Managing Local Opposition to Affordable Housing: A New Approach to NIMBY

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SAN MARCOS, CA—Officials from Casa de Amparo, a home for abused and neglected children in Oceanside, thought everything was going well for their plans to relocate to San Marcos. "At the first two workshops, things were going swimmingly for us," said Jerry Stein, chairman of Casa's building committee. But Casa officials say they now are trying to counter what they describe as a tidal wave of opposition to a proposed residential-care facility for newborns to 17-year-olds and a day-care center. . ."We're not against Casa," said Steve Anderson, a resident in the Allegra development, near the proposed site. *"We* know they are crowded and need a larger site, but we don't think this should be in a residential neighborhood." Anderson and Rebecca Jones are members of a newly formed group called Save the Children of San Marcos.'

MERCED, CA—The City Council unanimously rejected a proposed 398-unit, low-income apartment complex on the city's east side, making the decision after a public hearing that lasted more than three hours. . . . Neighbors showed up in force, saying the project would invade their privacy, lower property values in the area, bring about an increase in crime and create a traffic nightmare. "This is being proposed in an area without a proposed growth plan," said Joel Knox, a neighbor and spokesman for the anti-apartment faction. "It's an attempt by an out-of-town developer to make money at the expense of a neighborhood." . . . Councilwoman Nellie McGarry said it is wrong to equate low-income housing with an increase in crime. "It saddens me to hear that you think that crime is going to happen (because of the complex)," she said. "They want quality of life." . . . McGarry noted that more than 40 percent of the population could qualify for low-income housing, adding, "We also have to listen to all of the people out there who need affordable housing." . . . Mayor Mary Jo Knudsen encouraged the developer to come back with another project. "We do need it," she

said. "It was only 30 days ago that we were getting ripped for not having enough multifamily units." She said city staff projects that Merced needs 625 apartments a year to keep up with the demand caused by population growth. Two low-income housing projects have failed to get through City Hall this year.'

Introduction

The development of affordable housing3 and services for low- and moderate-income households has been plagued by "local opposition,"' commonly referred to as the not-in-my-back-yard or "NIMBY" syndrome,' for decades. In combination with exclusionary zoning," some developers' responses to actual or anticipated local opposition against specific development proposals maintain and increase racial and economic segregation.7 Much contemporary affordable housing is indistinguishable from market-rate housing8 and studies abound to refute fears about reduced property values and other common complaints." Some hope that as more communities experience the success of contemporary affordable housing, future proposals will generate less fear and resistance.[10] Yet, a hardening of racial and economic attitudes and increasing opposition to growth and development of all kinds suggest that local opposition is likely to remain and even get worse." While the severity of the problem varies considerably across numerous dimensions, including geographical location and the type of housing proposed,[12] in the view of many developers local opposition is the most important barrier to the development of affordable housing after insufficient subsidy."

This article is based upon the experience of two successful multiyear regional projects to confront local opposition in the San Francisco Bay Area." In addition to assisting more than twenty development proposals receive their local government approvals,15 the projects yielded a novel approach to local opposition that combines proactive planning by the developer with legal strategies, community organizing, and public relations strategies. 16

The approach described in this article, Managing Local Opposition (MLO), is founded on two insights. First, given its deep roots, local opposition will never be "overcome," so a more reasonable framing from the developer's perspective is "managing" local opposition.[17] "Managing local opposition" is defined as using the planning process described in this article to obtain funding and land use approvals. In seeking its approvals, a developer should strive to: (1) respect the legitimate concerns of the local community and neighborhood; (2) respect the rights of current and prospective residents whom it desires to serve; and (3) advance the prospects of future affordable housing proposals in that community. This framing has several consequences for the attitudes,[18] skills,'" and practices[20] that developers, advocates, and attorneys bring to the problem. Second, because opponents' issues and tactics are often repetitive, they are relatively predictable. This creates an opportunity for repeat players (e.g., affordable

housing developers, housing advocates, and their lawyers)[21] to learn to *manage* this problem collaboratively and more effectively.[22]

The MLO approach differs from most previous approaches in four ways. First, it is proactive and collaborative, focusing on what the developer and its allies (including its attorney) can achieve together by planning for potential opposition. Second, it explicitly considers the five potentially critical audiences that can determine success: local government (including staff, decision makers, and the city attorney), supporters, concerned neighbors, the media, and the courts.[23] Third, it integrates legal strategies, community organizing, and public relations strategies.[24] The MLO approach stresses integration of the law with other strategies at the front end during the planning stage as well as uses of the law without litigation. Fourth, it is broadly applicable because it is articulated at a level of generality that developers of any kind of affordable housing can apply in any geographical location, rather than as a particular one-size-fits-all strategy or a recommended set of tactics.

The analysis and planning that the MLO approach requires may seem, at first blush, extensive and complex. Depending upon the specifics of a proposed development and the intensity of the local opposition that it faces, this perception may be accurate. However, the search for a simple, one-size-fits-all solution to dealing with local opposition has been unsuccessful. Also, developers now familiar with the complexity of affordable housing financing applications and deals can certainly conduct this work to get siting approvals, which are as critical as financing to the success of a proposal.

Part I of this article describes the two projects that generated the MLO approach. Part II presents the problem analysis underlying the MLO approach. Part III presents the MLO approach in detail. Part IV discusses the role of the law and attorneys in the MLO approach and is followed by a brief conclusion.

Part I: The Tool Box Initiative and the Community Acceptance Strategies Consortium

The Non-Profit Housing Association of Northern California (NPH) is a twenty-one-year-old regional membership organization comprised of affordable housing developers, consultants, local government, funders, and advocates in the San Francisco Bay Area region. When a 1994 survey of its membership ranked local opposition as the second most important barrier to the development of affordable housing,[25] NPH gathered a group of experienced community and housing advocates, affordable housing developers, and local government supporters to devise a program to respond to the need. The Tool Box Initiative (TBI) was NPH's first response.[26]

TBI's goals were to reduce opposition to and increase community acceptance of affordable housing through public education, technical assistance and training, and the use of legal strategies. From 1995 to 2001, TBI produced numerous public education materials, including three videos,

"briefing kits" on affordable housing and supportive housing, and voluminous other "tools" to assist developers.[27] TBI also convened a group of attorneys interested in local opposition issues to foster mutual education and deeper working relationships among them.28

A second program, complementary to TBI, was launched in 1998 with funding from the U.S. Department of Housing and Urban Development. NPH convened the Community Acceptance Strategies Consortium (CASC),29 a consortium of eight county representatives and three regional experts (including an attorney specializing in affordable housing and land use law), to focus its technical assistance and training work on proposed developments that would provide housing and services for homeless people which were threatened by local opposition. CASC's mission was to articulate a widely applicable approach, train developers to use it, and support the use of the approach by providing free technical assistance in the hopes that the development community would adopt new attitudes, learn new skills, and change its practices. CASC envisioned that once developers and advocates began to collaborate using an approach that provided a common analysis and language, they could collectively adjust their attitudes, identify and adopt better practices, and hone needed skills to manage this ongoing problem.

Over four years during the period 1998-2001, CASC's regional group pooled its insights and experience to develop and refine the approach to local opposition described in this article.[30] CASC staff and members of the regional group trained more than 300 developers, advocates, and local government representatives in the San Francisco region alone.[31] Over twenty developments received their local government approvals using the MLO approach with technical assistance provided by CASC.[32] CASC has used the approach successfully to help site (or relocate) a wide variety of types of affordable housing, including a homeless dining room, a homeless shelter for youth, multifamily apartments, and housing for persons with disabilities. Some developers have formally changed their predevelopment process to incorporate the MLO approach; many other project managers incorporate it into their work.33

Part II: Analyzing the Local Opposition Problem

Local opposition has deep roots in fear, racism, classism, ablism, and growing antidevelopment reactions.[34] The problem can be framed as a classic collective action problem, a governance problem,[35] an economic problem,[36] or a civil rights problem (e.g., housing discrimination).37

Whatever the framing, the problem is extensive and enduring. It is not only a matter of "opening up the suburbs," but also increasing housing opportunities in older and redeveloping cities and rural areas.38

Generally, two sets of strategies are needed to address local opposition comprehensively. Communitywide strategies are needed to change the environment in which local opposition festers and flourishes.[39] Communitywide strategies will reduce the incidence and severity of local opposition,

but they will probably never eliminate it.[40] Therefore, another group of strategies aimed at obtaining specific development approvals in the face of local opposition is also needed.[41] Both sets of strategies are necessary, and they complement each other.[42] This article will address only the latter type of strategies.

TBI's and CASC's research and experience showed that many developers, even sophisticated and established ones, treated local opposition as an intractable problem.[43] Developers typically reacted to opponents' initiatives in an isolated, piecemeal, tactical fashion." Their responses focused primarily on dealing with upset, often angry, neighbors rather than seeking to gain political support, developing active community support, enabling good media coverage, and using the available laws to their advantage.[45] Many were unaware of their legal rights, or, even if they were aware, did not appreciate how the law could actually help them.

Conversations with developers revealed two contradictory reasons for this reluctance to focus sustained attention on the problem. Some claimed that "[e]very time is so unique that you can't transfer any lessons to the next time." Others claimed that lilt's always the same no matter what you do." Both perceptions contain a kernel of truth. It is true that each development is unique, including because of the specific project proposed, the particular site and surrounding neighborhood, the current political climate, and the set of staff and decision makers. At the same time, the second perception is validated by the fact that opponents' issues and tactics are so repetitive as to be predictable. Generally, opponents will be concerned about who will be living in the housing, tenants' behavior (e.g., crime and loitering), negative effects on their property values, the appearance and density of the proposed structure, standard land use issues (traffic and parking), and process.[4f] Initially, this may appear as a large list, but, in fact, once it is defined, the universe is limited.[47] While the list varies somewhat by the population to be served and often opponents will develop or discover more issues than they initially articulate as the process unfolds, there is a solid predictable core of concerns that surface for each type of proposal.

Opponents' tactics are similarly predictable: distributing flyers; canvassing door to door and holding meetings to organize against the development; circulating petitions to document opposition; demanding meetings with the developer; telling their story to the media; and lobbying local government staff and officials through telephone calls, faxes, e-mails, and private meetings, and at public hearings." If a development appears likely to be approved, some groups threaten a lawsuit or a referendum, and, more rarely, some actually proceed with the action.[49]

The MLO approach acknowledges and proceeds from recognition of both the uniqueness of each proposal *and* the repetitive nature of local opposition conflicts. The MLO approach is not a one-size-fits-all "strategy." Rather, it seeks the appropriate level of generality to provide a flexible framework for any developer to plan for potential opposition, and then to

select and execute strategies and tactics that are adapted to the unique circumstances of each proposal.50

Part III: Identifying the Missed Opportunity: Managing Local Opposition

The MLO approach is founded on the fact that repeat-player developers know what they plan to develop and when and where they will site it before anyone else.[51] This advantage, together with the predictability of opponents' issues and tactics, enables developers to prepare a plan and assemble resources to manage the expected opposition.52

Planning is the heart of the MLO approach. Not every argument, tactic, or crisis caused by opponents can be anticipated. Yet, the benefits of planning are substantial. They include the opportunity to act strategically; to frame the issues'" and to assemble pertinent information to address likely concerns;[54] the chance to gather and train active community supporters;55 the prospect of preventing concerned neighbors from forming a single opposition group; the potential for integrating different strategies[%] (including the opportunity to use law short of litigation); and the likelihood of reducing the costs and delays attributable to local opposition[57] compared to acting without planning ahead.58

In any local-opposition conflict, developers are communicating with five potentially critical audiences or forums: local government (including staff, decision makers, and the city attorney), supporters, concerned neighbors, the media, and the courts.[59] Sometimes the developer will address these audiences simultaneously.[6]0 Considering all of these audiences in the planning stage opens up strategic options and helps prevent developers from being blind sided.

Research and Planning

Allied Housing, Inc., a small nonprofit developer in Oakland, California, conceived of a novel development proposal: to build an apartment complex in Castro Valley to house low-income people with persons with various mental and physical disabilities. The proposal would require at least a height variance and a parking variance as well as substantial local government funding. Numerous danger signs were present: Castro Valley is a small, close-knit, and self-consciously "up and coming" unincorporated city of Alameda County; the service model of mixing these populations was untried; another special needs development proposed for Castro Valley had recently been defeated in a well-publicized fight; and Allied had only completed a few other much smaller and distinctly different developments. Finally, while the development was to be sited on a street near other multifamily complexes, a single-family neighborhood with a very active owners association was nearby.

Early in the predevelopment process, Allied's Executive Director gathered his project manager, the head of the regional housing coalition, a housing attorney. and CASC staff to prepare for potential opposition. The team met

several times and conferred over the phone frequently to assist the project manager in preparing a plan. Political research revealed that while the County Planning Commission and the County Board of Supervisors would be likely to follow staff recommendations, they might defer to the opinion of Castro Valley's municipal advisory commission, a group of appointed residents. This information focused Allied's efforts. A supporter identified a former commission member who had been sympathetic to affordable housing in the past. He recommended that Allied present the proposal informally in a "study session" to the commission before the required public hearing. While more time consuming, this approach appealed to the commission members' sense of participation and would create "space" for any necessary changes. Meanwhile, based upon warnings from supporters that the parking variance would be likely to raise strong concerns, Allied decided to prepare analyses based upon the car ownership rates of other affordable housing developments in order to justify the parking variance. Because of the complexity of the proposal, Allied prepared question-and-answer sheets for its supporters to ensure a consistent message. Allied also decided to write letters to the owners of nearby properties informing them of the upcoming demolition as a courtesy to create goodwill, promising that information about the proposal would follow later. The "study session" went smoothly with only Allied's supporters speaking on the item and the commission making only minor design suggestions. With the commission's positive recommendation, the proposal received easy approvals from the county bodies.[61]

Developers can take advantage of the opportunity to manage local opposition by holding planning meetings early in the predevelopment process[62] to assess potential opposition and to organize strategic responses. If they do not take advantage of this window, but wait until opposition emerges, they foreclose many options and much of the benefit of the MLO approach. For example, potential supporters are less likely to join the effort after a publicized conflict has erupted. However, if they have been recruited and prepared for likely conflict, supporters will often redouble their commitment to the proposal when the anticipated opposition appears.

