Inclusionary Zoning: Carrot or Stick?

by

James Pennington
Bachelor of Architecture, 1996
Montana State University

Submitted to the Department of Urban Studies and Planning
in Partial Fulfillment of the Requirements for the Degree of

Master of Science in Real Estate Development

at the

Massachusetts Institute of Technology
September 2002

©2002 James Edward Pennington. All rights reserved.
The author hereby grants to MIT permission to reproduce and to distribute publicly paper and electronic copies of this thesis document in whole or in part.

Signature of Author:  

James E. Pennington
Department of Urban Studies and Planning
August 2, 2002

Certified by:

Gloria Schuck
Lecturer,
Department of Urban Studies and Planning
Thesis Advisor

Accepted by:

William C. Wheaton
Chairman,
Interdepartmental Degree Program
in Real Estate Development
Inclusionary Zoning: Carrot or Stick?

by

James Pennington

Submitted to the Department of Urban Studies and Planning on August 2, 2002 in Partial Fulfillment of the Requirements for the Degree of Master of Science in Real Estate Development

Abstract

The public sector has become increasingly attracted to using regulatory mechanisms that stimulate the private production of affordable housing without direct subsidies. Inclusionary zoning ordinances in many U.S. cities, towns, and counties now require developers of market-rate housing projects, in certain circumstances, to rent or sell a percentage (often 10% to 20%) of the units at affordable prices without any financial subsidy from the government. Although inclusionary zoning is being adopted widely, very little research has been conducted regarding the arrival of the newest stakeholder in the provision of affordable housing: the private, for-profit developer. Although some for-profit developers already have a great deal of experience with affordable housing as a result of federal subsidy or tax credit programs, in many jurisdictions all developers of housing are now dealing with the complex issues of affordable housing, not just those developers who have developed an affordable housing expertise in the past.

This research examines information obtained in interviews with for-profit developers to determine the response these developers have to such a policy. This research also explores the practical application of this policy and how it augments, alters, or interferes with the standard practices of housing developers. This research concludes with evidence that there are no social barriers within the development industry that prohibit the viability of inclusionary zoning. However, there is evidence of practical limitations to its application and a need for greater flexibility in its terms and predictability in its application in order to avoid restricting the production of housing altogether and exacerbating the housing crisis. This study also suggests further research that might be undertaken to maximize the effectiveness and efficiency of this important and potentially broad-reaching policy.

Thesis Supervisor: Gloria Schuck
Title: Lecturer, Department of Urban Studies and Planning
Acknowledgement

My special thanks go to my wife Jessica and daughter Maggie, who endured my taking a year out of our busy lives to pursue this graduate degree, with all of its financial and personal costs. Special thanks also are extended to Jessica’s parents, Charlie and Linda Claeys, who provided me with unwavering love and support from the moment Jessica brought me through the door. My thanks go to my own parents, Lynn and Jim Pennington, who set me on the right track in the first place, allowing me to believe that I could pursue any endeavor and never doubting my abilities.

My thanks also go to my classmates at the MIT Center for Real Estate. I have never been associated with such a high-caliber group of individuals, and I am honored to be a member of the class of 2002 with you. I appreciate everyone involved with the MIT Center for Real Estate for providing the perfect educational setting for exploring all of the many facets of real estate.

Gloria Schuck, thank you being a friend and for bearing with me through this project. I can’t imagine having a better guide for this type of work.

Most importantly, I thank the nine interviewees that I enlisted for this research. I appreciate your taking time out of your busy summer to help a neophyte grad student snooping around for information. My only regret is that I cannot credit you personally due to the anonymity I promised you. I learned a lot from my short time with all of you, and I am looking forward to getting to know you all better in the relatively small world of Boston real estate.
Biographical Note

James Pennington is a licensed architect and builder. To date, his career has focused primarily on the issue of housing from many perspectives, including: design, construction, development, finance, economics, and policy. James is currently employed as a project manager by a leading housing developer in Eastern Massachusetts.
# Table of Contents

## Chapter 1: Introduction
- What is Inclusionary Zoning? ........................................... 13
- What is known about Inclusionary Zoning? ............................ 14
- Central Questions .......................................................... 14
- Organization .................................................................... 15

## Chapter 2: Background
- The Primary Motivation Behind Inclusionary Zoning .......... 17
- The History of Inclusionary Zoning .................................. 18
- Variations of Inclusionary Zoning .................................... 20
- The Issues Behind Inclusionary Zoning ............................. 20
- Lens #1: National Policy .................................................. 21
  - Indirect Involvement in Affordable Housing .................... 21
  - Deconcentration and the Mixed-Income Approach ........... 24
- Lens #2: Regional, State, and Local Politics ................. 26
  - Severity of Housing Shortage ..................................... 26
  - Density ......................................................................... 27
  - NIMBYism .................................................................... 28
  - Other Local Affordable Housing Tools .......................... 29
  - Factors Unique to Massachusetts ................................ 29
- Lens #3: Law and the Constitution ................................ 30
  - Constitutional Issues ..................................................... 30
  - Legal Challenges ......................................................... 32
- Lens #4: Economics .......................................................... 33
  - Macroeconomics: Production, Supply and Demand ........ 33
  - The Economic Effect of Inclusionary Zoning ............... 34
- Lens #5: Business ............................................................. 35
  - Why the Business Lens? ................................................ 35
  - Marketing: Product, Price, Distribution, and Communication ... 36
  - Finance: Cash Flow, Return on Investment, and Cost of Capital ... 38
  - Business Strategy and Personal Awareness .................... 41

## Chapter 3: Interviews with Developers
- Methodology ................................................................... 45
  - Selection of Interviewees ............................................. 46
  - Questions and Interview Strategy ................................ 48
  - Limitations of Methodology ........................................ 49
- Presentation of Data ......................................................... 50

## Chapter 4: Analysis and Conclusions
- What does inclusionary zoning mean to for-profit developers? 69
- Is inclusionary zoning a “carrot” or a “stick”? .................. 72
- How do approaches and attitudes vary across firms and across jurisdictions? .................................................. 73
- What are the implications of the answers to these questions? 76
  - Factors To Improve Effectiveness ................................ 76
  - Issues Requiring Further Research ............................... 78
- Final Conclusions ......................................................... 79

## Appendix A: Summary of Categorized Data
- .................................................................................. 81

## Appendix B: Correlations of Categorized Data with Questions
- .................................................................................. 83

## Bibliography
- .................................................................................. 89
List of Figures

Figure 2.1 Optimal FAR for Residential Projects ................................................................. 39
Figure 2.2 Five Competitive Forces That Determine Industry Profitability ....................... 42
Figure 3.1 Summary of Interviewee Attributes .................................................................. 46
Figure 3.2 Matrix of Interviewees by Firm Size and Housing Focus ................................. 47
Figure 3.3 Summary of Interview Questions ...................................................................... 48
Figure 3.4 Who should finance and produce affordable housing? ..................................... 50
Figure 3.5 Will you produce more or less housing overall as a result of inclusionary zoning? 55
Figure 3.6 Who subsidizes or pays for the affordable units? ............................................. 56
Figure 3.7 Is capital more or less costly for mixed-income housing? ................................. 59
Figure 3.8 What resources or people do you consult on this issue? ................................. 61
Figure 3.9 Is inclusionary zoning a carrot or a stick? ......................................................... 67
Chapter 1: Introduction

"In order to be effective as a planner or designer in the housing field, it is vital to understand the nature and motivation of the various actors engaged in putting residential properties in place."


What is Inclusionary Zoning?

Inclusionary zoning is a local zoning law that requires builders of market-rate housing to provide some affordable housing in their projects. The term “inclusionary zoning” is based on the term “inclusionary housing” which is defined by the American Planning Association as a market-rate housing development with 20 percent of units available for low- and moderate-income households (Meck, 2002). Inclusionary housing is often called mixed-income housing. Inclusionary zoning is enacted in order to enforce the production of mixed-income housing without direct governmental subsidies to developers for the loss of revenue due to units sold or rented at below-market prices. However, indirect subsidies in the form of zoning “bonuses” or other incentives are often provided, and the percentage of required affordable units varies (Burchell, 2000).
What is known about Inclusionary Zoning?

Inclusionary zoning is adopted at the local government level. This makes it more difficult to study than past national or state policies. A modest amount research is available on inclusionary zoning’s success at creating affordable housing, but it is not complete since no comprehensive tally of municipalities with inclusionary zoning exists (Herr, 2002; Burchell, 2000). Thirty years since its first use, housing advocates, developers, and policy makers are still debating many aspects of inclusionary zoning, and there are a wide range of views on the policy’s strengths, weaknesses, and limitations (Schnare, 2000).

Regardless, of many unanswered questions, inclusionary zoning is spreading. It is not the primary housing policy in place today, but if it continues to spread, it could become the most significant stimulant of new affordable housing in some states (Ziegler, 2002). For example, in more than one third of cities and towns in Massachusetts, some form of zoning incentive is now in place to produce affordable housing (Herr, 2002).

Central Questions

Before inclusionary zoning will become a centerpiece of policy, there is a continued need to address the “troublesome policy questions these requirements raise.” (Conine, 2000, p. 29) Many of these questions result from the fact that inclusionary zoning requires many more for-profit housing developers to provide affordable housing than have done so in the past. This concern is a practical one because many of these developers may be reluctant to develop affordable housing even when incentives, or “carrots” are provided (Bobrowski, 2002). As Jim Stockard, the Curator of the Loeb Fellowship at Harvard writes, “In order to be effective as a planner or designer in the housing field, it is vital to understand the nature and motivation of the various actors engaged in putting residential properties in place.” (Stockard, 2002, p. 1) Despite the critical role of the for-profit developers in the physical implementation of inclusionary zoning, little has been written about their response to the policy in practice.

“Inclusionary zoning only works when the process makes sense – financial and otherwise – to the development community,” writes Mark Bobrowski, an attorney and author of the Handbook of Massachusetts Land Use and Planning Law (Bobrowski, 2002, p. 7). Therefore, this thesis seeks to answer four questions from the perspective of the for-profit developer regarding whether
or not inclusionary zoning "makes sense." Answers are based on data collected in interviews with for-profit real estate developers in Massachusetts, one of the states with the longest experience with this type of policy (Ziegler, 2002). The four central questions of this thesis are:

1. What does "inclusionary zoning" mean to for-profit developers?
2. Is inclusionary zoning a "carrot" or a "stick"?
3. How do approaches and attitudes vary across firms and across jurisdictions?
4. What are the implications of the answers to these questions for the policy?

Organization

Chapter two examines detailed background information about inclusionary zoning thorough five critical "lenses" that may be used to understand the policy's history, purpose, and structure. Chapter three outlines the methodology used to conduct the interviews and presents the information obtained from developers. Chapter four presents analysis of the information obtained and draws conclusions by answering the central questions. Chapter four also suggests additional research that is needed in order to maximize the effectiveness of this important housing policy.
"...if the era of big federal government is over, then advocates for effective housing policy now should refocus their energies on state and local governments and the private sector."


The Primary Motivation Behind Inclusionary Zoning

The fastest growing group of Americans that is having difficulty finding affordable housing is moderate-income working families (McIwain, 2002). Out of the 14 million households with critical housing needs in the U.S., 3 million, or 22 percent, are working families earning more than the equivalent of a full time job at the minimum wage. Furthermore, the rapid increase in this group of people, 17 percent in a two-year period, presents a unique and unprecedented challenge for many regions and municipalities throughout the country (Joint Center for Housing Studies, 2001). A host of other alarming statistics abound, such as the fact that 220,000 teachers, police, and public safety officers across the country spend more than half of their income for housing, and the fact that 51 percent of all working families with critical housing needs own their own homes (Stegman, 2000).

Although the affordable housing shortage is widespread throughout the country, federal subsidies only target low-income households, leaving local governments with the challenge of finding local resources to stimulate the supply of moderate-income housing (McIwain, 2002). A frequently
cited example is the need for affordable housing in exclusive resort communities. Existing residents are typically the employees of local businesses, but when housing costs rise substantially as a result of the influx of wealthy outsiders, they can no longer afford to live where they work (Heid, 1995). In these communities, implementation of affordable housing strategies can be complicated by community resentment, deed restrictions, and abnormally high construction costs (Heid, 1995). Zoning can stimulate construction of worker housing in these communities. The planning commissions of Martha’s Vineyard and Cape Cod, two resort areas in Massachusetts, have sweeping mandates for the use of zoning to require affordable housing (Herr, 2000). The Cape Cod Commission even exempts affordable housing from a strict building permit moratorium aimed at growth control (Houston, 2002).

This is not a problem unique to resort communities, however. In the Boston area, which has the second highest home prices in the nation, 48% higher than the national average in 2000, many communities are scrambling to find housing for teachers, firefighters, and other service providers that are vital to local economies (Moscovitch 2001). Even amidst a mild recession, Boston home prices have held steady (Deakin, 2002). Therefore, it comes as no surprise that local solutions to affordable housing problems have received great attention in Massachusetts, and more than a third of all towns in the state have a zoning mechanism in place to support affordable housing (Ziegler, 2002). Although there are other issues influencing the local adoption of affordable housing initiatives in Massachusetts, as will be discussed later, the struggle to find housing for moderate-income workers is frequently identified as the essential motivator behind inclusionary zoning throughout the country. This was the case in Montgomery County, Maryland, the first local government to use inclusionary zoning nearly thirty years ago (Herr 2002).

The History of Inclusionary Zoning

Inclusionary housing began as an informal housing policy in progressive towns such as Newton Massachusetts as early as the 1960s (Engler, 2002). Inclusionary zoning was first used in Fairfax County, Virginia, in 1971, but this ordinance was overturned by the Virginia Supreme Court two years later, beginning a legal debate over inclusionary zoning that continues to this day and which will be discussed in more detail later in this chapter (Burchell, 2000).

The first successful use of inclusionary zoning occurred in middle-class Montgomery County Maryland in 1974, called the Moderately Priced Dwelling Unit (MPDU) ordinance (Siegel,
Montgomery County’s MPDU ordinance continues to be a frequently cited example of successful inclusionary zoning. The MPDU ordinance required that 12.5 to 15 percent of residential units be affordable in projects over 50 units. Developers were compensated with a density bonus of up to 22 percent when the project had 15 percent of its units affordable (Siegel, 2000).

The MPDU ordinance has produced over 11,000 units of affordable housing in Montgomery County since its inception, making Montgomery County one of the nation’s more racially and economically integrated suburban communities (Rusk, 2000). Two thirds of the affordable homes have been purchased by the community’s young teachers, police officers, retail and service workers, workers that are vital to the vibrancy and economic health of the community (Rusk, 2000). Prior to the MPDU ordinance, employers in Montgomery County had to charter buses in order to bring in low-income employees. With inclusionary zoning in place, this is no longer the case (Siegel, 1999).

Although inclusionary zoning is not the primary mechanism in place to produce affordable housing in the U.S., it has spread widely in the 30 years since its first use. Current programs include: Bellevue, Washington; Boston, Massachusetts, Boulder, Colorado; Fairfax County, Virginia; Highland Park, Illinois; King County, Washington; Santa Fe, New Mexico; and a growing number of jurisdictions in states that have adopted other inclusionary programs such as California, Colorado, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Virginia, and Washington. (Burchell, 2000; Siegel, 2000; Herr, 2000).

Unfortunately, no definitive source or comprehensive national survey exists to accurately to determine the extent of its growth or the degree of variation in its implementation. The local nature of this housing policy makes it extremely difficult to track by conventional methods. Current estimates are that at least 50 to 100 jurisdictions now have inclusionary zoning in place (Burchell, 2000). However these estimates are likely to be very low. A 1999 study by the Massachusetts Housing Partnership Fund found that in Massachusetts alone, more than 100 out of 351 municipalities had some form of inclusionary zoning or other zoning provision explicitly promoting affordable housing (Herr, 2002).
Variations of Inclusionary Zoning

Inclusionary zoning is a local zoning law or ordinance. Therefore, it is shaped by local political and economic issues and has many variations. In most ordinances the percentage required to be affordable is 10, 15, or 20 percent of multi-family or single-family projects for rent or for sale. “Affordable” is typically defined as 30 percent of household income for households with 60, 80 or 100 percent of area median income. Affordable units are often required to be indistinguishable from market rate units and mixed in to the project rather than segregated. Durations for the rent/price restriction vary also, but are often in the form of deed restrictions for long periods of time (from 10 to 50 years). In some municipalities, inclusionary zoning applies to all multi-unit housing projects and is therefore considered mandatory. In other jurisdictions, inclusionary zoning is considered to be voluntary because it applies only to projects over a certain size or to projects that require a zoning variance or special permit. Some jurisdictions allow developers “cash out” (provide money to a trust fund) or build affordable housing off-site. Some ordinances provide additional incentives such as greater allowable density, increased allowable height, tax abatements, “fast track” permitting, and subsidization of infrastructure. (Burchell, 2000; Siegel, 2000; Herr, 2000).

The Issues Behind Inclusionary Zoning

There are many issues that shape inclusionary zoning beyond the primary motivation of providing worker housing. There are also many stakeholders involved, including but not limited to: housing advocates, economists, national politicians, state politicians, local politicians, local civic leaders, developers, lenders, real estate investors, town citizens, neighbors, and, of course, the residents themselves. Each stakeholder may have a different perspective on the issue and a different motivation for supporting or opposing it.

