



Division of Local Government Services

Affordable Housing



A Division of the New York Department of State

Overview

- What is Affordable Housing?
- Basics
- History
- Homelessness
- Exclusionary housing practices
- Affordable housing laws, policies and programs
- Land use tools
- Development process
- Preservation

Decent, affordable housing should be a basic right for everybody in this country. The reason is simple: without stable shelter, everything else falls apart.

Matthew Desmond, *Evicted: Poverty and Profit in the American City*

Affordable Housing: The Basics

What is Affordable Housing?



Affordable housing
comes in all shapes
and sizes

Generally used definition:

- Housing units where the occupant pays no more than 30% of gross income for housing costs, including taxes and utilities.
- Families who pay more than 30 percent of their income for housing are considered cost burdened and may have difficulty affording necessities such as food, clothing, transportation and medical care.
- Affordable Housing covers housing within the means of households that may occupy middle, moderate, or low-income housing. Covers sale price or rental amount.

The Need for Affordable Housing in NYS

Working at minimum wage each week, a person in NYS would have to work **99 hours** to afford a modest 1 bedroom apartment at Fair Market Rent

Percentage of Cost Burdened Households Paying More Than 30% of Household Income on Housing

	NYS Overall	Upstate	Downstate
Owners	32.1%	25.7%	40.0%
Renters	53.9%	52.7%	54.5%

- In New York, the Fair Market Rent (FMR) for a two-bedroom apartment is \$1,460. In order to afford this level of rent and utilities, without paying more than 30% of income on housing, a household must earn \$4,867 monthly or \$58,409 annually.

Source: Out of Reach 2017, National Low Income Housing Coalition

Federal Terms

Lower income people make up 40% of the nation's population



Percentage of median income

LOWER Income:

80% or less of median income

Low Income:

50% - 80% of median income

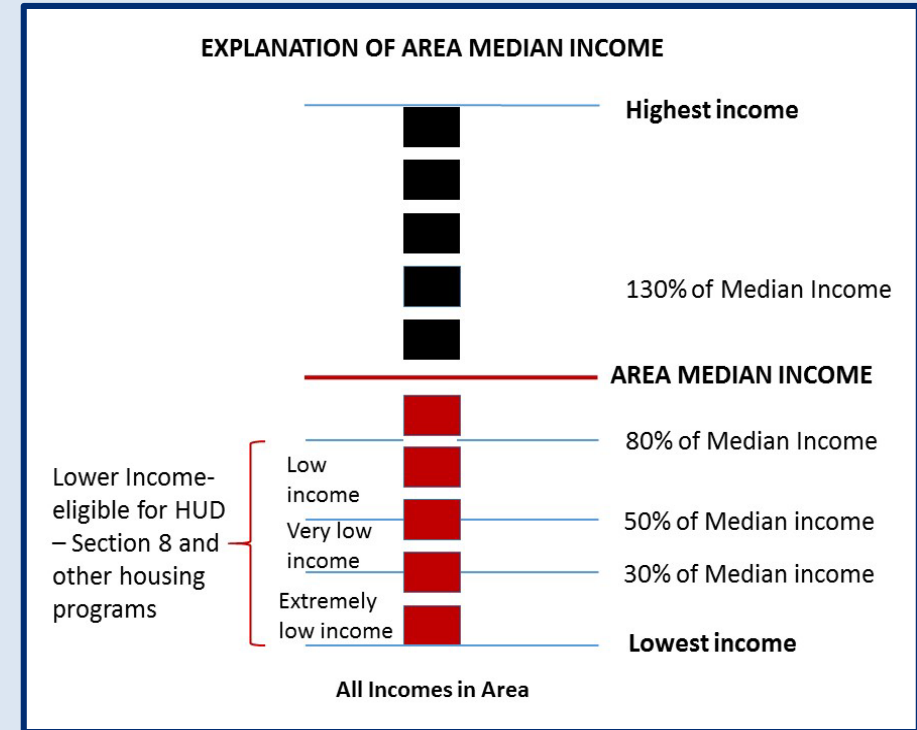
Very low Income:

