

# Locked Out: The Impact of Local Regulation on Affordable Housing

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# The Impact of Local Regulation on Affordable Housing

## Contents:

- I. Introduction
- II. Regulatory Barriers
- III. Restricting Housing Choices
- IV. Restricting the Location of Housing
- V. Potential Solutions

## Introduction

Between 1995 and 2005, the average Charlottesville area<sup>1</sup> home price rose 133%<sup>2</sup>. During this same timeframe, the Consumer Price Index increased only by 28.2%. This historic discrepancy is not unique to the Charlottesville market. Nationwide, families in many localities are spending a greater proportion of their income on housing. Nearly a third of all households in the United States spend 30 percent or more of their income on housing and 13 percent spend 50 percent or greater for housing.<sup>3</sup> According to Fannie Mae, the number of households spending 50% or more of their income on housing has increased 67% since 1997.<sup>4</sup> This climate of higher housing costs has prompted academics and policymakers alike to explore various affordable housing solutions.

Since housing policy is largely a local matter, the Charlottesville area jurisdictions have the opportunity to design and shape housing policy which impacts affordability. The cumulative cost of regulation on homebuyers is one area that has not yet received thorough examination. Although the housing market has been marked by high demand, regulatory barriers represent a significant part of the price increase on area homes.

According to the National Association of Home Builders, regulatory barriers and delays have increased home costs by as much as 25% nationwide, barring as many as 11.8 million households from buying the median-priced home.<sup>5</sup> However, Chester Hartman from the Poverty and Race Research Action Council points out that, “Even those land use regulations that indisputably add costs for the most part have a tangible social benefit. Virtually any land use control worthy of the name imposes a cost on someone. The trade off between these costs and benefits must be openly discussed and dealt with...”<sup>6</sup>

This report attempts to encourage an open analysis of these trade offs in the Charlottesville area, aiming to facilitate the discussion of affordability and its relationship to regulation. Although regulations such as building codes, and environmental regulations tend to increase home prices, some of these regulations produce a clear social benefit. For example, although the installation of a firewall raises housing costs, it aims to protect the safety of residents.

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<sup>1</sup> For the purposes of this report the “Charlottesville region/area” will refer to Charlottesville City and Fluvanna, Nelson, Albemarle, and Greene Counties.

<sup>2</sup> Data Collected from the Charlottesville Area Association of REALTORS®.

<sup>3</sup> Joint Center for Housing Studies of Harvard University. The State of the Nation's Housing, 2004.

<sup>4</sup> Fannie Mae, 2003.

<sup>5</sup> NAHB, nahb.org

<sup>6</sup> Hartman, Chester, “Comment on Anthony Downs’s “The Advisory Commission on Regulatory Barriers to Affordable Housing: Its Behavior and Accomplishments” Housing Policy Debate Volume 2, Issue 4

Therefore, an analysis of many regulations produces ambiguous results, largely dependent on the prioritization of the benefits and costs of a given regulation.

In this paper, The Free Enterprise Forum focuses on affordability by discussing regulatory barriers to homeownership. In the Charlottesville area, lack of affordability has led to a diaspora of the workforce, who have moved increasingly further from employment centers in search of affordable housing. In Fluvanna, for example “The Lake (Monticello) development has historically been marketed as a retirement and second home destination, but recent growth has included a stronger influence from younger families looking for better values than available in the Charlottesville market.”<sup>7</sup> For this reason, this study will extend beyond the Charlottesville city limits to include the counties of Albemarle, Greene, Nelson and Fluvanna as these counties house a majority of the workforce.

This report will explore the root causes for the lack of affordability and its relationship to regulation, advocating for a reformation of the development approval process, and of affordable housing programs and policy. Although many other regulatory barriers are ambiguous in their social benefit, streamlining the government processes benefits the entire population. A critical and comprehensive reorganization of government management of current and proposed regulations could lead to a decrease in the cost of bringing new homes onto the market. Since older homes have a tendency to track new home prices, such reorganization could improve overall affordability of area homes.

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## I. Regulatory Barriers

Governments frequently enact measures that directly and indirectly increase the cost or reduce the supply of new housing. While some of these regulations clearly serve a community’s best interest, others are as described by Former President George H.W. Bush as, “excessive rules, regulations, and red tape that add unnecessarily to the cost of housing...”<sup>8</sup>

A regulatory barrier to affordable housing is defined by the United States Department of Housing and Urban Development (HUD) as:

... Either a deliberate or de facto action that prohibits or discourages the construction of affordable housing without sound reasons directly related to public health and

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<sup>7</sup> County of Fluvanna Lake Monticello Community Plan, 2003.

<sup>8</sup> Advisory Commission on Regulatory Barriers, 1991.

safety; a federal, state or local statute, ordinance, policy, custom, practice or procedure that excessively increases the cost of new or rehabilitated housing, either by improperly restricting the location of housing or by imposing unjustifiable restrictions on housing development with little or no public benefit.<sup>9</sup>

Undoubtedly regulation can be beneficial in addressing issues of health and well-being of communities. For example, the Federal Fair Housing Act ensured that all people have access to housing regardless of race, religion, or disability. However, excessive regulation leads to delays in which costs are accumulated. These costs are transferred to consumers without increasing the value or improving the quality of their home. Regulation of development can represent a significant component of housing costs. As regulation of the housing market is mostly localized in its implementation and enforcement, these regulations can be locally revised.

Regulations on development include infrastructure financing mechanisms, zoning and subdivision controls, building codes, permitting and procedural rules, impact studies, resource protection ordinances, proffers and local procedures for processing development applications. A typical builder will have to pay for proffers, building permits, a certificate of occupancy and may have to apply for a rezoning. In the event of a rezoning, builders are increasingly expected to provide proffers that provide public infrastructure improvements to mitigate the impact of the land being developed. Those wanting to develop their land must pay professionals to respond to planning concerns and face compounding interest on land costs the longer the approval process takes. For each delay, for each additional layer of approval and for each additional proffer, cost is added to the dollar amount consumers must pay for a new home.

These costs are also accrued by the general public. As the public pays for government staff time, it is taxpayers who provide funds over and above fees for the review process. Additionally, as builders face pressure from banks and investors to maintain a predetermined profit margin, these costs are often added to each residential unit and thus transferred to the consumer. According to a study by Green and Malpezzi, moving from a lightly-regulated to a heavily-regulated environment could raise housing costs by fifty-one percent and decrease homeownership by as much as ten percentage points.<sup>10</sup>

More than any other portion of the cost of new housing, local government has the opportunity to create more housing options and reduce costs for the new homebuyer, the developer and the taxpayer by streamlining the approval process. Unlike many other regulations, lengthy government administrative processes clearly have no social benefit while increasing the cost

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<sup>9</sup> "Taming the Exclusionary Effects of Growth Controls." Zoning News, American Planning Association, September 1989

<sup>10</sup> Greene, Richard K. and Stephen Malpezzi. 2003. A Primer on U.S. Housing Markets and Housing Policy.

of new homes for the consumer.<sup>11</sup> The following section will detail some regulations which restrict housing choices and thus increase costs in the Charlottesville region.

### III. “Restricting Housing Choices”

This section explores the extent to which the Charlottesville region is “restricting housing choices” as per the Housing and Urban Development’s definition of regulatory barriers. The Virginia Housing Authority produced a study reporting that the Charlottesville region’s “government policies, including zoning ordinances, are restricting housing choices due to increased costs to meet zoning demands or the lack of sites suitably zoned for needed residential development.”<sup>12</sup> As the Charlottesville market has grown, the housing stock has not kept pace with new housing stock has not kept pace with demand. This section details some ways in which jurisdictions within the Charlottesville area directly and indirectly restrict housing choices.

#### **The Rezoning and Subdivision Review Process**

Rezoning and subdivision applications typically require significant up-front costs to produce. The review process is rife with regulatory barriers and hurdles. Albemarle County’s Director of Community Development expressed his view of the process:

A possible 15 reviewers considering 102 different issues before the plan is brought to the Planning Commission. With this number of issues and reviewers, it is inevitable there will be conflicting objectives. For example, one reviewer could seek a street connection across a small stream valley while another reviewer sought less disturbance of the stream buffer. Typically, those conflicts are addressed through an iterative review process that seeks to find the optimal solution.<sup>13</sup>

Applicants echo the same concern about the review process. Rob Duncan, of Southern Development stated that “one individual’s interpretation of the ordinance can often be very different than another’s and as a result projects are drawn out over years...because you get these conflicting views...you end up in this circle of resubmittals.” According to area developers, differing interpretations are commonplace because of conflicting and ambiguous language within the ordinances and lack of coordination by senior staff members. One applicant compared the process to a “choose-your-own adventure book”.

A good example of the subdivision regulatory hurdles faced by applicants is found in the Fluvanna County subdivision ordinance. In accordance with the subdivision ordinance, a developer is required to perform a yield plan for a rural cluster sub-division showing how

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<sup>11</sup> Schill, Michael H., “Regulations and Housing Development: What We Know and What We Need to Know”, April 2004

<sup>12</sup> VHDA Analysis of Housing Needs in the Commonwealth, 2001.