The work of this step falls into three categories: gathering information, making assessments, and preparing strategies. The project manager sets up these planning meetings to include other staff, project collaborators (e.g., architect), and trusted allies, especially those who know the neighborhood, the city's land use politics, and the media.[63] As much of the relevant information[64] as possible should be gathered before the first meeting. At the first meeting, the available information is shared and then questions for what needs to be known and possible sources are generated. A person is assigned to get the additional information for the following meeting.[65] Next, the group assesses[""] the five audiences with the specific proposal in mind.["7] Then, with the input of the group, the developer makes strategic decisions about its approach, plans its activities toward each audience, and prepares a timeline of tasks and responsibilities.[68]

The planning group needs to know what local government approvals will be required, the decision-making process and timing (including appeals), the standards that the local government will apply, and who sits on the decision-making bodies.[69] Further research on how the proposal fits with the city's adopted housing policies and plans should also be conducted.[70]

The planning group also needs very particular information about each of the five critical audiences. Regarding local government, the group collects information such as the history of the treatment and current stance of the local government staff and decision makers toward the type of development being proposed as well as the reputation of the developer in the eyes of the local government.[71]

The most critical information is the answer to the following question: If the public hearing were held tonight, which decision makers would vote for the proposal, who would vote against it, and who are uncertain votes?[72] Broadly speaking, the answer to these questions will reveal that the developer is in one of three typical scenarios. In the "promising world," the developer has the needed votes if it acts reasonably. In the (most common) "uncertain world," there are some committed votes in both directions but enough uncommitted votes that the decision could go either way.[73] In the "uphill struggle world," there are enough currently committed votes to deny the proposal, so some votes must be changed to get an approval.

There is no substitute for knowing which kind of political world one is entering. From this assessment flows the rest of the strategies. In the promising world, the developer needs to act carefully and responsibly to hold the votes but will probably not need to dedicate substantial time and resources to the effort. In the uncertain world, the decision is likely to be largely "political," but there may be some role for the law. In the uphill struggle world, the developer is likely to need to employ strategies toward each of the five audiences, and the law may play an important role. A developer finding itself in that world should consider different sites or jurisdictions unless there are important countervailing considerations.[74]

Concerning potential supporters, the group gathers information about the potential allies in the city[75] and, whenever possible, in the neighborhood around the site!" As regards concerned neighbors, the group assembles information about the neighborhood, potential impacts that the proposal would have on the neighborhood, and potential opposition![7] On the subject of the media, the group considers media outlets, their coverage of affordable housing issues, and its own links to the media.[78] On legal issues, the group learns about the legal rights of the developer and prospective residents of this proposal [79] and considers the likely role of the law (if any).[80] If at this point the developer anticipates a legal problem, it should retain an attorney to participate in the strategy meetings.[81]

All of this information is gathered for the purpose of making assessments. Making assessments is how the MLO approach tailors the work to the particulars of a specific development proposal. The best metaphor for

this part of the planning process is a due diligence process.[82] While not every issue is likely to arise in each proposal and not every audience will be equally important to address, it is essential to consider each one and to make an informed, deliberate determination regarding how much (if anything) needs to be done toward each audience for this proposal to obtain its approvals. That is, performing this due diligence process does *not* mean that the developer will do extensive work in each of the five areas. Rather, the twin objectives of this process are to direct the developer's time and effort only where they are needed and to avoid unhappy surprises. For example, in some situations there is almost no chance that there will be any media coverage (positive or negative), so the developer can ignore that forum. Or, where a developer is invited in by a city and the political support is reliable, it will be unnecessary to consider legal strategies. For community-based developers whose work is always in the same city and sometimes even the same neighborhood, only an updating process is needed.[83] In some situations, because of the likelihood of a close vote, a developer will need to plan to spend significant energy performing outreach to gather active support for its proposal. Sometimes the supporters will be easy to find and mobilize. Sometimes law will play little or no role; at other times, it will be crucial.

Based upon a sober analysis of the information gathered and an assessment of how important each potential audience will be in obtaining approvals for this particular proposal, the developer selects strategies toward each relevant audience.[84] Choosing strategies requires pragmatic and prudential judgment calls by the project manager and /or executive director. This article's discussion of the next five elements of the MLO approach focus on the strategic decisions that the developer should make during the planning process toward each of the potentially critical audiences.[85] It is important to understand that these next five elements are not sequential steps, but rather integral parts of a unified approach.

Of course, a great deal of uncertainty will remain.[86] Being able to anticipate what an opponent is likely to do does not yield actual *control* over a situation. Still, it does enable a developer to fashion a thoughtful initial strategy to identify and assemble needed resources, skills, and allies as well as to avoid missteps by becoming aware of "red flags" before they become the basis of public attacks by opponents.[87]

Once strategies are selected, the consequences for timing, funding, and staffing are considered and fed back into the development process. In some cases, the developer will need to hire or otherwise obtain skills not available on its staff or among its supporters, e.g., a community organizer. If the political read is dismal, the proposal may need to be slowed down to enable the developer to build the necessary political and community support or to consider other sites.[88]

The planning meeting ends with agreement on a timeline of tasks and specific assignments to begin implementing the strategies.[89] In many cases the strategies toward different audiences will be executed simultaneously.[90]

Planning the Approach to Local Government

Hamilton Family Shelter (HFS), which provides emergency and transitional housing for homeless families in San Francisco, decided to move from its downtown location to an upscale residential area near Golden Gate Park when a rare appropriate site became available. CASC assistance to the proposal was rendered through a member organization, the San Francisco Council of Community Housing Organizations (CCHO), that had, through years of education and advocacy efforts, established solid contacts at all levels of San Francisco's government.

> CCHO helped the project manager of HFS identify who would need to support the proposal and how to obtain their support. Preparation of materials documenting HFS's track record and the basis for the proposal was followed by meetings with several city departments and the Mayor's office attended by HFS staff and prominent supporters. Staff and members of the Planning Commission and Board of Supervisors were apprised of the likely opposition (which quickly materialized) and "inoculated" regarding the contentious issues. When the local property owners group split on the proposal largely due to a skillfully organized series of design charettes which engendered the participation and "buy-in" of numerous community leaders, the committed opponents broke off to form their own community group. At the end of the hard-fought struggle, the decision makers approved the development.91

The primary strategic decision that the developer makes is: Given the political world that it is in and the assessments of the other four audiences, what mix of strategies will it use to get and keep the necessary votes? Central to this decision is whether the work will be political, legal, public relations, or a mix.

The vote-counting research and analysis should reveal who the uncertain votes are and clues about how these decision makers may be influenced.92 For example, a wavering council member may be known to be concerned about the needs of local businesses, neighborhood revitalization, or providing more open space. Some decision makers will regularly defer to staff recommendations, so the focus of the developer's attention may be to ensure a strong, positive staff recommendation. The fact that the development proposal will meet city-identified housing needs and advance the city's adopted housing plans will impress some decision makers. Also, some officials are more sensitive to neighborhood dissatisfaction or negative media coverage than others.93 From this information comes a political plan that by addressing the concerns of uncommitted decision makers, attempts to either gain their support for the proposal or at least encourage them to take a neutral position.

The tactics for political outreach and advocacy are generally well known, e.g., providing information to and meeting with staff and decision makers, subject to open-meeting requirements and other restrictions.94 Sometimes political skills or sensitivities are lacking on the nonprofit developer staff and must be obtained through

supporters.

Recruiting and Using Active Community Support

Napa Valley Community Housing (NVCH), a small nonprofit housing developer, needed a planned unit development approval and funding commitments from the City of Napa for a proposed seventeen-unit low-income townhouse that would include four units for homeless families. Recently, the city had denied approval for a similar affordable housing development. Also, the site bordered a popular tourist attraction. NVCH staff met with CASC to plan public support strategies.

The group decided to frame the proposal as a response to the city's need for "workforce housing." The outreach plan included setting up a community support committee, canvassing the nearby neighborhood, and holding one "open house." Using its outreach plan, NVCH garnered support for its proposal from the Napa Valley Wine Train, the Chamber of Commerce, the Hispanic Network, the Conference Visitation Bureau, and others. With this broad show of support from the influential business community, NVCH's proposal was approved. Only one neighbor showed up in opposition to the development.[95]

Considering local opposition as a collective action problem, organizing support is of obvious value, but many developers fail to commit the necessary resources early enough in the process to build the community support that is often latently present. The primary strategic question is: Based upon what political situation one is in and what votes one needs to keep and get, what kinds of supporters are needed and what does one want them to do? For example, certain decision makers will be swayed by the support or endorsement of a local business group or an environmental organization. There may be other established groups with credibility, e.g., the League of Women Voters. Of course, the support of neighborhood groups around the site is ideal but rare. Or it may be the case that producing significant numbers of supporters who live in the jurisdiction at the public hearing will be most useful. In this situation, recruiting some leaders with a following (e.g., religious leaders) may be important.

The process for organizing supporters includes four sequential steps: first, brainstorming potential supporters;[96] second, prioritizing who to recruit and what one wants them to do to help obtain approvals; third, recruiting, educating, and preparing the selected supporters; and fourth, mobilizing supporters at key points and keeping them on board, including demonstrating appreciation.[97]

Enthusiastic supporters may take on a wide range of tasks. They may provide political intelligence, lobby decision makers, recruit and organize additional supporters, perform outreach to concerned neighbors, brainstorm responses to opponents' attacks, serve as public spokespersons for the development to the media, testify at public hearings, and even file administrative complaints against the local government on behalf of the development.[98] Volunteer supporters are a precious resource that must be

carefully tapped and mobilized strategically, always with an eye toward obtaining the necessary votes for the proposal.

Dealing with Concerned Neighbors

For the past three years, the City of Fremont had been embroiled in a bitter conflict regarding an affordable housing development proposal that had dominated local politics and been an important issue in city council elections. Within this climate of hostility, the Tri-City Homeless Coalition (TCHC) approached CASC for assistance in obtaining a funding approval from the city for the acquisition and rehabilitation of an eight-unit apartment complex in the Irvington District of the city. TCHC had successfully operated a homeless shelter in Fremont and wanted to fill the gap in Fremont's continuum of care for homeless people by providing transitional housing for families currently living in its shelter. The Irvington District perceived itself as already having more than its share of subsidized housing. Also, the proposed site was near a strip of small, struggling retail businesses.

After strategy sessions with local housing advocates and CASC, TCHC developed and implemented a careful political and community outreach program to gain support. The strategy included door-to-door canvassing of the local businesses, presentations to influential community groups, and individual meetings with selected local officials followed by an "open house." TCHC's targeted outreach quelled potential community opposition. No opponents attended the open house forum and the funding proposal was approved on the City Council's consent calendar.[']['']

In the minds of many developers, responding to upset neighbors is the sum total of dealing with local opposition. This often occurs because the developer has failed to take the initiative to manage the local opposition and so is constantly on the defensive, reacting to the opponents' latest attack.

There are three primary strategic decisions to make regarding this audience. The threshold question is whether to reach out to neighbors at all or to take a wait-and-see approach.[100] The second decision is, if the developer will conduct outreach, when it should be performed and what form it will take. The third decision is deciding what range of options the developer will consider in responding to neighbors' concerns. Each will be discussed briefly in turn.

Cities ubiquitously require public notification for public hearings.[101] The threshold issue is whether the developer should perform *any* additional notification or outreach.[102] The predicament of community notification and outreach is eternal. It seems that no matter what the developer decides, it is either "too early" or "too late" in the view of some neighbors. There is no *right* time to inform the community. For this reason, some developers avoid this decision altogether. Others have a standard policy to host one or more community meetings a few weeks before the first public hearing no matter what the specific situation.

This strategic decision should be made with three factors in mind: the political situation, legal rights, and practical issues. Often these considerations will conflict and force a difficult, risky choice.[103] For example, uncertain decision makers may feel reassured to support a proposal if a developer agrees to go out to the community. They will be disappointed or suspicious if the developer chooses not to. In some cities, previous developers' practice has created an expectation of such outreach. However, as critics of voluntary outreach argue, outreach by developers may "stir up the community" in ways that would not have happened if notification were limited to the typical letter from the city to nearby property owners and other formal public means.[104] The contention of the MLO approach is that however complex and difficult this decision, the developer is better off explicitly considering it and making a deliberate decision to consider the specific circumstances of each development proposal, rather than avoiding the issue or adopting a standard policy that it applies to every proposal in each city.

If a developer decides to conduct its own voluntary community notification and outreach, the issues become when and how to "go public." In the MLO approach, the developer, in consultation with allies, deliberately selects the time and forum for explaining the proposal to the community that it believes will maximize the possibility of receiving a fair hearing and developing constructive relationships with reasonable community members.[105] While hosting a traditional open community meeting is the most common tactic, there are many other forms of outreach that the developer should consider, including door-to-door canvassing around the site, house meetings, individual meetings with local leaders, and hosting an "open house." Each form has its own costs, benefits, and risks.[106] Also, not every outreach tactic has the same potential for "stirring up the community."[107] The MLO approach puts a premium on outreach tactics that have the potential for establishing individual interactions between a neighbor and someone representing the proposal (either developer staff or supporter) because these interactions are more likely to facilitate effective exchanges of information, help reassure fearful neighbors, and build trust in the relationship.

