development, the cost of land or developers' profits will have to come down. While developers may reduce their profit margins, it is more likely that they will seek a reduction in land costs.

Given the uncertainty surrounding this debate, and in an effort to reduce both the cost of development and the political opposition of developers, incentives, cost offsets or alternative compliance options are made available. These include financial assistance, density increases, DIFs waivers or deferral, fast-track permit approval, lower parking requirements, reduced street widths and setbacks, reductions in affordable unit size and equipment (Calavita and Grimes, 1998; Porter 2004). Studies have shown that, at least before the steep price increases of the past few years, the affordability gap - the difference between what it costs to provide housing and what lower-income households can afford - can be filled through these measures to reduce production costs (Brown and Harrington 1991; Rosen 2004). What needs to be remembered, though, is that cost offsets carry a price of their own. Density bonuses, more lenient standards and fee deferrals, do not come for free. Density bonuses, for example, may engender opposition to IH on the part of community groups opposed to densities above what their community plan calls for. It has been argued (Hagman 1982), that what incentives and cost offsets do, is to keep land costs high, making unnecessary subsidies and cost offsets. But they may be politically necessary to blunt developers' opposition.

2) Development interests insist that developers are likely to leave a locality when confronted with IH, thus reducing the overall number of units produced. For example, two recent reports, prepared by two economists at Fresno State University for the Reason Foundation - a libertarian think tank - analyzed the effects of IH in the Bay area and Los Angeles and Orange Counties (Powell & Stringham 2004). They measured the production of housing units in the IH localities seven years after adoption and found a significant reduction. An analysis of the report, however, reveals that, "the narrow scope of the research, the flawed research design, the data limitations and the weaknesses of the analysis are so consequential that few, if any, of their conclusions are useful to policymakers." Most importantly, "the research design lacks a comparison between cities with and without IH and the authors do not provide long-term data by year. It is therefore impossible to ascertain whether the decline in housing production in localities with IH is: 1) due to IH *per se* or, 2) part of an overall downward trend in housing production or, 3) due to the time of enactment of IH in relation to the economic cycle. For example, fifteen of the IH programs in the Bay Area were passed between 1989 and 1992, just before or at the very beginning of the economic recession of the early and mid-1990s" (Basolo

and Calavita 2004). On the other hand, cities with programs adopted during the seven years prior to 2003, years when housing production went up, were not counted. An analysis of San Diego County, comparing localities with IH to localities without, shows that there is no difference between them (Calavita 2004).

A separate study of 28 cities in California with and without IH found that IH "is not associated with a negative effect on housing production. In fact, in most jurisdictions as diverse as San Diego, Carlsbad and Sacramento, the reverse is true. Housing production increased, sometimes dramatically, after passage of inclusionary housing ordinances" (Rosen 2004).

Recent Trends

The increasing interest on the part of localities to utilize IH as a tool to help expand the supply of affordable housing has led to a major outpouring of publications during the past few years. For example, the Urban Land Institute, the research arm of the building industry, has recently come out with a largely sympathetic analysis of IH (Porter 2004). The National Housing Conference has published three reports that analyze IH in general, and Montgomery County, Massachusetts and California programs in particular. Business and Professional People for the Public Interest has produced a report presenting the "Nuts and Bolts" of IH and several case studies in various parts of the country (Anderson 2003). Policy Link, a progressive research and advocacy organization, has published reports advocating IH in Washington D.C., and New York, two major cities considering IH (Policy Link 2003, 2004).

Zoning Practice, a publication of the American Planning Association, dedicated two issues to IH, including one that brings attention to the fact that several large cities have adopted or expanded their IH programs since 2000, including Boston, Denver, Sacramento, San Diego and San Francisco (Brunick 2004). In California, the League of California Cities produced a *California Inclusionary Reader* (Higgins 2003), while two non-profit organizations brought attention to the increasing pace of IH adoptions on the part of localities in California where at least 110 jurisdictions have passed IH programs (California Coalition for Rural Housing & Non-Profit Housing Association of Northern California 2003). Finally, a "National Inclusionary Housing Conference: Building Strong Mixed-Income Communities" organized by Policy Link, the Innovative Housing Institute and Business and Professionals for the Public Interest (BPI) was held in Washington, D.C. in October of 2005.

