

# A Critical Review of the Canadian Homebuilders Association Report on Inclusionary Zoning

**A backgrounder from the Wellesley Institute**



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# A Critical Review of the CHBA Report on Inclusionary Zoning

*by Richard Drdla, May 2010*

The Canadian Home Builders Association commissioned Altus Clayton to prepare an analysis of the ramifications of inclusionary zoning. The result was the report entitled "*The Potential Effects of the Inclusionary Zoning in Canada*", released in May 2008.

Their report is a discursive presentation of false hypotheses, misleading conjectures and unfounded claims derived from a narrow reading of a limited and selected collection of earlier reports.

The report displays, more than anything else, an outright unwillingness to examine inclusionary zoning in a full and impartial way. It begins with, and never deviates from, the premise that inclusionary zoning has no merit, and must be fought by any and all possible arguments – no matter how spurious – that could be mustered.

What would have been more helpful was a report that identified and assessed the real problems that inclusionary policies could cause for developers. This would have provided a start to a constructive dialogue on how those problems could be addressed and mitigated.

## **Purpose of this paper**

For this examination of the Altus Clayton report, this paper focuses mainly on the report's central and most fundamental claim. That claim also happens to be one of the most extraordinary statements in the report.

Its central and most fundamental claim is this: "The literature from the US overwhelmingly suggests that inclusionary zoning is a relatively ineffective and inefficient approach" (found in the 'conclusion' to the main text).

Elsewhere, the claim is repeated in a slightly different way: "Most research based on the US experience suggests that inclusionary zoning is an ineffective and inefficient policy, compared with other options" (found on first page of the executive summary, and again on second page of the main text).

**However, it is clear that the documentation put forward by Altus Clayton, when properly read and examined, falls well short of being "overwhelming" and fails to show that Inclusionary Zoning is ineffective and inefficient in providing affordable housing.**

For a critical examination of other ill-supported claims in the report, reference should be given to a separate paper by David Rusk, a noted US expert on inclusionary zoning. This paper, entitled "*He Who Pays the Piper ...: An Assessment of Research on Inclusionary Zoning*"; was released in December 2008.

## **WHERE IS THE “OVERWHELMING” LITERATURE?**

The main body of the Altus Clayton report cites a total of 12 reports. The appendix identifies 15 “major inclusionary studies”, which include all but one of the other 12.

These reports can be placed in the following groups:

Only 3 of these reports (Reason, Vandell and Furman) purport to assess the impact of inclusionary zoning. As such, they carry the entire burden of proof for the central claim.

- A total of 8 of the cited reports are by authors or organizations supportive of inclusionary zoning. By and large, these reports are directed at promoting and enhancing inclusionary programs. In any case, it would be a great stretch to say that any of them supported the central claim of Altus Clayton.
- Another 3 of the reports (Mills, Evans and Glaeser) are academic and theoretical critiques of zoning or density controls. None of them actually mention inclusionary zoning, let alone provide any research or evidence about it. At best they represent a very indirect way of criticizing inclusionary zoning.
- The remaining 2 refer to an existing or proposed inclusionary housing policies in Vancouver and Edmonton. Neither of these policies are more than remotely related to inclusionary zoning as used in the US, and so are quite irrelevant to the central claim.

By any possible accounting, relying on a total of 3 reports for support falls well short of “overwhelming”. What’s more, as shown shortly, the evidence provided by 2 of these reports does not stand up to scrutiny, while the third provides only limited and qualified support.

## **WHAT DOES THE CONCLUSION REALLY MEAN?**

The report claims inclusionary zoning is “ineffective and inefficient, compared with other options”, while not being clear about what this means. It takes a close reading to find a possible meaning, possibly because the report is trying to imply more than it can prove.

It also merits noting that having set up this comparison, Altus Clayton fails to identify what those other more effective and efficient options might be, let alone actually make the comparison.

The best interpretation that can be coaxed from the text (page 16 of main body) is that inclusionary zoning is considered inefficient and ineffective for these two reasons:

- It reduces the supply and the affordability of market housing.
- It is unlikely to deliver “an adequate supply [of affordable housing] to meet a municipality’s social housing needs”.

To support the first reason, Altus Clayton relies upon two reports (Furman and Reason). As explained shortly, the first and most credible of the two provides only very limited and qualified support, while the findings of the second are not credible.