Once contacts with community members begin, the developer must listen carefully to determine the bases underlying neighbors' stated concerns and then offer specific appropriate responses.[108] These decisions are largely tactical and should flow from the third strategic decision in this arena, i.e., what range of responses the developer will prepare to offer to concerned neighbors.

The MLO approach distinguishes among seven bases of concern: lack of information/misinformation; fear of negative impacts (e.g., property values, crime, or poor design); complaints about the process (e.g., expressing a desire or expectation to participate); prejudice or bias toward prospective residents; conflicting interests regarding typical land use concerns (e.g., parking or traffic);[109] value conflicts (e.g., no-growth environmental-

ists, local pressure to make the site into a park, or opposition to the use of tax revenues to support affordable housing); and issues unrelated to the actual proposal (e.g., anger at the *local* government because of lack of services).110

For each of these bases of concern there is a set of potentially appropriate tactical responses that a developer may choose to apply. For example, while lack of information can sometimes be adequately addressed by providing the appropriate facts on paper, fears about crime are unlikely to be calmed by receiving copies of academic studies reporting low crime rates at affordable housing developments. Rather, fears about crime are better addressed by a meeting with a police officer who has experience with another similar housing complex built and managed by the developer. A neighbor's desire to participate in the design process will only be frustrated by the developer's and architect's repeated assertions that the design will be attractive. Negotiation over verified land use impacts is appropriate, but negotiating with opponents motivated by discrimination is almost never advisable."1

At the planning stage, the developer decides what kinds of responses it is willing to make to the likely bases of concern and takes steps (including gathering necessary resources) to make these available when needed. For several reasons, developers should make this decision about the range of options to be offered *before* approaching the community. First, most responses will require some efforts to gather certain resources or skills. This can be done more effectively and efficiently during the predevelopment process. For example, if the developer will offer a design charette to address likely concerns about appearance, property values, and process, it will need to select an architect capable of constructive interaction with the public and budget some redesign fees to accommodate the outcome of the process.1 12 Second, the alternative to not making a deliberate decision in the planning stage is making ad hoc plans in reaction to neighbors' demands, sometimes under conditions of strong public pressure. A spontaneous promise by the *developer* during a community meeting to work with a neighborhood advisory *committee* in making design recommendations may be both very costly and disruptive to the development's timeline. If the developer has failed to previously consider what types of responses it will offer to the community, there is a risk of making unrealistic promises. Failure to keep promises can permanently damage the developer's credibility.

Once they become aware of the proposal, neighbors often organize themselves and take their own initiatives, e.g., collect signatures on a petition, which the developer will often feel pressured to respond to. Would-be neighbors have almost nothing to lose by repeatedly opposing any development that they do not like."' They may incur minimal organizing costs, especially in communities where most residents regularly use e-mail, although mobilizing costs are sometimes higher.

The dynamic between the developer responding to the neighbors' initiatives and making its own initiatives should be guided by the same over-

all goal—attracting and keeping the necessary votes to approve the proposal. Sophisticated opponents will pursue the opposite goal by pressuring decision makers, gathering their own allies, attacking the developer and the proposal, sometimes raising legal issues, and trying to get the media to tell their story. The developer must carefully choose its battles. The important but difficult point to understand is that adopting an approach that amounts to slavish reaction to opponents' attacks does not necessarily advance the proposal. A developer facing committed, organized, and well-resourced opponents can waste substantial time and resources reacting to every attack by the opponents without actually increasing the possibility that the decision makers will approve its proposal. In fact, the heightened community conflict that such action and reaction bring may convince some decision makers that this proposal is just too controversial to approve. Also, by adopting this reactive approach, developers cede the initiative to their opponents.

The MLO approach counsels developers to take and maintain the initiative toward would-be neighbors by focusing on the modest objective of peeling away layers of opposition and reducing the number of contested issues—that is, neutralizing opposition—rather than attempting to respond to all of the opponents' attacks, to eliminate all opposition, or to gain "community acceptance." Developers do this by anticipating likely concerns, making informed deliberate decisions about whether and how to conduct voluntary community outreach, selecting what kinds of responses they will offer to meet the concerns that are expressed, and judiciously implementing these responses instead of being sidetracked by opponents' initiatives.

Employing Legal Strategies

Center Point, Inc., an established community services agency with almost no development experience, received a house in the upper-income city of Larkspur in Marin County, California, after another mental health services nonprofit had gone bankrupt. The house had been previously used as a congregate living facility and had developed poor relations with its neighbors. In addition, a private, for-profit alcohol rehabilitation center was nearby that was also a source of neighborhood conflict. Center Point proposed to establish and operate a transitional housing residence with supportive services for women and children at the site. There was uncertainty concerning whether Larkspur's zoning code would require a conditional use permit (CUP) for the use both because of confusing language in Larkspur's code and because of the city's attorney appearing to be in equipoise on the issue. The Planning Commission decided that no CUP was required. During the period prior to the Planning Commission hearing, Center Point had been meeting with neighborhood representatives to listen to and respond to their concerns. After the Planning Commission decision, however, neighbors organized against the proposal. They hired an attorney who appealed the decision and wrote a memorandum arguing for the imposition of a CUP requirement. Center Point then approached CASC for assistance.

CASC's attorney drafted a memorandum supporting the Planning Commission's decision and countering the arguments advanced by the opponents' attorney. On the eve of the City Council meeting at which the appeal would be heard, the opponents met with Center Point and agreed to withdraw their appeal in exchange for reasonable assurances (all of which had previously been offered) by Center Point. The city not only approved the proposal, but also directed its city attorney to review the disputed code language and propose appropriate modifications.114

Land use decisions are often the result of a mix of law and politics."' The MLO approach takes a pragmatic view, but emphasizes the need for the developer to clearly and deliberately consider the potential for using law, and to do so early in the predevelopment process116 The information gathered and analyzed in the research and planning step will set up the strategic decisions that the developer should make regarding legal strategies.117

The first strategic issue that the developer should carefully consider is whether it is willing to employ *any* legal strategies. Many developers are skittish about framing their housing proposal as a legal or civil rights issue. There is a common reluctance among affordable housing developers to press or even raise legal issues with the local government for fear of up‐setting the relationship in which the developer is often seeking both funding and land use approvals.' [18] At one end of the spectrum, experienced and successful developers of affordable single‐family and multifamily housing typically shy away from any use of the law.1 [19] At the other end of the spec‐trum, some developers—particularly those sponsoring housing for persons with disabilities—are keenly (and painfully) aware of the likely opposition that they will face, and may tend to interpret any local opposition as "dis‐crimination" requiring a legal solution.[12]0 (This comment is not meant in any way to minimize the facts of rampant discrimination, particularly against housing and services for persons with mental disabilities.121)

There are numerous other obstacles to developers taking advantage of their legal rights. Developers tend to accommodate most local govern‐ments' aversion to conflict. Some developers have numerous options for expending their predevelopment resources and rationally decide not to risk spending time and energy in a context where legal issues might arise.122 Of course, the money, time, and risk associated with exercising legal options are additional barriers. Moreover, the appropriate legal resources, i.e., attorneys skilled in fair housing and other relevant laws, may be scarce where the developer operates.[12]3 Finally, many developers assume that "using the law" inevitably means engaging in protracted, contentious litigation. They are often unaware of alternative ways to assert their rights short of filing a lawsuit.124

If the developer is open to using legal strategies, the next strategic issue concerns the scope of legal strategies that the developer is willing to pur‐sue. The primary divide is between developers willing to file or support the filing of an administrative complaint or a private lawsuit to defend their rights and those that will only entertain strategies short of litigation.125

Litigation is always a last resort, but the use of the law need not be. The CASC project successfully used laws in three ways to obtain local government approvals: educating decision makers, providing an "excuse" for well-meaning decision makers, and enforcement actions short of litigation.

Ideally, the planning staff and city attorney will be aware of applicable laws, but sometimes they may need to be educated about them.[126] Some laws are written clearly and have sufficient specificity of application that they are almost self-executing when the decision maker is made aware of them.[127] If it is not apparent that city staff is aware of fair housing laws and other federal antidiscrimination laws that apply to land use policies and decisions,[128] the developer should consider making inquiries of the planning staff to determine the city's awareness of them. If the awareness is dim or lacking, setting up a meeting with the planner or a sympathetic appointed/ elected official and/or providing a memo summarizing the relevant law[n]') that could be passed on to the city attorney is advisable. If the information is relevant, clearly written, and unbiased, and if it is delivered early and in a nonconfrontational manner, often the local government representative will appreciate the early notice and having some of the staff work done in a reusable fashion. The benefit to the developer of knowing that the local government understands the legal context of the siting decision is twofold: first, the local government is less likely to take action that may violate the laws; and, second, if the local government begins to take such an action, the developer has an already-established reference point from which to question the action.

Some decision makers want to do "the right thing" (i.e., approve the proposal) but feel threatened by expressed community opposition. If they can point to the city's legal duties as a reason for voting to approve a development that some elements of the community oppose, this may provide them with sufficient political cover to vote for the proposal. Sometimes this occurs even if the law would not, strictly speaking, require the approval. On other occasions, this use of the law comes as a result of a city attorney briefing decision makers either by a memo or in executive session about the applicable laws. Such briefings can be prompted by a sympathetic public official or, more frequently, in response to the threat of a lawsuit.

If, after attempts at education and persuasion, a city appears likely to take an action that the developer believes may violate its rights,"0 the developer should consider its enforcement options."1 When the potential violation of the developer's rights is clear, a well-drafted demand letter is often enough to change the city's course of action,[132] especially if the potential violation is identified and challenged *before* decision makers have taken a public position on the issue."' Of course, any developer whose attorney drafts such a letter should be clear on whether or not it will bring an action to enforce its rights if the city refuses to yield to the demand letter.

A third strategic issue is how the developer integrates its legal strategies with its political and public relations strategies. When a developer asserts its legal rights, putting together a consistent message for each of the five critical audiences is important.[134] Of course, the attorney representing the developer ought to foster constructive relations with the city and its attorney to keep the door open to settlement. If the legal conflict becomes the focus of media coverage, the developer will need to educate the media about the law.[135] It is not difficult for a developer to educate its supporters about the legal dimension of its approach.[136] However, communicating with concerned neighbors about the law is likely to be challenging. Protecting individual property rights and property values are traditional and broadly accepted objectives of the local government's exercise of land use power. Home owners often assume that their own property rights somehow extend to "their community" or that they have some implicit right to decide who can live in their neighborhood.[137] Neighbors may be surprised, confused, angry about, and dismissive of the legal rights of developers and the housing rights of prospective residents.

Given the law's degraded status in contemporary American culture, certain laws (such as the fair housing law) that command citizens' obedience to serve controversial social goals are unlikely to inspire conversion to, appreciation for, or even interest in those social goals.[ns] There are few or no "teachable moments" in the typically adversarial public hearing. Appeals to the prospective tenants' housing rights may even provoke more friction and backlash among empowered and threatened home owners.[139] Sometimes an explanation of the law that includes how its various applications benefit members of the opposing community group may help promote understanding.[140]

The value of legal strategies should not be overstated.[''] Use of legal strategies is limited by additional factors. Often the laws do not reach important forms of conduct (e.g., when local officials engage in backroom arm twisting to pressure developers to agree to burdensome and possibly illegal conditions) or are not clear in their application. The developer's assertion of its rights may lead organized, well-resourced opponents to threaten their own lawsuit if the development is approved. Of course, if the developer elects to litigate, it may lose on the merits. Or, even if it wins, it may gain only a Pyrrhic victory because it has lost its funding or land during the dispute and the laws that it relied upon do not provide the desired remedies. Still, it is clearly in the developer's interest to consider the legal strategies that it might employ to get its approvals.

Media and Public Relations: Getting the Developer's Story Told

The St. Vincent De Paul Dining Room fed 200 to 300 low-income and homeless people daily in the heart of the City of San Rafael's downtown redevelopment district. For months, city officials regularly disparaged the dining hall in the local media and publicly announced its intention to close the Dining Room or move it outside of the downtown area (which, because of

the lack of public transportation would have made it hard to access for its clients). Operating on a shoestring budget with a small staff and numerous volunteers, the Dining Room had failed to respond in any substantial way to the negative press. In her private negotiations with city officials, the Dining Room's Executive Director was feeling forced to accept an unreasonable resolution. CASC was invited to help ensure that any relocation would be to an appropriate site.

Because the widespread and unchallenged public misperceptions of the Dining Room hindered any possible fruitful negotiations, a substantial part of CASC's involvement centered on a media and public relations strategy to help community leaders, the media, and the public understand the work of the Dining Room, the population that it served, and the Dining Room's policies and codes of behavior. As one part of the strategy, a professional photographic exhibit was displayed in a downtown coffeehouse, and then was circulated to banks and other buildings frequented by the public. The photographs featured diners, staff, and volunteers of the Dining Room in a manner that cleverly drew the viewer into the image because it was sometimes hard to distinguish the roles of the people pictured. The exhibit was supported by a series of letters to the editor and op-ed articles in local newspapers. This strategy drew heavily on the Dining Room's supporters and volunteers. For example, the photographer donated his services and several volunteers who were established members of the community arranged for the photo exhibit venues. The photo exhibit, in combination with other outreach strategies, enabled organizers to obtain 1,500 signatures on petitions and 2,300 letters of support for the Dining Room. The petitions and letters were delivered in a dramatic fashion at the public hearing before television cameras with hundreds of supporters in attendance. In the face of such community support, the city negotiated a very favorable relocation site.142

Newspapers (and less often radio and television) sometimes carry stories about proposed developments, especially controversial ones. News stories about affordable housing proposals are sometimes inaccurate and biased, but fair and even flattering coverage is also possible. Almost any media coverage—news stories, human interest stories, treatment in the business or real estate sections, editorials, or letters to the editor—can profoundly influence appointed and elected officials as well as the general public.