≤ 50% of median income

Extremely Low Income:

≤ 30% of median income

Area median incomes (AMI) - calculated annually by HUD
Income is adjusted for household size



HUD's Area Median Incomes (AMI)

Area Median Income (AMI) - \$60,000

Household Size	30% of AMI	50% of AMI	80% AMI
	extremely low income	very low income	lower income
1	\$18,050	\$30,100	\$48,100
2	\$20,600	\$34,400	\$55,000
3	\$23,200	\$38,700	\$61,850
4	\$25,750	\$42,950	\$68,700

The area median income (AMI)

- Calculated annually to determine Section 8 income eligibility limits
- Based on the estimated area median family income (MFI).
- https://www.huduser.gov/portal/datasets/il.html#2017_query

Affordable Housing - ongoing need



American Housing Survey

Showed need for decent housing:

- **Substandard housing:**
6% of housing is physically deficient
- **Cost burden:**
Affects 2/3 of all low income homes
- **Overcrowding:**
Limited finances, inadequate housing supply
- **Segregation:**
Urban and rural high poverty areas



Benefits of Affordable Housing

Who may need help?

- Young adults
- Seniors
- Single parent families
- Young families
- Veterans
- Former employee after downsizing
- Your family member or friend
- Potentially anyone of us

Give everyone access to:

Providing support for everyone helps the entire community

- Quality education
- Jobs
- Workforce housing
- Public services



Challenges of Affordable Housing

- Rising new housing costs
- Regulations
- Extended development time
- Older housing surplus “filtering down”
- Leadership changes
- Consumer patterns/beliefs
- Exclusionary housing practices

Conclusion: Affordable housing needs are not adequately addressed in the marketplace



Affordable Housing History



History - Pre-US to 1950

- Early US: poorhouses; poor farms; company housing
- Tenement House Act, 1901
- 1930's - 1940's: The New Deal; Wagner Act (Public Housing Authority); Public Housing Projects



History - The Perfect Storm

1950's & 1960's - Perfect storm of changes

- Suburbanization
- Urban renewal
- Highway construction
- New rules for housing projects
 - Residents vacate if income rises
 - Must accept poorer households

History - Changing Times



Redskirt, New York City



Taylor Apartments, Troy, NY

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NYC



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History - Last 50 Years

1960 -1980 Federal Model Shift:
role reduced

- Johnson: Great Society; Sec 236 (rental); Sec 235 (home ownership)
- Nixon: Housing allowances
- Ford: Section 8 rental subsidy
- Carter: Increase Section 8 units

1980 - Present

- Reagan: Low Income Housing Tax Credit – mainstay
- G. H. W. Bush: HOME Program; Housing Block Grants – remains mainstay
- Clinton: Community Reinvestment Act home ownership, especially lo income
- G. W. Bush: Programs to increase home-ownership rate
- Obama: Home Affordable Modification Program and the Home Affordable Refinance Program

History - Public Housing Units - 1949-1999

Year	Cumulative Number of Public Housing Units	Average Annual Change From Prior Decade
1949	150,000	
1959	401,000	+25,100
1969	768,000	+36,700
1979	1,178,000	+41,000
1989	1,401,000	+22,200
1999	1,296,000	(-10,400)

Source: Listokin, David. "Federal Housing Policy and Preservation: Historical Evolution, Patterns, and Implications" HUD data.

History - Homelessness

Why the sudden problem in 1970's?

