



Strategies Can Help Developers Overcome NIMBYism

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Developers of low-income housing tax credit (LIHTC) properties face the potential of “not in my backyard” (NIMBY) opposition. Any public hearing, whether it is for land use or zoning changes, variances or funding requests, can be subject to protest. These conflicts between neighborhoods and new developments are more likely in higher-income communities with active neighborhood associations, but can happen anywhere. The opposition can be organized and well-funded or just a minor diversion, but developers need to be prepared and have strategies in place to deal with the issues.

In a NIMBY battle, the LIHTC developer is more than likely in the right. However, developers don't want to be in the position of suing a municipality. We depend on our relationships with local governments and, in the Internet age, having a reputation as a developer willing to sue can make future government partners leery. In addition, lawsuits take time and are expensive. Properties have placed-in-service dates, deadlines on soft funds and equity pricing that may not hold. Winning a lawsuit but not being able to move forward because the delays caused the financing to fall apart is not a win.

The following strategies are not meant to be all-encompassing or to guarantee success. However, they will hopefully give a framework and some approaches to combat local NIMBY opposition:

Count Your Votes

What matters in a public approval process is the number of votes your development receives. Never walk into a hearing without understanding if you have a majority of those votes. Gathering this knowledge means meeting with elected officials, their aides and staff beforehand to get a sense of both their issues and their support. It's time-consuming but necessary. While you would like the neighborhood to back you, the real focus is on strategies that will get you the number of votes you need. In the end, it's those votes that count, not a friendly neighborhood.

Data Matters

Give elected officials information that will allow them to go against the neighborhood opposition. If traffic is mentioned, get a traffic study. Fact-based concerns such as property values, stormwater, roads, schools and community impact can be combated with data. This information gives local officials the justification

continued from page 1

they may need to support the development and gives them the backing for their vote.

Hire Local Consultants and Attorneys

Having local consultants and attorneys on your team early in the development process is absolutely essential. Get recommendations and verify that they have a good reputation with the staff and elected officials. The goal is to build the trust of the local officials. If the local officials already have a good relationship with your consultants and attorneys, they are more likely to believe the information you present to them and to support your development. Look for team members who are friendly with the staff and elected officials when they meet. When walking into a meeting with a local official, pay attention to the interaction between those officials and the local consultants or attorneys—if they start out by discussing family or just catching up before moving onto business, they are the right team members. They are trusted in the community.

The same is true when ordering traffic and neighborhood studies for the local officials. Hire local engineers or consultants who have worked in the community and who have a good reputation. Hiring outside firms allows the opposition to claim that they really don't know the community so how can their studies be accurate. In addition, you may need these consultants to present their data at a public hearing. They need to be trusted, and more practically, they need to be able to attend a hearing at a moment's notice.

Focus on Another Community Benefit

If there is some other community benefit that comes from the development besides housing, let the officials know about it. For example, a nonprofit planned to purchase a convent and convert it into housing for homeless people with HIV/AIDS, a challenging population for any neighborhood. The nuns were aging, the order now only had 12 members from a high of 60 and they could no longer afford the upkeep and maintenance of their

large building. They needed the proceeds from the sale of the convent to both purchase a smaller home and to financially support the members of their order. However, the proposed development needed a parking variance to make the project work. In meetings with local planning board members, the fact that homeless people with HIV/AIDS don't own many cars wasn't mentioned. Instead, the focus was on the nuns, since the previous winter they had barely enough money to afford both food and heating oil and this year the nuns would run out of money if they couldn't sell their building to the nonprofit. The variance was approved with only one planning board member opposed.

Know What You are Willing to Concede

It is always better if the other side feels like it has gotten something from you, so have a list of items that you would be willing to give up if necessary, i.e., fewer units, more parking, etc. However, it's a little like playing poker—you know what you are holding in your hand and you need to react to what is being played by your opponent. If you are speaking with the neighborhood opposition, listen but don't concede these items to them. Your focus is on votes, not the neighborhood. These items are either conceded in meetings with individual local officials or in formal public hearings to get those officials comfortable supporting your project.

Community Meetings

Having neighborhood meetings is not a given. If a local official requests a community meeting, arrange for one. However, ask that official what outcome they expect from the meeting and how they would like the meeting handled. If you are not asked to have a community meeting, it becomes a strategic decision. Will it help to know what the community is thinking, give the community a sense that they are involved or help to dissipate rumors? If a community meeting does not add something positive to the process, you may not want to hold one. The downside risk is creating or exacerbating opposition. Even normally calm, mild-mannered people

continued on page 3

continued from page 2

can become hopelessly irrational in large group settings, especially when discussing real estate near where they live.

Public Hearings

Be willing to pull or defer your agenda item as a strategy if it doesn't appear that the vote will go your way. It is better to wait another month and spend that time working with the local officials than have a public meeting go badly. Once you lose, it is difficult to go back. Also, the opposition can make outrageous statements in these hearings, so ensure that all of your team members speak calmly and respectfully no matter what is said.

Conclusion

As stated above, these approaches aren't a guarantee that a development will overcome NIMBY opposition. There are times when nothing can be done to sway the local officials. However, strategies that include being proactive, having a plan that addresses at least some of the concerns of the local officials and hiring local consultants and attorneys can make a difference. NIMBY opposition is never enjoyable but it can be overcome. ❖

This article first appeared in the April 2017 issue of the Novogradac Journal of Tax Credits.

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ISSN 2152-646X

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