Typical news reporters receive little training, endure demanding responsibilities and deadlines, and are subject to high turnover rates. Therefore, the developer should do as much of the reporter's work as possible in order to increase the chances of receiving accurate and favorable coverage. Otherwise, the deadline-driven reporter who likely knows little about affordable housing will use some variant of the typical headline: "Brave Homeowners Band Together to Protect Their Neighborhood from Low-Income Housing Project."

There are two primary strategic decisions.143 First, will the developer seek media coverage for its proposal or prepare to respond to media coverage generated by others? Usually, affordable housing developers choose

to be responsive to coverage initiated by others, but some situations provide the opportunity for positive, proactive media coverage that eases approvals.[144] Alternatively, the developer may initiate other public relations efforts that do not rely on making the news, e.g., providing a housing tour to its existing developments.

The second strategic decision is what will be the developer's "message," and, relatedly, who will be its spokesperson(s)?[145] Preparing a persuasive message requires research about the city and community. Because housing cuts across so many topical areas, a wide variety of messages can be conceived. Housing is not just a "welfare" issue, but also a planning issue, a business issue, an environmental issue, and a civil rights issue. The message should be framed to appeal to the known concerns of uncommitted decision makers, and, whenever possible, to a community/neighborhood's self-perception as welcoming, progressive, or responsive to its community needs.

Identifying and preparing a spokesperson is necessary to increase the possibility of getting out the developer's message. Everyone associated with the proposal needs to refer reporters to this spokesperson and should suppress any temptation or pressure to answer questions themselves. Executive directors and project managers employ many skills to perform their jobs, but may or may not have the skills or aptitude for giving interviews to reporters. Someone who will regularly be a spokesperson should receive media training.

Putting It All Together: Riding the Tiger and Debriefing After a Decision

In the period between the developer's initial research and planning meetings and when the local government makes a decision on the proposal, the developer needs to be creative and nimble. The developer should expect to conduct additional information gathering, reassess one or more of the critical audiences, and revise its strategies. Keeping focused on the votes and ensuring that all strategies serve the ultimate goal are important and require discipline. This often means that the developer must refrain from reacting with all of its available resources to every attack by opponents, and carefully reserve staff and volunteer time to implement its own plans. CASC's experience was that even if the planning process failed to anticipate every problem and even if the developer's initial plans toward each audience were never completely carried out, the planning process, together with the early mobilization of supporters, provided the developer with substantial benefits. When the unexpected occurred, the developer was able to draw upon some information, resource, or contact yielded by the planning process to fashion a constructive response.[146]

As the developer proceeds with its strategies, typically the more reasonable and the less concerned neighbors become satisfied or lose interest. This often leaves a core of committed opponents, some of whom are likely to be opposed to the proposal for unreasonable and /or illegitimate reasons. Usually, the formal permit process culminates in a public hearing (or a

series of public hearings) ending in a decision by elected officials. The developer should carefully prepare its presentation of the proposal, including telling the story of how it responded to the concerns that neighbors expressed, and especially how those concerns and the numbers of concerned neighbors have been reduced. Usually, the developer will organize and prepare support speakers to amplify its points. Sometimes the developer may also mobilize large numbers of community supporters to counterbalance the letters, calls, and e-mails of opponents or their presence at public hearings.

Finally, a vote is taken. The proposal is approved or denied. Of course, a denial will prompt a consideration of the developer's options. However, win or lose, the developer should gather its initial planning group and loyal supporters to thank them and to debrief—critically asking themselves what went well, what went wrong, and how could it have gone better. This debriefing is essential for learning to manage local opposition better during the next proposal.

Part IV: **The Role of the Law and Attorneys in the MLO Approach**

Just as the MLO approach requires developers to reconsider their attitudes, practices, and skills concerning local opposition, attorneys involved in affordable housing development may need to do the same.

The role of law is important' ut contingent. Local opposition is typically not amenable to a narrow legal solution. Yet, while law may not be the only or primary tool in all cases, it sometimes is a critical tool. While developers need to drive the process, bringing in attorneys at the last minute after all else has failed limits the usefulness of the law and leads to other negative consequences (e.g., the developer not documenting evidence, leading to proof problems). While litigation should be a last resort, other potential uses of the law should be considered at the beginning.1[47] The common wisdom of including an attorney in the loop early applies strongly to the local opposition problem.

Recommendations for Attorneys Representing Developers'[48]

In the MLO approach, the developer is primarily responsible for creating and implementing a plan to manage local opposition. A land use attorney retained by the developer to represent it in obtaining funding and land use approvals will obviously play a central role. However, any attorney associated with the development (e.g., assisting with a tax credit application) can play an important role in the research and planning stage.

The research and planning step includes assessing whether or not obtaining the necessary local government approvals is primarily a political problem, a legal problem, a public relations problem, or a mix. Every attorney representing an affordable housing developer should engage his or her client in making an informed, critical judgment at the beginning of the representation concerning the likely nature of the opposition and the appropriate range of responses. This article assumes that attorneys engaged

specifically for the purpose of obtaining land use approvals will perform this task. These remarks are primarily addressed to attorneys representing developers on transactional financing and real estate issues.

The first requirement is for the attorney to be familiar with the client's rights. Federal and state versions of fair housing laws are the workhorse in this area in most states. They apply to both land use and funding approvals.[149] Some states, including New Jersey, Connecticut, Rhode Island, Florida, and California, have adopted additional laws intended to prevent or minimize the impact of local opposition.[150] Many attorneys will be part of a practice that includes land use attorneys familiar with the applicable laws. If not, summaries of fair housing laws are widely available[151] and fair housing law training is offered in some locations.[152] Information about specific state laws may be more difficult to obtain.[153]

The attorney should raise the local opposition issue with the developer in a conversation early in any representation concerning the development of affordable housing that will require discretionary local government approvals. Avoidance of the issue, delay, or segmentation ("that's someone else's problem") does not serve the broader interests of the attorney or the client. The attorney should inform the client of its rights, including a conversation about using the law without litigation, and have available written materials[154] for the client to gain a clear understanding of its rights and legal options.[155]

Next, the attorney should find out whether and to what degree the client either has prepared for or plans to prepare for local opposition, especially including reading the political situation. The goal is to find as early as possible the potential for a legal problem. For example, if the local government attempts to impose an illegal notification requirement or a conditional use requirement, it should be challenged before the developer begins the process of abiding by it.[156] As appropriate, the attorney should coach the client on spotting risk factors for likely opposition and potential legal problems.[157] If additional counsel with expertise in land use and /or discrimination law are not available in-house, the attorney should provide the client with an appropriate referral (e.g., another firm, legal services office, or a public-interest law organization). In some cases, the attorney should explain how to file a fair housing administrative complaint.[158]

If a proposal involves both legal and political aspects, close collaboration and clear communication between the attorney and the developer are necessary to ensure that the legal strategies are integrated into the community organizing and public relations strategies.'"

Recommendations for Attorneys Representing Local Governments

Some attorneys representing local governments are not familiar with the applicable law. This is not surprising since even after several decades, many communities are still struggling to assimilate the implications of fair housing laws for their land use policies and practices.[160] These attorneys

should try to attend fair housing training or at least obtain this information to have it on hand.161

To fulfill one's responsibility to protect the client from unnecessary exposure, the attorney should ensure that the client's plans, policies, ordinances, regulations, and practices comply with applicable federal and state laws.162 Training for key personnel or a review of the city's policies and practices may be in order. If the client has had trouble in this area before, the attorney should consider if it is a problem with the jurisdiction's policies and practices, a lack of understanding of the law, or something else, and take appropriate follow-up actions.163

Sometimes federal or state planning requirements offer an opportunity for raising the issue with the client.164 For example, if the client is located in a state requiring a General Plan with a housing element165 or in a jurisdiction participating in federal block grant programs that require the preparation of a Consolidated Plan,166 these requirements provide an appropriate occasion to raise the pertinent issues.

Even if the jurisdiction's policies and practices are in compliance with all applicable laws, turnover of elected and appointed officials as well as key staff (e.g., planning director) will create a need and present an opportunity for educating newly hired key staff and avoiding potential problems. The attorney could distribute a brief, easy-to-understand memo outlining important issues and applicable laws in the new staff /new official orientation packet. The attorney should also be aware of and pass on notices of relevant training and encourage key decision makers and staff to participate in it as appropriate.

When the attorney foresees a controversy or is contacted when a conflict erupts, the attorney's involvement may include a variety of tasks, such as counseling key officials about their legal duties and options, coaching the chairs of the planning commissioners and the city council about how to run the public hearing, and ensuring that the final decision is in accordance with all applicable legal requirements.

Conclusion

Anticipating local opposition and planning for local government funding and land use approvals are as important as developing a project concept, assembling financing, and finding the site. Despite the uncertainties of local opposition conflicts, useful planning *can* be done. Developers should learn to manage local opposition. If they do, they will reap significant benefits, including not only obtaining needed approvals, but also reducing the costs and delays attributable to local opposition and preserving the integrity of their initial proposal. Moreover, the developer that has prepared to manage anticipated local opposition is much better placed to respond when the unexpected does occur. Developers should take advantage of this opportunity to conduct thoughtful planning and should incorporate legal strategies when appropriate.

Attorneys associated with affordable housing developments should en-
courage and enable developers to manage local opposition by their own
familiarity with the issues and the applicable law and by raising the per-
tinent issues in the course of the representation that they provide.

1. Excerpt from John Berhman, *A Center in Crisis: Opposition Growing to Plans to
Relocate Children's Home,* SAN DIEGO UNION TRIB., Oct. 10, 2001, at NC-1.

2. Excerpt from Mike Conway, *Merced Council Rejects Housing,* MODESTO
BEE, Nov. 7, 2001, at Bl.

3. This article uses the term "affordable housing" to refer to housing that is
legally restricted to be available for households of certain income levels and is
typically offered to eligible households at rent or mortgage *levels* at less than 30
percent of household income. Most forms are subsidized by federal, state, and
/or local funding.

4. Local opposition is defined as "actions intended to block a meritorious
proposal, or to create delays and obstacles to hinder its development." Local
governments, would-be neighbors, and the media are the most common op-
ponents. This definition includes speech protected by the First Amendment,
but focuses on "action" to avoid the tendency among some advocates to label
every person who says negative things or who asks hard, even rude or accusatory,
questions as an opponent or to assume that he or she is a permanent opponent.
A complete discussion of the relationship between local opposition and
freedom of expression protected by the First Amendment is beyond the scope
of this article.

The local opposition problem is common for public housing and 100 percent
affordable housing proposals. However, mixed-income developments and in-
clusionary zoning proposals sometimes meet local resistance. Section 8 and
Gautreaux-type mobility programs meet a different form of local opposition.
See generally Corinne Anne Carey, *The Need for Community-Based Housing De-
velopment in Integration Efforts, 7* J. AFFORDABLE Hous. & COMM. DEV. L. 85
(1997) (explicating opposition to mobility programs from both suburbs and the
communities that are the intended beneficiaries and recommending, inter alia,
combining community-based affordable housing development with Section 8
programs).

5. Often a developer will need one or more local government land use and/ or
funding approvals to create new affordable housing and services for low-and
moderate-income households. Local government officials, would-be neighbors,
and the media who oppose the proposal can use the land use and/or funding
approval process to force developers to seek other sites, revise the proposal
(reduce density, reduce affordability, change populations that they will serve,
add expensive amenities), or block proposals entirely. Even if a local government
only requires "site plan review," opponents can use this public review process
as an opportunity to block the proposal. *See, e.g.,* Buckeye Cmty. Hope Found. v.
City of Cuyahoga Falls, 263 F.3d 627 (6th Cir. 2001), *cert. granted in part,* Cuyahoga
Falls v. Buckeye Cmty. Hope, 2002 U.S. LEXIS 4691 (June 24, 2002).

This article uses the term "local opposition" instead of NIMBY because
NIMBY has become a pejorative term that can undermine efforts to reduce
opposition and to build community support by unnecessarily offending rea-
sonable individuals who have sincere concerns and questions.

There is a vast literature documenting the problem of local opposition. For a classic exposition that includes an extensive bibliography, *see generally* Michael J. Dear, *Understanding and Overcoming the NIMBY Syndrome,* AM. PLAN. Ass'N J. (Summer 1992). For scholarly treatments of the issue, *see generally* Michael Gerrard, *The Victims of NIMBY,* 21 FORD. URB. L.J. 495 (1994); BENJAMIN DAVY, ESSENTIAL INJUSTICE: WHEN LEGAL INSTITUTIONS CANNOT RESOLVE ENVIRONMENTAL AND LAND USE DISPUTES (1997); DENIS BRION, ESSENTIAL INDUSTRY AND THE NIMBY PHENOMENON (1991). For a report on how local opposition affects homeless people, *see* NATIONAL LAW CENTER ON HOMELESS AND POVERTY, ACCESS DELAYED, ACCESS DENIED: LOCAL OPPOSITION TO HOUSING AND SERVICES FOR HOMELESS PEOPLE ACROSS THE UNITED STATES (1997). The best overall website on the issue is hosted by Building Better Communities, *available at* www.bettercommunities.org. *The NIMBY Report* is a regular newsletter and quarterly journal available through the National Low Income Housing Coalition's website *available at* www.nlihc.org.