Within each stakeholder group there are also many points of view, or “lenses for analysis”. For example, among developers, the focus of this thesis, there is great variation in points of view. The national managing partner of Trammell Crow, one of the largest developers in the nation, recently stated, “we need a national housing policy requiring every local zoning code [to] provide for inclusionary zoning to provide sufficient affordable housing.” (McIlwain, 2002, p. 1) On the other hand, Kent Conine, the Vice President of the National Association of Home Builders, has
written that “other builders maintain that [inclusionary zoning] imposes significant costs and regulatory burdens on the building industry and further increase[s] the cost of market-rate housing in already costly areas, thereby making housing even less affordable for many families who are not eligible for the units built under the requirements.” (Conine, 2000, p.27) Even policy makers are not in total agreement on the issue of inclusionary zoning and inclusionary housing. While some feel that inclusionary zoning may become the “centerpiece of housing policy” (Ziegler, 2002), others have noted that inclusionary housing mostly ignores the needs of low-income households or the many moderate-income households that are not fortunate enough to be selected to live in this new housing. They argue that government should continue to focus on the needs of low-income households with inclusionary housing playing a lesser role (Calavita, 1997).

These opinions reflect only two of the many different lenses for analysis that can be identified in the literature on inclusionary zoning, policy (what should be done) and economics (what can be done or what will result). It is simply not possible to identify all of the other points of view on this issue. However, this thesis does identify five primary “lenses for analysis” that are recurring themes in the current literature about inclusionary zoning. This remainder of this chapter summarizes each of these lenses:

1. National Policy
2. Regional, State, and Local Politics
3. Law and the Constitution
4. Economics
5. Business

**Lens #1: National Policy**

There are two dominant trends in U.S. housing policy that have directly influenced the evolution of inclusionary zoning:

1. Decreasing direct federal involvement in the production of affordable housing.
2. The deconcentration of low-income households into mixed-income communities.

**Indirect Involvement in Affordable Housing**

U.S. housing policy emerged even before Roosevelt’s New Deal as a result of local activism, the passage of stringent building regulations for low-income households, and numerous model
tenements and industrial villages designed to solve problems related to urban poverty (von Hoffman, 1996). However, during the 1930s the federal government stepped in to play a much larger role. The Great Depression led to the creation of the Federal Housing Administration (FHA) in 1934 and its home mortgage insurance program as well as a variety of other federal agencies such as the Housing Division of the Public Works Administration. The Great Depression also led to the passage of the Wagner-Steagall Act (The U.S. Housing Act of 1937) which created the United States Housing Authority (USHA). By 1942, the USHA had created 100,000 units in over 140 cities when it was folded into the National Housing Authority (von Hoffman, 1996).

After World War II, the 1949 Housing Act was passed with the goal of providing "a decent home and suitable living environment for every American family." Although it took twenty years to produce the 810,000 units intended to be produced in six years, the act provided much more funding to the construction of affordable housing than had been provided in the past (Adnani, 2001). This increase in funding for affordable housing spawned the "visionary" high-rise apartment buildings which became the dominant model of public housing in America during the 1950s. Housing officials in cities such as New York, Philadelphia, St. Louis and Chicago embraced high-rise design with an almost "insane tenaciousness" despite clear evidence of American housing preference for the suburban, single family home (von Hoffman, 1996).

By the mid 1960's, policy makers were struggling to manage the large housing projects they had constructed. Housing officials quickly learned that merely providing urban housing was not a sufficient solution to broader social concerns such as poverty, racism, drug use, mental illness, or naturalization of immigrants. In fact, the large housing projects seemed to make these problems worse. The well-publicized demolition of the enormous Pruitt Igoe Housing Project in St. Louis in the early 1970's, only twenty years after it was constructed became a strong symbol of the failure of large-scale public housing projects and the inability of the federal government to be the primary provider of public housing. In 1973, Richard Nixon placed a moratorium on federal funding for all housing programs (von Hoffman 1996).

Even before Nixon's moratorium, housing advocates and federal policy makers were shifting their focus away from large-scale public housing and toward subsidies for private development of affordable housing. Under President Johnson, the new Department of Housing and Urban Development (HUD) became a cabinet position, and in 1968 the Urban Development Act created
the Section 236 program that reduced interest rates for private developers of affordable housing. Other subsidies such as Section 221(d)(3), Section 8 and the Community Development Block Grant were developed in the early 1970s which offered either project based or tenant based subsidies to private developers of public housing. The 1977 Community Reinvestment Act increased the supply of capital for development of private affordable projects by requiring banks to invest community affordable housing projects (Adnani, 2001). In the 1980s, the Reagan administration continued promotion of Section 8 rental vouchers for tenants as a housing program that would continue avoiding public expenditure on construction of public housing (von Hoffman, 1996).

The Reagan era also was a time of significant revisions to the Tax Code, beginning with the 1981 Economic Recovery Tax Act. In 1986 the Tax Reform Act was passed which reversed some of the very generous tax benefits of 1981 laws but introduced the Low Income Housing Tax Credit (LIHTC). Later acts such as the 1990 National Affordable Housing Act which created the HOME Investment Partnership Program which provides federal funding for state and local programs and the 1998 Quality Housing and Work Responsibility Act of 1998 which instituted a number of reforms including the HOPE VI program targeting the redevelopment of existing public housing projects as mixed income neighborhoods. Additional legislation such as the 1989 Financial Institutions Reform, Recovery and Enforcement Act, the 1992 Federal Housing Enterprises Financial Safety and Soundness Act, and the 1992 Housing and Community Development Act placed requirements on lending institutions, Fannie Mae Freddie Mac, and HUD, respectively, in order to generate more loans for affordable housing. (Adnani, 2001).

During the budget cutbacks of the Reagan administration, community development corporations and other nonprofit groups emerged as leading developers of subsidized low-income housing. Funded at first by foundations and corporations and later by government, these groups produced about 30,000 to 40,000 units of housing annually in the mid 1990s, equal to the levels of production of affordable housing during the 1950s (von Hoffman, 1996). Today, the primary federal affordable programs include the mortgage interest deduction, the Low Income Housing Tax Credit, Tenant-based vouchers and certificates, project-based Section 8, and other programs at restructuring existing federally sponsored housing projects from previous decades (Adnani 2001).
As Alexander von Hoffman of Harvard’s Kennedy School of Government has written, “if the era of big federal government is over, then advocates for effective housing policy now should refocus their energies on state and local governments and the private sector.” (von Hoffman, 1996, p. 442) This shift in focus is already underway. In recent years, the public sector has become increasingly proficient at partnering with private developers with carefully administered RFP processes or at using regulatory mechanisms such as zoning to incentivize the private sector to provide public benefits that were previously provided by government directly (Sagalyn 1997). Indirect federal involvement in production of affordable housing today combined with a lack of sponsorship of any kind to support moderate-income housing has been a primary factor in the increased use local tools such as inclusionary zoning (Mellwain, 2002).

**Deconcentration and the Mixed-Income Approach**

Another prominent theme in national housing policy since the late 1960s has been the deconcentration of low-income households, or the “mixed-income approach.” The mixed-income approach is clearly the dominant direction of U.S. housing policy today, and it has broad political support nationally (Schwartz, 1997). Mixed-income development even has support outside of the traditional housing advocacy groups. For example, the provision of “a broad range of housing types and price levels” is included as one of the principles in the well-publicized “Charter of the New Urbanism” (Chen, 2002, p. 221). Advocates of smart growth and affordable housing have coined the term “fair growth” to emphasize the need for a social equity component in future neighborhood development. They promote the idea that a wide range of housing types should be planned in all communities and that these initiatives should be coordinated in order avoid mere gentrification which typically displaces low-income residents (Fannie Mae Foundation, 2000).

Mixed-income communities and buildings are not a new phenomenon. In the U.S., before the first zoning resolution in New York City in 1916, low- and moderate-income families in communities around the country lived in accessory units, or in what are often called “in-law apartments.” Apartments over garages, in attics, and over small stores and other commercial buildings created a diverse economic character in largely middle-class neighborhoods. Modern zoning did much to eradicate this by separating commercial and residential uses and then by explicitly prohibiting accessory units in residential districts. It is interesting then that zoning is now being used in a very different way to address housing problems (Hare, 1993).
The mixed-income approach gained national attention in 1969 with the landmark *Gautreaux* case, in which the Supreme Court ordered relief from discrimination of black tenants in large Chicago housing projects by the Chicago Housing Authority and HUD. Relief was ordered by the court in the form of 7,100 Section 8 certificates that would create new public housing at “scattered sites” in non-minority communities (Popkin, 2000). Although *Gautreaux* involved housing, it was really “a civil rights, not a housing, initiative.” (von Hoffman, 1996, p. 440) Additional revitalization efforts of failed public housing projects include many more local revitalization projects such as restructuring of the enormous Horner Homes project, also in Chicago. They also include the nationwide HOPE VI program to “demolish and rebuild or substantially rehabilitate deteriorated [public housing] properties and then designate the new or revitalized developments as mixed-income.” (Popkin, 2000, p. 916)

While mixed-income development is still generally agreed upon to be a good thing, some housing advocates have cautioned that overzealous adherence to mixed-income housing without full consideration of all factors can be dangerous (Schwartz, 1997). Alexander von Hoffman warns of “the tendency for housing advocates to view housing policies as panaceas and, in particular, to overstate the importance of environment in determining social behavior... [The] physical environment is only one of a complex of problems.” (von Hoffman, 1996, p.441)

Two leading researchers at the New School for Social Research, Alex Schwartz and Kian Tajbakhsh, have written, “Mixed-income housing represents the current direction of U.S. housing policy, but little is actually known about its social benefits, its costs, and the preconditions for its viability. Until these questions are answered, advocacy of mixed-income housing will be based largely on faith and on dissatisfaction with the previous thrust of housing policy.” (Schwartz, 1997, p. 71)

Other researchers have reiterated the need to continue studying existing mixed-income projects to understand the many complex factors that lead to success or failure. A 1997 study of inclusionary housing in California and New Jersey concludes “that inclusionary housing can and should be part of an overall housing strategy but that it is unlikely to become the core of such a strategy.” (Calavita, 1997, p. 109) As idealistic as mixed-income may be, planners and citizens must not forget that there is still a strong need to help very low-income households, the homeless, and other disadvantaged groups. Inclusionary zoning aimed at moderate-income households will not solve the problems of these households (Khadduri, 2001).
Lens #2: Regional, State, and Local Politics

Inclusionary zoning is adopted by local governments. Therefore, despite the significance of federal policy, local, state and regional forces dominate the political debate on inclusionary zoning. Commonly recurring issues in this local debate include of inclusionary zoning are described below. They include:

1. The severity of housing shortage,
2. Density,
3. NIMBYism, and
4. Other local affordable housing tools.

This section also presents factors unique to inclusionary zoning in Massachusetts, the geographic focus of this thesis.

Severity of Housing Shortage

Inclusionary zoning occurs in regions with the severest housing shortages (Burchell, 2000). Often there demand for moderately priced home is so great that they are allocated in a lottery (Conine, 2000). “It’s a real ice breaker to say ‘did you know that you have to have an income of $92,000 and no debt to buy a basic three bedroom home in Framingham,,” says Reverend Peter Cook, Minister of the Plymouth Congregational Church in Framingham, Massachusetts and Co-Chair of the MetroWest Affordable Housing Coalition, explaining the motivation behind creation of the Coalition which is seeking local government sponsorship of local initiatives to create affordable housing (Cook, 2002).

The magnitude of the problem plays a large role in the public support of the problem. As Buzz Staczynski, the town manager for Andover, Massachusetts, recently stated in a conference on affordable housing, it was “damn hard” for kids (of town officials) out of college to buy houses in the 1980s and it was clear that the town had to get on board the affordable housing train, “because the train will get way ahead of us, and we’ll have to run to catch up.” (Staczynski, 2002) Even exclusive resort communities with significant social resistance will support affordable housing measures when resort area employees can not afford decent housing and the resort can not sustain its economy (Heid, 1995). Busing of service workers from the inner city to the exclusive
neighborhoods of suburban Montgomery County, Maryland was identified as a primary
motivating factor for the adoption of inclusionary zoning there in the mid 1970s (Siegel, 1999).

Density

Another common local theme is density. For legal reasons to be discussed in more detail later in
this chapter, it is best for municipalities to offer incentives in zoning such as increased allowable
density (also called density “bonuses”) or other relaxed regulations. Increased density is very
appealing to developers because it increases the amount of potential revenue from a piece of land.
When density bonuses are allowed, then the community has effectively provided a subsidy in the
form of denser development. In fact, density bonuses may increase the developer’s profits
(Tetreault 2000). Not surprisingly, a recent housing policy statement published by the National
Association of Home Builders calls for increased density as an important factor in facing
America’s housing Challenges in the twenty-first century (National Association of Home
Builders, 2000).

For many, increased density is considered to be a good thing. For example, the “Charter of the
New Urbanism” includes a goal of making cities more compact, primarily in order to make
neighborhoods more pedestrian and transit oriented and less car dependent (Dutton 2000). Some
see inclusionary zoning with density bonuses as a step toward reducing sprawl (Burchell, 2000).
However, increased density is more frequently resisted by most towns for several reasons:

1. Low density zoning has been used as a tool to keep many communities economically
   exclusive by requiring large parcels of land per housing unit. Large lot sizes have also
   been encouraged in some towns because they increase the tax base without increasing the
   amount of town services required. For these reasons, this method of zoning has
   frequently been called “exclusionary zoning,” “snob-zoning,” or “fiscal zoning” (Collin,
   1995). This method of zoning sets abnormally high prices per housing unit, but
   abnormally low prices per acre of land since lower-income people might be willing to
   live at higher densities if they are allowed to do so (Wheaton, 1996).

2. Most people’s natural preferences are to live at lower density if financial constraints are
   not a problem. The early planners of large federal housing projects ignored this aspect of
   American psychology (von Hoffman, 1996). Some recent demographic research of the
   aging baby-boomer population suggests that consumer preferences for higher-density

27
environments is growing, but this still represents the minority view (Myers, 2001). The issue of density will be discussed later in this chapter as a factor in marketing projects.

3. Density is often perceived to be in direct competition with open space and the aesthetic character of towns. In fact, aesthetics is often cited as the number one concern of residents contemplating higher density development (Houston, 2002). The irony is that as cities and towns inevitably grow, open space will only be preserved if residential density is increased. The only alternative is zero growth.

4. Multi-family properties have a particularly bad rap in most communities. Although aesthetics is often spoken of as the primary motivation of opposition to higher density, the common fear that multi-family buildings will introduce “undesirable” residents to a community may be the greatest reason for resistance (Houston, 2002).

5. Increased traffic congestion is often cited as an undesirable byproduct of increased density (Houston, 2002).

**NIMBYism**

NIMBYism is an acronym for “Not in my backyard.” The roots of NIMBYism are in people’s fear of projects that “will adversely affect the growing value of their homes – for most of us the largest single component of our net worth.” (Perry, 2002, p. 2) NIMBYism is characterized by “myths” about certain types of development, and these myths often are regarding property values, traffic impacts, and fiscal impacts to educational systems (Houston, 2002). Regardless of the rationale behind it, NIMBYism has become a symbolic term to describe the increasing difficulty developers and public entities have gaining public support and approval when necessary for controversial or unpopular projects. Researchers and housing advocates have tried to disprove many of the myths of NIMBYism with empirical evidence. One example of this is a recent study by the Innovative Housing Institute which showed that there was no difference in pricing of houses near subsidized homes compared to houses that were not near subsidized units in Montgomery County, Maryland and Fairfax County, Virginia (Siegel, 2001).

A significant advantage of inclusionary zoning over past policies is its affect on NIMBYism. NIMBYism can prevent inclusionary zoning from being adopted in the first place of course, but once adopted, inclusionary zoning can offer significant political advantages to developers. First inclusionary zoning explicitly approves of certain types of controversial projects making objection more difficult. Second, new market rate units are often created and sold at the same
time as the affordable units. In this case, NIMBYism is shifted from a political risk with existing residents to a marketing risk for future residents (Siegel, 1999).

Other Local Affordable Housing Tools
Inclusionary zoning is hardly the only tool available for state and local governments to increase the amount of affordable housing in a community. In fact, the shortage of federal funds to solve these problems is sparking a great deal of creativity at the local level (Houston, 2002). Other ideas include: linkage fund programs; tax-increment financing; conversion of underutilized municipal properties into housing; town purchase of deed-restriction of existing moderate-income housing slated for “tear-down” and redevelopment into high-end housing; relaxation of other restrictions on construction such as exempting affordable housing from growth restrictions; and partnership with private developers through RFP processes that include affordable housing (Houston, 2002). Of course, state and local governments can contribute funds directly to create affordable housing or allocate portions of federal block grants toward affordable housing, but this only reduces funds needed for other services. Inclusionary zoning is just one of many tools, but it has the primary advantage of providing housing at little or no cost to local government (Burchell, 2000).

Factors Unique to Massachusetts
While Massachusetts is one of the oldest states to have inclusionary housing policies in place, it is also one of the first to have a state law that exempts affordable housing development from unreasonable local zoning requirements (Ziegler, 2002). The law is called “Chapter 40B.” It is also frequently called the “Comprehensive Permit Law” and the “anti-snob zoning law.” Enacted in 1969, Chapter 40B allows developers, in towns with less than 10 percent of total housing qualifying as affordable, to bypass all local project approvals when their projects contain at least 25 percent affordable units (Engler, 2002). When developers include 25 percent affordable units in their project in these towns, they can apply to the state for a “comprehensive permit” that overrides local regulations. In Massachusetts, affordable housing is the major exception to the dominant local control of land use, and most 40B projects are approved at the state level regardless of their variance with local zoning concerns including density (Herr, 2002).