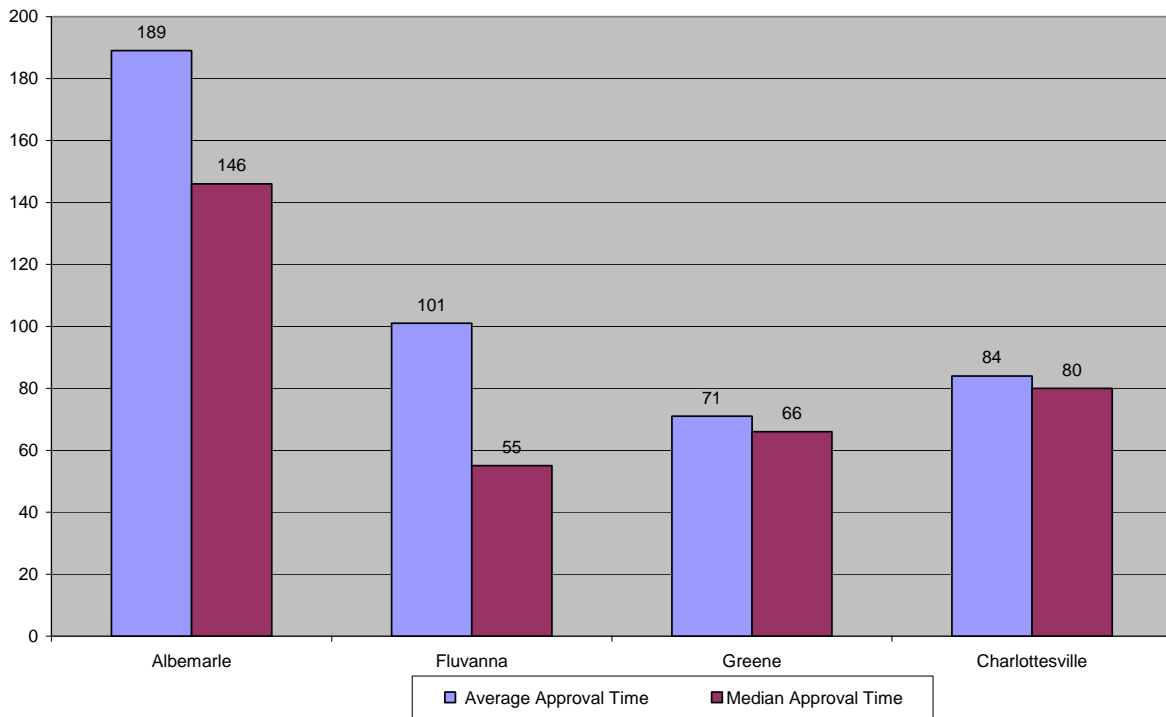
<sup>13</sup> Albemarle County Community Development Update and Process Improvement Work Session Executive Summary, June 1, 2005

many two acres lots could be developed. However the yield plan is a fictitious plan. Two-acre subdivisions are not permitted in Fluvanna County. When the yield plan was completed, Fluvanna County attended the applicant to have to obtain a permit from the Army Corps of Engineers and the Department of Environmental Quality on a plan which will never be realized. When implementation of this process was attempted in late 2005, The Army Corps of Engineers determined that it would not be involved in approving subdivision plans that have no intention of being built. These kinds of regulatory barriers represent unnecessary cost to the taxpayer, the applicant and the new homeowner.

The Free Enterprise Forum studied subdivision development activity in Albemarle, Greene and Fluvanna Counties and the City of Charlottesville to determine the length of time from initial application to approval of each subdivision. In every subdivision application studied, existing zoning already specified the number of developable units. A subdivision merely draws the boundary lines between distinct lots in the entire parcel. Graph 2-1 illustrates the Forum’s findings based in information provided by each locality.

**Graph 2-1**

**Average and Median Approval Time in Days for Subdivisions of Twenty or More Lots**



\*Nelson County does not have sufficient subdivision activity to include in this chart.

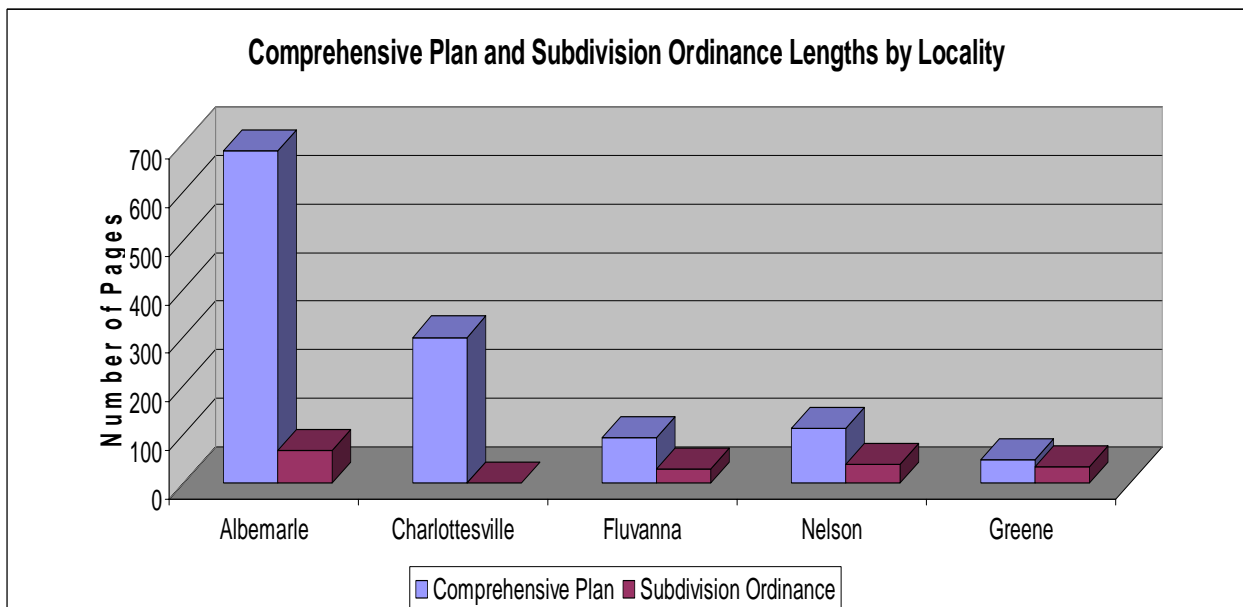
The time taken to obtain legislative approval has historically had a two-pronged influence on affordable housing. First, delays in construction resulting from the administrative process add to the cost of housing. Second, the impact of regulatory barriers may deter housing development in the first place, which could lead to a housing shortage.

## Administrative and Political Barriers

Subdivision approval is a very small part of a lengthy process. Every new regulation requires additional government staff for its implementation. When a proposal is submitted, planning staff must analyze the plans given by applicants and present reports to local governing bodies. Each additional ordinance or special designation necessitates more staff time. For example, Wayne Cilimberg, Albemarle County's Director of Planning, expressed that the designation of Rio Road East as an entrance corridor would require additional staffing. The road did become an entrance corridor and now is subject to specific design requirements which mandate everything from the building type to sign color.

Another difficulty cited is high turnover among planning staff in all the localities and the impact that has on a plan in the pipeline. If a planner working on a specific project leaves, another planner must familiarize him/herself with the project. This process also leads to delays. Planners are charged with evaluating proposals based upon the ordinances of the community. As the Charlottesville region has grown, so has the complexity and depth of these ordinances. Chart 2-2 shows the length of the subdivision ordinances and comprehensive plans by locality. The increasing complexity of these ordinances has resulted in an overall increase in both the time needed to obtain approvals and the number of staff in some planning departments. Chart 2-3 shows the number of planning staff each locality needs to administer these ordinances and review plans. Finally, to illustrate the output of each department, Chart 2-4 shows the number of residential building permits issued by locality in 2005.