This expansion of the IH literature comes at the same time when "smart growth" has become the reigning canon in land use planning. Its main purpose is to fight sprawl by redirecting growth from the fringes of metropolitan areas to already urbanized communities through densification and infill. While the potential of smart growth in reversing suburban and exurban growth is debatable, it is also true that there is a new interest in urban living, especially in cities experiencing high rates of growth and wild increases in property values, places which have already adopted or are likely to adopt IH. For example San Diego and Boston are two large cities with IH programs that are basically built up. Born to open up the suburbs to affordable housing, IH becomes more problematic when applied to infill sites or to redevelopment. While desirable from a "smart growth" point of view, developing in urban contexts is usually more expensive and difficult than in the suburbia, and developers will have difficulty in achieving the economies of scale that are possible for large properties in a suburban context. Flexibility in designing IH Ordinances then, becomes even more important in urbanized contexts. Variances or in lieu fees become essential for small projects of a few units

On the other hand, in redevelopment areas IH can become an important mechanism to insure that at least a small percentage of the units remain affordable to low-income households. Together with other housing initiatives, such as housing developed by non-profit developers, IH is an important tool to insure that inner-city neighborhoods in danger of gentrification could be transformed into mixed-income neighborhoods instead of enclaves for the middle and upper classes.

Another change that has occurred recently as a result of an unprecedented wave of conversions of low-cost rental apartments into condominiums has been to apply the IH requirements to condo conversions as well, as in the case of San Diego and other California communities. IH then, is a tool that can be used not only for new construction, but also for changes in existing buildings.

Finally, private developers not experienced in the building and administering of affordable housing, are teaming up with nonprofit housing developers when required to build IH. The dramatic cutbacks in direct-expenditure federal housing programs during the 1980s created a new era of housing innovations based on a decentralized approach to delivering affordable housing with nonprofit housing development corporations becoming the most important providers of low-income housing of the past 20 years. The federal government has supported this decentralized approach through the HOME Investment Partnership Program and Low-Income Housing Tax Credit Program (Erickson, 2004). While successful in its delivery approach, this decentralized system is woefully inadequate to meet the need of low-income families and, in some metropolitan areas, of the middle class as well. IH, if adopted on a large scale in the U.S., could become a significant opportunity for private/nonprofit partnerships to provide affordable housing.

In sum, unless localities utilize IH as a mechanism to discourage development, IH programs in the U.S. are the outcome of political and economic processes that attempt to balance the community's interests with those of the developers. As such, IH has evolved as a multifaceted approach marked by flexibility, adaptability and change. As the housing crisis worsens, and the Bush Administration plans to cut even more of its budget for housing and community development, IH will become a tempting tool for strapped localities, and the appeal of IH will continue to increase. As the U.S. enters the 21st century, it is becoming abundantly clear that housing affordable to low-income households will become even more problematic and IH more utilized as one of several programs necessary to meet the needs of lower-income families. It is necessary to understand, however, that because of class and racial prejudices and insular local controls, effective IH programs will be enacted mainly as a result of the intervention of either a higher level of government or the courts.

IH in Europe

What is fascinating when we compare the U.S. and European countries is that while in the U.S. the drive for IH began in the 1970s, European countries - at least the ones I have been researching, Great Britain, Spain and Italy - started to work with IH about ten years ago. That is politically counterintuitive because we would expect more government regulation in Europe than in the U.S. American attitudes and values remain in many important ways entirely distinct from those of Europe. The American ideology of individualism continues to shape public responses in the U.S., with Americans looking to government less than Europeans. Traditionally, governments in European countries have been much more interventionist than in the US,

especially at the central level, with powerful planning systems and extensive housing programs, especially in northern European countries. So, how do we explain this late entry in IH?