Regardless of the severity of housing shortages in a town, this state law creates an incentive for towns to promote affordable housing on their own terms since the state law gives developers the ability to override their authority. “40B projects,” as they are often called, may not be what is
best for a town for a variety of reasons. Therefore 40B serves as a “stick” in place to force towns to work toward having at least 10 percent of its housing stock affordable as soon as possible. As Mark Siegenthaler, a selectman from Bedford, Massachusetts said, “There is no motivation like 40B to make a community look at affordable housing and decide what they really want.” (Siegenthaler, 2002)

Therefore, inclusionary zoning is a common tool employed by Massachusetts towns with less than 10 percent affordable housing. If used correctly, inclusionary zoning can help towns increase the percentage of affordable housing on their own terms since the affordability requirement is typically lower. However, inclusionary zoning can not be too restrictive. If inclusionary zoning requires too much affordable units or does not provide enough density bonuses, developers may simply increase the affordable component to 25 percent in order to trigger 40B and increase the project density well beyond what may be desirable by the community (Perry, 2002).

Although Massachusetts is among the first states to establish a state-funded housing program and to provide state subsidies for the development of affordable rental housing, and despite the fact that virtually all cities and towns in metropolitan Boston have now approved the construction of low-income housing, Massachusetts is still one of the most expensive areas in the country, and gains in affordable housing inventory have “largely slowed to a crawl.” (Ziegler, 2002, p. 1)

Lens #3: Law and the Constitution

Constitutional Issues

“Because it has yet to endure a robust, comprehensive constitutional review in court, and because it selectively impinges on one class of property owners [housing developers], inclusionary zoning does not enjoy as solid a constitutional grounding as some land use regulations,” writes Jerold Kayden, lawyer, city planner, and Associate Professor at Harvard Graduate School of Design (Kayden, 2002, p. 12). In fact, land use regulations such as zoning, eminent domain, and police powers do not have explicit constitutional approval as taxation does (U.S. Constitution Article 1, Section 8). Rather, local land use powers such as zoning have evolved and have been shaped by the judicial interpretation of the Constitutional issue called the “takings issue” (Netter, 2000). Takings without “just compensation” are explicitly forbidden in the constitution (U.S. Constitution, 5th Amendment). The landmark Supreme Court case Euclid v. Ambler established
the constitutional validity of zoning in 1926, but as U.S. Supreme Court Justice Oliver Wendell Holmes wrote in 1922 in the *Pennsylvania Coal Co. v. Mahon* case, “while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking.” (Kayden, 2002, p. 10)

Justices in subsequent cases such as *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, established the two principles that all land use regulations - such as zoning - must uphold:

- This first principle is an “essential nexus” established in *Nollan*. This requires an establishment of a connection between the necessary public benefit and the regulation imposed on the land owner (Kayden, 2002). Advisors to towns recommend “nexus tests” to document why inclusionary zoning programs are necessary in a particular jurisdiction (Netter, 2000). One argument that can be made in establishing a “nexus” is that residents of new market rate housing will require new local services provided by new workers that will need affordable housing. In this argument inclusionary zoning is similar to other “impact fees” paid by developers to pay for infrastructure (Kayden, 2002).

- The other principle is “rough proportionality” established in *Dolan*. Municipalities must show that the “required dedication is related both in nature and extent to the impact of the proposed development.” (Kayden, 2002, p. 12) This requires economic study of regulatory policies on a case-by-case basis. This test does not need to be precise, but it must be preformed (Kayden, 2002).

Legal consultants frequently advise municipalities to provide compensation for the “taking” in the form of incentives like increased allowable density or other relaxed building regulations (Tetreault, 2000). Although it has not been fully tested, the courts are more likely to approve of inclusionary zoning when something is given to the developer in exchange for provision of affordable housing. The National Association of Home Builders has written, “most inclusionary zoning laws do not completely deprive the developers of a reasonable economic use (one of the Supreme Court’s criteria) and often seek to provide incentives and bonuses as partial compensation.” (Tetreault, 2000, p. 17)

Others, including many developers, have also called for zoning to be “voluntary” by only applying to projects that will require a variance or special permit from a zoning board, and
providing favorable zoning treatment when they provide affordable housing. In these cases, some attorneys have noted, a more precise term for inclusionary zoning is “incentive zoning” (Netter, 2000).

Legal Challenges

Even with careful work toward addressing these constitutional principles, inclusionary zoning is not “bullet proof” from the planner’s perspective, and developers are likely to challenge zoning on the basis that “they are being asked to solve a general social problem—the lack of affordable housing—even as they are expanding the supply of housing in the community.” (Kayden, 2002, p. 13)

The first known inclusionary zoning ordinance in Fairfax County, Virginia was struck down by the Virginia Supreme Court in 1973 on the grounds that it was a “taking” (Board of Supervisors of Fairfax County et al. v. DeGroff). In this case, the ordinance required developers of more than 50 multifamily units to provide 15 percent of their units at affordable prices (Burchell, 2000).

In 1975 and in 1983, two cases were brought against the New Jersey Township of Mount Laurel, both called Southern Burlington County NAAACP v. Township of Mount Laurel and known as Mount Laurel I and Mount Laurel II. In these cases, the New Jersey Supreme Court forced the town to abandon its “exclusionary zoning” or practices of requiring 1 or 2 acre lots and in effect “zoning the poor into the Atlantic Ocean,” as one judge called it (Tustian, 2000). “The court held that Mount Laurel was unlawfully exclusionary by not making it possible to provide for housing for low- and moderate-income persons, and that the townships of New Jersey must absorb their “fair share” of the housing needs of their particular area.” (Collin, 1995, p. 338) In a similar case in 1991, the New Hampshire Supreme Court held that the Town of Chester (Wayne Britton v. Town of Chester) was required to “provide realistic opportunities for low and moderate income housing.” (Merriam, 1991, p. 1) These cases have helped partially pave the way for inclusionary zoning policies when implemented in reaction to exclusionary zoning policies.

A case in 2000 has demonstrated that the courts can strike down inclusionary zoning when the legal principles are not solid. In Dacey v. Town of Barnstable, a Massachusetts Superior Court ruled that an “Inclusionary Housing Fee,” in which developers of subdivisions paid a fee to an “Inclusionary Housing Fund” was in fact and illegal “tax” (Blaesser, 2002). Though the case revolved mainly around the definition of a regulatory fee, this case revealed a fundamental
principle: that it was not legal for the burden of producing affordable housing solely on the developer rather than on the community as a whole (Blaesser, 2002). The ability for developers provide money and “cash-out” or provide “buy out fees” in lieu of constructing affordable housing.

Court cases in New Jersey, New Hampshire, and Massachusetts have also revealed another important legal principle: for inclusionary zoning to be legally sound, it is better to have state legislation in place that expressly authorizes it, as New Jersey’s Fair Housing Act does (Blaesser, 2002). Massachusetts law does not expressly authorize inclusionary zoning, but the Massachusetts Zoning Act actually requires that affordable housing should be required in exchange for a density bonus. This has been considered to mean that “affordable housing may be required as a special permit condition even where a density bonus is not provided.” (Netter, 2000, p. 3) The need for express statutory authority for inclusionary zoning has not yet been determined by the Massachusetts courts (Netter, 2000).

No law suits have been brought against the Massachusetts 40B “Comprehensive Permit” law (Tustian, 2000), although state legislators and the governor have debated the need to revise it for current needs, 30 years after its implementation. One initiative has been discussed to revise the law so that towns can avoid being bypassed by a Comprehensive Permit so long as they plan to increase affordable housing by at least 1 percent annually (Grillo, 2001).

**Lens #4: Economics**

**Macroeconomics: Production, Supply and Demand**

_The State of the Nation’s Housing: 2001_, produced by Harvard University’s Joint Center for Housing Studies identifies the following 28 important trends that are influential to the current state of high housing costs in the U.S. (Joint Center for Housing Studies, 2001):

1. Housing is holding up well relative to previous economic slowdowns.
2. Minority growth has spurred a population turnaround in many cities.
3. Many low-income married couples now rely on both spouse’s incomes to afford housing.
4. Housing has been resilient despite the weakening economy.
5. Manufactured housing is still undergoing a correction.
6. Housing production in most states is in retreat.
7. Despite rising prices, home equity fell as a share of value in the 1990s.
8. Despite some back-to-the-city movement, more people are still leaving for the suburbs.
10. Recent economic good times boosted the number of homeowners, but not of renters.
11. Multigenerational households are becoming more common.
12. White households continue their exodus from the nation’s central cities.
13. The echo boomers - including a large share of minorities – will fuel household growth.
15. Strong household growth has driven the increase in minority homeowners since 1994.
16. Automated underwriting has boosted the number of minorities qualifying for mortgages.
17. Ownership costs for new buyers continued to climb in 2000.
18. Subprime refinance specialists focus on women, minorities, and underserved areas.
19. The echo boomers are poised to become the drivers of homeownership growth.
20. Renter household growth sagged in the late 1990s despite the strong economy.
21. Renters income gains outpaced rent increases in the 1990s.
22. In many circumstances and locations, renting can be a better financial choice.
23. Small multifamily buildings are disappearing from the rental stock.
24. The heaviest cost burdens fall upon those least able to afford them.
25. Disproportionately large shares of minority, single-parent, and elderly households have sever cost burdens.
26. Today’s rents are out of reach for many households.
27. The shortfall in affordable housing extends from the central cities to non-metro areas.
28. The federal government has recently restored funding for additional rental vouchers.

These factors combined have cumulatively created what many policy makers are now calling a “crisis” based primarily upon supply constraints on housing for low- and moderate-income households, thus fueling the need responses such as inclusionary zoning (Collin, 1995; Ziegler, 2002). Academicians at the University of Pennsylvania have identified land scarcity and low interest rates as the primary factors in the high market values of housing (Wharton, 2002).

The Economic Effect of Inclusionary Zoning

"The fundamental purpose of inclusionary zoning programs is to allow the development of affordable housing to become an integral part of other development taking place in a community." (Burchell, 2000, p. 3) Assuming that inclusionary zoning is like a tax, economic
theory proposes that developers will demand the same financial returns with or without inclusionary zoning, and therefore, the implicit tax is passed on to the consumer of market rate units (Burchell, 2000). However developers may not perceive inclusionary zoning to simply be a tax since there are other non-financial issues involved, or the market may not be strong enough to absorb this additional cost. For either reason inclusionary zoning may cause developers to curtail housing development, contrary to the fundamental purpose of inclusionary zoning.

Kent Conine, Vice President of the National Association of Home Builders, has a philosophical question on this issue, “If there is a cost to the purchaser of the market-rate units, is it sensible housing policy to use a technique that further raises home prices in already high-cost area? Are housing prices for the majority of homebuyers made higher in return for lower prices for a few?” (Conine, 2000, p. 28) Others have raised the opposite concern: that density bonuses frequently provided by inclusionary zoning could cause too much production and produce a potential glut of housing with abnormally low prices as a result (Burchell, 2000). There are no definitive answers on this subject currently.

Lens#5: Business

Why the Business Lens?

Business issues are only occasionally presented in the literature on inclusionary zoning, but it is important to remember that “inclusionary zoning only works when the process makes sense – financial and otherwise – to the development community,” writes Mark Bobrowski, an attorney and author of the Handbook of Massachusetts Land Use and Planning Law (Bobrowski, 2002, p. 7). Real estate development is a business, and there are several ways in which a project must “make sense” in order to proceed. Exploring this issue is a necessary step in developing a methodology for this research.

A textbook on this business, Real Estate Development: Principles and Process published by the Urban Land Institute (ULI), states: “Like most good businesspeople, developers seek the maximum possible return with a minimum commitment of time and money.” (Miles, 2000, p. 16) The ULI text identifies returns in the form of profits, personal and professional satisfaction, and enhanced reputation. The ULI text identifies tools to plan for and these returns including: marketing, finance, business strategy, and personal awareness (Miles, 2000). These are described in more detail below.
Marketing: Product, Price, Distribution, and Communication

Marketing is a primary concern for developers and underlies every part of the development process (Miles 2000). As already discussed in the NIMBYism section of this chapter, inclusionary zoning may allow the developer to get the project past local permitting hurdles more easily, but it will not eliminate the “market risk” of the project, the risk that market-rate residents will buy or rent in the proposed development at the prices required to make the project work financially (Siegel, 1999). This “marketing risk” must be carefully addressed with a well-planned marketing strategy. Barbara Bund, Senior Lecturer of Behavioral and Policy Science at the MIT Entrepreneurship Center, defines marketing strategy as “a consistent, coordinated set of choices for the marketing tools (product, price, distribution, and communication) to address the needs of one or more segments or customers.” (Bund, 2002) Under this definition, inclusionary zoning presents many marketing concerns because it plays a substantial role in the regulation of product, price and distribution.

1. Product - Sometimes developers are successful at developing within the rules of inclusionary zoning by creatively developing the development “product.” For example, the late developer John McLaughlin tailored the lauded Laconia Lofts in Boston to meet the needs of artists. McLaughlin was able to negotiate with the city to provide 45 of the 99 loft units (nearly half) to artists at half of the $200 per square foot price of the market units (Betsky, 1999). The project architect David Hacin pointed out that “while traditional low-income ‘set-asides’ demanded by most cities discourage wealthier buyers, those who want a loft see the presence of creative types as an added attraction.” (Betsky, 1999, p.136) Of course, this is not an option for all developers of housing since the demand for artist loft housing may be limited.

Other creative ways at looking at the product include community planning principles extolled by the “New Urbanist Movement,” which claim to provide higher, more stable property values when mixed-income housing is provided in combination with other amenities such as traditional neighborhood structure with a diversity of uses (New Urbansim.org, 2002).

2. Price - The market price of a project is subject to many variables, but there are two variables that are influenced specifically by inclusionary zoning. The first variable is density. As discussed earlier in the economics section of this chapter, people in general prefer to live in lower density environments and are willing to pay less to live high density housing (Wheaton, 1996).
Therefore, increasing density on a project may not be the best solution to maximizing profit without other adjustments.

The second pricing variable specific to inclusionary zoning is the effect of mixed-income tenancy. In 1974 Massachusetts Housing Finance Agency study *All In Together: An Evaluation of Mixed-Income Multi-Family Housing* (Ryan, 1974). This report provided a critical examination of its housing projects as measured by tenant satisfaction. The report concluded that there was no evidence that the mixed-income aspect of projects made them superior to other types of projects despite the fact that mixed-income projects were proving to be quite successful in Massachusetts at that time. Factors such as good location, excellent design, and superior construction required to attract the market rate renters played a more important role in overall project success (Ryan 1974). Looking at it another way, there was no conclusive evidence that mixed-income tenancy detracted from project success either, at least as measured by tenant satisfaction. However, it is not at all clear that prospective market-rate buyers or renters will use this type of information when choosing a place to live. The use of "exclusionary zoning" as already discussed indicates that there are substantial consumer preferences for increased income segregation rather than integration, at least for some market segments.

As a result of both consumer preferences for density and exclusivity, increasing expenditures on other amenities may be required to attract market-rate residents. Frequently, the developer's response to inclusionary zoning is to increase the amenities and rents obtainable from the market rate units as illustrated by Proforma G. This strategy was identified in the 1974 study by the Massachusetts Housing Finance Agency (Ryan, 1974). Other researchers are currently calling for more up-to-date empirical research into the performance of mixed-income housing developments considering all effects including density, mixed-income tenancy, and the (Schwartz, 1997).

3. Distribution – For the purpose of this thesis, distribution will be considered the location of affordable units with respect to market-rate units. Some inclusionary zoning ordinances allow developers to "cash out" or provide cash payments in lieu of constructing the affordable housing on site. Other ordinances allow for the affordable housing to be built off-site, away from the market rate units. The desire to segregate affordable housing based on the argument that inclusionary zoning is a form of social engineering, not within the responsibility of the developer is often used (Tetraault, 2000).
4. Communication – Marketing communication includes selling, promotion, advertising and public relations (Bund, 2002). Nothing has been written in the literature on inclusionary zoning on this topic, and it is not clear how consumers of housing are informed about the issue. This lack of information is part of the stimulus for this thesis and will be addressed in the research.

Finance: Cash Flow, Return On Investment, and Cost of Capital

From a developer’s perspective, “the best ideas result in products that serve the user well and add value to the community – doing that at a profit is part of what distinguishes good development from poor development.” (Miles, 2000, p. 189) If policy makers and planners intend for inclusionary zoning to produce housing, it must make financial sense to developers (Bobrowski, 2002). Drafters of zoning bylaws are encouraged by legal experts to perform market studies prior to formulating a policy. If the real estate market is weak, an inclusionary zoning probably will not produce affordable housing (Netter, 2000). To determine if a project makes financial “sense,” developers must perform a real estate financial analysis, typically at a simple, “back of the envelope” level at first and then with detailed financial models as the project evolves (Miles, 2000).