6. Exclusionary zoning has contributed to high concentrations of low-income people and people of color in certain metropolitan areas, municipalities, and neighborhoods. There is voluminous literature on exclusionary zoning. For a sample, see citations number 64-68 in *An Annotated Bibliography of Affordable Housing and Community Development Law, 7* J. AFFORDABLE Hous. & COMM. DEV. L. 340 (1998).

7. Some developers avoid local opposition problems by only working in welcoming jurisdictions (which tend to be larger cities), using land that already has the necessary land use entitlements or is at least zoned properly, siting in neighborhoods that are not likely to oppose, only proposing politically acceptable developments (e.g., senior housing, ownership, or mixed income), or making significant concessions (e.g., significantly reducing density or changing the population to be served) at the first sign of opposition. Many of these strategies used to avoid local opposition issues result in siting additional affordable housing in neighborhoods that are already predominately low income and where most residents are people of color because of prior exclusionary policies and practices. This tends to increase segregation because most residents of affordable housing in many jurisdictions are both low income and people of color.

8. This article assumes that developers and sponsors are proposing developments that will meet community needs, are well designed, and will be well maintained and professionally managed. For some examples of well-designed contemporary affordable housing, see the Planning and Design section of the Building Better Communities website, *available at* www.bettercommunities.org.

9. See, e.g., Michael Dear and Robert Wilton for the Campaign for New Community, THE QUESTION OF PROPERTY VALUES (1996) (analyzing and Summarizing forty-seven studies); Xavier de Souza Briggs, *In the Wake of Desegregation,* AM. PLAN. ASS'N J. (Winter 1999) (finding that the traditional grounds for objection to public housing are not supported by fact); MAXFIELD RESEARCH, INC., A STUDY OF THE RELATIONSHIP BETWEEN AFFORDABLE FAMILY RENTAL HOUSING AND HOME VALUES IN THE TWIN CITIES (2000) (finding that single-family homes located near twelve affordable housing developments put into service during the 1990s in the Twin Cities had "similar or stronger market performance" after the affordable housing developments were built); The National Multi-Housing Council, *Research Notes: Apartments and Schools* (2002) (finding that on a unit-by-unit comparison, single-family houses are home to

more school children than apartments using U.S. Census Bureau's American Housing Survey data). Additional studies are available at the National Multi-Housing Council website, *available at* www.nmhc.org, and at the research section of the Building Better Communities website, *available at* www. bettercommunities.org. *But see* George Galster, Peter Tatian, Anna Santiago, Kathy Pettit, and Robin Smith, Why NOT in My Back Yard? Neighborhood Impacts from Deconcentrating Assisted Housing, CUPR Press, Rutgers U., New Brunswick, N.J. (forthcoming 2003) (reporting an initial analysis of three case studies that found some negative impacts from concentrated assisted housing and recommending policies to disperse assisted housing to achieve its positive impacts for assisted households while minimizing its potential negative ones for host communities).

10. There is an irony here: when contemporary affordable housing fits well in a neighborhood, by definition it will not "stand out" or be noticed. Neighbors, particularly new ones, may not ever be aware that they live near affordable housing. Yet this allows their long-standing stereotypes and myths about affordable housing to remain intact. So, increasing the supply of well-designed and well-performing affordable housing *alone* may not actually change long-standing stereotypical views of affordable housing unless housing advocates draw attention to their successes, e.g., by sponsoring housing tours.

11. Of course, the best way to avoid the problem is to find land already zoned appropriately and /or design a development so that it will need the fewest possible discretionary funding and land use approvals. Unfortunately, this is very difficult, largely because of the paucity of land appropriately zoned "as of right" for these uses. Sometimes a sponsor/developer has the opportunity to use land that has indices of a high likelihood of local opposition, but the land is owned by an individual or organization committed to using land for affordable housing. For example, in *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977), the site for the proposed multifamily development was surrounded by single-family zoning and development, but the land was owned by a religious order committed to assisting affordable housing. It may be difficult to pass up such an opportunity. Using a properly zoned land strategy is also difficult to follow because much contemporary affordable housing (especially supportive housing) includes resident services on-site and often includes innovative designs and site plans that either lead developers to apply for a planned unit development or require other types of land use approvals. In some cases, conditional approval requirements for supportive housing violate fair housing and other laws. *See Between the Lines: A Question and Answer Guide on Legal Issues in Supportive Housing—National Edition,* prepared by the Law Offices of Goldfarb & Lipman for the Corporation for Supportive Housing (CSH) (2001); *see also* the resources/publications section of CSH's website, *available at* www.csh.org.

12. See the trilogy of publications on this issue by Michael Dear, Lois Takahashi, and Robert Wilton for the Campaign for New Community, *Accepting and Rejecting Communities* (1996), *Hierarchies of Acceptance* (1996), and *Factors Influencing Community Acceptance: Summary of the Evidence* (1996). Of course, not every proposal is opposed and not every city is closed. Despite the severe reductions in federal subsidies for affordable housing since the 1980s, there are many successful policies and programs that local governments that understand the need for affordable housing can adopt to promote them in their jurisdictions. For a good example, *see* ASSOCIATION OF BAY AREA GOVERNMENTS, BLUE-

PRINT 2001: HOUSING ELEMENT IDEAS AND SOLUTIONS FOR A SUSTAINABLE AND AFFORDABLE FUTURE (2001); *see also* the Planning and Design section of the Building Better Communities website, *available at* www.bettercommunities.org.

13. Widespread discussion about "smart growth" and "sustainable development" has prompted the question of how such policies may affect affordable housing and the local opposition issue. For example, in 2000, the Fannie Mae Foundation sponsored a conference, titled "Fair Growth: Connecting Sprawl, Smart Growth and Social Equity," on this topic. Smart growth and sustainable development are, in principle, compatible with, and even supportive of, affordable housing, *see, e.g.,* the Social Equity and Community Building section of the American Planning Association's (APA) "Policy Guide on Smart Growth" (adopted Apr. 2002); relevant sections of APA's "GROWING SMART" LEGISLATIVE GUIDEBOOK (2002); the Apr. 2001 issue of *The NIMBY Report* dedicated to this subject; and PolicyLink, "Achieving Equity Through Smart Growth" (2001), *available at* www.policylink.org. However, the devil is in the details. Many versions of "smart growth" and other versions of "growth management" are intentionally or unintentionally hostile to affordable housing. For example, versions combined with urban revitalization risk igniting gentrification forces that both push out current residents and make it harder to develop additional affordable housing. If smart growth policies are successful in focusing more growth into a defined area (smaller than before), they create competition for fewer sites, driving up land prices and creating gentrification pressures that present a further challenge to affordability. Also, if existing communities are expected to embrace higher density, they are likely to prefer dense market-rate housing to dense affordable housing. On a disappointing note, a state-by-state review of the American Planning Association's report on the results of its national "Growing Smart" campaign revealed that very few of the "successes" touted by the APA include any measures that will directly support affordable housing, *see* APA, Planning for Smart Growth: 2002 State of States (2002), *available at* www.planning.org/growingsmart/pdf/states2002.pdf (the only mandatory measure was California's SB 211, which extended the existence of San Francisco's redevelopment agency on the condition that it spend more money on low-income housing; Colorado and Massachusetts enacted statutes that will enable or encourage more planning for affordable housing; Texas passed laws enabling cities to transfer property with delinquent taxes to nonprofits to build low-income housing, extending the existence of the Texas State Affordable Housing Corporation through 2003, and addressing manufactured housing and preservation of affordable units; three other states (Colorado, Nebraska, and Wisconsin) enacted some measures to assist in financing affordable housing; five states (California, Illinois, New Hampshire, South Carolina, and Vermont) convened some form of a commission to study the problem; legislation aimed at assisting affordable housing failed in three states (California, North Carolina, and Utah); one planner in Maryland—considered a national leader in "smart growth"—confided that Maryland still does not have the full set of policies necessary for its smart growth program, including an affordable housing element; in addition to these, there were references in the report to initiatives regarding "affordable housing" being put on the ballot and a statistic regarding the passage rate of all initiatives but no specific reference to the passage of any of the affordable housing initiatives, except Montana's about which no further details were provided.

14. Local opposition is a well-worn topic of commentary, analysis, and advice giving. Housing and community advocates, attorneys, land use experts, and others have published dozens of technical assistance manuals and guidebooks to assist developers in "overcoming" local opposition or gaining "community acceptance." For an extensive technical assistance manual based on the approach described in this article, *see* HOMEBASE, BUILDING INCLUSIVE COMMUNITY: TOOLS TO CREATE SUPPORT FOR AFFORDABLE HOUSING (1996) [hereinafter BIC]. This publication is available from HomeBase by calling (415) 788-7961. MANAGING LOCAL OPPOSITION TO AFFORDABLE HOUSING: STRATEGIES AND Toots (published jointly by the National Association for County Community and Economic Development and the Association of Local Housing Finance Agencies, 1997) includes a discussion of the Managing Local Opposition (MLO) approach directed to local government staff and officials. COMMUNITY ACCEPTANCE STRATEGIES CONSORTIUM & NON-PROFIT HOUSING ASS'N OF NORTHERN CALIFORNIA, SITING OF HOMELESS HOUSING AND SERVICES: BEST PRACTICES FOR COMMUNITY ACCEPTANCE (2000) [hereinafter CASC & NPH] is a twenty-five-page readable version of the MLO approach. For an excellent summary of the relevant laws in California, *see* CALIFORNIA AFFORDABLE HOUSING LAW PROJECT, LAWS AFFECTING THE LOCATION & APPROVAL OF AFFORDABLE HOUSING FOR FAMILIES AND HOMELESS PEOPLE: How THEY WORK & How TO USE THEM (2000) [hereinafter LAWS AFFECTING LOCATION AND APPROVAL] (a legal technical assistance manual) (available through California Affordable Housing Law Project; call (510) 891-9794).

Other manuals that the author does not entirely endorse but finds somewhat useful include: DEBRA STEIN, WINNING COMMUNITY SUPPORT FOR LAND USE PROJECTS (1992) (and see additional publications on the issue by Debra Stein); AMERICAN BAR ASSOCIATION COMMISSION ON HOMELESSNESS AND POVERTY, NIMBY: A PRIMER FOR LAWYERS AND ADVOCATES (2001); MICHAEL DEAR, GAINING COMMUNITY ACCEPTANCE (1991) (a technical assistance guide produced for the Robert Wood Johnson Foundation); HOUSING ASSISTANCE COUNCIL, OVERCOMING EXCLUSION IN RURAL COMMUNITIES: NIMBY CASE STUDIES (1994); THE INFORMATION CENTER, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, BUILDING PARTNERSHIPS WITH THE COMMUNITY: How TO OVERCOME NIMBY (1993); HOMEBASE, NEIGHBORS AFTER ALL: COMMUNITY ACCEPTANCE STRATEGIES FOR SITING HOUSING AND SERVICES FOR HOMELESS PEOPLE (1989); WILLIAM FULTON, REACHING CONSENSUS IN LAND-USE NEGOTIATIONS (1989); DOUGLAS PORTER ET AL., WORKING WITH THE COMMUNITY: A DEVELOPER'S GUIDE (1985). Many commercially produced land use law and real estate law practitioner manuals include sections on the topic. *See also* THE NIMBY REPORT, *available at* www.nlihc.org/nimby.

Opponents have also published manuals to assist resistance. *See, e.g.,* COMMUNITY AND ENVIRONMENTAL DEFENSE SERVICES, PRESERVING NEIGHBORHOODS & THE ENVIRONMENT FROM UNSUSTAINABLE LAND DEVELOPMENT PROJECTS: A CITIZENS GUIDE TO FORMING WINNING STRATEGY (1998) [hereinafter PRESERVING NEIGHBORHOODS & THE ENVIRONMENT], and the organization's website, *available at* www.ceds.org, which offers publications, technical assistance, and legal representation to opponents; JANE ANNE MORRIS, NOT IN MY BACK YARD: THE HANDBOOK (1994); MARITZA PICK, How TO SAVE YOUR NEIGHBORHOOD, CITY, OR TOWN: THE SIERRA CLUB GUIDE TO COMMUNITY ORGANIZING (1993); PEGGY ROBIN, SAVING YOUR NEIGHBORHOOD: You CAN FIGHT DE-

VELOPERS AND WIN! (1990); RICHARD D. KLEIN, EVERYONE WINS! A CITIZEN'S GUIDE TO DEVELOPMENT (1990) (despite its title, the book leans strongly toward Opposition); RAQUEL RAMATI, How TO SAVE YOUR OWN STREET (1981).

15. Assistance ranged from a few phone conversations and sending written technical assistance materials to providing grants for hiring community organizers and more extensive collaboration with project sponsors. Every development with which the project had significant involvement received its approvals. *See infra* notes 54, 55, 58, 61, 87, 91, 95, 96, 99, 114, 132, and 142, and accompanying text for examples. *See, also,* CASC & NPH, *supra* note 14, at 4-5 for brief descriptions of seventeen of the developments assisted by CASC. All of the developments assisted were sponsored by nonprofit organizations. It is this article's view that a complete solution to America's chronic housing crisis would necessarily include a substantial component of nonmarket housing. For an excellent explication of this view, *see* THE AFFORDABLE CITY: TOWARD A THIRD SECTOR HOUSING POLICY (John Emmeus Davis ed., 1994).

16. Previous attempts generally focus on one or two types of strategies, but not all three. *See, e.g.,* STEIN, *supra* note 14 (offering a sophisticated approach emphasizing political, negotiation, and public relations strategies but omitting legal strategies).