- Higher housing cost burdens
- Urban Renewal - Loss of housing
- Federal income support programs lost value
- Deinstitutionalization of mentally ill
- Weakening family ties
- War Vets – PTS
- Drug/alcohol use

Strategies

- 1987 McKinney-Vento Act
- Emergency shelters
- Transitional housing
- Housing First model
- Social Programs
 - Job training
 - Rehabilitation programs
 - Faith based partnerships



Exclusionary Housing



Exclusionary Housing

Suburban exclusion of affordable housing is real and commonplace, even in states with strong fair housing statutes and areas with strong local laws





Affordable Housing Laws and Case Law



Federal Laws

US Constitution

- Bars discrimination based on race

Federal Fair Housing Act – 1968

Zoning to prevent racially integrated subsidized housing may be a violation:

- Has racially discriminatory **EFFECT**, even without overt evidence of discriminatory **INTENT**



Court Challenges - Euclid

Village of Euclid v. Ambler Realty Co., 272 U.S. 365

Landmark case by U.S. Supreme Court

- Generally - upheld validity of conventional zoning
- Specifically - held that a municipality could exclude apartment buildings from residential zones
 - Protect residential character
 - Protect neighborhood desirability as place of detached homes

Court challenges - Mt Laurel

Mt Laurel I - 1975

Southern Burlington NAACP et al v. Township of Mt Laurel, NJ

- Influential case challenging exclusionary practices in NJ
- Key results - All NJ municipalities must zone for high density, low and moderate income housing
- Downside – court offered no direction on need determination process

Mt Laurel II - 1983

South Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390 (N.J. 1983)

- Based on widespread failure to comply with MT Laurel I decision
- Builder's Remedy - Failure to plan for affordable housing means lower courts can overturn local housing denials and grant "builder's remedy"

New York State - Berenson

Berenson v. Town of New Castle, 38 NY.2d 102 (1975)

- **Court ruled that town's zoning must reflect regional needs**, including “residents in Westchester County as well as the larger New York City metropolitan region [who] may be searching for multiple-family housing in the area to be near their employment or for a variety of other social and economic reasons”

New York State Case Law

Exclusionary Zoning

- Berenson v. Town of New Castle (1975)
- Robert Kurzuis v. Village of Upper Brookville (1980)
- Blitz v. T New Castle (1983)

- Asian Americans for Equality v. Koch (1988)
- Continental Building Co v Town of North Salem (1995)
- Gernatt Asphalt Products, Inc. v. Town of Sardinia (1996)

Local Land Use Tools and Affordable Housing

Tools: Comprehensive Plan

Future Housing Needs

- Demographics
- Housing inventory
- Assessment of need
- Sources of information
 - U.S. Census
 - Regional Planning Agency
 - NYS HCR
 - Local non-profit housing orgs
 - U.S. HUD



Tools: Comp Plan - examples

Orange County

*“Encourage the provision of a **wide spectrum of housing types and choices** including affordable housing, providing **options for rural, suburban, and urban living...** This should include housing at a **range of densities, styles and owner and renter types**”*

Southampton

- *Creation of planned residential communities providing an **array of housing** meeting the **social and economic needs of the residents** of the hamlets, the **town, and the region.***
- *Provide the opportunity for affordable housing for **senior citizens**, age fifty-five years and older*

Tools: Inclusionary Housing

BEST PRACTICE

Provide alternative methods of compliance in order to avoid constitutional vulnerability

Inclusionary Regulations:

Developer requirements for affordable housing are part of the market-driven development activity:

- Include affordable housing in development. or
- Build units off-site, or
- Contribute cash or land in lieu of construction

Inclusionary Housing: How it works

Typical mandatory inclusionary regulation specifies:

Size threshold of developments

- Often as few as 5 to 30+ units

Income range (defined in relation to Area Median Income)

- From below 30% to as high as 130% of AMI

Percentage of affordable units required to “set aside”

- Varies widely, from 5% to 25% or more
 - Suburban: most require 15-20%
 - Urban areas: usually require less
 - Trade off: can lower percentage for very low income units

Inclusionary Housing: How it works

Typical mandatory inclusionary regulation specifies:

Unit design and size standards

- Same design features (interior/exterior), size, bedrooms as market units?