Mallach noted in his 1982 *Inclusionary Housing Programs* that "although the objectives of an inclusionary housing policy are widely shared by planners and policy-makers in the industrialized nations, the specific approach characterized as an inclusionary housing program is largely an American phenomenon.... the inclusionary objectives of other countries are achieved through more direct public sector intervention in the financing and production of housing than in the United States.... It would appear that public policy in most European countries is supportive of more direct, ongoing public intervention in the housing market than is the case in this country. In such a climate, a delegation to the private sector to the extent implicit in the inclusionary housing program approach can be seen as a failure on government's part to carry out its responsibilities. This is particularly the case in those countries in which a clear political distinction is made between the private sector and the "social sector" which must be protected from the vagaries of the private marketplace. In the United States, by comparison, even in the heyday of federal housing programs, the dominant ideology consistently maintained that the provision of housing was a private sector responsibility, to be only supplemented by public resources" (pages 21-22).

But Mallach was writing a quarter of a century ago, and the balance between the public and private sectors has shifted in the meantime. It has been argued that the political economies of both the U.S. (Judd & Swanstrom 1988) and Western Europe (Hirshman 1982) oscillate between periods when the private sector predominates and those characterized by the expansion of the public sector. When either sector predominates for a period of time, the weaknesses and side effects that result, prompt a reaction from the other side to regain the upper hand. In the U.S., business elites, having felt under siege throughout the 1960s, and having experienced a crippling recession in the early 1970s, mounted free-market and antigovernment offensives and actively stoked and shaped shifts in public policy and public opinion (Lieberman, 2000). Similarly in Europe there was "intellectual disenchantment with *dirigisme* and Keynesianism in certain circles. Scepticism about the efficacy of state intervention became manifest in many countries, and notably in the United Kingdom" (Wickers & Wright 1989 :2). The result was a "shift of the boundary between public and private in favor of the latter" (Wickers & Wright 1989 : 5). "Privatism" was the result.

In short, privatism is about the retrenchment of the public sector and a return to market efficiency by transferring enterprises from public to private ownership, cutting State regulation and taxes, reducing the scope and financing of domestic public sector programs and weakening trade unions. Through these measures, the process of industrial decline could be reversed and a more globally service-oriented economy facilitated. Of course, the emphasis on various aspects of privatization varied not only among European countries and the US, but among European countries as well.

Housing, our concern here, was a sector with strong government intervention in Europe, especially in northern European countries where public housing amounted to a large portion of the housing stock, whereas in "the US public housing always has been a minor element in a larger private housing market" (Barnekov, Boyle and Rich 1989 : 4). In Europe, as a result of privatism, much of the public housing sector was privatized (as in England) and outlays for its production reduced in most countries.

As the private housing sector in Europe acquires new importance, leading to increasing affordability problems, it is natural that localities and regions have turned to planning policies

and measures that, as in the U.S., utilize the private housing market to produce affordable housing.

What follows is a brief description of IH programs in Italy, Spain and Britain, to be preceded by a description of two related issues; the “unearned increments in land values” and the “incidence controversy,” and their role in shaping European planning systems in general and IH programs in particular.

Unearned Increments and the incidence controversy

These issues concern windfall profits for landowners that result from the development process and government investments in infrastructure. The question is: Should landowners enjoy windfall profits that result from governmental decisions? In Europe it is generally understood that increases in land values are generally not the result of the owner’s efforts, but of public investments and government decisions and are, therefore, “unearned.” In Britain the term that is used is “betterment” and attempts to recapture it through various means has characterized the British planning system (Cullingworth & Nadin 2002). Betterment in Italy is referred to as “plusvalore” and in Spain “plusvalia”, in both cases the “plus” a reference to the increases in property values resulting from government activities. This argument is widely accepted among planners in many European countries, especially at times when governments have a left-of-center tendency, leading to the establishment of programs that attempt to recapture or to eliminate windfall profits – or in British terms, to “collect betterment” or “planning gain” in land development. The rise of exactions in general and IH in particular can be viewed as attempts to utilize land-use planning as a mechanism to reduce the cost of land for development, i.e., making landowners pay for its costs (Ward 1994, Crook 1996).