17. While no language is perfect, the term "community acceptance" is problematic in appearing to suggest that developers *should* seek and receive "community acceptance" for each of their proposals. Depending upon what is meant by "community" and "acceptance," this goal may be practically impossible, unnecessary, and legally dubious since at least some concessions that may elicit community acceptance, e.g., allowing neighbors to screen potential residents, will transgress the rights of prospective residents.

18. This framing intentionally challenges the unfortunate but understandable head-in-the-sand reluctance to deal with local opposition that some developers exhibit. One example of an attitude that needs reform is defeatism about the problem ("everything is unique, so you can't plan or prepare, only bear it"), which gives developers permission to not plan and analyze. Other unfortunate attitudes include the tendency to only see responsibility on the part of the opponents ("it's just them"); the assumption that all opponents are the same (e.g., discriminators); and the "holier than thou" attitude that upsets decision makers, undermines potential support, and enrages even reasonable concerned neighbors.

19. Sometimes developers need to learn or bring needed skills to the task so that useful strategies can be conceived and implemented. Some skills that are often needed but are not necessarily part of the typical affordable housing developer's skill set include community organizing skills, media and public relations skills, and some legal skills (e.g., spotting potential invasions of rights). For example, not every executive director of a nonprofit housing developer possesses media skills. Some may need to develop these on the job, or delegate media relations to someone else. Also, at least since the early 1990s in northern California, many established nonprofit affordable housing developers have hired project managers who have completed undergraduate or graduate programs in planning and /or community development. While these employees bring sophisticated skills in project design and financing, they often lack critical community-organizing skills and intuitions. Certain communication skills, especially the capacity to listen carefully to opponents to discern their

motivating concerns, may also be lacking. Supporters often can provide many of these missing skills to the developer. *See infra* notes 95-98 and accompanying text.

20. As will be discussed in this article, there are some useful practices that developers would do well to adopt: first, being *proactive* instead of reactive, especially planning for potential opposition early in the predevelopment process; second, approaching the problem *comprehensively* instead of piecemeal, especially by considering all five potentially critical audiences instead of focusing on only the neighbors and the decision makers; third, acting *collaboratively,* especially by recruiting and working with supporters and other allies instead of as the isolated developer; and fourth, focusing on and deciding *strategic* issues instead of being driven by tactical choices.

21. Of course, many local government representatives and some neighbors are also repeat players.

22. This article focuses on what the development community and its allies, including attorneys, can do. It is tempting to blame all of the trouble and pain associated with local opposition on "them," the opponents. While it is very important to try to change negative stereotypes, undo exclusionary zoning, and work on the underlying causes of local opposition, *see infra* notes 39 and 40, the development community also bears some share of the responsibility for the problem. Obviously, the development community has more control over changing itself than changing other parties.

23. Most previous approaches are less comprehensive because they omit one or more of these critical audiences in the planning or strategizing stage.

24. See infra Part III; *see also* Appendix A.

25. The Survey of San Francisco Bay Area's Non-Profit Development Community: Production and Constraints [hereinafter Non-Profit Development Survey] was conducted by Toby Morris along with the Institute of Urban and Regional Development of the University of California at Berkeley in collaboration with NPH. An Executive Summary or the entire report may be obtained by contacting NPH at (415) 989-8160.

26. The TBI built upon a previous one-year project initially conceived of and hosted by HomeBase under the direction of Marty Fleetwood and funded by the law firm formerly known as Pillsbury Madison Sutro and now named Pillsbury Winthrop LLP. The TBI project was funded primarily by regional foundations, including the SH Cowell Foundation and the Evelyn and Walter Haas, Jr. Fund.

27. These materials may be obtained by contacting NPH at (415) 989-8160. Some of these materials can be downloaded from NPH's website, *available at* www.nonprofithousing.org.

28. Three attorneys from the group who had not worked together before eventually were cocounsel in a lawsuit assisting a developer.

29. Further information about the participating organizations may be obtained from NPH at (415) 989-8160 or from the author.

30. This article is not intended as a technical assistance manual. Resources for implementing this approach can be found at the NPH website, *available at* www.nonprofithousing.org. They include the one-page handout titled "Six Steps for Obtaining Local Government Approvals"; CASC & NPH, *supra* note 14; and numerous one-page handouts on specific issues and tactics; *see* BIC, *supra* note 14.

31. Training in this approach has also been provided throughout California as well as in New York City; Washington, D.C.; El Paso, Texas; Tucson, Arizona; Minneapolis, Minnesota; and other locales.

32. For example, *see* CASC & NPH, *supra* note 14, at 3-4, for a brief description of seventeen homeless housing and services proposals assisted by CASC.

33. For example, EAH (formerly known as Ecumenical Association for Housing), based in San Rafael, California, and Resources for Community Development, located in Berkeley, California, regularly use the approach described in this article.

34. To the degree that local opposition is actually based in traditional land use concerns (such as design, traffic, and parking) where these issues are objectively verified and not hiding other motives, developers and neighbors can usually negotiate a reasonable solution under the framework of the city's planning and development standards.

35. See CONFRONTING REGIONAL CHALLENGES: APPROACHES TO LULUS, GROWTH, AND OTHER VEXING GOVERNANCE PROBLEMS (Joseph DiMento & LeRoy Grayment eds., 1991).

36. Individuals and households with sufficient income to afford market-rate housing are relatively immune from this problem. Still, if they are people of color, immigrants, persons with disabilities, or households with children, they may suffer discrimination in applying for a loan or renting.

37. See, e.g., THE NIMBY REPORT (Winter 1999) and the special supplement on the Federal Fair Housing Act and THE NIMBY REPORT (forthcoming Winter 2002). There is disagreement within the affordable housing development community on the appropriate framing and the consequent role of the law. *See also* Tim Iglesias, *Conflicts in Our Own Back Yard,* THE NIMBY REPORT (Fall/Winter 1996).

38. For statistics on the need for affordable housing in metropolitan areas, cities, suburbs, and rural areas, *see* National Low Income Housing Coalition, Rental Housing for America's Poor Families: Farther Out of Reach Than Ever (2002); *see also* JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 2002 (2002). Local opposition to the siting of affordable housing is ubiquitous. *See, e.g., supra* notes 1, 2, or any issue of *The NIMBY Report* in which brief articles describing current conflicts throughout the United States are a regular feature.

39. These strategies include education campaigns to inform decision makers, community leaders, the media, and the general public about both affordable housing needs and successful solutions; tenant organizing and voter registration drives; the promotion of proaffordable housing candidates in elections; advocacy and organizing campaigns aimed at revising state and local government policies and programs toward affordable housing; training for community leaders in contemporary conflict-resolution and community-building methods with an emphasis on land use issues; efforts to bring local zoning ordinances, planning codes, and approval processes into compliance with fair housing law (and other proaffordable housing laws); and legislative work to expand currently recognized housing rights in state and federal laws. Note, however, that cities proactive programs anticipating local opposition may have unintended consequences. For example, the "Good Neighbor Policy" program of the City of Portland, Oregon (that requires early meetings between developers of homeless shelters and community members in certain circum-

stances), may be useful in dealing with local opposition, but may also preclude or limit developers' strategic advantage upon which the MLO approach is based.

40. Good diet and regular exercise are a metaphor for these strategies. They require consistent, patient, ongoing efforts, and sometimes what appears to be useless work.

41. Running a marathon is the metaphor for this work.

42. In reference to the metaphors in the last two footnotes, one is more likely to finish the marathon in good condition if he or she has maintained a good diet and regular exercise before the event. Alternatively, one could imagine that communitywide strategies prevent or screen out a certain amount of local opposition, but there must always be project-specific strategies to deal with the residue of local opposition that passes through those screens.

43. The assertions of this section are primarily based upon the author's conversations and meetings with dozens of project managers, development directors, executive directors, housing advocates, and sympathetic local government staff and officials in northern California mostly in the period between September 1995 and August 1996.

44. Often these responses were reactions to painful experiences of local opposition that were left unanalyzed. The pain of the last fight and the dread of the coming one conspired to squeeze out any attempts to reflect upon and learn from previous experience.

45. Paradoxically, the perceptions of developers and local opponents are often mirror opposites: developers fear neighbors' seemingly overwhelming power to stop their development, while neighbors feel powerless to influence what appears to be the professional developer's "done deal."

46. This list is merely descriptive; it is not intended to suggest that the author believes that all of the issues are legitimate bases of opposition. For a more complete list, *see* BIC, *supra* note 14, at 49-50,73-97. Sometimes an issue is not related directly to the proposal itself but the proposal becomes a lightening rod channeling public attention to previously existing problems and conflicts between the neighborhood and the city. For example, if neighbors perceive a history of the city "dumping" unpopular land uses in their neighborhood or if there is a history of neglect by the city of the neighborhood's needs for services or parks, a proposal for affordable housing may occasion an eruption of these buried issues. There are also some derivative issues, e.g., overconcentration, in which neighbors complain that there is a disproportionate amount of affordable housing in their neighborhood compared to other neighborhoods because of previous policies or practices.

47. See infra notes 100-113 and accompanying text. But note that sometimes opponents make personal attacks on the developer or the organization. Opponents may want to turn a proposal into an election issue. The author is aware of one case in which residents hostile to a community-based nonprofit that sponsored affordable housing engineered the takeover of the nonprofit.

48. More recently, opponents have used e-mail and the Internet extensively for organizing and mobilizing opposition (e.g., setting up an opposition website) as well as for researching to find information supporting their opposition to the development. In fact, it would not be impossible for a developer to be blindsided at a public hearing by well-organized opponents whose opposition was never communicated to the developer or made visible in the neighbor-

hood. However, most decision makers would disapprove of such "stealth opposition."

49. Opponents' lawsuits often invoke environmental or historic preservation laws or seize on alleged procedural irregularities in the approval process. *See* LAWS AFFECTING LOCATION AND APPROVAL, *supra* note 14, at 62-74. For an example of a referendum on an approval of an affordable housing development, *see* Buckeye Cmty. Hope Found. et al. v. City of Cuyahoga Falls, et al., 263 F.3d 627 (6th Cir. 2001), *cert. granted in part*, Cuyahoga Falls v. Buckeye Cmty. Hope, 2002 U.S. LEXIS 4691 (June 24, 2002).

50. Previous approaches faltered because they failed to encompass the whole set of potential opponents, assumed certain bases for opposition, ignored the potential for organizing active supporters, left out legal strategies, or embraced a single strategy or set of tactics. Also, previous approaches often did not account for different kinds of developers (large, regional, or state-based versus community-based), their approaches to development (unit production versus "community" development), or their staffing and other resources.

51. In some cases, some local government staff and possibly the landowner will become aware of the nature of the proposal because of negotiations about financing proposals or other conversations. Even in these cases, the developer can know with a high degree of certainty when the proposal will become *potentially* public. This time then sets the outer limit of the developer's control.

52. *See* the definition of MLO in the Introduction to this article.

53. *See, e.g., infra* note 95 and accompanying text.

54. When a city began pressuring a long-standing homeless dining room to relocate out of a redevelopment district, the dining room operator knew that part of the city's public rationale would be the dining room's alleged negative effects on the existing businesses. The planning group in this case organized and conducted a personal door-to-door survey of each business near the dining room. The survey had three valuable benefits. First, the results of the survey showed that, from the merchants' own responses, there were few problems in the area that the merchants attributed to the operation of the dining room. Second, the personal contacts engendered by the fact-gathering exercise provided the dining room operators with important specific information about which merchants were, in fact, concerned and the level and content of their concerns, as well as which merchants were sympathetic. Third, the dining room used the information about concerns that were attributed to the dining room to immediately make changes to address these concerns and reported the changes back to the businesses surveyed, creating goodwill among some and a sense of credibility and responsibility among others.

55. When a transitional housing proposal was to be sited in a struggling neighborhood with endangered businesses, the sponsor turned to religious congregations to find allies who either lived in or worked in the neighborhood. This search turned up one of the local business owners who became enthusiastic about the proposal. She accompanied a representative of the developer in door-to-door visits to each of the local businesses, which effectively reassured them. She also allowed her picture and a supportive quote to be included in an information sheet produced as a handout for other community relations.

56. *See infra* note 142 and accompanying text. Ensuring that the relocation of the dining room would be downtown in a suitable place required a carefully coordinated combination of legal, political, and media strategies. Legal repre-

sentation prevented the city from overreaching its rights under the state's Re-development Law. Media strategies turned public opinion into support for the dining room's services. Community organizing and political strategies translated this public support into political acceptance of a site meeting the dining room's requirement, contrary to the elected officials' initial plan to locate the dining room (if at all) outside of the downtown area.

57. Local opposition can add substantially to the costs of development, "ranging in worst case scenarios from 1% to 14% of total project costs." Non-Profit Development Survey, *supra* note 25, at 9.

58. Because a project manager of a proposed development that would house persons with HIV/AIDS was aware of the rights of its prospective residents, he closely documented a citizen-led commission's deliberations on the issue. When the commission recommended that the elected officials deny the proposed development's application, the project manager successfully challenged the basis of recommendation by a letter referencing the prospective residents' rights and documenting the biased process and reasoning used by the commission.

59. Since any communication about the proposal outside of a closed staff meeting (whether part of a written funding proposal to HUD, oral conversations with staff or neighbors, or an interview with a reporter) may become public, the developer should be careful to ensure that any statement that could become public is consistent with any other communications. Some opponents will jump on any real or apparent inconsistency to demonstrate that the developer cannot be trusted.