The Rusk paper addresses this particular point more fully, while drawing upon other objective studies that do not support this position and were overlooked by Altus Clayton.

To support the second reason, Altus Clayton relies only on one report (Vandell). Again, as explained shortly, the assessment provided in this report is both inadequate and unreliable.

It bears noting that the second reason given by Altus Clayton seems to be an attempt to set an unfair and inappropriate standard for judging the worth of inclusionary programs.

First of all, it uses a standard that even social housing programs would fail. These programs also have never been able to provide sufficient housing to meet social housing needs. So, by logical extension, in putting forward this same standard, Altus Clayton could be arguing against the use of social housing programs as well.

Also, it portrays inclusionary programs as something they are not – namely, the complete or even substantial answer to affordable housing needs. Proponents of inclusionary programs – or, at least, knowledgeable ones – have never promoted these programs as more than a limited and partial answer to current needs. Those needs are now so diverse and serious that they call for a variety of solutions, including not only social housing and inclusionary programs, but also many other initiatives as well.

## WHAT IS THE ACTUAL EVIDENCE IN THESE REPORTS?

Altus Clayton did not undertake any original research. Its claims are derived mainly from three reports. The following examines the credibility of these reports, and summarizes their most relevant findings.

### Furman Report

The following summarizes the report prepared by the Furman Center for Real Estate & Urban Policy, entitled *"The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas"*; and initially released in late 2007.

Although given less prominence by Altus Clayton than the other two, the findings of this report have greater credibility for various reasons. It is more recent, empirical and thoroughly analytical. Also, unlike the other two, it does not set out to confirm previously-held convictions.

Because of the importance of this report, a somewhat fuller summary is also provided in the attached appendix.

This report was commissioned by the Center for Housing Policy, which is the research affiliate of the National Housing Conference. The NHC is a long-standing non-profit organization in the US that draws its wide membership from the housing and related sectors. It is dedicated to non-partisan advocacy for effective housing policy solutions, and has been responsible for many important reports and initiatives specific to affordable housing.

The report examined the impact of inclusionary zoning of production and price in three major metropolitan areas where inclusionary zoning is widely used – namely, the areas around Boston, San Francisco and Washington DC – over a 25-year period from 1980 to 2005.

Its principal findings were these:

- In the San Francisco area, no evidence of an impact was found on either the price or production of market-rate houses.
- In the Boston area, some evidence was found, but the impact was variously described as “relatively modest” and “fairly small”.
- In the Washington DC area, where the full analysis could not be completed due to the inadequate sample, no impact was found.

Altus Clayton failed to report that no impact was found in the San Francisco and Washington DC areas, nor that the impact in the Boston area was not really consequential.

Altus Clayton also failed to report other findings in this report that qualified the significance of the impact found in Boston in these ways:

- In the Boston area, the study found that many communities with inclusionary zoning programs also used growth management policies. These policies by intent (unlike inclusionary zoning) restrict residential development. The analysis was unable to separate the two, and so the report notes that the adverse impact found in the Boston area could very well have been caused by these policies rather than inclusionary zoning.
- In the San Francisco area, the lack of any discernible impact is notable because the programs there typically are more demanding on developers than those in the Boston area. This provides evidence that productive inclusionary zoning programs can be designed to prevent or mitigate adverse impact on price and production. Or, in the words of the report, this shows that “adverse price and supply effects are not inevitable consequences of IZ”.
- In general, the report also noted that inclusionary zoning programs have been typically adopted in high-cost places that have seen rapid increases in house prices. (Indeed, although not stated in the report, these programs are typically adopted as a way of addressing the decline of affordability caused by those rising prices.) So, in this light, inclusionary zoning should be seen as a response to rising house prices, and not necessarily a cause of them.

In summary, it takes a selective and one-sided reading of this report to say that it supports the claims made by Altus Clayton.

### **Reason Report**

This report, *“Housing Supply and Affordability: Do Affordable Housing Mandates Work?”*, was prepared by The Reason Public Policy Institute in 2004. The Institute is a libertarian think tank based in California, and dedicated to opposing all forms of government regulation. The report was commissioned by the Home Builders Association of Northern California and the California Building Industry Association.

This report identified and quantified a number of dire impacts that it ascribed to the introduction of inclusionary zoning policies. These impacts, listed in the Altus Clayton report, include reduced construction that led to higher prices for the other home purchases and lost tax revenue for local governments.