The U.S. “incidence controversy” then, is no controversy at all in Europe. In Britain, where the Planning and Compensation Act of 1991 codified “planning gain,” (akin to the DIFs in the US), that can include requirements for affordable housing, it has been observed that “much of the case for planning gain is that it is a means of capturing value for public benefit” (Cullingworth & Nadin 2002: 170). There is no doubt among European planners and economists that planning gain or “planning obligations” that increase the cost of development will result in lower land prices. A newsletter of a prominent property law firm states unequivocally: “As, inevitably, it falls to the landowner to fund these provisions, by reduction of the sale price, there is often lengthy and sometimes acrimonious discussion as to the need for and the amount of the provision” (Green 2004). Planners and economists I interviewed in Italy and Spain were absolutely sure that land costs had declined or would decline as a result of the IH regulations.

Housing systems in Britain, and in Italy and Spain: A distinction

It has been argued (Allen et al. 2004: 3), that “the housing provision systems in southern European countries are sufficiently different from their northern counterparts to consider them as a separate group within Europe as a whole, and that, at the same time, the similarities among the four southern countries (Greece, Italy, Spain and Portugal) are strong enough to constitute a family resemblance.” In this paper I will analyze IH in Britain as an example of northern European, and Spain and Italy of southern European housing systems.

Spain and Italy

European housing programs have been characterized by strong government intervention that has produced a large percentage of the housing stock, especially socially rented housing

(Danermark & Elander 1994). But in reality there are huge differences between northern and southern European countries. The percentage of socially rented housing is miniscule in Spain (1 %) and Italy (5%), while the percentage of owner-occupied housing is amazingly large, 82 percent in Spain and 69 % in Italy. The large percentage of owner-occupied housing in both countries is due, according to Allen et al. (2004), to the central role that the extended family plays in extending access to its family members (usually at the time of matrimony), the symbolic importance of "patrimony," in the form of real property, and self-building activities, often illegal, especially in southern Italy.

The State, however, has played an important role in promoting homeownership, "using deep subsidies to promote home ownership among low-income groups that would otherwise live in social rented housing elsewhere in Europe" (Allen et al. 2004: 18). These housing systems have worked well until recently. There was relatively little need for rental housing.

Also, it should be mentioned that, at least in Italy, housing responsibilities have been left to the regions, and central government financing has practically ceased, while the regional governments have yet to step in to replace the loss of financing from the central government (Preite 2005).

Three changes have occurred recently, that have created a housing crisis in both countries, especially in the rental sector: 1) Housing costs have skyrocketed and household size has shrunk, creating the need for more housing in general, and affordable housing in particular; 2) Job seekers have become more footloose, needing rental housing away from their hometowns and; 3) The population of immigrants is growing rapidly. These changes point to a desperate need for rental housing, something that Spain and Italy are totally unprepared for, both on the part of the State and the private sector.

The housing situation for immigrants is especially dire. With little rental housing available and usually no extended family to rely on, immigrants pay exorbitant rates for rental housing, when they can find it, since they are blatantly discriminated against. And when they find it, the cost is higher than the market for natives, and usually in the most undesirable parts of the historic centers or of the first ring suburbs. Calavita (2005) reports that both in Italy and Spain immigrants see housing as their most serious problem, even ahead of being paid a fair wage, finding work or securing documents.

These characteristics of the housing systems and recent changes in the housing market have influenced the characteristics of IH in both countries.

Italy

I am aware of two programs, both very recent; one in Rome and the other in Florence.

- **Florence.**

The spur for the adoption of IH in Florence came as a result of builders complaining to the administration of the city that their construction workers, many of them immigrants, had no access to housing or paid high rents, affecting work performance and putting an upward pressure on wages. In a kafkaesque twist, the administration decided to impose inclusionary requirements on developers to produce rental housing (Di Benedetto 2005).

The IH requirements (20% of the square footage of the building) apply to all new construction or rehabilitation over 2.000 square meters. The regulation points out that its legal basis is to be

found in the "*facolta' di convenzionamento*" i.e., the ability of the administration to, as in Britain, negotiate with developers for planning gain. On that basis, rent levels were also to be part of an agreement between the administration and the developers. It is interesting to note the reasons given for requiring rental housing:

"In the present historical phase it has become necessary to emphasize the need for rentals as opposed to other forms of housing tenure, because leasing presents itself as the economic relationship closer to the needs of a society where:

- temporary work is becoming more widespread making it difficult to access credit to buy a home
- work is becoming more flexible making it necessary for people to move or having multiple residences, flexibility discouraged by the lack of temporary housing
- the immigrant workforce is becoming more and more numerous, a workforce that generally cannot access ownership housing and is extremely interested in renting
- homeownership has reached high levels, leading to a lack of flexibility of the real estate market

The need for IH and a more comprehensive approach is then pointed out: "To propose such a maneuver, although partial, to balance the spontaneous tendency of the market, is a concrete alternative for the solution of the most obvious emergencies, while waiting for the legislature to address these issues at the necessary levels (Comune di Firenze 2005 : 3).