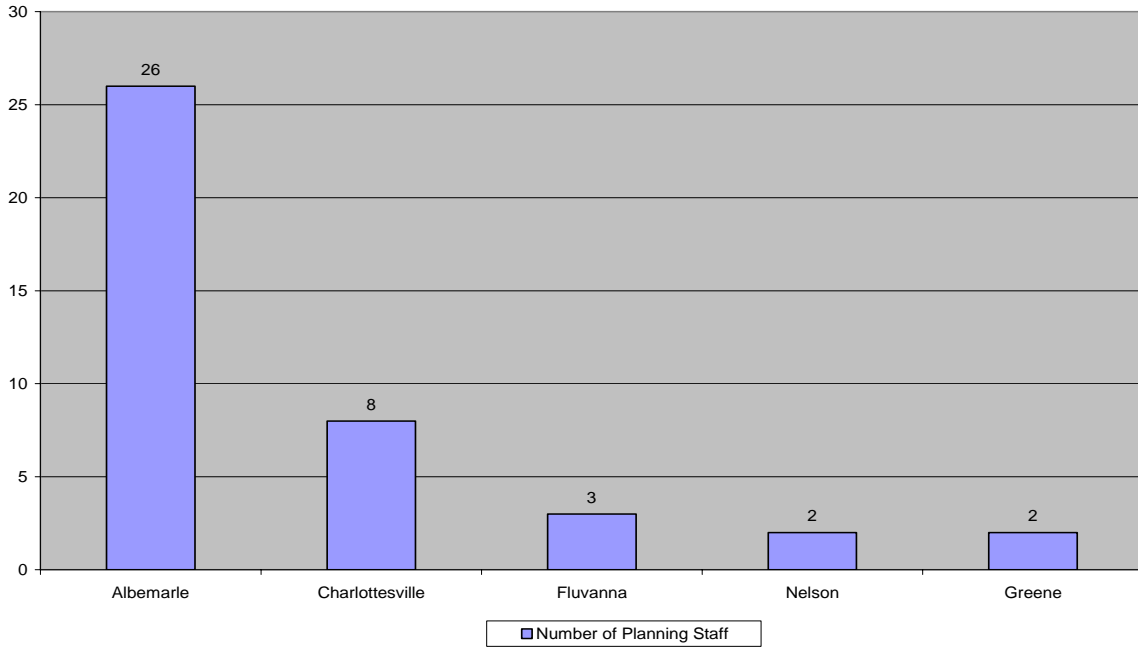
Graph 2-2





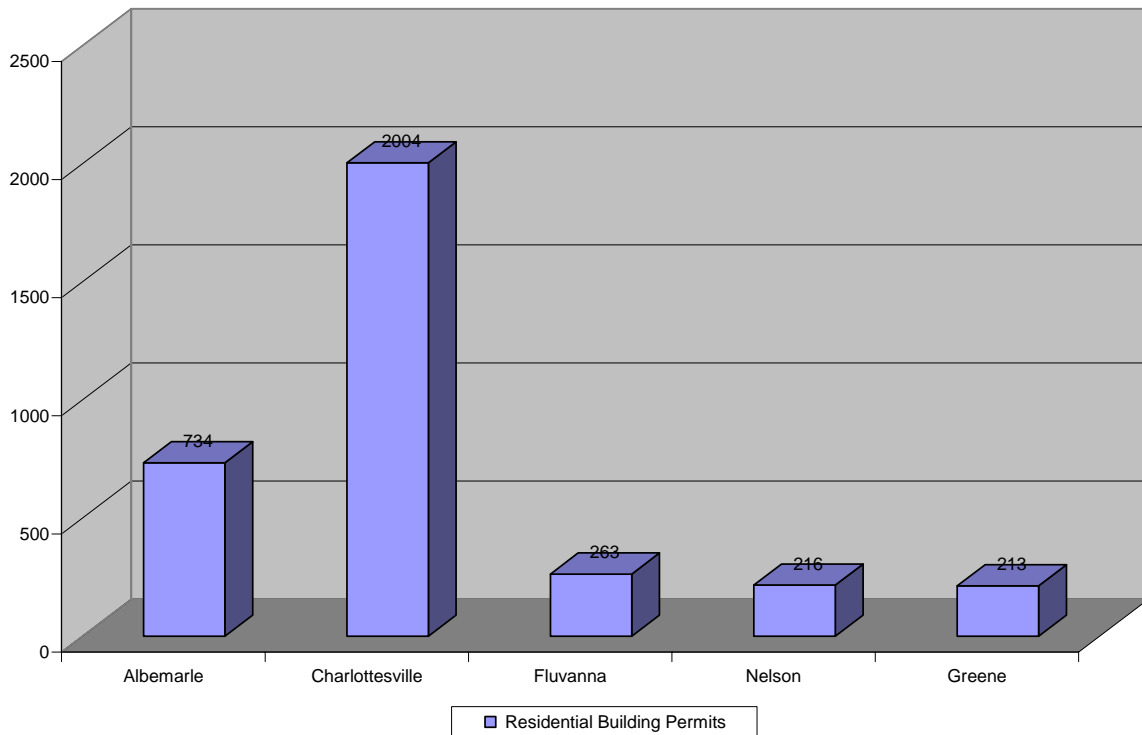
**Graph 2-3**

**Number of Planning Staff by Locality**



**Graph 2-4**

**Number of Residential Building Permits Issued in 2005**



As municipalities enact legislation to control development, administration of these ordinances is often highly politicized. Both local politicians and existing residents have strong incentive to favor regulatory barriers.

Because each city or town pursues its own parochial interest, it is not forced to consider the cumulative impact of regulation on housing in the metropolitan area or region. Indeed, each municipality has strong fiscal incentives to erect regulatory barriers to avoid tax increases to pay for needed services. In addition, direct participation by citizens tends to be most intense and effective with respect to local governments. Many existing residents would prefer to avoid development because they want to preserve the status quo, are concerned about congestion, or want to maintain racial or economic homogeneity.<sup>14</sup>

The fate of a subdivision application, a site plan or a rezoning rides on the decision of an elected Board of Supervisors or City Council. This political process is often upset by those who are often labeled as NIMBYs (Not In My Backyard). In addition to opposing subdivisions in their area that would increase density, these individuals also seek to enact regulatory barriers to the development of “their” backyard. Chester Hartman cited “Balkanized local government structure, which permits those with large backyards to make sure only those with equally large or larger backyards move into the community, clearly is a problem....”<sup>15</sup>

A Planned Urban Development (PUD) proposed in the Belmont neighborhood of the City of Charlottesville illustrates this point. DKW Development presented a plan which offered to replace a dilapidated house, zoned to allow two dwelling units with five affordable housing units in three buildings. Although many of the Planning Commission initially viewed the plan favorably, the application was denied after the public hearing. Two commissioners sited community opposition as the driving force. Similarly, DKW Development also attempted to develop a PUD in the Locust Grove neighborhood which was defeated. By right, the company could have developed three units, but in consideration of the City’s desire to increase the density of development closer to the city center, the company planned to develop four. Nine community members spoke in opposition to the plan at the Planning Commission meeting, citing traffic increases, limited parking and a decrease in the quality-of-life in a plan that would have yielded one additional unit.<sup>16</sup>

#### IV. “Restricting the Location of Housing”

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<sup>14</sup> Schill, Michael H., “Regulations and Housing Development: What We Know and What We Need to Know”, April 2004

<sup>15</sup> Hartman, Chester, “Comment on Anthony Downs’s “The Advisory Commission on Regulatory Barriers to Affordable Housing: Its Behavior and Accomplishments”” Housing Policy Debate Volume 2, Issue 4

<sup>16</sup> Charlottesville Planning Commission Minutes, September, Oct. 12, 2004

This section explores how the Charlottesville area housing policy might be “restricting the location of housing” as per the HUD definition of a barrier to affordable housing. The first restrictions on building locations in the United States took form in traditional zoning laws. Zoning helped control the locations of residential, industrial, agricultural and commercial development such that a meat packing plant could not set up for business in the middle of a zoned residential neighborhood. Since its embryonic phase, residential zoning has evolved to include sub-categories which dictate the density and type of development allowed in each residential district. Because zoning determines lot size and housing type, it has sometimes unintentionally and sometimes intentionally resulted in a lack of economic diversity. This type of zoning has been termed exclusionary zoning.

Recently, growth management policies have emerged as tools for shaping regional housing policy. Cities which have experienced an accretion in population have turned to growth management policies to respond to sprawl and congestion. The Charlottesville region has implemented several growth management tools. Of these policies, this report will examine the Neighborhood Model and urban-growth boundaries and their relationship to affordable housing.

### **The Affordable Housing Crisis**

Challenging many municipalities throughout the country, the affordable housing crisis is not unique to the Charlottesville area. A Brookings Institute study recently explored the root of the lack of affordability. “First, and fundamentally, wages and incomes have not kept pace with increasing daily living costs such as transportation, health insurance, childcare, and, most importantly, housing. Second, the supply of affordable housing has fallen.”<sup>17</sup> Furthermore, federal funding for low-income housing has also decreased drastically. Federal low-income housing funds dropped from \$71.2 billion in 1978 to \$16.3 billion in 1997.<sup>18</sup> This situation has caused many municipalities to look toward more localized solutions.

As the housing prices have increased exponentially in the Charlottesville area, local policy makers have focused their attention on the lack of affordability in the region. In the City of Charlottesville, affordable housing is defined as, “those houses affordable to the sixty - seventy percent of the City population that have household incomes at or below 80% of the 2004 metropolitan area median household income of \$63,700 for a family of four. For 2004, the maximum affordable home for purchase (by those making 0-80% of the median area household income of \$63,700) would be approximately \$218,300”.<sup>19</sup> Albemarle County’s Chief of Housing has said that a family earning the 2005 median income for Charlottesville, Albemarle, Greene and Fluvanna (jurisdictions included in the Metropolitan Statistical Area) of \$66,500 could afford a \$238,000 dollar house. Using this information, the Free Enterprise

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<sup>17</sup> Brown, Karen Destoral, “Expanding Affordability Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area” October 2001

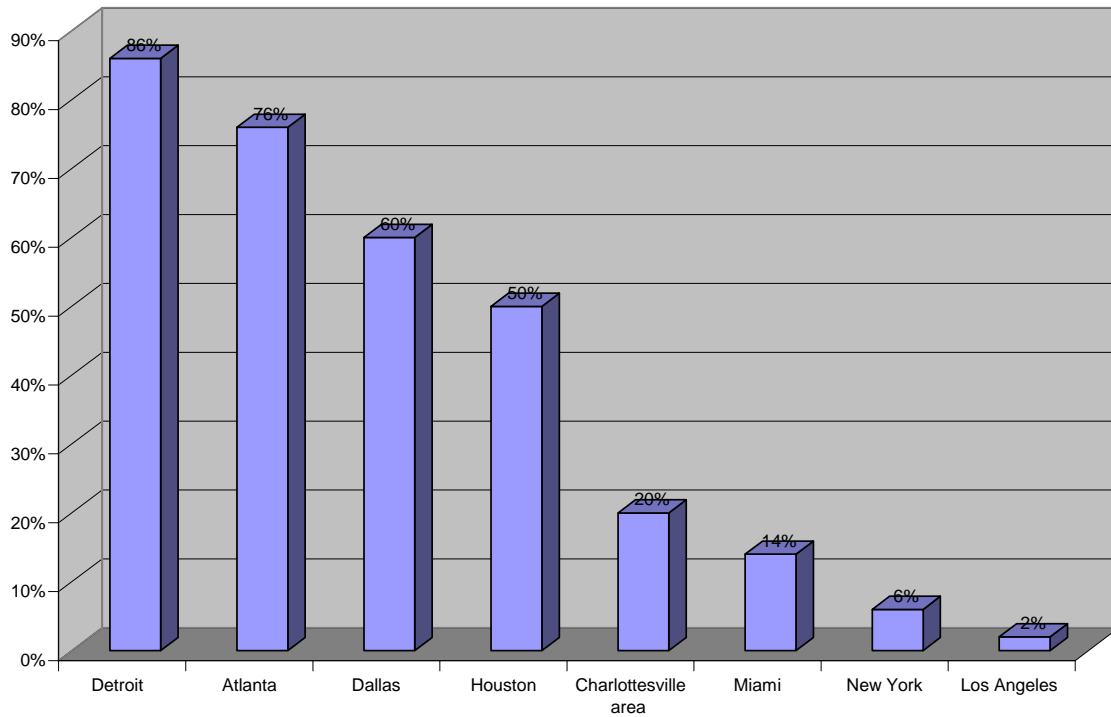
<sup>18</sup> *Housing at a Snail’s Pace: The Federal Housing Budget: 1978-1997*, National Low Income Housing Coalition, August 1996

<sup>19</sup> City of Charlottesville, Housing Policy, charlottesville.org

Forum analyzed the Charlottesville Area’s affordability based on the National Association of Home Builders Housing Opportunity Index. The Opportunity Index indicates the percentage of homes sold which would be available to a family making the median income. Graph 3-1 includes the Index for the Charlottesville Metropolitan Statistical Area (MSA) and the indices for other municipalities around the nation calculated by the National Association of Home Builders. Graph 3-2 breaks down the Housing Opportunity Index of the MSA by locality.