Their findings rest mainly on an analysis of building permit data for single-family development collected for 1990-2003 in 33 communities in the San Francisco area, all with inclusionary programs. The analysis found that the number of building permits dropped after these programs were implemented, and so it was concluded that the drop “could” be blamed entirely on the inclusionary zoning policies.

The study also found inclusionary zoning programs caused a market price increase of \$22,000 to \$44,000 per unit. This finding was not based upon empirical evidence. No

information on house prices was collected. Rather, it was based upon an unvalidated and theoretical construct that attempted to determine the price impact caused by building permit drop-off.

It is relevant to mention that the findings of the Reason report have been discredited by two other reports:

- A report, *“Policy Claims with Weak Evidence”* by two California professors Victoria Basalo and Nico Calavita in 2004, examines this work in some depth. The report identifies enumerable problems and gives this damning overall assessment: “The study does not provide empirical evidence necessary to assess the merits or demerits of IH [inclusionary housing]. The narrow scope of the research, the flawed research design, the data limitations and the weakness of the analysis are so consequential that few, if any, of their conclusions are useful”.
- The Furman report came to a similar conclusion: “Their work relies on several questionable assumptions and is not methodologically sophisticated.... In short, the results ... [should not be taken] as proof of a causal relationship between IZ and housing market outcomes”.

The shortcomings of this study can be best illustrated by reference to one its most obvious flaws. The study did not compare the building permit data of the communities with and without inclusionary policies. In the absence of such a fundamental comparison, it is impossible to ascertain whether the drop in permits was specific to communities with inclusionary zoning, or a more widespread occurrence that was caused by other factors.

As noted by critics of the report, there are at least two more plausible reasons for the decline in construction activity not related to inclusionary policies. Neither was examined. These are the reduction in development caused by the major economic downturn of the early 1990s, and the eventual building-out of the raw land suitable for single-family housing in many of these fast-growing communities.

Overall, this report reads like a screed in which the ideologically-based conclusions were firmly established well before the research and that research was used to confirm those conclusions rather than form them.

In summary, the findings of this study can be dismissed because they have no credibility. Since all of the findings of the report rest on its flawed analysis of building permits, they all fall when it falls.

### **Vandell Report**

This report, *“Inclusionary Zoning: Myths and Realities”* was prepared by Kerry D. Vandell in 2003 for the Center for Urban Land Economics Research at the University of Wisconsin-Madison.

The report was funded by the Wisconsin Realtors Association and the Madison Area Builders Association to support their opposition to the enactment of an inclusionary ordinance by the city of Madison in Wisconsin.

Altus Clayton points to this report – and only to this report – as providing evidence that inclusionary zoning does not provide much affordable housing. Specifically, it derives this statement from this report: “Inclusionary zoning does not produce a high volume of subsidized housing – typically, only 3-7 percent of the new stock produced annually represents ‘affordable housing’ in inclusionary zoning jurisdictions”.

This particular analysis was based upon building data on about 130 inclusionary zoning programs compiled from disparate sources. No attempt was made to collect new data, nor to check the collected data.

The report strangely does not contain the information necessary to verify this finding. It does provide tabulated data on affordable housing completions in most (but not all) of the programs, but it does not present either the market or total completions for any of them. So, the results cannot be validated.

While such an assessment would appear to be easy and straightforward, it is not possible to do at this time. The cross-country data on the units produced by inclusionary programs have never been properly surveyed. The numbers that are available are patchy, unreliable and available only on an inconsistent basis. The Furman report acknowledges this problem, but Vandell does not.

Beyond its reliance on inadequate data, the analysis contains a number of significant flaws that serve to under-estimate the potential of these programs, and to undermine the credibility of this particular conclusion.

- The report combines, without making any distinction, both mandatory and voluntary programs. Mandatory programs are known to produce significantly more units than voluntary.
- The report does not identify the fees-in-lieu and other possible contributions that are allowed in many of these programs. Some have produced little affordable housing directly, but have generated substantial fees-in-lieu, that are subsequently used to provide affordable housing not captured in these statistics.
- A significant number of the programs had been in existence for only a few years. New programs need time to become productive; their initial output is not indicative of what they will produce when mature.
- A significant number of the programs had no recorded output. The report is not clear whether this was taken as zero output or incomplete information. The two possible interpretations have a substantially different effect on the results.