Similarly to IH ordinances in the U.S., the Florence ordinance specifies that financial incentives or density bonuses can be made available to the developers, the length of rent controls (no less than 12 years), and the possibility for the payment of in-lieu fees. What is important to remember is that the regulation provides a framework for negotiation between the administration and the developers. As of the Spring of 2006, only one project had been approved and was under construction. The negotiation had led, however, to the establishment of allowable rents to market levels. Even so, given the need for rentals, at all affordability levels, the project is seen as a big step forward by the planner in charge (Di Benedetto 2006).

• Rome

The Rome approach does not include a typical IH requirement, where the direct production of housing units is the goal, but establishes a requirement that 20% of the building volume allowed in areas destined to private housing be given to the city for "Institutional objectives" including social housing. This requirement is found in article 56 of the new (2003) Master Plan for the City of Rome.

The plan allows in-lieu fees, especially for small areas and density bonuses. The developer can double the allowable density, provided that 80% of that increase is given to the city. These "inclusionary" requirements have not been "activated" yet, given that this is a totally new regulation, that was not part of the old plan (Caudo 2005).

Spain

While in Italy the regions, now in charge of affordable housing policy and financing, have not stepped in the IH arena, in Spain the powerful autonomous regions have been the proponents of IH as a mechanism to generate affordable housing, including the Basque Region in 1994, Castilla-Leon in 1999 and Catalonia in 2002 (Ponce Sole' 2004). But first a few words on the Spanish planning and housing systems.

Local plans classify land into three broad categories: urbanized, urbanizable and the rest (more than 90% of the country's territory) that is non-urbanizable. No landowner can develop his/her land unless included in the plan, and no compensation is due. All landowners are supposed to have the same profit per unit of land. In the attempt to recapture windfall profits, the administration receives 10% of the land, "at the expense of the private landowners of the predetermined area, without paying for it" (Riera 2000: 4), presumably for the construction of social housing.

Social housing programs in Spain have traditionally encouraged homeownership by reducing families' financial burden of accessing housing through interest subsidies on mortgages, lower dwelling prices and tax deductions (Pareja & San Martin 1999 : 710). Developers receive subsidies too, usually through reduced interest loans.

There are two major types of financial aid: For *Viviendas de Proteccio'n Oficial* (VPO - Officially Protected Housing) associated with families with lower incomes and smaller apartments both for ownership and rentals; and for housing *De Preu Concertad* (Controlled Prices) for the middle class.

IH programs in the three regions are very similar. They all require that a certain percentage of the developable square meters of a project be dedicated to Officially Protected Housing and a lower percentage to Controlled Prices Housing. The percentages might vary between urbanized and urbanizable areas.

The Basque region has the highest requirements:

- 30% of development sites in the "urban" areas: 20% for Officially Protected housing and 10% Controlled Prices housing
- 70% in "urbanizing" areas (60% and 10%)
In these areas developers have to sell at a fixed price per square meter, established by the region for different areas. Subsidies to the buyer, depending on income, is calculated as multiple of minimum income.

In Catalonia the requirements are 20% and 10% respectively.

Subsidies for homebuyers have existed for a long time, which explains why the ownership rate in Spain is 80%, but given the recent boom in the real estate market, developers are developing for the market with its potential for higher profits and not for the state-controlled sector. The IH requirements would force them to produce affordable housing.

Britain

During the 1980s a comprehensive privatization and marketization program was implemented in Great Britain. The sale of public sector council housing was particularly successful, with more than one million units sold at discount prices to sitting tenants. In addition, the provision of rented housing by private landlords and by housing associations was to be increased. Public resources were to be used more efficiently by reducing subsidies to local authorities and housing associations (Crook 1996).