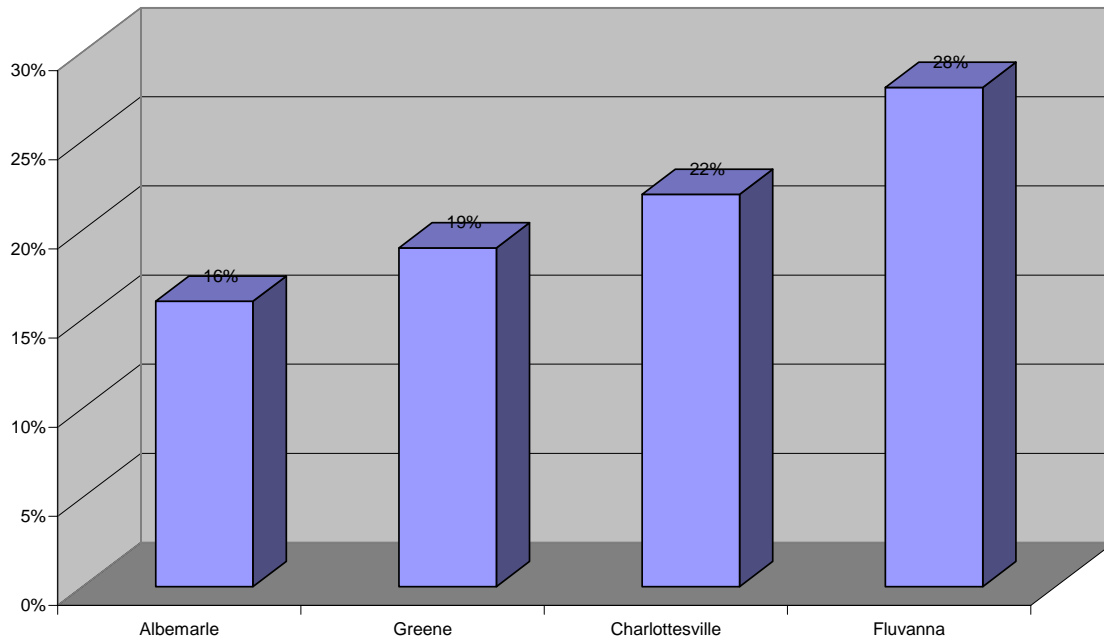
**Graph 3-1**

**Percent of Homes Sold Available to Families Earning the Median Income**



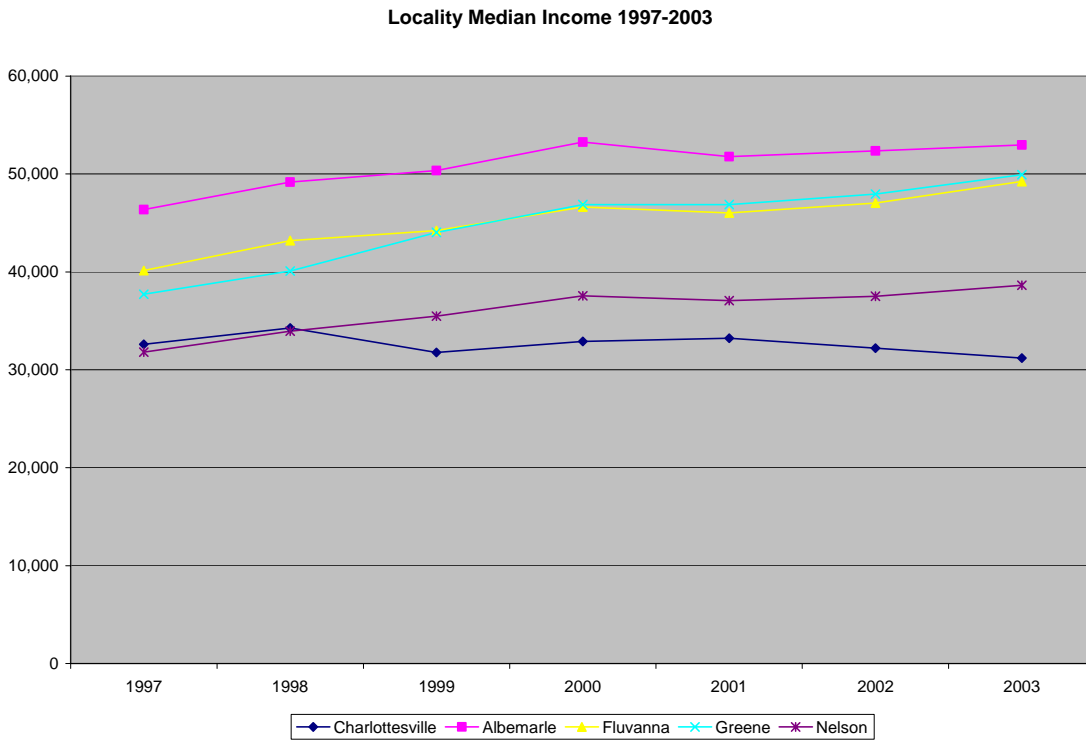
**Graph 3-2**

**Percent of Homes Available to Families Earning the Median Income by Locality**

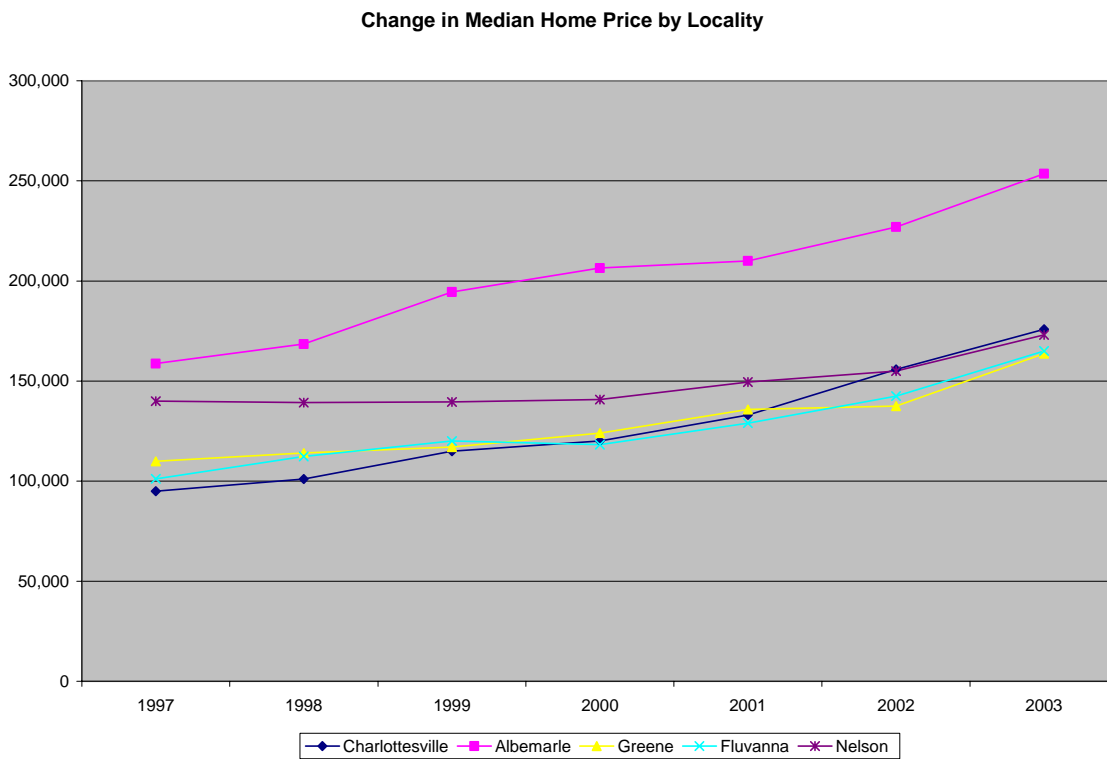


Since relatively few houses in the region are priced at affordable levels, many families have sought housing in outlying communities where pricing is more moderate. The fact that the City of Charlottesville has lost population while all outlying counties have gained residents indicates that many families have chosen the trade off a longer commute in exchange for more rural living conditions. Along with populations, incomes have increased most dramatically in the outlying counties, while they have declined in the City of Charlottesville suggesting an outward migration of professionals. Graph 3-3 shows the change in median income and 3-4 illustrates the change in median home prices from 1997-2003. Graph 3-5 compares the percent increase in income levels to the percent increase in housing costs per locality to illustrate why many families are choosing to live in the outlying counties. However, while residents living in those counties face more affordable home prices, they also face increasingly greater travel times and transportation costs if they, as many residents do, commute to Charlottesville.