Financial analysis is primarily concerned with projecting expected cash flows from projects, ensuring that a sufficient profit or “return on investment” is obtained, and assessing the cost and availability of capital for a project (Geltner, 2001). Financial analysis of development begins with a determination of what will be built in the first place. Often, buildings are planned based the maximum Floor Area Ratio (FAR) allowed by zoning. FAR is the ratio of allowable building area to lot area. This determines the building’s maximum size (or the maximum building density on the site). After the maximum building size is determined, estimates of total development costs are calculated, including “hard costs” such as building cost and land cost and “soft costs” such as architects fees, selling commissions, and interest paid on loans during construction.

It is important to note that there may be many reasons why building to the maximum allowable density (maximum FAR) or to an increased FAR (as a result of a density bonus) is not desirable. Maximum FAR may not be technically feasible or even desirable for the type of building proposed. Particularly for residential development, an optimum FAR may lower than the maximum allowable FAR since people generally are willing to pay more for lower density projects (Wheaton, 1996).
The determination of optimal FAR then becomes a function with the following variables:

- FAR (F) – measured as housing area per acre of land
- Construction cost (C) – which generally increases with higher densities
- Housing Price (P) – which generally decreases with higher densities
- Land Price (p) – which equals the FAR multiplied by the Price minus FAR multiplied by the Construction Cost

![Diagram of optimal FAR for residential projects](image)

*Figure 2.1 Optimal FAR for Residential Projects (Wheaton, 1996, p. 75)*

When FAR = 0, there is theoretically no profit to be made on the land. Similarly, at a value of FAR (Fm), there is no profit to be made since housing costs more to build than it is worth.

Somewhere in between these two values for FAR is the optimum profit. The four variables together determine the optimum FAR (F*), the optimum price for each unit (P*) and the optimum price per acre (p*) according to Figure 2.1. A decrease in price (or rent) of a project resulting from the affordability requirements of inclusionary zoning may further reduce the optimal FAR.
(F_i), unit price (P_i), and land price (p_i) respectively. This may or may not be less than the FAR allowed by zoning with a density bonus.

The second step in financial analysis is to develop a "proforma," a financial projection into the future that describes the expected streams of cash flows on a project, beginning with construction and continuing after the property is producing income. These cash flows include the initial equity investment, total development costs, rental revenues, vacancy expectations, absorption expectations (the time required to fully lease up or sell out), operating expenses, real estate taxes, replacement reserves for capital expenditures, mortgage payments, income tax payments, and often many others including an expected sale of the property 7 to 10 years from development (Geltner, 2001). Outgoing cash flows (including debt payments and taxes) are subtracted from incoming cash flows to determine the Net Cash Flows. Any cash left over is available to the equity investors as "profit" or "return" (Poorvu, 1999). These returns are "discounted" to determine the overall return on equity over time (Geltner, 2001). The final step in financial analysis is to confirm the availability and "cost of capital" for debt and equity for the initial development. Few developers self-finance entire projects. Even if they have resources to do so, developers typically prefer to diversify their investments. Most real estate development projects are financed with a combination of debt, equity from the developer, and equity from other equity partners (Geltner, 2000). Therefore, "a key to promoting and expanding rental housing opportunities for low- and moderate-income families and individuals is an ample flow of debt and equity capital to the multifamily market." (Bogdon, 1998, p. 285) The same thing can be said for other housing types as well.

Lenders can be considered to be investors that typically hold a mortgage and can foreclose on the property to recoup part or all of their investments if a property owner defaults on a loan. For this reason, lenders are willing to accept relatively low return on their investment compared to equity investors that will only obtain returns if the project has additional funds available after all expenses (including debt payments and taxes) have been paid (Geltner, 2001). Unfortunately, little is known about the effects of mixed-income tenancy on mortgage performance or financial feasibility of projects (Bogdon, 1998; Schwartz, 1997). If, lenders believe that a project has additional risks, the lender will increase their expected return to reflect this risk. The additional risks could include increased possibility that the lender will not be able to recoup their investment upon foreclosure due to lower rents, higher vacancy or any other operational factor. Lenders can adjust their expected return by increasing the interest rate, decreasing the loan amount, increasing
closing costs, or requiring other collateral such as other real estate assets or "recourse" to entities or individuals that sponsor the development project (Geltner, 2001). Doing this increases the "cost of debt" and reduces returns available to equity holders (Geltner, 2001).

The portion of a project that is not financed with debt must be financed with equity. In order to obtain this equity capital, developers must show that the project can produce competitive returns on the equity invested when compared to the risk of the project. Otherwise, investors will invest in projects that offer similar returns, but with less risk. Developers are not likely to invest in projects, even their own, when expected returns are lower than what can be obtained through other investments. During the late 1990s, real estate investors have demanded returns between 15% and 30% for raw land ready for development, depending on the level of risk (Geltner, 2001). This is the "cost of equity." Some investors require different returns for different periods of the project, such as higher returns during the riskiest parts of a project such as during construction and during the post-construction period when units are being sold or rented and then lower returns only after the project is leased up, or "stabilized" (Hodder, 1985).

Inclusionary zoning may present unique obstacles for developers in financing projects if lenders and equity investors perceive more risks, thereby increasing the "cost of capital." Increasing capital costs may make projects unfeasible regardless of density bonuses. This thesis will not explore financial analyses of projects in depth, but it will assess developer's experiences obtaining capital for mixed-income projects and how this has affected firms' ability to proceed with projects in the context of inclusionary zoning.

**Business Strategy and Personal Awareness**

This is the last lens through which inclusionary zoning will be analyzed for this thesis, but it is essential to answer the central questions. The strategy of a firm or individual developer is what leads them to assess a particular project in the first place, before financial calculations are performed or marketing plans are conceived. Given all the opportunities that many developers may have, some strategy, either planned or emergent, brings the developer to consider a project long before it is known to be feasible. This thesis seeks to answer what motivation and strategy leads developers to consider or to avoid projects regulated by inclusionary zoning.

Several frameworks for assessing a firm's motivation and business strategy have been substantially considered in management schools. A frequently used framework for business
strategy is Michael Porter’s Five Forces Model. This model describes how forces such as “high barriers to entry” and the bargaining power of suppliers create a “structural” strength or weakness to a firm’s position within an industry or within a segment of the industry. The Five Forces Model is simple, yet it yields very powerful assessments of entire industries or segments within them. The following figure illustrates the five forces:

![Five Forces Diagram](image)

*Figure 2.2 Five Competitive Forces That Determine Industry Profitability. (Porter, 1985, p. 5).*

If a threat of entrants is low (due to high barriers to entry), the bargaining power of buyers and suppliers are low, the threat of substitutes is low, and there is little rivalry among existing firms, then an industry or industry segment is considered to be “structurally attractive” (Porter 1985). With this type of analysis, producing mixed-income housing in the context of inclusionary zoning might be a “structurally attractive” segment of real estate development due to higher barriers to entry than other housing segments. Developers may or may not be familiar with this model in detail, but they are probably aware of the basic concepts.
Even if Porter’s model or other similar strategic frameworks are used to help a development firm decide which type of real estate asset to develop (office, residential, mixed-use, mixed-income, etc.), these frameworks may not be sufficient to help the developer assess the more complex aspects of highly unique projects. In highly complex and creative activities such as real estate development, managers must frequently act quickly, well before information necessary to fully assess a situation is available (Mintzberg, 2001).

Consider the similarity in these two remarks regarding strategy:

- First, from the ULI textbook on development: “Developers as professionals [are] constantly involved in informal brainstorming; they search their background and current experience for an idea that offers potential. During the development process, however, ideas emerge in many different ways.” (Miles, 2000, p. 190)
- Second, from noted strategy researcher Henry Mintzberg: “Effective strategies develop in all kinds of strange ways.” (Mintzberg, 1987, p. 66) and, “companies in the business of producing novel outputs [such as real estate developers] apparently need to fly off in all directions from time to time to sustain their creativity.” (Mintzberg, 1987, p. 72) “Strategies need not be deliberate – they can also emerge.” (Mintzberg, 1987, p. 68)

Developers should know their capabilities and limitations (financial and intellectual) and consider their image to other stakeholders when approaching a development opportunity (Miles, 2000). Furthermore, the developer cannot act alone due to the many skills required on even a modest size project. “By assuming ultimate responsibility, the developer must make sure that team members meet development objectives and command the skills to do their part of the job.” (Miles, 2000, p. 15) Background information combined with experience, self-awareness, and an understanding of the development team’s capabilities is often the basis for early decision making rather than a highly ordered strategy.” (Miles, 2000, p. 189)

How then do we get at the essential question regarding developers motivation to pursue of avoid developing housing in the context of inclusionary zoning? The answer: only by asking the individual developers themselves since it is their personal perceptions about inclusionary zoning, their knowledge, and their experience that ultimately influence their willingness to pursue a development idea. This is the essential quest of this thesis.
Chapter 3: Interviews with Developers

3

"Don't believe that housing is a commodity like toothpaste. . . .
The interests are the same for the owner of a $62,000 house as they are for the owner of a $300,000 house. People care about their neighborhoods."

- Developer D

Methodology

This research was structured to answer the central questions in the introduction of this thesis using data collected from interviews with developers. The central questions are:

1. What does "inclusionary zoning" mean to for-profit developers?
2. Is inclusionary zoning a "carrot" or a "stick"?
3. How do approaches and attitudes vary across firms and across jurisdictions?
4. What are the implications of the answers to these questions for the policy?

Before selecting interviewees, the enormous variation in the types of developers building housing had to be considered. The housing industry is extremely fragmented, with the 100 largest builders producing only 10 percent of the nation's homes (Demshar, 2001). Many developers also specialize in particular types of housing, from single-family homes and townhomes to large multi-family apartment buildings. Furthermore, developers have various business structures ranging from small sole-proprietorships and fee-based development service providers to large-scale, publicly owned real estate investment trusts (REITS) that develop and manage large portfolios of properties.
Given the diversity of development firms and inclusionary zoning policies in place, it is not possible in a limited study to construct a comprehensive answer to any of the central questions. However, through careful selection of interviewees and questions asked, meaningful conclusions can be drawn, and issues requiring further research can be identified.

**Selection of Interviewees**

For this research, nine interviewees were selected to represent firms with a broad range of the following attributes (see Figure 3.1 for summary of attributes for each interviewee):

- Size, measured by annual units produced
- Housing focus, measured by percentage value of firm’s development that is housing.
- Housing type focus, the primary housing product pursued and produced by the firm
- Inclusionary zoning experience, measured by number of projects and units the individual had worked on with inclusionary zoning and by the number of affordable housing units produced by the developer as a result of inclusionary zoning.
- Geographic focus of firm, by specific location(s) and urban versus suburban. All firms are developing projects in Eastern Massachusetts even if focus is broader.

<table>
<thead>
<tr>
<th>ID</th>
<th>Size¹</th>
<th>Housing Focus (type)²</th>
<th>Position of Interviewee</th>
<th>Incl. Zng Experience³</th>
<th>Geographic Focus</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>3⁴</td>
<td>15% (single-family for sale)</td>
<td>Owner</td>
<td>4 (0)</td>
<td>Suburban Eastern MA</td>
</tr>
<tr>
<td>B</td>
<td>10⁴</td>
<td>90% (multi-family for sale)</td>
<td>Owner</td>
<td>1 (1)</td>
<td>Cambridge &amp; suburbs</td>
</tr>
<tr>
<td>C</td>
<td>200⁵</td>
<td>25% (multi-family for sale)³</td>
<td>Principal</td>
<td>3 (14)</td>
<td>Urban Northeast U.S.</td>
</tr>
<tr>
<td>D</td>
<td>100+</td>
<td>75% (single-family for sale)</td>
<td>Principal</td>
<td>2 (30)</td>
<td>Suburban Eastern MA</td>
</tr>
<tr>
<td>E</td>
<td>1,000</td>
<td>75% (multi-family for rent)</td>
<td>Vice President</td>
<td>3 (120)</td>
<td>Urban Northeast U.S.</td>
</tr>
<tr>
<td>F</td>
<td>300</td>
<td>90% (multi-family for sale &amp; rental)</td>
<td>Vice President</td>
<td>12 (50)</td>
<td>Boston, MA</td>
</tr>
<tr>
<td>G</td>
<td>75</td>
<td>80% (multi-family for sale &amp; rental)</td>
<td>Vice President</td>
<td>5 (100)</td>
<td>Boston &amp; inner suburbs</td>
</tr>
<tr>
<td>H</td>
<td>1,000+</td>
<td>90% (multi-family for sale &amp; rental)</td>
<td>Principal</td>
<td>24+ (200+)</td>
<td>Boston &amp; inner suburbs</td>
</tr>
<tr>
<td>I</td>
<td>5,000</td>
<td>100% (multi-family rental)</td>
<td>Vice President</td>
<td>1 (8)</td>
<td>National, urban &amp; suburban</td>
</tr>
</tbody>
</table>

1. approximate number of housing units produced annually.
2. percentage of development as housing (with primary housing type produced in parenthesis).
3. number of projects involving inclusionary zoning (with number of units produced in parenthesis).
4. typical size of a development, actual annual production may be less.
5. historical focus is 25% on housing. The firm is moving a much larger housing focus.

*Figure 3.1 Summary of Interviewee Attributes*
Developers interviewed ranged from a suburban land developer, producing approximately three single family homes a year to a national apartment developer and manager producing up to 5,000 units per year. Order of identification (ID) numeration follows the order in which interviews occurred. All interviewees were owners or top executives in their firm, responsible for making critical decisions about project feasibility and strategy. By no intention of this author, all interviewees were male. A secondary goal in interviewee selection was to interview developers from firms on a broad range of positions on a matrix of size and housing focus (see Figure 3.2).

![Figure 3.2 Matrix of Interviewees by Firm Size and Housing Focus](image)

The geographic scope of this study was limited to developers in Massachusetts, although one third of the developers interviewed (C, E, and I) produce housing in more than one state. Massachusetts is a particularly interesting environment in which to conduct this study because of the severity of the housing shortage there (Moscovitch, 2001), the relatively long history with inclusionary policies (Engler, 2002), and the broad range of inclusionary zoning ordinances in place (Herr, 2002). All but two of the developers interviewed (C and D) were familiar with several variations of inclusionary zoning within Eastern Massachusetts, but further research is required to see how the answers to these questions vary across wider geographic areas.
Questions and Interview Strategy

Twenty-seven interview questions were developed for the interviews (See Figure 3.3). The questions designed to provide information necessary to answer the central questions as well as to promote the discussion of unanticipated issues. Questions were asked regarding firm attributes and interviewees were encouraged to provide real-life, concrete examples. Interviews were conducted in person (except for interviews with B, D and I which were conducted via telephone) and all lasted approximately one hour. Interviewees were not asked to prepare for the interview, and questions were not distributed prior to interviews. Anonymity was assured to all interviewees, and interviews were not tape recorded in order to promote candidness.

<table>
<thead>
<tr>
<th>Interviewee and Firm Attributes</th>
<th>Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. How many housing units produced annually?</td>
<td>15. What are the challenges in creating and owning a mixed-income project (beyond financing)?</td>
</tr>
<tr>
<td>2. How much of firm work is housing (by value)?</td>
<td>16. What concerns have prospective market-rate tenants/buyers raised?</td>
</tr>
<tr>
<td>3. What type of housing do you primarily produce?</td>
<td>17. What are the issues in financing mixed-income housing? Is capital more or less available/costly?</td>
</tr>
<tr>
<td>4. What is geographic focus of your firm?</td>
<td></td>
</tr>
<tr>
<td>5. What is your position in the firm?</td>
<td></td>
</tr>
<tr>
<td>6. How many projects have you worked on involving inclusionary zoning?</td>
<td></td>
</tr>
<tr>
<td>7. How many affordable units have you produced as a result of inclusionary zoning?</td>
<td></td>
</tr>
</tbody>
</table>

National Policy

8. Who should finance and produce affordable housing?
9. What does mixed-income housing mean to you?

Regional, State, and Local Politics

10. How does inclusionary zoning affect local politics and the permitting of projects?
11. How does inclusionary zoning vary among jurisdictions in practice (beyond written policy)?

Law and the Constitution

12. How do density bonuses or other incentives for inclusionary units affect project feasibility?

Economics

13. Will you produce more or less housing overall as a result of inclusionary zoning?
14. Who subsidizes or pays for the affordable units?

Overview

18. How do you approach inclusionary zoning and jurisdictions that use it?
19. What resources or people do you consult on this issue?
20. How do you define success in this market? What are the “returns”?
21. How does success with inclusionary zoning affect your competitive advantage?
22. What values and attitudes are important to success with inclusionary zoning?
23. What attitudes have you observed among your colleagues, lenders, and investors regarding mixed-income housing and inclusionary zoning?
24. What is the primary thing that you have learned working with inclusionary zoning?
25. What is the biggest question or concern you have about inclusionary zoning?
26. What does inclusionary zoning mean to you?
27. Do you pursue or avoid working in jurisdictions with inclusionary zoning or are you indifferent? In other words, is inclusionary zoning a carrot or a stick?

Figure 3.3 Summary of Interview Questions
Limitations of Methodology

There are several aspects of the methodology of this thesis that affect the results and could alter the conclusions if modified:

1. **Small sample of firms interviewed.** A larger set of interviewees could add greater depth to this research. However, the opportunity to ask nine for-profit developers to provide candid answers about sensitive business strategy issues is rare. In the event that this thesis does not present the majority view, it highly probable that the prominence and proven success of the interviewees selected only biases this research towards the most advanced and productive thinking in real estate development today.