60. For example, how a developer describes the population to be served by the proposal in its funding applications to federal, state, and local governments becomes public information for neighbors, the media, and potentially a court. The developer risks charges of duplicity and untrustworthiness if it later tries to describe the population differently to any of these audiences.

61. This CASC project concluded after the publication of CASC & NPH; *see supra* note 14.

62. Initial assessments can begin when the city where the development will occur is known, but full planning is not possible until a specific site is under consideration.

63. It is critical that the right people participate in the strategy meetings. Otherwise, only inadequate planning can occur.

64. See infra notes 69-80 and accompanying text.

65. Usually a second meeting is required when the rest of the information is available for completing assessments and selecting strategies.

66. Sometimes some initial assessments can be performed before the first meeting, e.g., when a developer has recently performed work in the same city.

67. See supra note 59 and accompanying text.

68. See infra Appendix A.

69. This information should be available at the planning counter, in the zoning ordinance and planning codes, or from other public information resources.

70. Note that some states, such as California, require the adoption of a housing element or plan by authorities exercising zoning powers. *See* Cal. Gov't Code §§ 65580 *et seq.* (2002). Jurisdictions that receive certain federal block grants and other housing funds are required to prepare Consolidated Plans (42 U.S.C. §§ 12701 *et seq.,* 42 U.S.C. §§ 5301 *et seq.,* 24 C.F.R. pts. 91 and 570 (2002)).

Developers whose proposals serve the city's stated policies can use this fact to attract support.

71. For a more complete list of potentially useful information, *see* BIC, *supra* note 14, at 21,24. Developer(s) that completed or attempted the last few afford-able housing developments in the city can be an invaluable source of infor-mation and support. They can often identify key community leaders and what their positions are likely to be.

72. Such political intelligence is often available from other developers, local supporters, and allies. If a proposal is likely to be heard before a planning commission and a city council or county board of supervisors, the question should be posed regarding all relevant bodies.

73. In jurisdictions with representative districts, an informal practice is often observed in which other council members defer to the judgment of the repre-sentative in whose district the development would be sited. In this situation, if this person's vote is uncertain, the whole vote is probably uncertain.

74. Some cities, most famously Mt. Laurel, N.J., are willing to expend enor-mous resources and risk significant exposure to litigation in order to exclude affordable housing. However, if land is generally hard to find and a patient seller /owner is committed to enabling a particular site to be used for affordable housing, then it may still make sense to move forward.

75. This article will use the term "city" to refer to any type of municipality that exercises the authority to grant discretionary funding or land use approv-als for a proposed development.

76. For a more complete list of potentially relevant information, *see* BIC, *supra* note 14, at 31-39.

77. This inquiry includes a host of questions. For example, is there already an organized group? How involved is this group and what stance has this neighborhood taken toward previous developments, especially any similar to the proposal? Are there any existing affordable housing developments of any kind there? What is the reputation of each and its relationship to the neigh-borhood? What are the perceived needs of this neighborhood and its relation-ship with the city? For a more complete list of relevant questions, *see* BIC, *supra* note 14, at 25,41-50. There are many sources for this type of information: city planners, local newspapers, organizations' websites, and project supporters who know the neighborhood.

78. For a more complete list of issues to consider, *see* BIC, *supra* note 14, at 69-70. Questions to consider include the following: Is there a reporter regularly covering land use issues, housing issues, or this neighborhood? What potential might there be for pitching a positive story about the organization and its pre-vious work that would run before the current proposal becomes public? In one case in which CASC assisted, the developer subscribed to the local community newspaper and learned valuable lessons from the published mistakes of a simi lar development.

79. One relevant question would be, to what degree are the city's planning/ housing department and legal counsel likely to be aware of the developer's and prospective tenants' rights under the fair housing law in the land use approval process? For a more complete list of issues, *see* BIC, *supra* note 14, at 59-67.

80. While federal fair housing law will be applicable in all states, other legal rights will vary by state as well as by the type of development/population to

be served. California, Florida, New Jersey, Connecticut, and Rhode Island provide more protection for affordable housing than do most other states. For resources on applicable laws, *see infra* notes 128-30,150-51, and accompanying text.

81. In many cases, the attorney would remain in the background reviewing documents, debriefing with the developer after meetings, and consulting with the developer regarding its options rather than serving as a public represen tative of the proposal.

82. Another possible metaphor is that planning to obtain a land use ap-proval is similar to preparing a political campaign in which the candidate will consider his or her options for each of the strategies discussed.

83. In such a case, developers might ask themselves the following types of questions. How is this neighborhood different from previous ones in the com-munity where we have already developed? Are there new staff, new decision makers, or new reporters who do not know the organization and its work? Are there any new neighborhood or community groups likely to get involved as supporters or opponents because of the specifics of this proposal? What can be learned from our last experience?

84. Suppose a developer requires a conditional use permit for a tax-credit multifamily proposal. A hypothetical set of strategies may be as follows. Be -cause the developer believes that the final vote is uncertain, it may select a political strategy to focus on two decision makers whose previous votes or reputation suggests that they are skeptical about affordable housing. For its community support strategy, it may decide to identify supporters either from or with strong ties to the business community as allies who will meet with the decision makers on a tour of the developer's previous developments. To deal with likely community opposition, it may decide to recruit supporters from a church community near the site to help it perform a door-to-door canvass of the neighborhood followed by one-on-one meetings with key neighborhood leaders. On legal issues, if the city has not previously considered a similar development, the developer may offer to provide information about applicable antidiscrimination laws to the planning staff and a friendly council member with the suggestion that it be passed on to the city attorney. For a media strat-egy, if the local media appear to focus on community conflict from a neigh -borhood perspective, the developer could decide to invite a reporter to a lunch or on a housing tour that a local supporter would attend and provide brief factual background materials (e.g., its track record and emphasizing how the current proposed development serves city-articulated goals) at that meeting. While this is an obviously incomplete plan, it demonstrates the proactive, com-prehensive, collaborative, and strategic aspects of the MLO approach compared to a typical "community outreach plan" of scheduling a community meeting a few weeks before the public hearing.

85. The planning process should also be informed by a sense of the orga-nization's own strengths and weaknesses in managing local opposition, in-cluding the quality of its current relationships with each of the critical audi-ences. Strengths (e.g., a charismatic executive director) should be used, and weaknesses (e.g., lack of engagement with community leaders) should be ad-dressed, for example, by recruiting supportive community leaders to join the board of directors.

86. Many prudential judgments are required, but the contention of the MLO approach is that *enough* information can be obtained so that the developer can

make reasonable judgments that generate valuable benefits to it in the approval process.

87. For example, one developer that endured a bruising local opposition battle to obtain approval for a group home for mentally disabled adults recounted to the author that things could have gone quite differently if she had been aware that a mentally ill person had attacked a neighbor in a very publicized event a year before her proposal. This information could have been discovered easily, and the developer could have avoided several decisions that became serious missteps.

88. For *example,* if a local election is looming, *depending* upon the political situation, it may be wise to either delay the proposal until after the election or try to move it quickly so that it can be decided before the election. It is almost always unhelpful for a particular affordable housing development to become an election issue.

89. See Appendix A.

90. For example, a meeting with a likely potential ally might be scheduled in the same week as the preparation of a spokesperson for potential media coverage. *See* Appendix A.

91. This description is adapted from CASC & NPH, *supra* note 14, at 9.

92. Sometimes supportive officials will help the developer with this assessment and provide suggestions.

93. Usually decision makers are balancing a wide variety of conflicting community needs and interests, including the need for affordable housing. In general, members who are elected "at large" are less vulnerable to a particular neighborhood's complaints than members elected in representative districts. Some communities have a tradition of being "neighborhood-focused." Elected officials in communities with organized neighborhood groups that regularly monitor and participate in land use issues are usually very sensitive to these groups' concerns. Sometimes this responsiveness borders on illegal delegation of land use authority to the neighbors.

94. See, e.g., Cal. Gov't Code §§ 54950 *et seq.,* popularly known as the "Brown Act."

95. This description is adapted from CASC & NPH, *supra* note 14, at 11.

96. As the book and movie *Six Degrees of Separation* contends, seemingly different people are only a few relationship links away. Mining the relationship networks of staff, the board of directors, funders, and other supporters can often identify very useful contacts. In one case, the sister of a hired community organizer lived in the neighborhood of the site and agreed to host a pivotal small group meeting. In another case, a church friend of a supporter was a member of the Chamber of Commerce of a small city where a development was planned; she agreed to write a letter and testify on behalf of the development.

97. See generally BIC, *supra* note 14, at 31-39.

98.   See id. at 37.

99. This description is adapted from CASC & NPH, *supra* note 14, at 13.

100. This article assumes that the developer will require some form of local government approval that will trigger a notification requirement to property owners (typically within 300 feet of the site).

101. A developer whose land use entitlements are certain but that must seek funding from a local government faces a particularly difficult decision. Neighbors upset over being excluded from input on the siting decision may organize to attack funding sources.

102. Some housing advocates object in principle to developers performing any outreach to neighbors that is not legally required. Moreover, they question whether any required notification or outreach is not a violation of fair housing laws.

103. See generally BIC, *supra* note 14, at 41-44.

104.   See id.

105. The MLO approach's assumption and CASC's experience are that while there are often some neighbors who will become implacable opponents (although it may be impossible to know at the first meeting), there are often many others who can be reassured enough so that they will not actively lobby against the proposal. When a developer treats skeptical but reasonable neighbors as "opponents," it loses the opportunity to reassure them, and increases the tendency that they will ally themselves with more vociferous and less reasonable opponents.

106. For example, the standard open community meeting has the benefit of being familiar and easy to organize, but significant drawbacks include the low quality of public conversation likely to occur and the developer's unintentional assistance in organizing its opponents by drawing them together in one time and place. In contrast, door-to-door canvassing is time-consuming, but gives the developer the opportunity to present itself and the proposal in a more personal way, and to create direct, constructive relationships with would-be neighbors instead of adversarial ones mediated by the leadership of an organized opposition group.

107. For example, the Community and Environmental Defense Services organization counsels opponents to hold an open community meeting as an organizing tool. *See* PRESERVING NEIGHBORHOODS & THE ENVIRONMENT, *supra* note 14, at 7.

108.   See BIC, *supra* note 14, at 49-50.

109. Sometimes sophisticated opponents will use traditional land use concerns to delay or stop a proposal that they object to for other reasons, e.g., bias toward prospective residents.

110.   See BIC, *supra* note 14, at 49-50.

111. An exception to this rule may be a situation in which the developer documents the course of its negotiations to demonstrate that an opponent's stated concerns are endless and ever changing, so that a decision maker could draw the inference that something else is motivating the opponent. In this case, the negotiations may be useful to demonstrate the developer's good faith to a wary decision maker.

112. This includes skills in educating the community about design options and their consequences in a sensitive manner as well as meeting process skills. In one case where neighbors were upset about the proposed density of a development, a skilled architect used a charette process to pose trade-offs with density, on-site parking, open space, and building type. In the end, the community supported a higher density because it appreciated the positive benefits that it would bring.

113. There may be significant payoffs for local leadership in being seen as "leading the charge" to protect the neighborhood against any unwanted development. There is the risk of a potential loss of goodwill or reputation in the eyes of city leaders if a certain neighborhood is always seen to oppose proposals. However, there could be an offsetting benefit to the neighborhood because this reputation will have a deterrent effect.

114. This description is adapted from CASC & NPH, *supra* note 14, at 15.

115. See, e.g., RICHARD BABCOCK, THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES (1966); RICHARD BABCOCK , THE ZONING GAME REVISITED (1985).

116. The use of Strategic Lawsuits Against Public Participation (SLAPP) are not recommended. These lawsuits and anti-SLAPP laws are beyond the scope of this article.

117. This section assumes that the developer has conducted the planning process described, *supra* notes 62-90 and accompanying text. Such a developer is aware of its rights and the rights of its prospective residents and has assessed the likelihood of serious disregard for those rights by the local government. Many developers are unaware of these rights. A later section of this article *(see infra* notes 147-59 and accompanying text and notes 150-51) addresses an attorney's role in helping his or her client understand their rights, how to spot and document potential legal violations, and when to retain a land use lawyer for representation in getting the approval. Another section highlights potentially relevant laws *(see infra* notes 127-29 and accompanying text and notes 150-51).

118. In the author's experience, compared to for-profit developers, non-profits rarely mention, much less assert, their property rights as owners of land.

119. See Ben Field, Why *Our Fair Share Housing Laws Fail,* 34 SANTA CLARA L. REV. 35, 50-53 (1993) (discussing reasons why developers do not bring lawsuits to enforce California's fair share housing law).

120. Some authors do not make clear distinctions between local opposition that will generally be protected by the First Amendment and actions that are likely to be actionable as discrimination. *See* Jennifer Honig, *Advocating for Housing for People with Serious Psychiatric Disabilities,* 8 J. of AFFORDABLE HOUSING AND COMM. DEV. L. 336, 348 ("[S]ome forms of discrimination may be easily detectable (such as neighbors protesting the siting of a group home in their community). . . ."). For a thoughtful reflection on this issue, *see* Michael Allen, *Making Room at the Inn: Civil Rights and Inclusive Siting Practices,* 8 J. of AFFORDABLE HOUSING AND COMM. DEV. L. 115 (1999).

121. See, e.g., U.S. Housing Discrimination Greatly Underreported, REUTERS NEWS SERVICE, Apr. 3, 2002 (while the National Fair Housing Advocacy Alliance compiled 24,000 complaints about housing discrimination in 2001, the U.S. Department of Housing and Urban Development "estimates 2 million people experience some form of [housing] discrimination based on race, disability, national origin or for other reasons . . .").