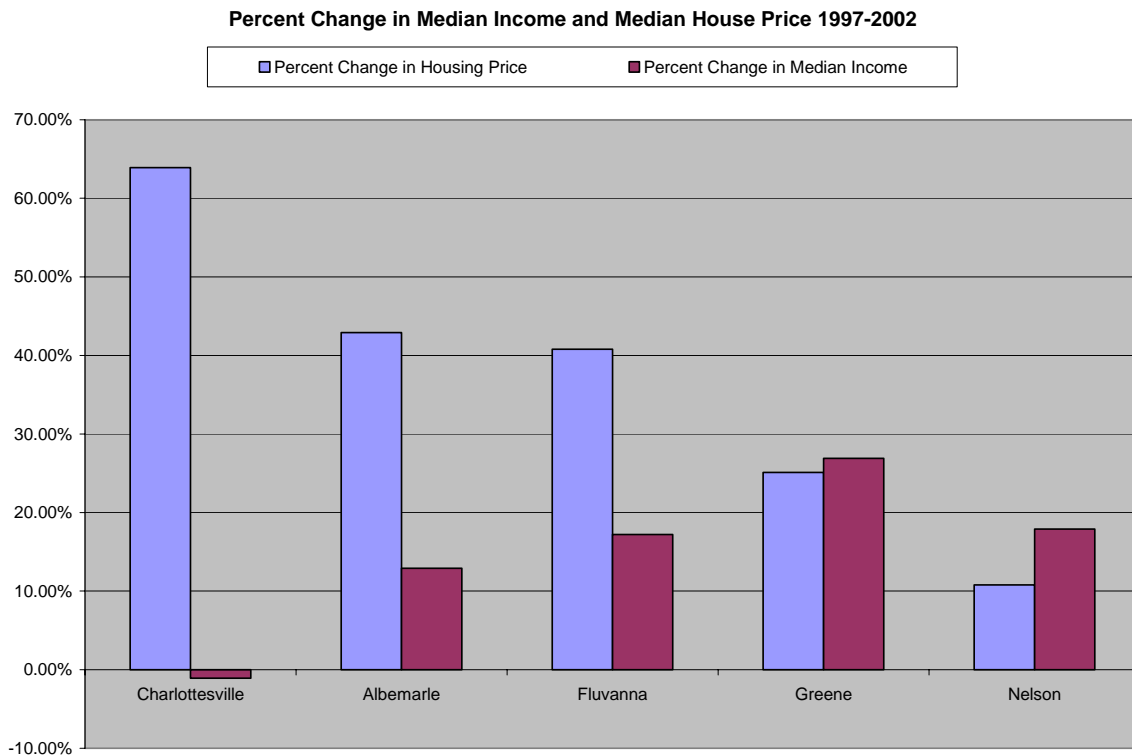
**Graph 3-3**



**Graph 3-4**



**Graph 3-5**



### **Inclusionary Zoning Policy**

In attempt to encourage the development of affordable units, many localities have established inclusionary zoning policies. Inclusionary zoning involves either requirements or incentives for developers to include affordable housing in all new developments. Generally, builders receive some sort of incentive such as density bonuses, fee waivers, or fast-track permitting. In Albemarle County, inclusionary zoning involves instituting price controls necessitating that a certain percentage of new development be affordable, under the guidelines established by the locality. For a rezoned development in Albemarle County, fifteen percent of the housing must be affordable or a proffer can be made in lieu of providing affordable housing. It is too early to gauge the effectiveness of this one-year-old approach. According to Ron White, Chief of Housing for Albemarle County, “While the County has accepted proffers for the potential of over 400 affordable housing units, none of the developments have produced any units yet”<sup>20</sup>.

### **The Limitations of Inclusionary Zoning**

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<sup>20</sup> Per Email, 2/24/06

All inclusionary zoning policies include trade offs which give incentive to developers to provide these affordable units. In Albemarle County, if the fifteen percent affordable housing criterion is met, the county gives developers the incentive of allowing further development at thirty percent higher density, providing that all the additional units are affordable. The County is rethinking this policy to allow for the additional units to be market units. However, the incentive provided by density bonuses in exchange for affordable housing is dubious. Albemarle County Planning Commissioner Jo Higgins notes that: “We always seem to gloss over that the density bonuses have been available, we’re seeing rezonings where they are not even using the maximum density allowed in the zoning...and even without the restriction that all the units would need to be affordable, developers have not chosen to pursue density bonuses historically.”<sup>21</sup> Although density bonuses have been successful tools in other localities, Albemarle does not yet have the market conditions to make these density bonuses appealing.

Clearly, Albemarle County’s density bonuses have not provided incentive for the private sector to fulfill the County’s need for additional density in the growth area. The failure of this incentive or “carrot” led the Albemarle Board of Supervisors to enact the 15% mandate or “stick” for all rezonings. It is possible that Albemarle County will begin to see more by right development in response to this and other “stick” ordinances that are enacted on a rezoning.

Inclusionary zoning policies may have additional unintended consequences. First, in order for a builder to make an acceptable return, compensation must be made for the income lost on providing affordable units by raising the price on market value units. In the Charlottesville area, with high costs of land and materials, builders face a potential profit loss for each affordable unit constructed, thus raising the cost of other units to compensate for that loss. Although affordable homes in this scenario would compose a small percentage of the housing market, construction of them would result in an increase in the costs of other homes to cross-subsidize these units. This cross-subsidy raises the price of market units not earmarked as affordable making them less affordable and in turn driving up overall market prices. The cost of making 15% of housing affordable is to make the remaining 85% less affordable.

Second, inclusionary zoning ordinances can be divisive. Even though intended to integrate and unite mixed-income people into one neighborhood, inclusionary zoning prioritizes the needs of those families who meet the requirements of the ordinance while ignoring the needs of families who do not meet these requirements. Thus inclusionary zoning ordinances can have the affect of pricing many families out of the market. For this reason, a white paper released by Albemarle County staff on affordable housing recommends that families making between 80% and 120% of the area median income also be permitted to purchase affordable units proffered by developers.<sup>22</sup> In response to the reduced purchasing power of moderate income families under this ordinance, the head of the County Housing Department voiced support of a higher housing price point in the form of “workforce housing”. This idea would link to a Virginia Housing Development Authority program already in place for first-time home buyers. The program would support families making 80-100% of the median income

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<sup>21</sup> “Affordable Housing Worksession” 1/31/06

<sup>22</sup> “Develop and Implement a Housing Policy that Works” Albemarle County White Paper 9/9/05



and enable participation of teachers, nurses, rescue personnel, policemen, firemen, and administrative service providers, those who collectively represent the fabric of the community.

Third, in addition to creating a ripple effect throughout the entire market raising home prices, inclusionary zoning can also affect the supply and quality of housing available. According to the American Institute for Economic Research: “The law of supply tells us that if government restricts how much builders can charge, less investment in housing will occur than if government allows prices to adjust to market conditions. Since affordable housing mandates lower the developer’s revenue, they make development less profitable. In turn, this results in a decrease in residential construction.”<sup>23</sup> Rather than encouraging the production of affordable housing, price controls set barriers to new construction. Additionally, price ceilings encourage a decrease in quality. Builders, searching for a way to make these houses affordable, could use lower-grade materials, not only making these affordable units less aesthetically appealing, but less sustainable. Conversely, if localities choose to remove these barriers, expediting the time need to approve new construction, the increase in supply will help stabilize the cost of housing within the community.

Fourth, inclusionary zoning policies only apply to new development on land which has been rezoned. Thus, inclusionary zoning makes up only a small percentage of the numerous possibilities for affordable housing creation. Localities should thoroughly explore other possibilities beyond inclusionary zoning that revitalize the existing housing stock.

### **Growth Management and New Urbanism**

In the mid-1990’s New Urbanism emerged as an influential growth management movement. New Urbanism advocates a shift in established development patterns, increasing urban density, creating walkable, mixed-use neighborhoods. However, New Urbanist based growth management policies contribute to an increase in costs for the homebuyer. A Brookings Institute study points out that: “... even well-intentioned growth management programs can be ill-designed; they can accommodate too much growth and allow sprawl, or they can accommodate too little growth and result in higher housing prices.”<sup>24</sup>

The tenuous balance between managing development and unduly restricting development is reflected in the regulatory impact on affordable housing. Builders, as private entities influenced by demand in the market, will create more units if conditions are favorable. As the Virginia Housing Authority study intimated, “During the 1990s, the Charlottesville area experienced household growth well above the statewide average. The rate of household

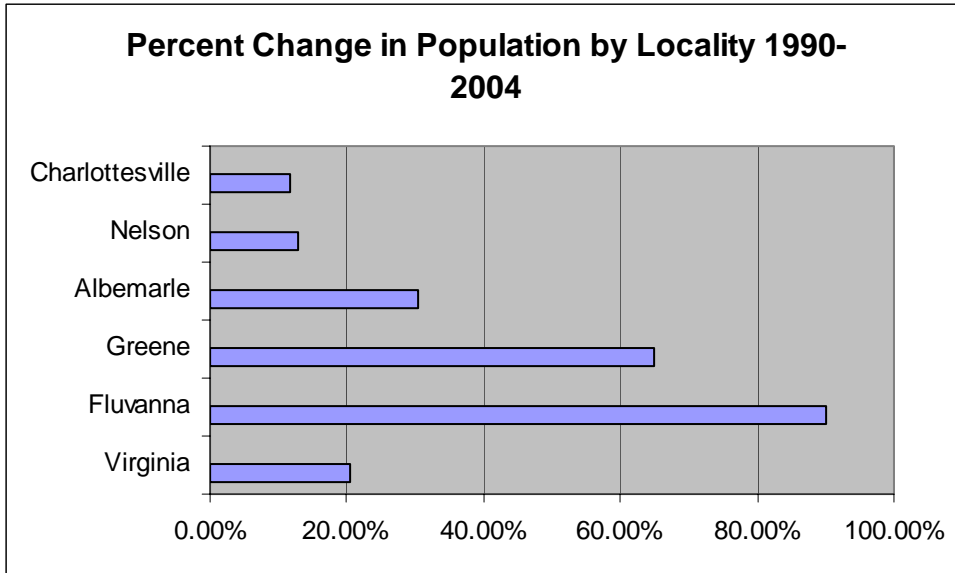
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<sup>23</sup> Stringham, Edward and Benjamin Powell, “Affordable Housing Laws Make Homes Less Affordable.”