2. **Small number of interviewee attributes collected.** A larger set of interviewee attributes, such as age, years of housing experience, and others might have exposed different correlations or presented alternative means for drawing conclusions. A few additional attributes were collected over the course of the interview and used in the analysis, such as the fact that Developers E and F have a lot of experience with affordable housing in general (in addition to inclusionary zoning) and Developer A and C do not.

3. **Lack of preparation.** Developers were intentionally not provided with information or questions prior to interviews. Their answers might be different if they were given more time to consider the complexity of the questions asked. However, for most questions there were no right or wrong answers and collecting basic perceptions about the issues was most important since these perceptions are such a significant factor in the early decision making process of development as discussed in the “Business Lens” section in Chapter two.

4. **Lack of quantifiable aspects of the problem.** There are certainly many measurable aspects of this problem would be helpful in adding detail to the issue. For example, the question could have been asked of developers in question 13: exactly how much more or less housing will you produce as a result of inclusionary zoning? Unfortunately, the majority of developers found this question difficult enough without being asked to quantify it. In reality, development is more of an art than a science and knowing precisely what a firm’s optimum annual housing output even more elusive than determining ex ante returns (returns calculated in advance of actual occurrence) as discussed by Developer D in question 17.
Presentation of Data

Some firm specific, and project specific information presented below have been altered or withheld to ensure interviewee anonymity. All numbers are approximated. Interviewee and firm attributes from questions 1 through 8 are summarized in Figure 3.1. All comments are attributed to specific developers according to the identification letter assigned in Figure 3.1. Summaries of answers obtained for interview questions 8 through 27 are provided below.

Interview questions elicited different types of answers. For example, some questions had short answers of a limited nature and can be categorized and tallied (see Appendix B for comparison of categorized data with firm attributes), and some had lengthy unique answers. Others had succinct but varied ideas that are most clearly presented in summary or raw data. Therefore answers are presented below in three ways in order to efficiently and effectively communicate the information obtained. Information is utilized in the next chapter to assess patterns between attitudes, approaches, firm attributes, and jurisdictions with inclusionary zoning. Information is presented in the following formats:

- categorized and then summarized (Questions 8, 13, 14, 17, and 19),
- summarized only (Questions 10, 11, 12, 15, 16, 18, 20, 21, 23, and 27), and
- presented as raw data and then summarized (Questions 9, 22, 24, 25, and 26).

8. Who should finance and produce affordable housing? Answers to this question included:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number</th>
<th>Developer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Sector</td>
<td>3</td>
<td>A, C, I</td>
</tr>
<tr>
<td>Federal Government</td>
<td>1</td>
<td>B</td>
</tr>
<tr>
<td>Government finances, private sector produces</td>
<td>4</td>
<td>E, F, G, H</td>
</tr>
<tr>
<td>Communities that need it</td>
<td>1</td>
<td>D</td>
</tr>
</tbody>
</table>

Figure 3.4 Who should finance and produce affordable housing?

The majority developers believed that a public/private partnership, where government finances projects built by the private sector, is the best method of producing affordable housing.
Developer A, C, and I’s comments are consistent with the goal of inclusionary zoning to have the private sector produce affordable housing without government assistance. Developer C qualified his answer by saying that “middle market projects [as opposed to the high end housing market] should not carry the burden.” Developer E went so far as to say that “there are all kinds of things [the government] can do,” and the best situation is a “combination of all kinds of methods,” including direct subsidies, tax increment financing, and controlling rent increases only after units are initially rented to a tenant at market rates. Developer E also suggest that “no one has looked out for the middle-income group”, and the government consider a short-term tax credit program targeted at moderate income households just to “get projects over the hump” in the early stages of development. Developer D suggested a new alternative: that communities that need affordable housing should pay for affordable housing themselves. Developer E added that without subsidies and “if there were no executive order [technically the name of Inclusionary Zoning in Boston] we would provide zero affordable housing units.”

9. What does mixed-income housing mean to you? Answers to this question included:

A. “Not just affordable housing, but a range of housing products.”
B. “A broad spectrum of housing, low, middle, and high, but not the high end. . . more tiers are better.”
C. There is a good place for it, and it has good effects for moderate income households.
D. “A range of housing prices.”
E. “If you want to be strict, every project is mixed-income”
F. 70% market rate, 30% affordable starting at 60% of area median income.
G. “Housing where some units are market rate and some are reserved for low to moderate income people.”
H. “Housing with a wide spectrum of economic residents . . . a normal tenant mix in some cities [with lower overall housing costs] like Houston.”
I. “Stratification of rent levels that ties market [units] with low and/or moderate-income residents.

Except for Developers C, answers to this question were short and straightforward, indicating that most developers had already given some thought this issue. Developer F’s answer was the most specific, suggesting that there 70% market and 30% affordable is the best mix, and Developer E and H suggested that many housing developments and neighborhoods are really mixed-income
even if not defined as such. Developer C had much more to say, stating that there are some levels of income mixing that may not be desirable for either market-rate residents or affordable residents. Specifically, he suggest that the high end projects are probably not a good place to put low- to moderate income households, saying, "Will it be a nice place [for low and moderate income people] to live? Yes. Will people live next to people they have anything in common with? No." Developer C also pointed out that it often makes more sense to provide the affordable units off-site, also because you can produce much more of the affordable units for the same amount of money in a different location, rather than giving an moderate-income household a luxury unit. In his answer to question 12, Developer D also described the ability to produce more affordable units off-site if allowed. But in his answer to question 8, Developer F also said, "bringing in market rate people improves the quality of projects." In his answer to question 11, Developer I noted that in a specific project, giving a moderate-income household a 3,000 luxury housing unit raised concerns that they may not be able to pay the heating bills. Developer G lamented that when the government started cracking down on income levels in federal housing projects, working families had to get out creating "islands of poverty with no good working role models."

10. How does inclusionary zoning affect local politics and the permitting process? Echoing a common complaint among the developers interviewed, Developer H stated, "Housing is a simple, low-tech product that is easy to build. The challenge is getting approvals in the Byzantine system of getting projects permitted and financed." Developer I noted that on a "macro-political perspective," people are supportive, but it doesn't eliminate NIMBYism and the general dislike of multi-family development. Developer B simply stated, "It doesn't make it easier," and Developer D said simply, "It is just a rule you have to obey."

Several developers described surprising arguments they have encountered when trying to develop housing in a neighborhood such as "we're increasing their property values (Developer H)," "if you build more housing, my landlord can charge more rent (Developer E)," or "if you build more housing more foreigners will come (Developer E)." In his answer to question 17, Developer E noted that he thinks that many public officials believe that housing development has no risk, making them unsympathetic to a developer's economic needs. Developers E and G described how inclusionary zoning sets a baseline expectation for developers beyond which only further concessions are often expected. Developer G also stated that in places like Boston and Brookline, "the zoning code is so outdated that nothing gets built without a variance or special permit." Therefore he frequently hears from planners, "You need zoning relief now what are you going to
give us?” Developer H said “It is politically very popular to beat up on developers,” and “No [public official] will get brownie points for helping a good development along.” None of the developers interviewed indicated that inclusionary zoning and compliance with it made the political process of development any easier. Although in answering question 11 developer F said, “The practical thing is to say ‘this is something we have to do... If you comply it helps you.’

Developer A stated that in suburban areas “the rhetoric [to support affordable housing] is there, but the will isn’t there.” Furthermore, Developer A noted that when combined with other regulations such as historical districts and environmental regulations, there is very little land available for housing development at all, leaving little potential for inclusionary zoning to produce any affordable housing. Developer A also suggested that some exclusive suburban towns don’t really even want affordable housing. In his answer to question 12, Developer A said “the bylaw was crafted to preclude us from having any interest [in producing affordable housing] anyway.”

11. How does inclusionary zoning vary among jurisdictions in practice (beyond written policy)? Developer D indicated that the regulations were fairly clear in Newton and Developer H said that working with Cambridge was “very professional.” Developer B described how Cambridge’s policy of not allowing developers to provide “in lieu of” payments or to provide affordable housing offsite was consistent with the fact that “Cambridge really wants to blend people.” In contrast, developer B thought that towns such as Belmont and Concord were not doing a good job preserving housing and ethnic diversity. Developer A discussed how there are no special interest groups in the suburban areas to support affordable housing, resulting in “a lot of happy talk” with very little action, although 40B does make people talk with more sincerity and “reverses the slide into ‘snot-zoning’.” Developer E added that the suburbs don’t have the same “sophistication” as the cities. There it “is a whole different ball game,” he says. Developer I noted that inclusionary zoning is a burden for many suburban planning boards who must administer the policy.

Developer G described how developers of housing in Brookline simply divide a lot’s FAR by 14 to determine the unit size, since inclusionary zoning requires affordable units only on projects of 15 or more units. This may not produce units that are really what the market needs or wants. Developer G also said that regarding the need to always provide more public benefits than the written policy requires, the attitudes in Boston and Brookline are the same.
Developer C's experience with inclusionary zoning was limited to Boston so he had no comment for this question. Developer F discussed how the policy in Boston in practice “varies from street to street.” He believes that East Boston doesn’t want any affordable housing and in the South End “it is not really what we’re looking for,” but Chinatown wants affordable housing. Developer I had the strongest thing to say about Boston’s policy, saying “Boston has one thing on the books, and then you go in the back room and get your arm twisted... Zoning is not an issue in Boston. The issue is still the process and the uncertainty and cost of the process.” Developer I also discussed the fact that often $500,000 is required in the early stages of a multi-family project, totally at risk, to see if a project is even feasible. “If you do one or two of these and you are wrong, you're out of business.” This risk, he says, can deter smaller firms from attempting housing development altogether. The margins are thinner in housing, this is why when a developer obtains a site, they may be less likely to build housing on it. Add union labor and increasing regulations, there will be even less housing built, Developer I asserted.

12. How do density bonuses or other incentives for inclusionary units affect project feasibility?
A common theme in answers to this question was that the economics of the deal are paramount in determining project feasibility. “It has to work on its face, otherwise why would anybody play?” said Developer A. Developer A thought that density bonuses were required to make inclusionary zoning work on small scale projects, but Developer E described how on a small project in Watertown, “bonuses have no real economic value.” Developer D stated, “Density bonuses are a type of subsidy. It’s the only way to make it work.” Developer H didn’t feel that density bonuses really help on rental projects, but do on condominium projects because they have a higher return. Developer I felt that bonuses might not help much in suburban situations unless it was substantial. “It could work if a project allowed to have 8 units per acre was juiced up to 12 units per acre with 2 affordable and 10 market rate.” This developer believes that feasibility on a project is really determined in the negotiation of the land purchase price.

Developer B discussed how the logistics of a 10 unit project that involved historic rehabilitation made using the density bonus impractical. The “footprint for many of the units was already cast [do to the existing structure], and the total value of more smaller units would have been less.” Also, in order to get 5 extra units, the developer would have to have provided one more unit of affordable housing which would have had a more dramatic effect on the economics of the deal. On the other hand, the developer couldn’t simply increase the size of the units either. Increased density would have detracted from the project and reduced profits since the market won’t pay
extra for larger units over a certain size. "Values per square foot drop above or below 1700 to 1800 square feet." Units of this size get the "biggest bang for the buck," said Developer B. Developer C raised a similar concern stating that increasing the density can "stress the site logistically" even when offered. Also, Developer C described an instance in which a density bonuses was handed out by the Boston Redevelopment Authority (BRA) late in the process due to political pressure on the BRA to keep projects moving forward. Unfortunately the bonus didn't help. As a rule in Boston, Developer G noted that "when developers want to increase the number of units, they get run out of town with the elected officials leading the charge." This developer has not been able to use density bonuses yet since they have not been available in the specific districts in which he has worked. But, "that is a reasonable way to approach the situation... if people can accept that logic down the street maybe they can apply it in their neighborhood," said Developer G.

13. Will you produce more or less housing overall as a result of inclusionary zoning? The answer to this question is of great importance since it is the question that will demonstrate most whether or not inclusionary zoning constrains the production of housing and supply in overall. Answers to this question included:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number</th>
<th>Developer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The same amount</td>
<td>3</td>
<td>A, B, F</td>
</tr>
<tr>
<td>Less</td>
<td>5</td>
<td>C, E, G, H, I</td>
</tr>
<tr>
<td>More</td>
<td>1</td>
<td>D</td>
</tr>
</tbody>
</table>

*Figure 3.5 Will you produce more or less housing overall as a result of inclusionary zoning?*

The majority said they would produce less housing overall as a result of inclusionary zoning. Only one developer interviewed, D, thought that supply might actually be increased due to density bonuses. Developer F stated that inclusionary zoning hadn't "derailed" any of his deals within Boston (although in his answer to question 18 he indicated that it was a factor in an abandoned project in another state), but Developer E stated that "the government's mindset is that the same amount will be built, but nothing is truly free."
14. Who subsidizes or pays for the affordable units? Answers to this question included:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number</th>
<th>Developer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowners</td>
<td>4</td>
<td>A, E*, H, I*</td>
</tr>
<tr>
<td>Market-rate condominium owners</td>
<td>2</td>
<td>B, G</td>
</tr>
<tr>
<td>Market-rate rental tenants</td>
<td>1</td>
<td>C</td>
</tr>
<tr>
<td>Developers</td>
<td>5</td>
<td>D, E*, F, G*, I*</td>
</tr>
<tr>
<td>Local Governments</td>
<td>1</td>
<td>I*</td>
</tr>
</tbody>
</table>

*Three developers indicated that the cost was shared by more than one party.

Figure 3.6 Who subsidizes or pays for the affordable units?

Developers B, C, and H stated that developer’s returns are not flexible. Therefore, these interviewees did not believe that developers shared the cost. However, Developer I (the largest developer) stated that developers do pay in the form of “slightly” lower returns. Only Developers C thought the cost would be passed on to the renters of market rate units in the long-term because the market units have to be more high-end, and because the policy creates a shortage of housing overall. In his answer to question 8, Developer C stated that ultimately all business in the area pay because of the shortage of worker housing.

Others, such as Developer H noted that it is not possible in the short term to pass on the cost to market rate tenants because market rate tenants will only pay market rents. Developer F said, “If we could charge more, we would charge more anyway.” Developers B and G noted that in condominium developments, market-rate condominium owners do subsidize the affordable units operationally since condo fees are based on unit value rather than use although most buyers still consider this fee when considering the true cost of owning a condominium since fees are disclosed “up-front.” Developer E described a specific project in Watertown in which the inclusionary zoning policy devalued the land 30%.

Developer D stated that this questions presumes that investment returns can accurately be known in advance. In reality, he noted, there is a great deal of chance and luck. In other words, Developer D doesn’t place much importance on the accuracy of financial projects, especially to anything more specific than a whole percentage point. Developer F stated that developers pay mostly due to “opportunity cost lost.” Developer E noted that developers really pay when the
economy goes into a slump and a project becomes unfeasible do to concession made during good times. Only Developer I noted that local governments partially subsidize the affordable units in the form of reduced taxes.

In response to this question, many developers expressed concerned about having a small group of people (developers and land owners) subsidize affordable housing without any support from government. As Developer G asked, “Why do we select such a miniscule group to pay for it?” In his answer to question 25, Developer G asked again, “Is there any other industry where this occurs? Stop and Shop doesn’t have to give out food. Brooks Brothers doesn’t have to give out clothes.” In his answer to question 26, Developer F stated, “Has it produced affordable housing that wouldn’t have been produced otherwise? Absolutely. Is it good, should developers totally subsidize the affordable housing? I don’t know.” This issue will be addressed later in this chapter in more detail.

15. **What are the challenges in creating and owning a mixed-income project (beyond financing)?**

Only developer B presented a real-life example of a negative experience with mixed-income projects resulting from inclusionary zoning. This is a result of a single resident whose children have stimulated noise complaints in a small condominium development. Although children should not be a problem in a condominium development as a rule, Developer B noted that it has been difficult for the owner of the affordable unit to change condominium bylaws that prohibit “family activities.” The owner of the affordable unit has a much smaller percentage voting right because of a smaller value of their condominium and most of the other residents are professionals without kids and prefer a quiet atmosphere. Developer G believed that market rate units probably have less value as result of the affordable units in the same development.

Developer I stated that, “A certain management expertise is required.” He explained that this is necessary to deal with the increased paperwork and regulatory oversight. Developer E noted that it can actually be hard to find tenants with 120% of median income (a definition of affordable by some zoning codes) because some people will not go through the hassle and paperwork of having their income scrutinized to save as little as $50 a month. In some cases, he said, 30% of 120% of area median income can actually be higher than a particular neighborhood’s market rent. Developer F cautioned that another problem on the for-sale side is that affordable units don’t benefit from market appreciation, since value is tied to area median income rather than market home values. This can be discouraging for these owners, he noted.
There were several positive comments regarding the creation and management of mixed-income projects. Developer H noted that “market rate tenants can be difficult too.” Developer C stated, “We have not been able to detect any effect on rentals.” Developer E, representing a large firm which has managed mixed-income developments for many years stated, “There is not a marketing problem if done right.” Although having no direct experience with creating or owning affordable units, Developer A stated that he knew of projects that have been successful. Developer D noted that “places don’t function if you don’t have affordable housing; places for kids, retired persons, police officers . . .”