These results at best provide a very rough estimate at the low end of the past production, but a very poor guide to the potential production. Broad historic averages do not say much about the future output of new programs. Using past performance fails to recognize that

there is now a much better understanding of how to enhance the productivity of these programs.

Separately from the above-mentioned research, the Vandell report also anecdotally comments upon a number of the other potential impacts of inclusionary zoning, both positive and negative, without providing any empirical evidence. This assessment, which does not offer any new insights, indicates that none of the negative impacts are likely to be more than marginal.

In summary, this report offers nothing solid or conclusive to support Altus Clayton. The only new evidence, provided on the productivity of inclusionary zoning, is faulty and of limited value.

RD/15May2010

## **Appendix: Review of the Furman Study**

The following provides a summary of a report entitled "*The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas*", prepared by the Furman Center for Real Estate & Urban Policy, and first released as a working paper in late 2007.

The study was commissioned by the Center for Housing Policy, which is the research affiliate of the National Housing Conference. The NHC is a non-profit organization in the US established in 1931 that draws its membership widely from the housing and related sectors, and is dedicated to non-partisan advocacy for effective housing policy solutions. Over the years, the NHC has been responsible for many influential reports and initiatives specific to affordable housing.

The study provides an objective and analytically rigorous examination of the impact of inclusionary zoning (IZ) on the price and production of market-rate housing. It does this through an "in-depth longitudinal analysis" of the available data for the three metropolitan areas around Boston, San Francisco and Washington DC for the period of 1980 to 2005.

The study was designed to examine empirically three key questions: 1) what kinds of jurisdictions have adopted Inclusionary zoning; 2) how much affordable housing have they produced, and what influenced that production; and 3) what has been their impact on the price and production of market housing. Of these, only the third question was really addressed to any substantial extent, and that is the focus of this summary.

The study represents the first examination of the effects of inclusionary zoning in an objective and analytical way. The report offers this explanation for the lack of earlier studies: "The paucity of rigorous empirical research on the effects of IZ is due in large part to the difficulty of obtaining accurate data on the presence and characteristics of inclusionary zoning programs across jurisdictions and over time, as well as units produced under such programs" (page 16). As a result, "most of the existing studies are descriptive case studies that are not methodologically suited to identify the effects of the policies, and many studies reflect strong ideological biases on the part of authors" (page 3).

In this context, it is relevant to note that the report specifically dismisses the two studies by the Reason Foundation. As stated, "their work relies on several questionable assumptions and is not methodologically sophisticated.... In short, the results of the two studies [should not be taken] as proof of a causal relationship between IZ and housing market outcomes" (page 16).

(Reference is made in the above to two studies by Reason. The first, which was cited by Altus Clayton, was undertaken for the San Francisco area. The second was for the Los Angeles area. It used the same methodology, came to the same conclusions, and used almost the same text.)

## **Summary of the Relevant Findings**

The key findings of the study regarding the impact on price and production are summarized here, using as much as possible the actual words of the report. The findings are taken from both the full report and the executive summary.

### **Executive Summary**

The main finding, as highlighted in the executive summary, is this: “In the San Francisco area, there is no evidence that IZ impacts either the prices or production of single family homes. In suburban Boston, IZ seems to have resulted in small decreases in production and slight increases in the prices of single-family houses” (page 8).

There is also this additional and telling finding: the results from the San Francisco area “suggest that adverse price and supply effects are not inevitable consequences of IZ ... it seems likely that the details of the policies – particularly the inclusion of effective cost offsets – matter considerably” (page 10).

### **Main Body**

The main body of the report provides additional findings specific to the three areas.

#### Boston

The analysis provides “some evidence that IZ constrains new development, but the results are not conclusive. The simplest model ... suggest[s] that the presence of IZ is associated with roughly 10 percent fewer single-family permits per year ... [and] that adopting IZ is associated with just under a three percent increase in prices” (page 63).

The report adds this important caveat: “these results [could] imply ... changes in housing market conditions that are correlated with the adoption of IZ, rather than the effects of IZ itself” (page 63).

In other words, it is possible that the inclusionary zoning should be seen as the result, and not the cause, of rising prices. As noted elsewhere in the report, inclusionary zoning is typically adopted in high-priced and fast-growth communities already facing rapidly rising house prices. So, the analysis might be falsely blaming those prevailing conditions on inclusionary zoning.