122. On the other hand, an established developer with substantial resources and a well-documented track record may be best placed to challenge an exclusive jurisdiction for the benefit of other affordable housing developers in the region.

123. Typically, legal services attorneys, fair housing groups, and some private law firms are familiar with the relevant laws.

124. See, e.g., options discussed *infra* at notes 125-130 and accompanying text.

125. The answers to these strategic issues will largely determine if and when the developer should retain a land use attorney.

126. Because it appeared that many planning directors and city attorneys in the San Francisco region were unfamiliar with important applicable laws, CASC conducted two training sessions for these groups. Because the training was conducted outside of the context of any particular siting issue, it provided

a safe, open environment for participants to learn about legal and planning issues related to the siting of affordable housing and to discus their own questions and concerns. The trainers used the opportunity to prepare and distribute useful technical assistance materials to participants. Such training can pave the way for later assertions of legal rights without litigation.

127. For example, in California and some other states, "six and under laws" (e.g., California Health and Safety Code §§ 1267.8, 1566.3, and 1568.0831 (2002)) require local governments to treat state-licensed congregate care homes that will house six or fewer residents as "single-family housing" for purposes of applying the local planning and zoning laws. In one case, upon being informed of this law and its clear application to a proposal, a council member in whose district the group home was proposed informed upset neighbors that the city could not require community notification or a public hearing of any kind on the proposal. Laws providing affordable housing with exemptions from certain state-mandated environmental review are another example of laws that are generally clear in their application. *See, e.g.,* California Public Resources Code §§ 21080 *et seq.* (2002).

128. The federal Fair Housing Act (FHA) (42 U.S.C. §§ 3601 *et seq.,* or "Title VIII") makes it illegal for local governments and individuals to deny or "to otherwise make unavailable" housing to persons based on race, color, religion, sex, familial status, national origin, or mental or physical disability. The Americans with Disabilities Act (ADA) (42 U.S.C. § 12210 *et seq.* (2002)) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 1691 *et seq.* (2002)) also prohibit discrimination by local governments and others against persons with disabilities. In addition, the FHA, ADA, and section 504 require local agencies to make "reasonable accommodations" for the needs of disabled people.

129. Many such summaries are available. For California's laws, *see* LAWS AFFECTING LOCATION AND APPROVAL, *supra* note 14. *See also* THE NIMBY REPORT (Winter 1999) and the special supplement to the federal Fair Housing Act. For information about laws protecting the rights of persons with disabilities, *see* BAZELON CENTER FOR MENTAL HEALTH LAW, WHAT "FAIR HOUSING" MEANS FOR PEOPLE WITH DISABILITIES (1999) (hereafter, BAZELON CENTER, FAIR HOUSING), and BAZELON CENTER FOR MENTAL HEALTH LAW, DIGEST OF CASES AND OTHER RESOURCES ON FAIR HOUSING FOR PEOPLE WITH DISABILITIES (2000) (updates on these publications and other resources can be found at www. bazelon.org).

130. Common violations include requiring community notification for affordable housing developments that is not required of other similar housing developments, requiring additional land use approvals, attaching illegal conditions, and denying permits that should be approved.

131. While fair housing laws may in some circumstances be enforced against the neighborhood opponents themselves, this action implicates very complex and sensitive First Amendment concerns. This article only considers enforcement actions against potential local government violations.

132. Following are three examples from CASC's experience.

Opponents to a proposed transitional supportive housing for persons with HIV /AIDS (New Hope Housing) were pressuring the city to impose an unwarranted CUP. An attorney retained by CASC drafted a demand letter explaining the violation and the city withdrew the requirement.

In a similar case, after the Planning Commission had decided that a transitional residence with supportive services for women and children (Center

Point, Inc.) did not require a CUP, opponents hired an attorney who appealed the decision and demanded that the city require a CUP. The political winds and a wavering city attorney seemed to lean toward requiring it. After CASC's attorney countered with a legal memorandum and demand letter, the city firmed up its position that a CUP would not be required.

In another case, the project manager for a special needs project serving persons with HIV/ AIDS was alerted to likely opposition and potential legal issues. His plan was to document the public processes carefully and then assert the developer's legal rights only if needed. A citizen committee appointed by the county delivered a biased and procedurally defective recommendation to the county Board of Supervisors to deny the approval. Using his documentation and citing the law, the project manager himself drafted a letter to the Board of Supervisors detailing the events and his concerns (but not threatening litigation). The board refused to accept the citizen committee's recommendation and approved the development.

133. This puts a premium on early identification of potential legal violations, a skill that comes from the research and planning stage; *see supra* notes 61-90 and accompanying text.

134. Opponents tend to characterize a developer that asserts its rights as a "big bad bully developer forcing a project down the neighborhood's throat." Sometimes elected officials will adopt or echo this theme. The developer will want to explain that it does not want to bring a lawsuit, but only wants to build housing and is open to resolving any legitimate issues of concern, but it is unwilling to sacrifice its own or its prospective residents' housing rights.

135. This may be done by distributing an easy-to-understand handout and ensuring that the development's spokesperson (who should not necessarily be the attorney) is articulate on this issue. If a local newspaper has been regularly covering the conflict, it may be appropriate to request an editorial board meeting or to offer substantial background information on the applicable law.

136. In some cases supporters want to or are willing to play the role of "bad cop" in criticizing the local government so that the developer may retain its cordial relations with local officials. If the relationship between the developer and the supporting group is publicly known to be close, the city is likely to see through this tactic. However, in some situations it may create the potential for speaking with two (coordinated) voices, saving face for the city and making settlement easier for the city by being less vulnerable to the charge that it caved in under advocates' pressure.

137. One of the profound challenges of managing local opposition in the long run is for developers and housing advocates to appreciate how these expressions and expectations reveal not only parochial and selfish attitudes but also a laudable sense of community and civic mindedness (e.g., leaders or community groups that have worked to improve their neighborhood and overcome obstacles). The challenge for affordable housing developers is to learn to harness the civic dimension of this sentiment to *support* the development of affordable housing to meet the community's needs.

138. Law's educative function (or, more grandly, moral suasion) is more achievable outside of the context of a particular siting, but (paradoxically) it is difficult to engage an overstimulated populace about fair housing laws when nothing appears to be at stake.

139. In one instance, after an affordable housing development was approved, in part because of the developer's appeal to the fair housing law, op-

ponents later sought to pressure the city to sponsor state legislation to revise and weaken the law.

140. For example, if the opponents are home owners, one could discuss the application of the fair housing law to prevent discrimination by lenders in the lending context.

141. See Allen, *supra* note 120.

142. This description is adapted from CASC & NHP, *supra* note 14, at 17.

143. There are numerous tactical issues and tasks concerned with media and public relations. *See generally* BIC, *supra* note 14, at 69-70. For example, the developer should prepare easily faxable and e-mailable materials concerning its track record, the community's need for the current proposal, basic information about the proposal (e.g., number and kind of units, who will be served, and the planned design), lists of endorsements and supporters, and a list of other persons whom a reporter could contact for more information. The developer should identify and prepare interviewees who can help support the developer's story (e.g., respected community leaders familiar with the developer's work, successful former tenants, or neighbors of existing developments) and provide easy access to other supportive information (e.g., property value studies). Often supporters can play an important role in cleaning up after inaccurate or unfair stories by writing to or calling the editor.

144. For example, a developer that has a successful development already located in a city may seek coverage about its success prior to going public with another development in the same city.

145. A contingent strategic issue is how the message may change if legal strategies, particularly enforcement, are used. *See supra* notes 130-141 and accompanying text.

146. On this view, the planning efforts themselves bear fruit even if the initial plan is not actually implemented. Consider the views of Miguel De Cervantes ("To be prepared is half the victory.") and Dwight D. Eisenhower ("Plans are worthless. Planning is essential.").

147. See supra notes 125-130 and accompanying text.

148. This section concerns attorneys representing developers in the process of obtaining development approvals. It does not address situations in which the local government has granted the approval but opponents sue the local government and the developer is a real party in interest in the ensuing litigation. Also, because this article focuses on using the law *without* litigation, it only minimally addresses the situations in which the local government issues a final decision denying the proposal, forcing the developer to face the difficult decision about whether to seek legal relief.

149. Federal and state constitutional causes of action (e.g., substantive due process, procedural due process, and equal protection claims) may also be available.

150. For a review of California's laws, *see* LAWS AFFECTING LOCATION AND APPROVAL, *supra* note 14. For New England states, *see* Vol. 22, Issue 2, and Vol. 23, Issue 1, of the WESTERN NEW ENGLAND LAW REVIEW (2001) (publishing papers presented at the 1999 Increasing Affordable Housing and Regional Housing Opportunity in Three New England States and New Jersey symposium); *see generally* Paul K. Stockman, Note, *Anti-Snob Zoning in Massachusetts: Assessing One Attempt at Opening the Suburbs to Affordable Housing,* 78 VA. L. REV. 535 (1992); Julie M. Solinski, *Affordable Housing Law in New York, New*

Jersey, and Connecticut: Lessons for Other States, 8 J. of AFFORDABLE HOUSING AND COMM. DEV. L. 36 (1998). Regarding Florida, *see* Charles E. Connerly and Marc Smith, *Developing a Fair Share Housing Policy for Florida,* 12 J. of LAND USE & ENVTL. POLY 63 (1996), and FLORIDA HOUSING COALITION, CREATING INCLUSIVE COMMUNITIES IN FLORIDA, 2002 (a guidebook for local elected officials and staff on avoiding and overcoming local opposition to affordable housing). *See also* RICHARD DRDLA ASSOCIATES, INC., STATE, PROVINCIAL AND METROPOLITAN HOUSING MANDATES (2001) (analyzing efforts in New Jersey, California, Massachusetts, Connecticut, two Canadian provinces (British Columbia and Ontario), and two metropolitan areas (Portland, Oregon, and Minneapolis/St. Paul, Minnesota)).

151. See, e.g., Peter W. Salsich Jr., *Federal Influence on Local Land Use Regulations: The Fair Housing Act Amendments,* 9 J. of AFFORDABLE HOUSING & COMM. DEV. L. 228 (2000) (summarizing requirements of Act and federal case law). For the application of the fair housing law to persons with disabilities, *see* BAZELON CENTER, FAIR HOUSING; CAMERON WHITMAN & SUSAN PARNAS, LOCAL OFFICIALS GUIDE: FAIR HOUSING: THE SITING OF GROUP HOMES FOR THE DISABLED AND CHILDREN: LOCAL OFFICIALS GUIDE (1999); U.S. DEPARTMENT OF JUSTICE & U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT: GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT (2000) (presenting key issues in a question-and-answer format).

152. In past years, HUD has funded local fair housing groups to provide such training. Regional HUD offices should be aware of such training opportunities.

153. *See supra* note 150 for some resources.

154. *See, e.g.,* THE NIMBY REPORT (Winter 1999). The law offices of Goldfarb & Lipman prepare and regularly update a brief memorandum on California's proaffordable housing laws. *See also* LAWS AFFECTING LOCATION AND APPROVAL, *supra* note 14.

155. Some of the materials mentioned in *supra* notes 129 and 151 are also appropriate for developers.

156. For example, in one of CASC's cases, a city planned to require that a small transitional house for persons with HIV/AIDS obtain a CUP. A letter explaining the law exempting the proposal from such a requirement was sufficient for the city to withdraw it.

157. *See supra* note 12 for resources identifying risk factors.

158. Usually an office of the U.S. Department of Housing and Urban Development or a state agency will handle fair housing administrative complaints.

159. *See supra* notes 134-140 and accompanying text regarding integrating legal actions with other strategies. In one case, the developer organized weekly meetings of the key strategy group and biweekly conference calls with its attorneys to ensure sufficient coordination. This is particularly challenging if there is an independent advocacy group supporting the development because the developer will not control this group's strategies, tactics, and public statements. Executing a "good cop-bad cop" strategy requires sophistication, trust, and communication among all of the allies as well as clear common goals and a mutual understanding of the risks of litigation.

160. *See* BIC, *supra* note 14, at 13-14; *see also* Allen, *supra* note 120.

161. See, e.g., resources listed at *supra* notes 150-151 and U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FAIR HOUSING PLANNING GUIDE (vol-

umes I and II) (1996). Regarding fair housing and persons with disabilities, *see* WHITMAN & PARNAS, *supra* note 151 (a unique presentation coauthored by advocates and municipal representatives).

162. *See supra* notes 128-130 and 150-151 and accompanying text.

163. After the City of Portland, Oregon, experienced fair housing challenges to its zoning code, it initiated a thorough revision process to bring its ordinances into compliance and later won a national award for its efforts. In one CASC case, after attempting to apply a questionable provision of its planning code to a housing proposal intended for persons with disabilities, the City Council directed its attorney to review the code's compliance with the fair housing law.

164. Obviously, this suggestion puts an attorney in a delicate situation. Fair housing law can evoke hostile responses from elected and appointed officials. Also, while some clients will appreciate their attorney taking such initiative, others will consider it unwelcome and inappropriate. In-house counsel are likely to be better placed to raise these issues strategically because of their access and familiarity with the client. Nevertheless, this article contends that such work is an important service to the client.

165. *See supra* note 70 and accompanying text.

166. *See id.* Also note that a Consolidated Plan must include a certification that the jurisdiction will "affirmatively further fair housing." To make this certification, the government entity must have prepared and be implementing an Analysis of Impediments to Fair Housing (AI). The AI must identify barriers to equal housing opportunities being available to all groups protected under the Fair Housing Act and specify appropriate actions to overcome the effects of any impediments identified through the analysis. *See generally* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FAIR HOUSING PLANNING GUIDE (Volumes I and II) (1996).