16. What concerns have prospective market-rate tenants/buyers raised? Developer C had observed “no specific concerns for “moderate-income” affordability requirements since income levels are not very low. Developer A stated that to his knowledge, “Prospective buyers are concerned about resale value, but there is no evidence that market rate units are affected or that they “comp” differently.” Developer I stated, “Very few concerns, if you do it right. Everyone can have a noisy neighbor or a slob next door . . . It has nothing to do with how much money you make.” In this developer’s projects, he claims that “you’ll have a real hard time telling the market rate units from the affordable units.”

However Developer D said, “Clearly there are some buyers for whom the idea of mixed-income does not make tem uncomfortable, and there are others who are comfortable.” Other developers listed negative concerns prospective buyers/tenants raised such as the higher condo fees noted by Developer G. “NIMBYism,” said Developer B, “They want to know: where is the unit that will be subsidized? . . . They don’t want to be next to the affordable unit.” The curb appeal of an well executed historic renovation project helps, but if there are “kids jumping up and down next door when a unit is being shown,” it will take longer to sell the unit even if the sale price isn’t affected, noted Developer A. Developer B thought that a more non-descript project may more adversely impacted. Developer F stated that he had observed “class issues, racism . . . typical issues. . . We have definitively lost sales due to 80 to 120% of median residents.” Developer F believed that mixed-income projects have hurt both absorption and sales price as much as 10 to 15%. Developer H stated “Many [residents] are not aware of it. . . but there is not a condo project where owners don’t have serious issues.”
17. What are the issues in financing mixed-income housing? Is capital more or less available/costly? Answers to this question included:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number</th>
<th>Developer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>More costly</td>
<td>2</td>
<td>B, D</td>
</tr>
<tr>
<td>The same (no premium or savings)</td>
<td>6</td>
<td>C, E, F, G, H, I</td>
</tr>
<tr>
<td>No knowledge</td>
<td>1</td>
<td>A</td>
</tr>
</tbody>
</table>

Figure 3.7 Is capital more or less costly for mixed-income housing?

The majority of developers (including C, E, F, G, H, and I) indicated that capital sources (lenders and investors) are not requiring a premium return for mixed-income projects. As Developer C said, “if they are, developers don’t know about it.” As Developer I said, “The flow of capital to multi-family [in general] has been phenomenal. The capital markets have come to understand that most multi-family built, be it in Massachusetts or Maryland, may have some affordable component.” Furthermore, as Developer E noted, some equity investors want to invest in Boston where inclusionary zoning is in place. “People just accept it as a given,” said Developer G. Developer G noted that some investors like union funds may see it as a plus to provide financing for affordable housing, but they won’t give an interest break on the deal. Developer G added that financing is based on the strength of the developer, the market, and the project.

All opinions on this topic were not as benign. Developer B indicated that his capital sources have expressed concern about mixed-income sales supporting the proforma and place greater scrutiny on the numbers. He says that it does require extra legwork on the developer’s part. Developer D stated “My guess is that there is some small premium.” One problem Developer C has encountered in financing projects is determining a potential future resale value, since there is not a good history of sales of mixed-income housing projects. “Most of the people in this business are owners with long-term holding expectations,” said Developer C so the big question is “do mixed-income projects sell at higher cap rates [i.e. lower prices]?” This phenomena may deter “Big strike” developers from developing mixed-income properties, he said.

Developer E cautioned that housing is a relatively low yield asset class (compared to commercial development), with “razor thin margins” and discounting rent for affordable units creates a 5% cost impairment to a project. Just look to large-scale stalled projects right now to see that this is
not true. The economics are severely impaired already in Boston due to union workers and other high barriers to entry. Developer F noted that due to the strength of the market right now, “You can make 90/10 work for the investment grade market,” but “will policy change with the market?” Developer F also stated that you can’t conventionally finance 70/30 developments. You must get subsidies of some sort. In answering question 22, Developer H noted that “10% [affordable component] is about as high as most projects can afford. 15% bifurcates housing into affordable units and extremely expensive units.” Developer H specifically identified Brookline as a town in which this bifurcation is eliminating the middle market of housing.

18. How do you approach inclusionary zoning and jurisdictions that use it? Developer A said, “I am open to inclusionary zoning, but have never actually executed a project with it,” but before going ahead with a project, he would “want to know about the mechanics of it, not the goal.” Developers B, D, E, C, G, and H indicated that inclusionary zoning was just another factor and cost, like environmental conditions or other zoning regulations. In other words, it was very important and could determine project feasibility, but it was not necessarily the single most important factor.

“The first question we ask is ‘are we creating something people want?” said Developer D. Only after answering this question does the Developer D consider inclusionary zoning and mixed-income housing as an issue. Developer F stated that “We have a different portfolio than return driven firms . . . Our motivations are sometimes different [than other developers] using tax credits and soft loans. It doesn’t mean that every developer can do it though.” At some point, Developer H noted, it makes more sense to go for 80/20 (80% market, 20% affordable) preferred rate financing from someone like the Massachusetts Housing Finance Agency (Mass Housing).

Developer I had the most to say on this point. In selecting projects, he “looks at the likelihood of success in the permitting process.” In a recent project the town rejected a project proposed Developer I so he went back to the town with the same project as a 40B project and the project is being constructed. “Now they love it,” he said. Without 40B, this developer thought that very little would be constructed in Eastern Massachusetts. Developer I went on to describe a recent project where it was worth adding 5% affordable units in some towns (from 20% required by zoning to 25% required by 40B) to avoiding the permitting risk. Additionally, “you can get all kinds of zoning relief approved in one fell swoop.” Regarding the need to line-up financing prior to going for a 40B permit, he said “it’s not that big of a hurdle. You need it anyway.”
developer felt that his understanding of 40B helps him in places where it doesn’t apply [such as Boston and Cambridge where 40B does not apply because these cities have more than 10% of their housing stock at affordable prices]. “It wouldn’t impede me at all. The deal makes sense or it doesn’t. The only thing is that it has to be clear.” Developer I does not typically take permitting risk. Rather he places options on land and gets a project through entitlements before purchasing the land. Developer I also discussed the basic economics of a deal with rough numbers. For example, if the difference between market and affordable rents is $1,000 per month and $12,000 per year, then capitalized at 9%, this equals $132,000: A big cost for him.

19. What resources or people do you consult on this issue? Answers to this question included:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number</th>
<th>Developer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fellow developers</td>
<td>2</td>
<td>A, C*</td>
</tr>
<tr>
<td>Attorneys</td>
<td>2</td>
<td>B, C*</td>
</tr>
<tr>
<td>Specialized accounting firms</td>
<td>2</td>
<td>C*, F*</td>
</tr>
<tr>
<td>Local housing partnership/finance agencies</td>
<td>2</td>
<td>B, C*</td>
</tr>
<tr>
<td>In house</td>
<td>6</td>
<td>D, E, F*, G, H, I</td>
</tr>
</tbody>
</table>

* identified more than one resource

Figure 3.8 What resources or people do you consult on this issue?

The answers to this question do not preclude the fact that firms may occasionally consult other sources, but it does indicate the typical approach used by individual developers. The majority of developers indicated that they primarily assess projects in house. Developer A noted that he uses additional consultants who specialize in 40B projects for that type of work, and Developer H uses specialized consultants to apply for subsidies on some projects, but neither would use specialists for inclusionary zoning. Developer C, who had limited experience with affordable housing until recently, lamented the fact that nobody is really offering a comprehensive consulting service in this area, therefore, his best resources so far have been a wide range of people, including fellow developers. Developer F noted that, “we actually get calls from other developers.”

20. How do you define success with this policy? What are the “returns” beyond the financial ones? Developers A and G had specific stories to illustrate the pleasure received in providing affordable housing for low- and moderate-income families. “You have to feel good about
participating in something like that," said Developer G. "You would have to be a pretty cold, unfeeling person to feel that providing affordable housing doesn't help people," Developer G also said. Developers F and H described the professional rewards for providing housing for people in general. Developers C and E described the even more basic pleasure of just getting a project built. Developer I stated that "it is even more satisfying if you can do it in a mixed-income context while meeting your financial goals." Developer I also discussed the positive social effects of providing affordable housing and "lubricating the market" by helping regional companies attract employees and by "pushing forward the agenda of smart growth" via denser development closer to where people work and shop.

21. How does success with inclusionary zoning affect your competitive advantage? Developers identified ways in which inclusionary zoning improves competitive advantage, such as by providing "stature in the community (Developer A)" and "by raising barriers to entry further (Developer H)." Developer stated that success with inclusionary zoning gives urban developers competitive advantages over suburban developers who have "more cavalier attitudes" toward affordable housing. Prior to working with affordable housing, Developer C thought "we could just be market-rate developers without getting into affordable housing issues, but without understanding affordable housing a developer is working with "only half a quiver of arrows."

Developer E discussed the issue that "inclusionary zoning hurts your competitive advantage especially if a neighboring community doesn't have it." This developer discussed the fact that a project in Boston with inclusionary zoning and union labor can't compete with a project in Quincy. A developer in Quincy can bring a larger unit to market at a lower price than Developer E can in Boston. "Nothing is as it seems," said Developer G regarding the local political challenges of development. The biggest help a project can have is the support of involvement of a local community group regardless of the project's virtues, noted Developer G.

Developer I thinks that reputation for getting projects permitted and knowledge of the permitting process are the primary factors of competitive advantage in this industry. "The real barrier to entry isn't a lack of sites or construction cost [even though these are more difficult in Eastern Massachusetts]. It is really the cost and uncertainly of permitting." Developer F's firm has a saying that Developer F gave in response to this question: "in this business you can make a living, but with project X you can make a life."
22. *What values and attitudes are important to success with inclusionary zoning?* Answers to this question included:

A. “You can’t pretend that you are something that you’re not and do bad economic deals.” Being highly skilled at the public approval process is also required.

B. “You can’t fight something that the voting public has mandated.”

C. “People have to be sensitive to the reality of housing in the city. Affordable housing is not about the unwashed. It is incumbent on us all to make sure people can move to and afford to live here. There are many important jobs that just don’t pay well.

D. “Don’t believe that housing is a commodity like toothpaste. . . The interests are the same for the owner of a $62,000 house as they are for the owner of a $300,000 house. People care about their neighborhoods.”

E. “I understand the philosophy. It’s honorable. I have no qualms. But it’s gone on the wrong way.”

F. “We automatically think differently: ‘how do we get the deal done?’ rather than just looking at the bottom line.”

G. “You’ve got to accept it. It is the cost of doing business, and you have to try to make money around it.”

H. “Being open minded. . . You can’t resent it. You have to work with it. You have to take it as a given. It’s a good thing ultimately. It’s one of the rules of the game. If you don’t like the rules, don’t play the game. It won’t devastate a good project, but it may push a marginal project out of feasibility.”

I. This developer listed an open mind, an ability to listen, patience, flexibility, empathy, as important, “the same skills that get you through most negotiations. . . I’m an advocate of inclusionary zoning philosophically.”

Most of the developers expressed some degree of sympathy or acceptance of affordable housing and inclusionary zoning. However, Developer E feels that the development industry has been singled out because it is location is fixed, and this question stimulated a great deal of discussion about the injustice of developers being required to provide affordable housing without subsidies (see Appendix A for further discussion on this issue).

23. *What attitudes have you observed among your colleagues, lenders, and investors regarding mixed-income housing and inclusionary zoning?* Answers to this question show that attitudes
vary widely, as Developer H said, “from total resentment and anger to advocacy.” “There are people who believe in it, and there are people who won’t go near it with a ten foot pole,” said Developer D. Developer D has a saying: “It’s easy to say the right thing, but it’s hard to do the right thing.” Developer B has encountered really bad attitudes from his capital sources. Developer E thinks that “the general attitude is fine. There are no objections on the surface. Most objections are on the inside of development.” Developer F went further to say “No one thinks it’s a good idea in our [development] community if they are driven by economic return . . . lenders don’t like it. They perceive increase risk.” Developer C noted that “many have a preconceived notional about what affordable housing means.” Developer I stated, “[Many are] daunted by the process, and less patient than they need to be to be successful.”

Developer A noted that “everybody has trouble with labor. There is a quiet acknowledgement that laborers need housing, and you still hear people say ‘where does the help come from?’” For example, he discussed how it was a shame that a well paid manager in his firm is still not able to buy a house in the town he grew up in.

The biggest attitude problem that Developer G has identified is among the community members themselves in places like the North End and South Boston: “They sell for as much money as they can and then complain about how expensive housing is in their neighborhood. It is the capitalist system that is driving up rent. As long as we are strangling supply, it is the profit motive that affects how the average guy will sell for as much as he can. That’s America.” This developer also warned that inclusionary zoning focuses only on new construction but ignores the majority of transactions in which existing housing stock is being bid up in price. But, “you can’t go after that. You can buy and trade housing all day long and not participate in [the affordable housing issue],” he said.

24. What is the primary thing that you have learned working with inclusionary zoning? Answers to this question included:

A. “In the suburban environment, policy makers are not sincere about producing affordable housing, and there is no interest group for these people.” It is “kind of a shame.”

B. “It’s certainly not perfect.” The Cambridge law is difficult to apply across the diverse urban fabric, with odd lots, etc.
C. This developer has learned more about the process of financing and creating affordable housing than he had anticipated, "learning by hunting and pecking because there are not consultants to help you figure it all out." This developer recommends teaming up with a Community Development Corporation. The way to alleviate the current housing crisis is to increase supply not control prices. There is a lot of development in the pipeline, and he fears that the failure of inclusionary zoning will stimulate a reintroduction of rent control. "Don't give up on it yet."

D. "The best programs have as a basis the idea that it is something everybody does together." The developer referred to the Community Preservation Act now being considered and adopted by many Massachusetts towns. Inclusionary zoning is likely to be a tool used by towns that have no funds available for affordable housing but can "pay by allowing increased density." 40B is an important framework from which to view this issue.

E. "When it comes to housing policy, the public and the government really doesn't have a clue how to get there... I'll admit that I don't have a clue how public policy works."

F. "In its simplest form, it's the most important (I mean passionate) issue: affordable housing in general. Addressing that in a sensitive manner is very important. You have to think about it globally. How do I communicate it to investors, to the community, in order to get a project built?"

G. "It doesn't work."

H. "Good intentions, questionable means."

I. "Zoning is an iterative process. Most zoning needs to go through the test of time and communities need to be flexible."

25. What is the biggest question or concern you have about inclusionary zoning? Answers to this question included:

A. "I'm trying not to sound too jaded, but you have to look carefully at the written policy to know if local planners are just serious about avoiding 40B, but not serious about creating affordable housing."

B. "What changes might be instituted in policies in the future?"

C. More knowledge is needed. There is no good source for information currently. There should be an attempt to share knowledge on the subject describe how every deal is unique.
D. The owners of affordable units are just as concerned about their homes as the owners of market rate units. “That’s their biggest investment too.” This developer also stressed that “home equity starts most entrepreneurialism.” Therefore it is a dilemma to lock in the value of homes for affordable residents.

E. “Resolve the stupidity of it.” There is a need “for someone to come up with a comprehensive program that says ‘here are all the stakeholders, how do we fairly get there?’ The developer becomes the target to pay for everything . . . It will be interesting to see how much housing the Community Preservation Act produces.” The developer cited recent reports that Boston has a housing shortage of approximately 35,000 units while at least 2,000 units of development are being hung up over tight BRA constraints. He challenged the local government with the question, “what are you doing to get it built?”

F. “What is the most effective way from a social policy and real estate aspect to produce quality affordable housing? Should it be solely subsidized by profit-motivated developers [or with] government intervention? It can’t be done [by developers] alone.”

G. “Is there a single example of where inclusionary zoning has made housing more affordable?” And, “is there any other industry where this occurs? Stop and Shop doesn’t have to give out food. Brooks Brothers doesn’t have to give out clothes.”

H. “What is the real cost of inclusionary zoning and how does it affect the total production of housing? Is the overall effect desirable? . . . Do public approvals serve a public function, and if so is it worth the cost of increasing the cost of housing [by slowing down production]?”

I. “The ability to make inclusionary zoning a win/win.” This developer discussed the need for inclusionary zoning to “be something that works. I’m not convinced that most [zoning] bylaws have been well vetted.”

26. What does inclusionary zoning mean to you? Answers to this question included:

A. “a good first step.”

B. “Opening up the housing market to financially unqualified people, people who are otherwise fine individuals, but don’t have the resources to live in the area.”

C. “An attempt to produce income integrated neighborhoods.”

D. “A way for a town to leverage its ability to allow something that wouldn’t otherwise be produce, that is affordable housing with its own inherent public benefit.”
E. “A noble goal that is just not properly formulated and still is unconstitutional. . . it’s like having a balloon with Vaseline coated pins in it. If you pull them out it will collapse, if you push them in it will collapse. The potential outcome is that the balance of housing [the market rate units] get so much more unaffordable.”

F. “The implementation is flawed and doesn’t make sense for every project. . . But it is an important policy to address an important issue, especially in Boston.”

G. “A government sanctioned transfer of wealth from one person to another.”

H. “The same thing [as question 24]: Good intentions, questionable means.”

I. “Zoning that encourages the developing of housing which appeals to [people with] a broad spectrum of incomes.”

27. Do you pursue or avoid working in jurisdictions with inclusionary zoning or are you indifferent? In other words, is inclusionary zoning a carrot or a stick? Answers to this question included:

<table>
<thead>
<tr>
<th>Answer</th>
<th>Number</th>
<th>Developer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carrot</td>
<td>1</td>
<td>I</td>
</tr>
<tr>
<td>Stick</td>
<td>3</td>
<td>C, G, H</td>
</tr>
<tr>
<td>Neither/Indifferent</td>
<td>5</td>
<td>A, B, D, E, F</td>
</tr>
</tbody>
</table>

*Figure 3.9 Is inclusionary zoning a carrot or a stick?