Unit layout and placement

- Dispersed or clustered; not isolated or placed on unsuitable part of site

Timeframe

- When will units be built, in parallel with market units?

Controls to ensure units remain affordable

- Specify period (normally 30-40 years)
- Deed restrictions and covenants

Incentives and offsets

Inclusionary Housing Incentives and Offsets

Incentives:
Municipality
offers benefits
to developer

Offsets:
Public sector
reduces the
affordability gap

- Municipality requires developer to address regional housing needs in new development
- Developer did little or nothing to create the condition
- NYS court determined municipality must offer developer “offsetting benefit”

GOAL

- Reduce gap
- Mitigate ordinance’s economic effect on developer
- Keep projects economically feasible

Inclusionary Housing Incentives and Offsets

Incentives

Zoning

- Density bonuses
- Setbacks
- Height and bulk bonuses
- Open space

Parking space reductions

Expedited permitting

Offsets

Reduce developer costs

- Waive permit fees
- Waive sewer hookup fees
- Infrastructure subsidies

Increase developer return

- Tax abatement
- Reduce carrying cost to future lower income owner, allowing developer to charge more for unit
- Capital Subsidy – give subsidy on affordable units from HOME or a state or local housing trust fund

Tools: Voluntary Inclusionary Zoning

Not mandatory - Cannot be required

- Pros - Less opposition
- Cons - Not as effective as mandatory programs

Incentives in exchange for affordable housing units

- Zoning waivers in exchange for identified amenities
- Incentives may be on a sliding scale, based on:
 - percentage of affordable housing
 - levels of affordability

Workforce Housing

Affordable housing for households with earned income insufficient to secure quality housing in reasonable proximity to the workplace

- Target "essential workers"
- An expanded understanding of affordable housing
- For gainfully employed who "drive till they qualify"
- Definitions ranging from 50% to 120% of Area Median Income (AMI)



Partnership for Strong Communities
HomeConnecticut
 For Our Economy, Our Families, Our Future
 a campaign of the Partnership for Strong Communities

APA CT

Multifamily "Speed Dating"

Meet the Developer - or Town - of Your Dreams!!

Connecticut's multifamily housing market is hot! Demand from workers, families, young professionals, Baby Boomers and many others is moving dozens of municipalities to actively identify locations where smaller, denser, more affordable, energy-efficient, walk-able and, if possible, transit-proximate housing can be built.

BUT THERE'S A PROBLEM:
 Many towns are inexperienced in developing or redeveloping infill and other denser housing, and often don't know what developers need

AND
 Many builders and developers don't know towns want to hook up with them!

THE SOLUTION:
 Brings builders, developers, municipalities, lenders, planning consultants and other experts together along with:

Long Island Workforce Housing Program

- Nassau or Suffolk Counties (effective 1/1/09)
 - Applications to build 5 or more residential units
 - Developer gets at least 10% density bonus
- Local government requires one of the following:
 - At least 10% affordable workforce housing unit set aside (households at or below 120% of median income)
 - Construction of units on site or in municipality
 - Fee payment for each unit required to build

Tools: Cluster Development

Planning Board needs authorization to review

- Zoning may designate districts where cluster is authorized
- Cluster lots may not exceed number of lots if developed conventionally
- Lower site development costs
- Lower building costs presents opportunity to encourage addition of affordable units



Allows units to be clustered on small section of the property

Tools: Accessory Dwelling Units (ADU)



- Allowed as of right, or by special use permit
 - SUP: can address design, density, and health and safety issues
- Cost-effective affordable rental housing
- Older persons can stay in neighborhood
- Common in larger, older houses, in existence for many years

ADU: second residential unit contained in single family home or garage; aka “in-law apartment”



Tools: Manufactured Housing

Levels of Regulation:

Federal

- Construction and Safety

State

- Installation Standards
- Uniform Code
- Manufacturer's Manual
- Sanitary Code Part 17