Also, the report acknowledges that in the Boston area, “adopting IZ is positively correlated with having several other types of regulations” (page 67), including specifically growth management policies. “These results are consistent with a situation where the adoption of the IZ is correlated with other regulatory changes and those other changes, rather than IZ, produced the previously estimated constraint on supply” (page 63).

Put in other words, inclusionary zoning in the Boston area is typically found in communities using other land-use regulations, including most notably growth management policies. So, it is possible that these other regulations might be causing the constraint on supply rather inclusionary zoning.

### San Francisco

“The analysis shows no evidence of a statistically significant effect of IZ on either single-family permits or single-family housing prices in the San Francisco area... Based on the data available, it does not appear that the adoption of IZ among jurisdictions in the Bay Area has produced systematic effects on either housing production or housing prices” (page 64).

### Washington DC

The study could not complete the analytical exercise for the Washington area because the sample of jurisdictions was too small, but the report did provide a descriptive review of the data found there.

“The analysis of IZ in the Washington DC area also reveals no effects of IZ on permits or prices, although it is impossible to determine whether this reflects the true impacts of IZ or simply the severe data limitations” (page 65).

The report also points out this interesting finding. The data in some of the jurisdictions “show changes in housing permits and prices that are difficult to explain solely as a result of adopting IZ”. More specifically, in some communities after implementing inclusionary zoning, there was a drop of prices or an increase in production – just the opposite of the claims made by Altus Clayton.

### **Need for Additional Study**

The findings of the report contain a telling anomaly that is not fully addressed, and merits additional examination because of its relevance to the design of these programs.

The results for the Boston and San Francisco areas, if anything, are the opposite of what might be reasonably expected. If there was an adverse impact from inclusionary zoning, then it seems much more likely to have been felt in the SF area than Boston for these two reasons identified in the report:

- Most of the SF programs (93%) are mandatory, but those in the Boston area are considerably fewer (58%).
- The mandatory provisions in SF area are typically applied to nearly all developments, while in the Boston area they are in many cases only applied to specific areas or types of development (like cluster developments).

These results are telling because, as the report correctly says, “compared to mandatory programs, voluntary programs should be less likely to lead to increased prices and decrease production of market-rate units” (page 12).

It must be also noted that the data from the SF area provide a more credible basis for analysis than that from Boston. The programs in the SF area generally have produced far more housing, and have

produced it over a much longer time. Nearly all inclusionary zoning programs in the SF area have produced some affordable units, while close to half (43%) in the Boston area had produced none. The median length of time for the programs in the SF sample was 12 years, while the figure for the Boston area was 2 years.

The report points to two plausible and relevant reasons for this anomaly:

- The programs in the San Francisco area are more flexible in how they allow developers to meet their obligation, as they allow fees-in-lieu and land dedications as alternatives to on-site construction. At the same time, they are more likely to offer density bonuses and other cost offsets to mitigate any impact. This indicates that inclusionary zoning programs can be designed to prevent or limit any adverse impact on price and production.
- The inclusionary zoning programs in the Boston area have a “positive correlation” – that is, are commonly associated – with growth management policies. By their very nature, these policies restrict new housing development. This indicates that the growth management policies could be causing the negative effects attributed to inclusionary zoning in this area. The report acknowledges this possibility, but states that it could not “unpack” the two effects.

### **Overview and Conclusion**

This report presents important original research based upon empirical data. It is the first to apply a thoroughly analytical approach in assessing that data to determine the impact of inclusionary zoning.

Altus Clayton used this report along with two others to support its claims, but gave it less prominence. Of the three, this is the only one that came from a source not holding a pre-determined position, and the only one that undertook a rigorous analysis. For these reasons, its findings must be considered more credible than the others.

The findings of this study do not support the Altus Clayton assertion that inclusionary zoning has a substantial adverse impact on housing prices and production. At the very worst, in only one of the three market areas examined, inclusionary zoning was found to have no more than a marginal impact.

The report qualifies this finding by noting that this impact ascribed to inclusionary zoning could very well be caused by other conditions:

- Inclusionary zoning has been typically adopted in fast-growing and high-cost communities. In other words, it is a response to already rapidly rising house prices, and not a cause of them.
- Inclusionary zoning is often found in communities that have adopted other regulatory measures like growth management policies that have a restrictive effect on development.

In any case, the report also presents evidence that the impact of inclusionary zoning could be mitigated or overcome through the provision of cost offsets and compliance alternatives.