The majority of developers indicated that it was neither a carrot or a stick. Only Developer I believes that “it is more of a carrot than a stick. “But [it is] not that relevant to our business,” he says. Developer A stated, “I am indifferent . . . perhaps your thesis should be entitled ‘carrot, stick or nonentity.’” Similarly, Developer E said, “I’m indifferent fundamentally, but it’s easier to stomach [in areas where] the market and the affordable component are closer together [in rents].” Developer D said, “My first question is ‘is there a market for what we do?’” Developer B added, “It doesn’t scare me away from [developing in] Cambridge,” although for him inclusionary zoning is not a carrot. Developer C noted that it was a stick for him, but that was “due somewhat to our own ignorance. Some seek out and thrive in the affordable housing business,” he said.
Developer F has a lot of experience with mixed-income housing and other affordable housing types. He said, “We were for profit affordable housing developers before inclusionary zoning. We know we can make them work. Real estate principles govern the deal.” Despite believing that inclusionary zoning is a stick, Developer H noted stated, “People will jump over high hurdles to develop [in Boston].” Similarly, Developer G said, “We [developers] want to deal in markets where the best chances for reward are.”

The answer to this final question sets an interesting tone in which to begin analysis. What does inclusionary zoning really mean to these developers? Is inclusionary zoning neither a carrot nor a stick? The following chapter answers these questions, compares answers across different firm types, and identifies additional issues that were presented in the interviews.
"Inclusionary zoning only works when the process makes sense—financial and otherwise—to the development community."
- Mark Bobrowski, an attorney and author of the Handbook of Massachusetts Land Use and Planning Law, in "Bringing Developers to the Table."
(Bobrowski, 2002, p. 7)

What does inclusionary zoning mean to for-profit developers?

This question was asked directly near the end of each interview (question 26) after developers had been asked to think about and respond to questions on a variety of issues. Therefore, developers had a tendency to use this question to briefly “sum it all up.” Portions of the direct answers to this question illustrate developers’ general acceptance of the policy, at least as “a good first step” (Developer A), “good intentions” (Developer H), and “a noble goal” (Developer E). However these accepting tones are in dramatic contrast to statements by some of the same developers that they believe the policy is “flawed” (Developer F), “[a] questionable means” (also Developer H), and “unconstitutional” (also Developer E).

These simple and direct answers do not fully explain what inclusionary means to these developers, however. More detail is provided in answers to other questions. For example, in statements regarding attitudes necessary for success with this policy (question 22), developers had additional statements expressing sympathetic or accepting attitudes toward inclusionary zoning while still disagreeing with the policy’s approach (question 22). Specific thoughts shared were, “You can’t fight something that the voting public has mandated (Developer B),” and “You’ve got to accept it. It is the cost of doing business, and you have to try to make money around it (Developer G).”
Although specific challenges with producing mixed-income were identified by many developers (questions 15 and 16), no significant bias against producing mixed-income developments was detected (question 9). Developer C identified the fact that inclusionary zoning typically includes moderate-income households rather than low-income households as an important factor in this compliant attitude. Furthermore, many developers understood the importance of developing a housing policy addressing the needs of moderate-income households and the need to have an open mind about what affordable housing means in the context of this policy. Developer D said when asked for attitudes necessary for success with inclusionary zoning, “Don’t believe that housing is a commodity like toothpaste. . . . The interests are the same for the owner of a $62,000 house as they are for the owner of a $300,000 house. People care about their neighborhoods.” Most of the developers interviewed acknowledged that there were non-financial returns in producing mixed-income housing including personal satisfaction and increased political stature (question 20).

Developers did not indicate that there were insurmountable problems in marketing and managing mixed-income projects, although some additional expertise is required and the value of market-rate units may be reduced to some degree, further impacting the practical economics of a project (questions 15 and 16). Other specific problems developers identified included: limitations of mixing residents at the very high end (Developer C and I), problems with condominium representation for affordable residents (Developer B and G), difficulty finding residents at certain income levels (Developer E), and the inability to provide more housing off-site in some instances (Developer C and D).

Developers believe that the attitudes of others in the industry toward inclusionary zoning and mixed-income development were quite varied (question 23). “They vary,” as Developer H said, “from total resentment and anger to advocacy.” Despite this wide range of attitudes observed by the developers, there is no indication that a premium is being placed on capital for the mixed-income projects except perhaps at smaller scales (question 17). The lack of a premium on capital is a critical observation because developers are driven primarily by economic return (Developer F) and rely upon providing competitive returns on “other people’s money” to make projects economically feasible (Developer G). As housing researchers have already noted, “a key to promoting and expanding rental housing opportunities for low- and moderate-income families
and individuals is an ample flow of debt and equity capital to the multifamily market.” (Bogdon, 1998, p. 285)

The majority of developers thought that the production of affordable housing should be performed in partnership with government (question 8). Most developers believed that they are subsidizing the affordable units and are frustrated at bearing this cost without financial subsidies (question 14). The developers interviewed suggested that the public desire to demand this contribution from real estate developers may stem from public perceptions of housing developers as “fat cats” (Developer E) and housing development as having “no risk” (Developer E). Developer G asked, “Is there any other industry where this occurs? Stop and Shop doesn’t have to give out food.” Developer C had additional insight into this phenomena, “I always found it strange that when development gets hot, layers of regulations are heaped on it.” But this doesn’t happen to other parts of the economy, he says. For example, “it doesn’t apply to the tech market where people are carrying away money in wheel barrows.”

Inclusionary zoning does have economic costs at least in terms of “opportunity cost lost” (Developer F). Developer I calculated that the cost of inclusionary zoning can be roughly $130,000 per unit. Developer E estimated that inclusionary zoning’s cost per square foot to a developer is approximately $9 per square foot whereas “linkage” for commercial projects is less. Inclusionary zoning can add additional marketing risk to a project as well. In his answer to question 21, Developer E noted that, “Inclusionary zoning hurts your competitive advantage especially if a neighboring community doesn’t have it.” This developer discussed the fact that a project in Boston with inclusionary zoning must compete with projects in nearby locations that may not have this policy. A developer in Quincy can bring a larger unit to market at a lower price, he noted. Developer H noted how a high percentage of affordable units can make projects more financially vulnerable to economic downturns. “It won’t devastate a good project, but it may push a marginal project out of feasibility,” he added.

Regardless of these costs, there does not appear to be an overwhelming attitude among developers that is opposed to financing and producing mixed-income housing privately as long as the economics of a project still allow developers to offer a competitive return for investors (questions 14 and 17). This is good news for advocates of inclusionary zoning since there is no indication of overwhelming attitude or social barriers within the for-profit housing industry that would preclude the viability the policy. The evidence from these interviews points substantially
toward the conclusion that inclusionary zoning is really a practical concern for most developers, "like bad soil, environmental issues, or unique foundation challenges," as noted by Developer H, which has the potential to make a project unfeasible, but is not insurmountable by itself (question 18).

Is inclusionary zoning a "carrot" or a "stick"?

This question was also asked directly of each interviewee as the last question of each interview (question 27). Only Developer I indicated that it was more of a carrot than a stick, and only three developers believed that it was a stick (Developers C, G, and H). The majority said it was neither. Developers A and E specifically said they were "indifferent." However, like the previous question regarding what inclusionary zoning means to developers, developers' brief and simplified answers belie the depth and complexity of the question.

There is an inherent irony in this question. Although, the majority of developers interviewed believe the policy imposes an economic loss to them or land owners (question 14), only a minority consider it significant enough to be a stick (question 27). None of the developers indicated that they plan to avoid working in jurisdictions with inclusionary zoning, including the two who consider it to be a stick (question 27). As Developer H noted regarding development in Boston, "People will jump over high hurdles to develop here." Similarly, Developer G said, "It's a stick," but "we [developers] want to deal in markets where the best chances for reward are." Developer B inclusionary zoning is not a carrot, "It doesn't scare me away from Cambridge."

The irony is that despite developer's indifference or resistance to inclusionary zoning, high-barrier to entry markets, such as those that utilize inclusionary zoning, are the most attractive areas for many developers. In other words, the presence of a stick may be a carrot. This is consistent with Michael Porter's "Five Forces Model" presented in chapter two in which high barriers entry contribute to an industry's overall structural attractiveness. As Developer H said in his answer to question 21, "There are so many developer chasing so few projects," but "inclusionary zoning doesn't affect competitive advantage other than raising barriers to entry further."

Additional evidence that supports this conclusion can be found in the actions of the developer with the most negative attitude toward inclusionary zoning, Developer E, who considers
inclusionary zoning to be “unconstitutional” and who asked in question 22, “When I am providing housing, why should I have to pay for housing?” Although this developer’s firm has worked in various locations in the Northeastern United States, the firm’s most significant recent projects are in Boston, and he did not indicate the fact that he is deterred from working in Boston, despite the difficulties of developing there. In response to this question, he replied “I’m indifferent fundamentally, but it’s easier to stomach [in areas where] the market and the affordable component are closer together [in rents].” This developer has developed a strategy of mitigating the impact of inclusionary zoning by focusing on middle market housing in Boston for which demand is very strong.

The evidence from these interviews strongly suggest that inclusionary zoning actually functions as both a stick and a carrot, requiring developers to do more than they would ordinarily but contributing to the overall attractiveness of a market. A new question arises: how much can developers be forced to do before they stop producing enough housing to keep the market in balance and make the housing crisis worse? When housing demand is strong, it makes sense that some developers will still be drawn to working in areas despite high barriers to entry or even “Byzantine system of getting projects permitted and financed” (as described by Developer H). But how much fortitude do developers have for new regulations and unpredictable processes? How much can they be pushed before they simply call off projects? The answers to these questions are to be found in the information regarding firm’s approaches to inclusionary zoning and the policy’s practical impact on project feasibility and the basic economics of a deal, and these vary from project to project, from firm to firm, and from jurisdiction to jurisdiction, as will be discussed in answering the third central question.

How do approaches and attitudes vary across firms and across jurisdictions?

There were very few observable trends in the data regarding attitudes and approaches compared to firm attributes. Appendix B illustrates in graphic form how poorly the categorized data correlates with the firm attributes collected. The varied answers to the first policy question (who should finance and produce affordable housing?) is indicative of the varied opinions, attitudes, and approaches that these developers expressed throughout the interviews.

The only patterns observed in the data are those pointed out by the developers directly. For example, there is some evidence that there may be differences in experiences between small
developers (producing less than 50 units annually) and larger developers. Developer B's difficulty in obtaining capital is a disturbing example of potential restriction for an important industry segment (question 17). Unfortunately, the only other small developer had no knowledge about the issues surrounding the financing of mixed-income projects, and the presence of only two developers below this threshold does not provide adequate evidence to adequately prove this conclusion.

Other possible patterns between approaches and firm attributes were pointed out by Developers C and H. Developer C noted that "big strike" developers (developers who build and then sell for maximum profit rather than hold the property long term) are less likely to build housing now because of the uncertainty regarding resale of mixed-income properties (question 17). Similarly Developer H noted that large national REITS have difficulty working in areas with increased uncertainty in permitting (question 21). Combining the two issues raised by Developers C and H with information about the difficulties that small firms have obtaining capital (Developer B) indicates that there may a particularly type of developer who is best suited to produce housing in this regulatory environment: medium to large local firms with long-term property ownership goals.

As further indication of the lack of correlation of attitudes and firm attributes, the developer who expressed the most opposition to inclusionary zoning was Developer E, the leader of a development group for a firm with a track record of success developing and managing mixed-income properties prior to inclusionary zoning. In contrast Developer C, was very sympathetic toward the goals of the policy despite his lack of experience with affordable housing and the hardship he has endured with delay of projects. In fact, Developer C indicated that his firm is increasing its housing focus.

Despite the lack of a strong correlation between information obtained and firm attributes, there is considerable information in these interviews that points to important differences across jurisdictions. Many developers described ways in which suburban development is very different from urban development in Massachusetts (question 11). In particular, Boston stands out in stark contrast as the most difficult place in Eastern Massachusetts in which to mitigate this policy. This is not necessarily because of the written policy itself, but because of the unpredictable process by which it is implemented.
Developers C, E, F, G, H, and I all discussed the difficult and arbitrary nature by which Boston implements its inclusionary zoning policy. Developer I described it this way, “Boston has one thing on the books, and then you go in the back room and get your arm twisted... Zoning is not an issue in Boston. The issue is still the process and the uncertainty and cost of the process.” As Developer G stated, “the zoning code is so outdated that nothing gets built without a variance or special permit.” The result of this process, he says, is that all projects must go through this process in which he frequently hears, “You need zoning relief. Now what are you going to give us?” Developer H discussed how a huge amount of knowledge and resources are needed for success in Boston, and many outside national players get defeated even when their cost of capital is very low due to a lack of local expertise. The evidence of this is that the large, national REITs are not developing in Boston, rather they are simply buying up properties in order to have a presence here, noted Developer H. Developer C said, “[In Boston] every deal is a long drawn out negotiation process. The city should make guidelines clear and stick to them, and streamline the process to speed up supply.” Developer C recounted a story of how the Boston Redevelopment Authority (BRA), the city’s planning agency, offered a density bonus late in the process due to political pressures to keep the project moving forward. Unfortunately, the bonus didn’t help the project substantially due to the logistics and limitations of the site. Only one developer had similarly negative accounts of the process in another jurisdiction. “The attitudes in Boston and Brookline are the same,” said Developer G regarding the need to always provide more public benefits than the written policy requires.

Developers repeatedly indicated that the political process of getting projects approved is one of the most critical risk factors in development. One developer indicated that there are clearly times when developers act in order to preserve project feasibility politically rather than simply pursue greatest profit. For example, Developer F in answering question 10 stated, “We would just get croaked politically if we cashed out [versus providing affordable units on site] although if you look at the numbers, cashing out always makes more sense.” Several developers reported the common need to provide additional units than were required by the written policy (Developers C, E, and G).

In the Massachusetts suburbs, the presence of 40B alters both the regulatory process and business strategy. Developer I described a recent project in a suburban town in which he began working through the inclusionary zoning process that had a 20% affordability requirement, but the town rejected the proposed development. So the developer went back to the town with the same
project as a 40B project (with 25% of the project affordable) and now the project is being constructed (question 18). "Now they love it," he said. Developer I typically does not take on permitting risk. In applying for a 40B comprehensive permit, he avoided a long unpredictable public approval process. Therefore Boston, which has more than 10% of its housing stock at affordable prices and therefore is exempt from the Chapter 40B regulation, is a an undesirable jurisdiction in which to work for this large developer.

Again indicating the lack of an important trend based on firm attributes, both Developer A (the smallest developer interviewed) and Developer I (the largest developer interviewed) noted that they have had more success with 40B than with inclusionary zoning in suburban towns. Developer B noted that in his experience, suburban towns such as Belmont and Concord were not doing a good job preserving housing and ethnic diversity, compared to Cambridge. Developer H said that working with Cambridge was “very professional.”

What are the implications of the answers to these questions?

As described in the answers to the previous questions, there is no indication of any overwhelming social, marketing or financial barriers within the for-profit housing industry that would preclude the viability of inclusionary zoning policy to produce for-profit development of moderate-income, mixed-income housing without subsidy. In fact some developers indicate that there are additional professional satisfaction in producing this type of housing. However, information from these interviews suggests many specific practical aspects of the policy that can make projects economically unfeasible and therefore result in project delay or cancellation. This research suggested two types of implications for further refinement of inclusionary zoning policy: known factors that can improve policy effectiveness and issues requiring further research.

Factors To Improve Effectiveness

1. Density bonuses that have real economic value. Developers acknowledged that density bonuses can serve as a non-financial subsidy (question 12), but there are specific situations in which they may not have as significant of an impact as intended due to the logistics or capacity of a particular site (Developers B and C). For projects that have additional limitations such as historic preservation of existing structures, inclusionary zoning may place additional unintended burdens on a developer and should trigger additional consideration since density bonuses may not alleviate these burdens (Developer B). Public officials must also recognize that density bonuses
may have more value for some types of development than for others. This may or may not be advantageous. For example, Developer H didn’t feel that density bonuses really help on rental projects because of the thinner project margins than condominium development. This could discourage apartment development, which may not be a desirable effect. For similar reasons, Developer I felt that bonuses might not help much in suburban situations unless it was more substantial.

Government must be careful to not demand so much that the policy does not pass the constitutional “nexus” and “rough proportionality” tests discussed in chapter two. In fact in order to pass these constitutional tests, policy advisors have advised that incentives such as density bonuses should be included (Kayden, 2002; Netter, 2000). If in fact the vast majority in development in Boston requires a special permit to proceed, then practice (rather than written procedure) indicates that the policy may really be mandatory. Without economically valuable density bonuses or other incentives, Developer E may correct about Boston’s policy being vulnerable to constitutional challenges as well as practical ones.