Local

- Location, lot size, setback
- Home site development

- Freestanding; permanent chassis
- 20-30% less expensive than site built homes
- Privacy and amenities associated with home ownership



Across-the-board exclusion from municipality prohibited
(*Town of Pompey v. Parker*)

Tools: Manufactured Housing Laws

- N.Y. Executive Law, Article 21-B, Title 2, effective November 20, 2015
- A manufactured home that is affixed to a permanent foundation and conforms with the identical development specification and standards, including general aesthetic and architectural standards, applicable to conventional, site-built single-family dwellings in the residential district in which the manufactured home is to be sited, **shall be deemed to be a conforming single family dwelling** for purposes of the applicable local zoning law or ordinance.

N.Y. Executive Law, Article 21-B, Title 2, §616, 617

Tools: Manufactured Home Parks

- What can local governments regulate:
 - Location
 - Lot size
 - Setback
 - Vehicle parking, etc
- Can require site plan review
- Should be reviewed the same way as any other single-family housing development
- Don't discriminate against manufactured housing



Tools: Senior Housing Needs



Tools: Senior Housing Zones

DISTRICT OR ZONE

- Senior Housing District
- Retirement Community District
- Golden Age Housing Zone

MEANS OF IMPLEMENTATION

- Overlay district
- Floating zone



Tools: SEQR and Affordable Housing

18. Consistency with Community Character

The proposed project is inconsistent with the existing community character.

NO YES

(See Part 1. C.2, C.3, D.2, E.3)

If "Yes", answer questions a - g. If "No", proceed to Part 3.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input type="checkbox"/>	<input type="checkbox"/>

SEQR: The Full Environmental Assessment Form, Part 2 has a question on Affordable Housing needs of the area of the proposed project.

Tools: Housing Boards and Regional Planning Commissions

Local Government Housing Boards

- Assess area and regional housing needs
- Research, promote, and coordinate funding
- Formulate/develop policy and programs
- Implement and monitor policies
- Observe rights of lower income households and homeless

Regional Planning Commissions

- Provide census data and analysis
- Forecast housing and employment numbers
- Coordination of plans
- Stormwater/sewer overflow regulations
- Coordination of housing with other related entities

NYS Homes and Community Renewal (NYSHCR)