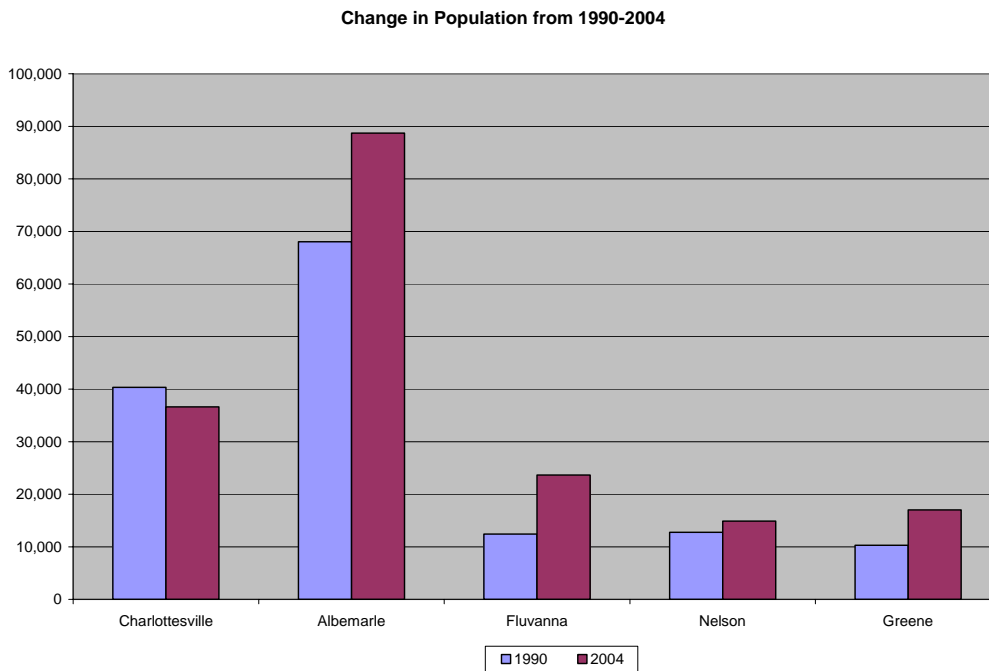
<sup>24</sup> Nelson, Arthur C., Rolf Pendall, Casey J. Dawkins, Gerrit J. Knaap, “The Link Between Growth Management and Housing Affordability: The Academic Evidence” February 2002

growth exceeded the increase in housing units.”<sup>25</sup> When people chose to move to an area without a commensurate increase in the housing stock, housing prices tend to increase. From 1990 to 2004 the Charlottesville area population grew by 37,016 residents, while the number of available housing units on the market has remained relatively flat since 1997 (See Charts 3-6, 3-7 and 3-8). This discrepancy suggests greater competition for units for sale.

**Graph 3-6**



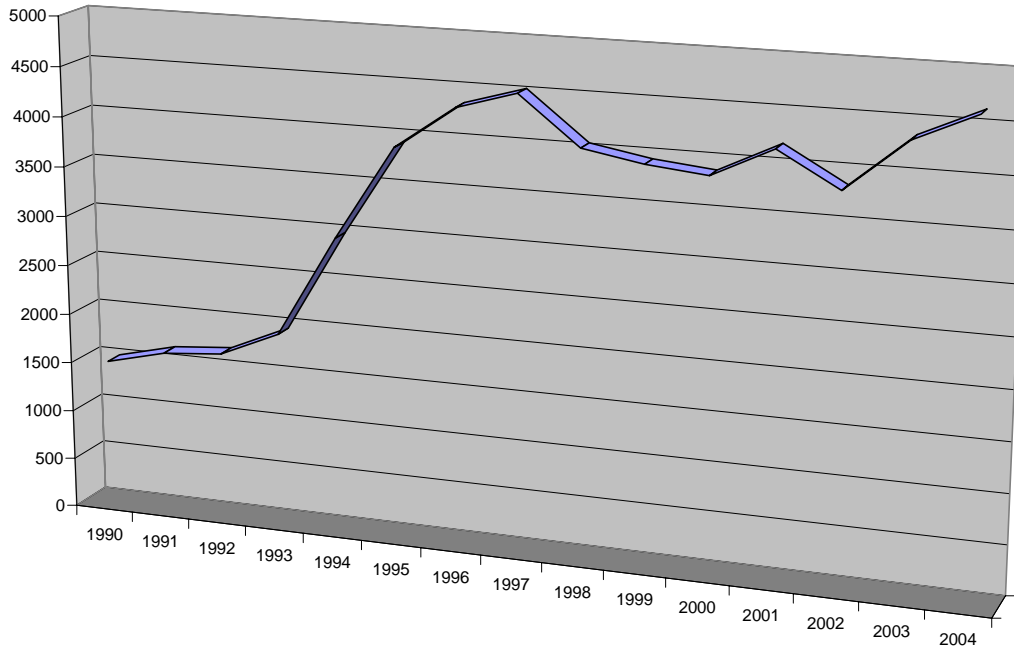
**Graph 3-7**



<sup>25</sup> VHDA Analysis of Housing Needs in the Commonwealth, 2001.

**Graph 3-8**

**Number of Units Available for Sale in Albemarle, Fluvanna, Charlottesville, Nelson and Greene Counties 1990-2004**



Local governments must carefully analyze the balance between social benefits of growth management policies and their costs. The creation of urban-growth boundaries is one growth management tool. Designed to channel growth into certain areas, urban-growth boundaries designate the land intended for development. Albemarle, Nelson, Fluvanna and Greene Counties all have growth boundaries. As with any restriction which limits the supply of developable land, urban-growth boundaries may have negative impacts on development. Reducing the supply of land could reduce the amount of housing developed to meet market demand, thus increasing prices. Portland, for example, implemented its growth boundary in 1979 and since then has experienced a dramatic increase in land costs making it one of the least affordable places to live in America.

However, this increase in costs cannot be attributed solely to the urban-growth boundary. A Brookings Institute study noted that:

“The strength of the housing market is the single most importance influence on housing prices whether growth management programs are present or not. The effects of growth management policies on housing prices are much more complicated to isolate because of the variations in policy styles and implementation, the structure of

local housing markets, the patterns of land ownership, and the stringency of other local regulations.”<sup>26</sup>

However, the Charlottesville area, unlike Portland, provides little incentive to develop in the development areas. An Albemarle County Supervisor stated that he is “appalled at how difficult it is to get approvals in the growth area.”<sup>27</sup> Because approvals are so difficult to obtain, during the last five years approximately half of all single family detached residential development in Albemarle County occurred in the rural areas. As developers must respond to more stringent planning requirements in the development areas than in the rural areas, the current configuration of the urban-growth boundary restricts development opportunity. Although Albemarle County intends to concentrate growth into the development areas, the restrictions in these areas impede the approval time, thus making by right development in the rural areas more attractive. This impact on the development community in turn impacts the housing market. “By restricting land development, an effective urban-growth boundary will almost certainly impact the pattern, density and cost of housing and development.”<sup>28</sup> So, although protecting the rural area has been named as a top priority by Albemarle County residents, the policies in the development area are pushing development to the rural areas and surrounding counties.

Although the effects of urban-growth boundaries are difficult to view in isolation from other factors such as demand for housing and increased employment, increased land costs can also lead to a reduction in development. Development area land is perceived by land owners to be much more desirable, and thus it is sold for a premium. The increased land costs in the development areas in addition to the lengthy approval time places a large financial burden on the developer.

In response to the national trend toward New Urbanist development, the Albemarle County Board of Supervisors authorized the creation of the Development Initiative steering Committee (DISC). The DISC was designed to explore ways to encourage development in the County’s designated growth areas. This exhaustive process including developers, citizens and county staff, yielded the 2001 adoption of the Neighborhood Model. Although recommended by DISC as “a” model as opposed to “the” model, this recommendation morphed into a mandated Neighborhood Model. The model mandates an urban form of housing development in the growth areas. However, developers will only build a housing type if they estimate it to be profitable and marketable.

As a mandated form of development, the Neighborhood Model limits the ability of the market to respond to buyer preferences. In this way, Neighborhood Model guidelines could also

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<sup>26</sup> Nelson, Arthur C., Rolf Pendall, Casey J. Dawkins, Gerrit J. Knaap, “The Link Between Growth Management and Housing Affordability: The Academic Evidence” February 2002

<sup>27</sup> CAAR Government Affairs meeting, March 22, 2006.

<sup>28</sup> Staley, Samuel R., Jefferson G Edgens, Gerard C.S. Mildner, “A Line in the Land: Urban-Growth Boundaries, Smart Growth, and Housing Affordability.”

constrain development by barring other forms of urban development. As researchers Staley and Ikeda explain, some of the unintended consequences of New Urbanism seem to be applicable to Albemarle County's Neighborhood Model, "... New Urbanism...advocates extensive land-use regulation and zoning, subsidies to expand public transit, controls on the design, scale and number of buildings and residences, and the preservation of farmland and undeveloped tracts to create green belts. Moreover, its attempt to achieve specific urban design objectives implies discouraging or in some cases prohibiting alternative urban forms, even when they may be preferred by homeowners and residents."<sup>29</sup>

Although the Neighborhood Model amendment to the Comprehensive Plan is rather lengthy with 116 pages of text, the principles are somewhat ambiguous. The Neighborhood Model guides the character of growth by twelve principles of development. Often these principles are in opposition to each other. For instance, in a recent application that came before the Planning Commission, interconnectivity, a principle of the Neighborhood Model, was shown to be in opposition to walkability in one part of the development area. Interconnectivity has been a defining issue during the ongoing "Places 29" master planning process and was a focus of citizen concern during the recent Board of Supervisors election campaign.