2. Affordable units at percentages that are economically supportable. A potential negative byproduct of requiring high percentages of affordability is the tendency for developers to produce an abundance of high-end housing product instead of more middle market development as noted by Developers C, G, and H. As Developer G described, developers of housing in Brookline simply divide a lot’s FAR by 14 to determine the unit size, since inclusionary zoning requires affordable units only on projects of 15 or more units. This may not produce units that are really what the market needs or wants. As Developer H said, “10% [affordable component] is about as high as most projects can afford. 15% bifurcates housing into affordable units and extremely expensive units. This middle market is what is really missing.” Developers C and E are clearly willing to build mid market housing, but they feel that they are carrying an inordinate share of the burden in creating affordable housing.

3. Increased permitting predictability. Developers C and I made compelling cases for the need to make implementation of this policy more predictable. When accepting the economic burden of providing affordable housing without subsidy, increasing the uncertainty of public approvals through a Byzantine negotiation process only heightens the cost and risk of a project and decreases the likelihood that developers will initiate new projects. Providing reduced permitting risk or an expedited approvals for housing projects regulated by inclusionary zoning could be
considered a non-financial subsidy of great economic value for developers with no cost to the public. This is a critical component of the Massachusetts Chapter 40B law and should be a component of inclusionary zoning policy as well.

4. **Efficient and equitable application.** Inclusionary zoning should be crafted for efficiency and equitable outcomes. For example, providing housing off-site should always be an option for developers, especially when the developer can produce a significantly greater amount of housing in a nearby location at the same cost. This more efficiently allocates the resources demanded from developers. Also, policy should be fairly applied. Developers C and E discussed the inequity in Boston's policy regarding the "cash out" or "in lieu of payment" which is a fixed amount per unit in Boston. These developers noted how this option has more value to a high-end development since these units are typically larger and cost more to build. "Why is the buyout price the same regardless of the price of the market rate units?" asked Developer E. "There should be a sliding scale," said Developer C, "Middle market housing projects shouldn't carry the burden."

5. **Economic Flexibility.** In addition to the factors mentioned above, inclusionary zoning should be crafted for economic flexibility. Even if a market study indicates that a certain percentage of affordability can be supported by the development industry at some point in time, this supportable level will likely change. Developer H provided compelling evidence regarding current projects in Boston in which percentages of affordability were negotiated when the economy was hot. Even though demand is still high and the affordable housing crisis has not disappeared, a small softening in the housing market from previous highs has made some large projects unfeasible. Unfortunately, the end result of this is that less affordable housing gets produced than is intended. When the economy softens, developers should have the ability to reduce the percentages when according to certain economic indexes in order to preserve project viability. Otherwise, the policy places an artificially high replacement cost on housing development that can severely disrupt the balance of supply and demand during a down economic cycle.

**Issues Requiring Further Research**

1. **What type of firms are most burdened and deterred from working in jurisdictions with inclusionary zoning?** Preliminary evidence in this study suggests that both small local firms and large national firms may have the most difficult time mitigating the impact of inclusionary zoning
on development projects (Developers B and I). Further study is needed to verify or reject this conclusion, and ramifications of the results should be explored.

2. **What is the financial impact of the affordable units required by inclusionary zoning on a real estate project?** Financial analysis from the perspective of for-profit housing developers should be performed and shared with the public. Increasing the public understanding of the fundamentals of real estate finance will help the dialogue between the public and private sectors which must work together to refine inclusionary zoning policy for maximum effectiveness.

3. **What is the financial and resale performance of mixed-income properties?** The answer to this question does not currently exist (question 17). A preliminary theory might be that although cash flows are reduced from pure market projects, mixed-income properties might have less cash flow volatility due to the stability and low vacancy rate of the affordable component.

4. **What is the effect of inclusionary zoning on supply and regional housing affordability?** Preliminary evidence in this study suggests that housing production will slow down as a result of inclusionary zoning (question 13). The developers interviewed strongly suggested that this will only exacerbate the affordable housing crisis in Massachusetts. This is a natural response for housing developers to suggest because supply is the solution that a housing developers are able and wanting to offer. However, there is support for their conclusion. In 2001, housing experts in Massachusetts projected that the region would need to produce 78,000 new units over the next five years to keep up with the demand, but that “the-market-will-handle-it” approach might only produce 36,000 units (Alberghini, 2001, p. 48). As long as production is slowed while other conditions remain the same, the answer to this question may be found in the basic economic theory of supply and demand: prices will increase. Further quantitative research is needed in order to confirm or reject this conclusion.

**Final Conclusions**

Inclusionary zoning is different from most previous housing policies for two fundamental reasons. First, it is designed to help a new group of citizens in need: moderate-income households. The severity of the housing crisis combined with government funding cutbacks has led local governments and housing advocates to consider and adopt this policy in order to aid this group of people vital to local communities. Second, inclusionary zoning is crafted by local
government officials and ratified by local citizens. This is quite different than past housing policies that were adopted and managed by housing experts at the federal or state level. The benefit of this “local” approach is that policy can be crafted to meet a particular community’s needs. The downside is the danger that local officials may not have the expertise or interest to adequately craft policies that meet regional housing needs. Even worse, if local officials, the consultants who advise them, and the voters who approve the policy are not adequately aware of the many issues and stakeholders involved, they may implement policies that have the unintended adverse effect of restricting supply and increasing prices overall for the same group of people that the policy seeks to help.

For better or for worse, public policy will have an increasing influence on the delicate balance of housing supply and demand as developable land becomes increasingly scarce. Unfortunately there is an inherent dilemma in trying to control rising housing costs for some citizens while preserving the potential for property value appreciation for existing owners. Therefore public officials must have the courage to make wise policy decisions that strike a balance between these two needs. Public officials must also address the practical nature of policies, rather than merely place additional burdens on politically unpopular industries such as real estate development. As long as the public sector attempts to push the development industry to its economic limits it may never realize its goals of producing affordable housing in this manner at quantities necessary to actually ease the housing crisis for moderate-income households.

As this research has shown, inclusionary zoning functions as both a stick and a carrot. However, despite the fact that developers may actually be drawn to pursue projects in areas with increased regulation and high barriers to entry, their production may be significantly reduced if policies diminish the economic feasibility of projects. Therefore, in crafting effective inclusionary zoning policies, planners and citizens must be diligent to remember that “inclusionary zoning only works when the process makes sense – financial and otherwise – to the development community (Bobrowski, 2002, p. 7).” This research provides specific examples of how this policy might be refined to “make sense” from the perspective of the private for-profit developer, the stakeholder primarily responsible for the physical implementation of this important and potentially broad-reaching policy.
Appendix A: Summary of Categorized Data

Summary of Firm Attributes*

<table>
<thead>
<tr>
<th>ID/Size</th>
<th>Housing Focus (type)</th>
<th>IZ projects</th>
<th>Aff Units</th>
<th>Geographic Focus</th>
</tr>
</thead>
<tbody>
<tr>
<td>A 3</td>
<td>15% (single-family for sale)</td>
<td>4</td>
<td>0</td>
<td>Suburban Eastern MA</td>
</tr>
<tr>
<td>B 10</td>
<td>90% (multi-family for sale)</td>
<td>1</td>
<td>1</td>
<td>Cambridge &amp; suburbs</td>
</tr>
<tr>
<td>C 200</td>
<td>25% (multi-family sale/rental)</td>
<td>3</td>
<td>14</td>
<td>Urban Northeast U.S.</td>
</tr>
<tr>
<td>D 100+</td>
<td>75% (single-family for sale)</td>
<td>2</td>
<td>20</td>
<td>Suburban Eastern MA</td>
</tr>
<tr>
<td>E 1,000</td>
<td>75% (multi-family for rent)</td>
<td>3</td>
<td>120</td>
<td>Urban Northeast U.S.</td>
</tr>
<tr>
<td>F 300</td>
<td>90% (multi-family sale/rental)</td>
<td>12</td>
<td>50</td>
<td>Boston, MA</td>
</tr>
<tr>
<td>G 75</td>
<td>80% (multi-family for rent)</td>
<td>5</td>
<td>100</td>
<td>Boston &amp; inner suburbs</td>
</tr>
<tr>
<td>H 1,000+</td>
<td>90% (multi-family for rent)</td>
<td>24+</td>
<td>200+</td>
<td>Boston &amp; inner suburbs</td>
</tr>
<tr>
<td>I 5,000</td>
<td>100% (multi-family rental)</td>
<td>1</td>
<td>8</td>
<td>National, urban &amp; suburban</td>
</tr>
</tbody>
</table>

*see figure 3.1 for additional notes and explanation of categories (does not include interviewee position)

Summary of Categorized Questions and Answers

<table>
<thead>
<tr>
<th>Question/Answer</th>
<th>Number</th>
<th>Developer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Who should finance and produce affordable housing?</td>
<td>3</td>
<td>A, C, I</td>
</tr>
<tr>
<td>Private Sector</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal Government</td>
<td>1</td>
<td>B</td>
</tr>
<tr>
<td>Government finances, private sector produces</td>
<td>4</td>
<td>E, F, G, H</td>
</tr>
<tr>
<td>Communities that need it</td>
<td>1</td>
<td>D</td>
</tr>
<tr>
<td>13. Will you produce more or less housing overall as a result of inclusionary zoning?</td>
<td>3</td>
<td>A, B, F</td>
</tr>
<tr>
<td>The same amount</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less</td>
<td>5</td>
<td>C, E, G, H, I</td>
</tr>
<tr>
<td>More</td>
<td>1</td>
<td>D</td>
</tr>
<tr>
<td>14. Who subsidizes or pays for the affordable units?</td>
<td>4</td>
<td>A, E*, H, I*</td>
</tr>
<tr>
<td>Landowners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Market-rate condominium owners</td>
<td>2</td>
<td>B, G</td>
</tr>
<tr>
<td>Market-rate rental tenants</td>
<td>1</td>
<td>C</td>
</tr>
<tr>
<td>Developers</td>
<td>5</td>
<td>D, E*, F, G*, I*</td>
</tr>
<tr>
<td>Local Governments</td>
<td>1</td>
<td>I*</td>
</tr>
<tr>
<td>17. Is capital more or less costly for mixed-income housing?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More costly</td>
<td>2</td>
<td>B, D</td>
</tr>
<tr>
<td>The same (no premium or savings)</td>
<td>6</td>
<td>C, E, F, G, H, I</td>
</tr>
<tr>
<td>No knowledge</td>
<td>1</td>
<td>A</td>
</tr>
<tr>
<td>19. What resources or people do you consult on this issue? **</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fellow developers</td>
<td>2</td>
<td>A, C*</td>
</tr>
<tr>
<td>Attorneys</td>
<td>2</td>
<td>B, C*</td>
</tr>
<tr>
<td>Specialized accounting firms</td>
<td>2</td>
<td>C*, F*</td>
</tr>
<tr>
<td>Local housing partnership/finance agencies</td>
<td>2</td>
<td>B, C*</td>
</tr>
<tr>
<td>In house</td>
<td>6</td>
<td>D, E, F*, G, H, I</td>
</tr>
<tr>
<td>27. Is inclusionary zoning a carrot or a stick?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrot</td>
<td>1</td>
<td>I</td>
</tr>
<tr>
<td>Stick</td>
<td>3</td>
<td>C, G, H</td>
</tr>
<tr>
<td>Neither/Indifferent</td>
<td>5</td>
<td>A, B, D, E, F</td>
</tr>
</tbody>
</table>

*More than one answer.
** Not graphed due to multiple answers
Appendix B: Correlations of Categorized Data with Questions

8. Who should finance and produce affordable housing?

Question v. firm size

<table>
<thead>
<tr>
<th>Private</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>C</td>
<td>I</td>
<td></td>
</tr>
<tr>
<td>Public/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private</td>
<td>G</td>
<td>F</td>
<td>E</td>
</tr>
<tr>
<td>Public</td>
<td>B</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Question v. housing focus (%)

<table>
<thead>
<tr>
<th>Private</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>C</td>
<td>I</td>
<td></td>
</tr>
<tr>
<td>Public/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private</td>
<td>H</td>
<td>E</td>
<td>G</td>
</tr>
<tr>
<td>Public</td>
<td>B</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Question v. housing focus (type)

<table>
<thead>
<tr>
<th>Single (sale)</th>
<th>Multi (sale)</th>
<th>Multi (sale/rent)</th>
<th>Multi (rent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A, I, C</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private</td>
<td>F</td>
<td>G</td>
<td>E</td>
</tr>
<tr>
<td>Public</td>
<td>B</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Question v. No. of Incl. Zng. projects

<table>
<thead>
<tr>
<th>Private</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>C</td>
<td>I</td>
<td></td>
</tr>
<tr>
<td>Public/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private</td>
<td>H</td>
<td>F</td>
<td>G</td>
</tr>
<tr>
<td>Public</td>
<td>B</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Question v. No. of Incl. Zng. Aff Units

<table>
<thead>
<tr>
<th>Suburban</th>
<th>Both</th>
<th>Urban</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 100</td>
<td>100</td>
<td>200+</td>
</tr>
</tbody>
</table>

* "D" had fourth answer: "Communities that need it."

Question v. Geographic Focus (urban v. suburban)
13. Will you produce more or less housing overall as a result of inclusionary zoning?

**Question v. firm size**

**Question v. housing focus (%)**

**Question v. housing focus (type)**

**Question v. No. of Incl. Zng projects**

**Question v. No. of Incl. Zng. Aff Units**

**Question v. Geographic Focus**
(*urban v. suburban*)
14. Who subsidizes or pays for the affordable units?

- **Land owners**
  - A
  - E* H I*

- **Devlprs**
  - G* D F E* I*

- **Market rate res.**
  - B G* C

**Question v. firm size**

- **Land owners**
  - A
  - E* I*

- **Devlprs**
  - E* F D G* I*

- **Market rate res.**
  - C G* B

**Question v. housing focus (%)**

- **Land owners**
  - A
  - I* E*

- **Devlprs**
  - D I* E* G* F

- **Market rate res.**
  - B C G*

**Question v. No. of Incl. Zng projects**

- **Land owners**
  - A
  - I* H

- **Devlprs**
  - D I* G* E*

- **Market rate res.**
  - B G* C

**Question v. No. of Incl. Zng. Aff Units**

- **Land owners**
  - I* E* H

- **Devlprs**
  - D F G* E*

- **Market rate res.**
  - B C G*

**Question v. Geographic Focus (urban v. suburban)**

- **Land owners**
  - A I* H E*

- **Devlprs**
  - D I* G* F

- **Market rate res.**
  - B G* C

* more than one answer - "I" had third answer: local governments
17. Is capital more or less costly for mixed-income housing?

**Question v. firm size**

<table>
<thead>
<tr>
<th>More</th>
<th>Less</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>D</td>
</tr>
<tr>
<td>A</td>
<td>G</td>
</tr>
</tbody>
</table>

**Question v. housing focus (%)**

<table>
<thead>
<tr>
<th>More</th>
<th>Less</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>B</td>
</tr>
<tr>
<td>E</td>
<td>F</td>
</tr>
<tr>
<td>A</td>
<td>C</td>
</tr>
<tr>
<td>G</td>
<td>C</td>
</tr>
</tbody>
</table>

**Question v. housing focus (type)**

<table>
<thead>
<tr>
<th>More</th>
<th>Less</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>B</td>
</tr>
<tr>
<td>E</td>
<td>I</td>
</tr>
<tr>
<td>A</td>
<td>C</td>
</tr>
<tr>
<td>G</td>
<td>I</td>
</tr>
</tbody>
</table>

**Question v. No. of Incl. Zng projects**

<table>
<thead>
<tr>
<th>More</th>
<th>Less</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>B</td>
</tr>
<tr>
<td>G</td>
<td>F</td>
</tr>
</tbody>
</table>

**Question v. No. of Incl. Zng. Aff Units**

<table>
<thead>
<tr>
<th>More</th>
<th>Less</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>D</td>
</tr>
<tr>
<td>A</td>
<td>I</td>
</tr>
<tr>
<td>C</td>
<td>E</td>
</tr>
</tbody>
</table>

**Question v. Geographic Focus (urban v. suburban)**

<table>
<thead>
<tr>
<th>More</th>
<th>Less</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>D</td>
</tr>
<tr>
<td>G</td>
<td>F</td>
</tr>
<tr>
<td>A</td>
<td>I</td>
</tr>
<tr>
<td>C</td>
<td>E</td>
</tr>
</tbody>
</table>

86
27. Is inclusionary zoning a carrot or a stick?

- **Question v. firm size**
  - Carrot: [Diagram showing firm size with categories: Single, Multi (sale), Multi (sale/rent), Multi (rent)]
  - Stick: [Diagram showing firm size]

- **Question v. housing focus (%)**
  - Carrot: [Diagram showing housing focus percentages]
  - Stick: [Diagram showing housing focus percentages]

- **Question v. housing focus (type)**
  - Carrot: [Diagram showing housing focus types]
  - Stick: [Diagram showing housing focus types]

- **Question v. No. of Incl. Zng. projects**
  - Carrot: [Diagram showing number of inclusionary projects]
  - Stick: [Diagram showing number of inclusionary projects]

- **Question v. No. of Incl. Zng. Aff Units**
  - Carrot: [Diagram showing number of inclusionary units]
  - Stick: [Diagram showing number of inclusionary units]

- **Question v. Geographic Focus (urban v. suburban)**
  - Carrot: [Diagram showing geographic focus]
  - Stick: [Diagram showing geographic focus]
Bibliography


Hare, Patrick H. “Affordable Housing That Is Not Subsidized.” CityWatch. Winter/Spring 1993:5.