While successful with existing tenants, the liquidation of public housing was accompanied by severe cuts of funds for affordable housing. Investment in public sector housing fell by 46 percent between 1976 and 1986, paralleling Reagan's cuts of the early 1980s (Barnekov, Boyle & Rich 1989). Also, the sale of council housing might have led to increased social and spatial segregation, with families that could not afford to buy council housing relegated to undesirable parts of British cities in deteriorating housing (Barnekov, Boyle & Rich 1989).

The 1990 Town and Country Planning Act, amended by the Planning and Compensation Act of 1991 gave localities, through its Sec. 106, the ability to extract what in the U.S. are called DIFs. In addition to infrastructure and public facilities, local authorities now could negotiate the inclusion of affordable housing on development sites. Ward (1994 :222) has pointed out that Sec.106 "reflects an institutionalization of planning gain, renamed planning obligations, in effect completing the retreat from the principle of a general betterment tax".

The rise of IH in Britain, then, must be related to a movement to increase the levying of charges on developers through planning gain, resulting from; 1) a desire to collect betterment as an alternative to earlier failed comprehensives schemes, 2) the financial difficulties of localities in providing infrastructure and public facilities, 3) a planning control system that was emphasizing negotiation over adherence to plans and, 4) efforts to increase the production of affordable housing and decrease the cost of housing provision by reducing land prices (Crook 1996; Cullingworth & Nadin 2002).

What is the status of IH in Great Britain? The most comprehensive analysis to date is a July 2005 Report prepared for the Office of the Deputy Prime Minister, titled *The Value for the Money of Delivering Affordable Housing through Section 106*, by the Cambridge Center for Housing and Planning Research and the Town and Regional Planning Department, University of Sheffield (Whitehead et al 2005). In its "Policy Context" section, the report places IH in the context of "creating mixed and inclusive communities...The planning system has an important role in creating communities with a better mix of housing." The report then indicates that "Delivering affordable housing through Section 106 agreements is becoming increasingly important in the supply of affordable housing. This research indicates that affordable housing delivered through the planning system now accounts for over 40 percent of all affordable housing completions and acquisitions" (page 5). The report goes on to point out that "an optional planning charge to developers as an alternative to the current negotiated route for developers contribution" is being considered (page 6), the in-lieu fee of the American system.

Their survey indicates that Section 106 is making it possible for affordable housing to be provided in areas that, because of high land prices, would not be "normally associated with affordable housing." Significant variations among various regions exist (page 10), and the majority of the affordable housing produced through the planning system is social rented housing (page 12). Also, much of the affordable housing produced on Section 106 sites has utilized public subsidies. In the majority of cases the developers have provided land to non-profit development corporations that have developed the sites with public funds. Given that public funds are decreasing and land costs increasing, the non-profits have stated that the Sect.106 contributions have become essential for the production of social housing, and building it where they could not before, thus fostering mixed-income housing.

Finally the authors, ever so gently, provide some guidance for change: "with a tougher negotiating stance from local authorities and clearer government guidance as to the powers of local authorities we might expect over 3,000 units (in the next two years)."

Convergence?

There are two major reasons for IH: the increasing need to produce affordable housing in a context of privatism and the societal objective of creating mixed-income communities. European countries have come late upon the IH scene but paradoxically in the future they might utilize this tool more effectively than the U.S.. First, because the issue of spatial segregation and more generally because "social exclusion" is taken more seriously at higher levels of government, including the EU, than in the U.S.. Social exclusion is a multidimensional concept that, because of structural economic changes in European countries, has been the subject of much debate and "social cohesion" policy-making in national states and the European Union. The case can be made that social exclusion is not only linked to unemployment, poverty and lack of access to services, but also to housing (Griffith 1998; Ratcliffe 1999). The examples presented here cited the need to create mixed-income communities, or more generally sustainable development, as a major rationale for IH. Second, even with privatism, the powerful bureaucracies associated with government in Europe are still a much more effective force in the shaping of urban change and in the ability to steer private development in desired directions than in the U.S.. This paper represents an initial analysis of IH in a comparative context. The research should be expanded to other European countries, placed in the context of overall housing policies and their implementation and efficacy analyzed.

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