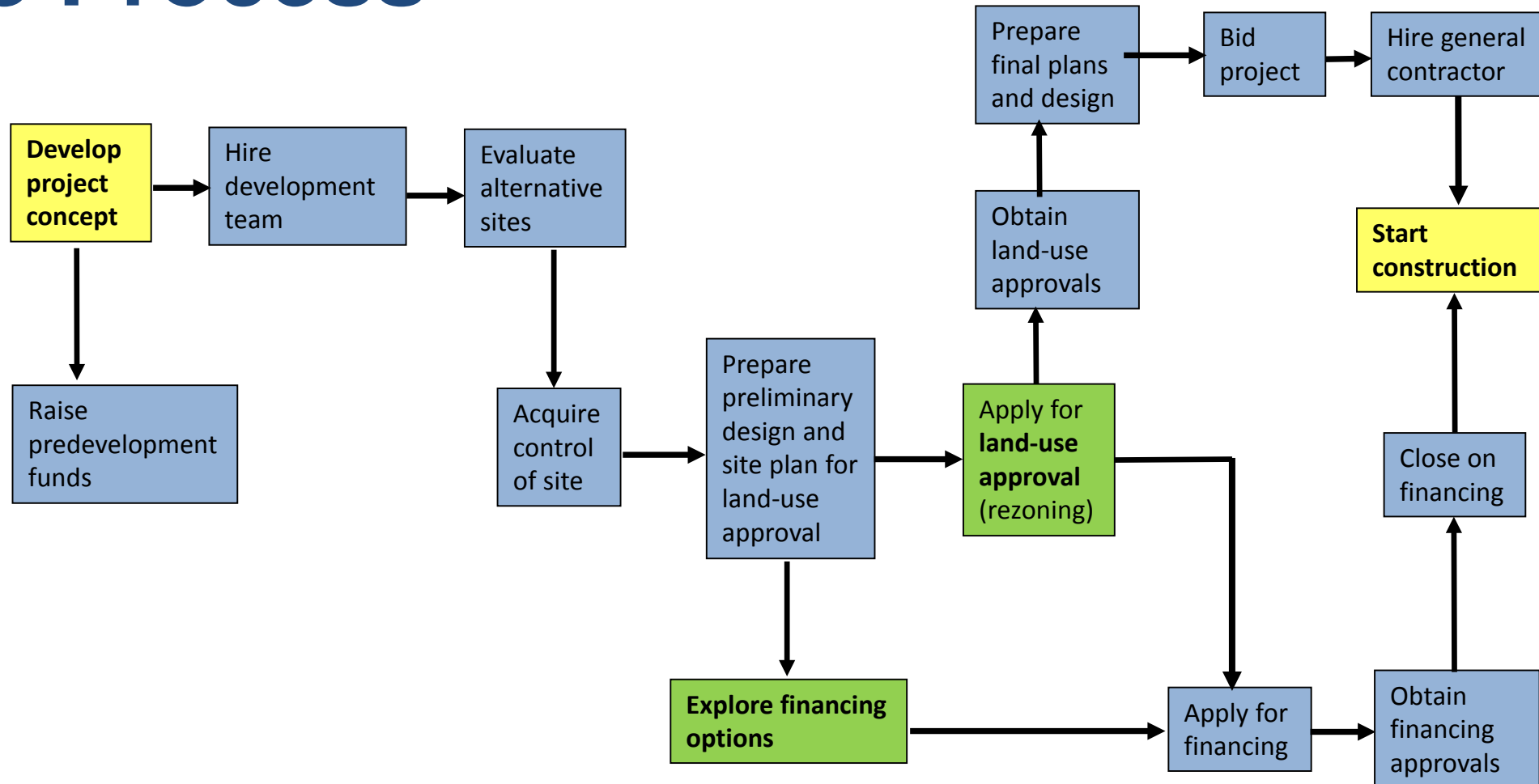
NYSHCR - Major Housing and Community Renewal Agencies

- Housing Trust Fund Corporation
- Housing Finance Agency
- Division of Housing and Community Renewal
- Affordable Housing Corporation
- State of NY Mortgage Agency

Development Processes and Preservation

Building Affordable Housing

The Process



Principle Site Selection Criteria

Category	Elements	Key Questions
Zoning	Use, height, setback, coverage, parking, open space, design review	Is project consistent? If not, is variance or SUP needed?
Unit size mix	A mix of housing sizes, for various groups including single parent families, large families, seniors, and people with disabilities	What is adequate? Ideal? Universal design features? Combination of unit sizes effect project's impact on community.
Infrastructure	Sewer, water, roads	Available? If not, can it be brought in or provided on site?
Environmental Constraints	Wetlands, flood plains, steep slope, resources, contamination	If yes, can it be adequately mitigated?
Suitability	Access to public transportation, jobs, services, recreation	If not, can it be improved or provide services on-site?
Compatibility with surrounding uses	Proximity to incompatible uses	If yes, can it be mitigated through design or other means?
Special consideration or constraints	Historic district, farmland, easements, regional plans, specific funding program criteria	If yes, can it be addressed in ways that protect both?

The Process

DESIGN

Site selection

- Near jobs and services

Design for target group

- Age distribution, number of children, single household families
- Elderly, disabled, workforce housing, immigrants, ethnic, religious groups

Economics – what design features can you afford to build

- Income ranges- % of AMI
- Subsidies; incentives ; offsets

TYPE OF HOUSING

Apartments

- Low rise, high rise
- Garden apartments, townhouses
- Unit sizes, location, universal design?