The Neighborhood Model has also introduced new regulations that include setting the width and construction standards for streets and pedestrian walkways, requiring curb and gutter, planting strips with street trees, sidewalks, interconnections, and walkable neighborhoods. Parking regulations, utility easements, alleys, streetlight standards, are all specified. Although some of these regulations contribute to the character of the neighborhood, they also have additional costs. Interestingly, the work of the codification of the neighborhood model is incomplete and applicants are often left to explain to Albemarle County their need for variances in order to accomplish the stated goals of the Neighborhood Model. The quest for such variance approvals leads to additional delay and costs.

Even without variance approvals, the cost of Neighborhood Model Development is higher than traditional development. As the 2004 Timberwood study done by the Blue Ridge Home Builders shows, imposing Neighborhood Model restrictions on a new neighborhood can increase costs to the developer by as much as 24%. Appendix A includes this report.

Furthermore, all of the land in any given development area is not always suited to development. Infrastructure and topographical constraints give uncertainty to the development plan. Various situations have occurred in which land which is not suited for development is located in the development area. In addition, a number of well-organized, well-financed and articulate interest groups with committed members have increasingly begun to monitor the approval process. These groups have become more visible and active and their interest has resulted in the need for more detail and cost at the land use stage of the approval process. A development planned in the designated development area which responds to all the requirements of the Neighborhood Model can be delayed or possibly even defeated because of

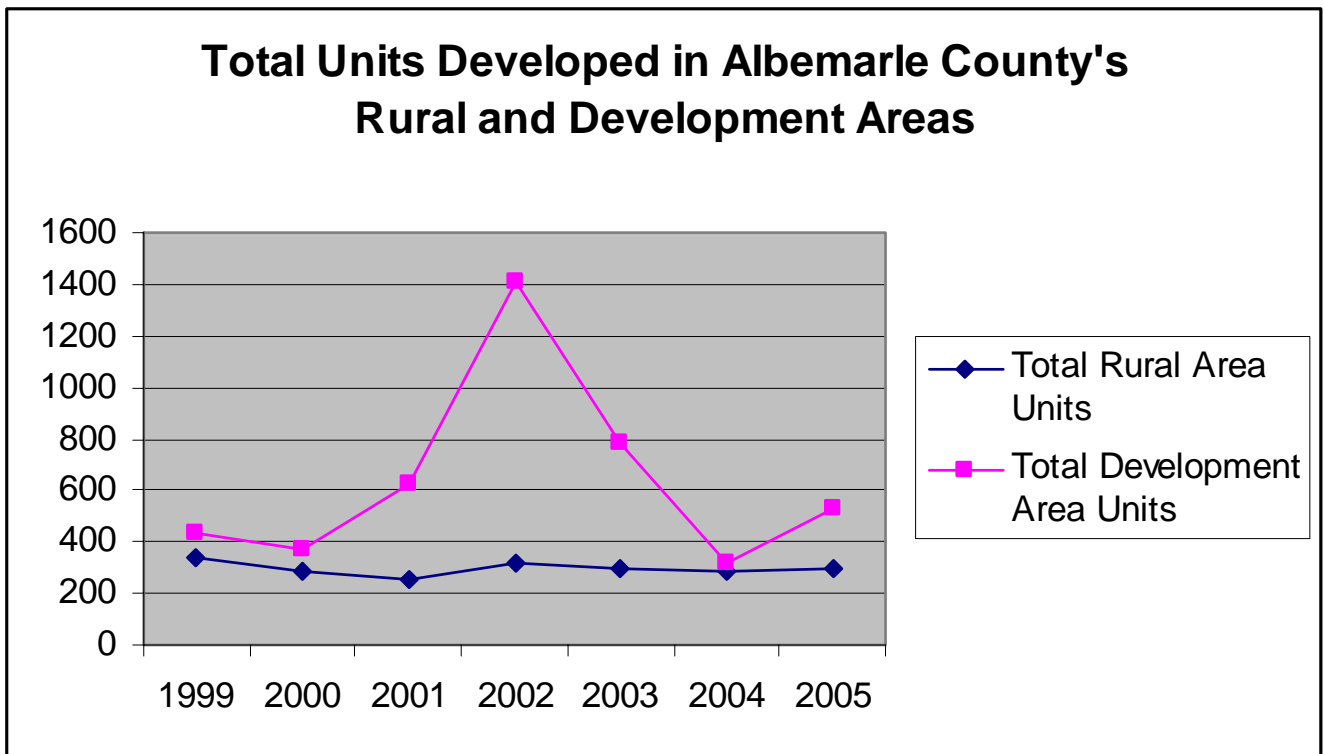
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<sup>29</sup> **Introductory Essay for a Symposium on "Urban Interventionism"**, SANFORD IKEDA  
*Associate Professor of Economics, Purchase College, SUNY, SAM STALEY The Buckeye Institute for Public Policy Solutions*  
*The Review of Austrian Economics, 17:2/3, 151-154, 2004.*

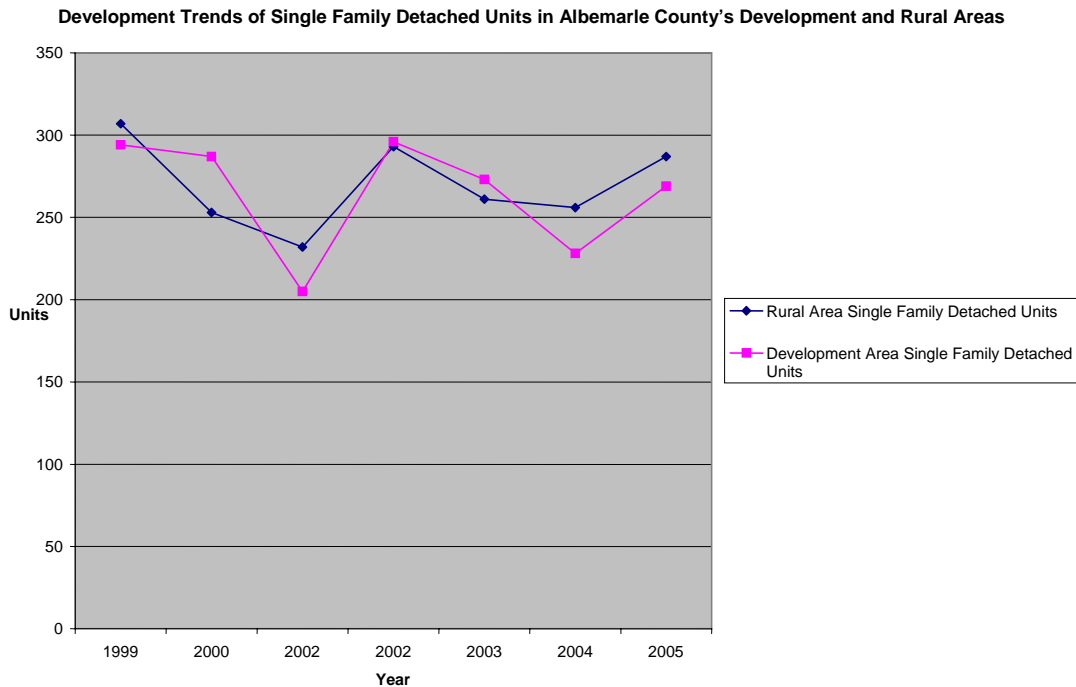
constraints over which the applicant has little or no control. These areas will be passed up for development and the expansion of residential development into the rural areas will continue.

Unfortunately for all the citizens of the greater Charlottesville region, the approval process for developments is often more costly and much lengthier in the designated development areas than in the rural areas. These restrictions and costs might account for the decrease in the number of new units created in the development area since 2002, despite the increase in area population. Rural area development has not been reduced, while development area growth has experienced a decrease in the rate of units developed since 2002. For this reason, Albemarle County, specifically has failed in its significant efforts to concentrate growth in the development areas and limit development of the rural area, a goal stated in the Comprehensive Plan. Chart 3-6 shows the number of units developed in the rural area and in the development area from 1999 to 2005. Also included is Chart 3-7, which shows the number of single family units developed in each area, as the rural area almost exclusively consists of single family detached unit development. In Albemarle County, approximately 50% of single family homes are constructed in the rural areas. This raises a significant market based question: What amenities and incentives are required to change single family homebuyer preferences from a rural area home to a smaller, more pedestrian oriented home in the urban core?

**Graph 3-6**



**Graph 3-7**



## V. Potential Solutions

### **Streamline the Approval Process and Create Market-Based Incentives**

If localities want to channel development in the growth areas, steps need to be taken to streamline the administrative review process. Streamlining would provide a market-based incentive to develop in the growth areas. Citizens and developers deserve an efficient and clear path to approval or denial of applications. Recently, Albemarle County Director of Community Development met with several developers to discuss the development approval process. In that meeting, lack of clear direction and expectations by Albemarle County were cited as hurdles to approval. Timely submittals of plans and comments on both sides would speed the process. The Free Enterprise Forum urges all localities to define explicit time lines to be followed by both the applicant and county staff so that the road to approval is clear.

Localities need to evaluate the entire legislative review process to identify priorities and share those priorities with those involved in the development process. Communication of priorities between planning staff, governing bodies, and developers would improve the situation markedly. Currently, a developer can receive contradictory comments from different reviewers at various times in the approval process. If a concrete plan is to be submitted for legislative approval, it stands to reason that new comments should only be allowed when new information is provided. Improved communication and oversight by senior planners would clarify many of these conflicting comments. Furthermore, senior planning staff should

exercise a more active role during times of high turnover so there are no repeat reviews of a plan.

Providing the developer with a prioritized list of expectations and deficiencies in a plan in addition to helping suggest possible solutions would enable the developer to respond to those concerns more effectively. Additionally, staff reports should be made available to the applicant and the public two weeks prior to the scheduled work session or public hearing. More interaction between staff and developers early in the development review process and a continuous dialogue throughout the “dead” periods of the process would help governing bodies shape a plan from its initial stages and would give developers clear direction. Although certain areas might be designated for growth and high density, sometimes other limitations exist on a parcel which will cause governing bodies to view it unfavorably. These limitations can be defined earlier in the process to guide the form of development.

The approval process could also be expedited by introducing new technology which improves communication and access to information. “Local governments are increasingly using the power of the Internet to reduce the time and expense of securing permission to build or repair housing. As these constraints are overcome and technological innovations become more widespread, one more obstacle to the development of affordable housing will continue to diminish.”<sup>30</sup> Such technologies would allow citizens to check about the status of applications and permits online and would allow electronic payment of fees thereby reducing processing time.

Although local governing bodies are elected by constituents, they are ultimately beholden to the laws established by the locality. Often a project may have regional benefits which need to be considered along with localized concerns. For this reason, local governments should guide growth according to the legal ordinances and develop a forum for assessing these competing needs. Although the community should have input into the development process, governing bodies need to distinguish between projects which might cause growing pains and those which might harm the fabric of the community. Growth management needs to be a dynamic process, constantly evaluating current trends and anticipating future population needs.

Developing market-based incentives for developers would encourage affordable housing development. As detailed earlier in this report, the current density bonuses do not provide appropriate incentives for Charlottesville area builders. Fast tracking options would reduce processing time, thus creating a market-based incentive. Area localities should explore options which give this incentive when affordable housing will be developed. Localities might also want to investigate options that would allow fast-tracking or priority processing for projects meeting certain established criteria. Policies that adjust set-back requirements and waive certain fees when affordable units are being developed could also increase incentive for builders to create affordable units.

### **Prioritize the Principles of the Neighborhood Model**

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<sup>30</sup> Regulatory Barriers Clearinghouse, “Technology Speeds the Development Process” February/March 2006



The twelve principles of Albemarle County’s Neighborhood Model also need prioritization. Although the principles look good on paper, in their implementation, the principles have come into conflict. For example, the Neighborhood Model calls for a density of between three and six units per acre. A recent plan which came before the Albemarle County Planning Commission planned for density of approximately five units per acre, but many on the Commission felt that this density was in excess because of traffic concerns. Thus the Commission asked the applicant to rework the plan to yield less density—a slippery slope when the supply of developable land is restricted, but higher density is difficult to achieve. Although traffic, for example, might be an issue, less density results in less affordability.

Furthermore, review of plans by staff, the Planning Commission and the Board of Supervisors should recognize the multiple applications of the Neighborhood Model. The Comprehensive Plan allows latitude in how the twelve principles of the Neighborhood Model are applied to each development proposal:

The twelve principles contain the characteristics which the Development Areas are to reflect at buildout. However, it is recognized that as individual proposals are considered, all the principles of the Neighborhood Model, listed as the General Land Use Standards, below may not be equally applicable to any specific proposal. All proposals will need to be considered in a more global context, particularly as they relate to the mix of uses. It is recognized that there are multiple applications of the principles of the Neighborhood Model and balance, rational and reasonable applications of those principles is expected.<sup>31</sup>

### **Develop Private Sector Housing Trust Funds**

The affordable housing problem has no easy solution. The area needs to take a more multi-faceted approach. Under inclusionary zoning laws only a segment of the community, those who are purchasing a unit in a development which has been impacted by inclusionary zoning, share in the expense of providing that affordable housing. Inclusionary zoning relies on the homebuilding industry to meet community affordable housing needs. If affordable housing is a community concern, it stands to reason that the whole community, inclusive of those not purchasing new units should pay for affordable housing initiatives. Certainly, to the extent that the total community will potentially benefit from inclusionary zoning and land use regulations by the rural areas remaining relatively undeveloped, it follows that the whole community, not exclusively new development and new homebuyers should bear the cost of these policies.

Subsidizing buyers rather than the housing unit has proven to be a much more effective means of providing affordable housing. The drastic reduction in federal funding has undoubtedly catalyzed the proliferation of the housing trust fund idea across the country. Affordable

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<sup>31</sup> Albemarle County Comprehensive Plan, albemarle.org

housing trust funds can provide monies to homebuyers enabling them to buy market-priced units. Currently in the Charlottesville region, various non-profits work to subsidize buyers. The Piedmont Housing Alliance, for example, provides qualifying aspiring homebuyers with down payment assistance. The Alliance also purchases dilapidated properties and revitalizes them, making them available to low-income buyers. Habitat for Humanity has a very effective and growing homeownership program for families making below 50% of the area median income. In addition, the Charlottesville Area Association of Realtors set up a fund in 2004 to help workers to support workforce housing. The organization has amassed \$300,000 to date to help a police officer, a teacher and a firefighter buy homes. Select established programs deserve significant General Fund financial support, which more fairly would allocate the costs of affordable housing programs to the general population.

Housing trust funds can also function as a renewable money source. In one scenario, investors can provide money to lower-income homebuyers and expect the same percentage of funds back, making investment a viable prospect. For example, assume that an investor gives ten thousand dollars toward the down payment of a hundred thousand dollar house. If that house is sold in ten years for two hundred thousand dollars, the investor can expect to receive twenty thousand dollars in return. If the investor is a government agency, the twenty thousand dollars can be used to replenish the fund to help other low-income buyers. This solution would also quell concern over the effect of affordable housing values on the surrounding properties as they would be priced to the market.

Housing trust funds also allow flexibility in creating housing. While inclusionary zoning ordinances only focus on the production of new units, housing trust funds allow the community latitude in creating affordable units. For example, the fund could be used to reinvigorate deteriorating housing stock, subsidize buyers, or fund organizations such as Albemarle Housing Improvement Program, Piedmont Housing Alliance and Habitat for Humanity. Since funds are generated locally and distributed locally they can be altered to address a range of housing needs.

As housing trust funds often call for a community contribution in the form of a fee or tax increase, they can be more politically sensitive than the establishment of inclusionary zoning ordinances. Much like the state earmarks certain tax funds specifically for transportation or education projects, certain funds could be earmarked for an affordable housing trust fund.

A rather vaguely worded affordable housing fund bill sponsored by Charlottesville Delegate David Toscano has recently passed in the State Senate and House and is now awaiting the signature of Governor Tim Kaine. If enacted into law, the fund would allow for a restructuring of the Charlottesville Charter to allow the city to give loans and grants to low to moderate income residents. However, like the existing Albemarle Housing Initiative Fund, administration of these funds should fall on the shoulders of already established non-profit organizations and not the City itself. As Charlottesville City Counselor Blake Caravati recently pointed out that the Charlottesville Housing authority “can barely do what they do.”<sup>32</sup>

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<sup>32</sup> Caravati, Blake, The Daily Progress, “Delegates Delay Housing Bill” March 1, 2006

Since these non-profits already have the structure in place to administer these funds, giving another responsibility to the already overstretched Housing Authority seems rather wasteful.

The affordable housing bill makes no mention of how these funds will be generated. It is anticipated this will be a general fund obligation. Structuring the fund as an investment opportunity through a public/private partnership rather than a mandated contribution may yield surprising results. When investors feel that they may be able to get a return on investment, more might be willing to donate funds. Furthermore, if government wishes to subsidize these funds, profits can be used to build the balance of the trust fund.

### **Increase the Supply of Developable Land**

With a projected continued increase in area population<sup>33</sup>, solutions which assist the buyer can only be implemented if the quantity of developable land is sufficient. Increasing the supply of developable land would result in a more elastic housing supply. “If a city’s housing supply is relatively elastic, we should expect an outward shift in demand to result in an increase in population, while the corresponding increase in housing prices should be relatively modest.” In contrast, an inelastic supply will result in a decrease in housing productivity and an increase in prices.<sup>34</sup> If a regional goal is affordability and the creation, each municipality will have to carefully assess their growth boundaries and contemplate expanding them to accommodate the region’s growth in population.

If governing bodies are unwilling to increase the supply of developable land, housing costs will increase unless higher density is allowed and accepted by both the citizenry and the market. Currently high-density development is only called for in the growth areas and rationed within already urban city locations because of zoning restrictions. With organized community opposition to increased density in many neighborhoods, traditional zoning is also a barrier to affordable housing development. The elimination of traditional lot sizes in some areas or tax breaks for the retention or development of accessory units in targeted areas would encourage density in already urban areas.

### **Provide an Affordability Impact Statement**

The Free Enterprise Forum believes that the affordable housing issue requires a multitude of solutions that focus energy on giving the first time home buyer a hand up rather than artificially lowering the price of housing. Additionally, localities must evaluate their land use regulations to determine if there is a proper balance between the cost and the benefit of a given regulation.

Since the effects of local regulatory barriers are virtually unstudied, the degree to which regulatory barriers affect affordable housing is not established. In order to help the public decide the appropriate balance between the cost and benefit of regulation, localities should

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<sup>33</sup> County of Albemarle, Albemarle Community Profile, 2005.

<sup>34</sup> Glaeser, Edward L., Joseph Gyourko and Raven Saks, “Urban Growth and Housing Supply” January 15, 2005

create a housing affordability impact statement. Such a statement would quantify the cost of all proposed regulations on housing. Localities already evaluate how much a regulation will cost the government to implement; the citizens deserve the same respect.

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