Houses

- Size
- Same location or scattered?
- Features; design
- Traditional or condo
- Risks and rewards



Housing Preservation

- Preservation has economic and social benefits
 - Prevent loss of existing affordable housing
 - Ensure future affordable housing remains affordable
- Tools
 - Spatial mapping programs for comprehensive view
 - Preservation compacts- a collaborative & multipronged approach to affordable rental housing preservation
 - Analyzing data for at-risk properties
 - Facilitating partnerships across levels of government; reduce costs



The Future



Trends Affecting Housing

Demographic, Geographic, & Environmental Trends

- Supply shrinking; demand increasing
- Aging population
- Movement back to the city and along urban waterfronts
- Many urban areas are located in 100 year floodplains.
- Job types and locations may change

Economic Trends

- Land scarcity in
 - Most desirable locations
 - Urban areas
- Complex government funding programs; subject to change
- Regulations slow development process
- Energy concerns
- Greater economic divide
- Economy slow to recover
- Aging housing stock
- “Durational stipulations” on some housing

Conclusions

- Address housing needs in Comprehensive Plan
- Encourage inclusionary housing policies
- Promote workforce housing
- Use land use tools to attain goals
- Housing integration is key
 - Meet housing needs
 - Maximize benefits
 - Minimize negatives
- Foster regional equality
- Educate public officials and constituency

Resources

The U.S. Department of Housing and Urban Development (HUD)

- Offers a Low-Rent Apartment Search for those who qualify for HUD housing assistance (find low-rent apartments for senior citizens, people with disabilities, families, and individuals).
- <http://www.hud.gov/apps/section8/index.cfm>

NYS Homes and Community Renewal

- Main Toll-Free Phone Number: 1-866-ASK-DHCR (1-866-275-3427)
Hours - Monday - Friday: 9am - 5pm
- HCR resources for Municipalities/Non-Profits
<http://www.nyshcr.org/Topics/Municipalities/Municipalities>
- **Albany**
Hampton Plaza, 38-40 State Street, Albany, NY 12207
Phone: 518-473-2526

Resources: Manufactured Housing

- Manufactured Home Tenant's Bill of Rights:
<http://www.nyshcr.org/Publications/HousingInformationSeries/mhpinfo.htm#rights>
- HCR Manufactured Home 24 hour help hotline: 1-800-432-4210
- Mobile & Manufactured Home Replacement Program:
<http://www.nyshcr.org/Programs/MMHR/>

Senior Housing Resources

NYS Office for the Aging

The Livable New York Resource Manual – goal is to help local officials, professionals and residents plan, zone and develop for livable communities, aging-in-place and sustainable neighborhoods – stressing future-based planning on evolving demographic trends.

- The manual addresses housing, transportation, mobility, green buildings, energy alternatives and inclusive planning.
- Available on-line: <https://aging.ny.gov/LivableNY/Index.cfm>

Other Resources:

Housing Agencies & Organizations

- NYSAFAH - NYS Association for Affordable Housing - www.nysafah.org
- SHNNY-Supportive Housing Network of New York - <http://shnny.org/>
- The Assisted Living Federation of America - <http://www.alfa.org/>
- Assisted Living State Regulatory Review (2012)
- National Center for Assisted Living Report - <https://www.ahcancal.org/ncal/>
- Senior Housing Network - <http://www.seniorhousingnet.com/>
- The Furman Center for Real Estate and Urban Policy - <http://furmancenter.org/>
- National Housing Conference - <http://www.nhc.org/>
- Neighborhood Preservation Coalition of NYS - <http://npcnys.org/>
- NYC Department of Housing Preservation and Development - www.nyc.gov/hpd
- NY Housing Conference - <http://thenyh.org/>
- NYS Rural Housing Coalition - <https://ruralhousing.org/>

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