

# Lawsuit Breaks Suburban Affordable Housing Limits— Challenges Affluent Sprawl

By Marcy Rein

**O**n a warm afternoon, late lunchers linger at sidewalk tables in downtown Pleasanton. Small shops and restaurants fill Main Street's carefully restored Old West-style wood buildings. Business parks ring the town and beyond them, low rolling hills meet the skyline.

Money magazine ranked Pleasanton among the 100 best small cities in the U.S. in 2010. The article pegged the median home price there at \$465,000, and the median family income at \$134,282—more than double the California average. It touted Pleasanton's strong school system and abundance of parks, trails, public art spaces, and jobs.<sup>1</sup> This eastern Alameda County city of 70,000 has more than 2.3 jobs per household, the most lopsided ratio in the region.<sup>2</sup> Pleasanton, it seems, has plenty of everything—except housing.

## Thou Shalt Not Build

City ordinances, ballot measures, zoning decisions,

and General Plan provisions put in place since the 1980s have created a severe shortage of housing, particularly affordable housing. Pleasanton's Housing Cap, approved by city voters in 1996 and reaffirmed in 2008, barred it from ever building more than 29,000 units of housing.

The housing restrictions prevent many who work in Pleasanton from living there, forcing them to become commuters. Of the 47,000 people who work in the city, around 42,000—almost 90 percent—commute to their jobs. Only about 4,000 of them take Bay Area Rapid Transit (BART) trains; the rest drive, adding to the pollution and traffic congestion in the region.<sup>3</sup>



Photo:  
Downtown Pleasanton.  
©2009 John Krzesinski



A lawsuit brought by San Francisco-based Public Advocates on behalf of Urban Habitat and housing activist Sandra DeGregorio overturned Pleasanton's most stringent housing restrictions. The settlement in *Urban Habitat, et al v. City of Pleasanton, et al* required the city to plan and rezone for more affordable housing and sparked a broader conversation about what makes a community sustainable.

"For decades, the standard definition of sustainability focused on environmental sustainability," says Connie Galambos Malloy, senior program director at Urban Habitat. "Now we are learning how closely environmental sustainability and equity are linked."

### Keeping it Green for the People Who've Got 'Green'

Ironically, when the slow-growth majority on Pleasanton's City Council first put the Housing Cap on the ballot in 1996, they framed it as environmental protection.

"We put the Housing Cap on the ballot because we wanted to keep growth within bounds that our infrastructure—especially our sewer system—could handle," says Becky Dennis, who served on the Council from 1993 to 2002.

The Council originally paired the Housing Cap with

an urban growth boundary to rein in sprawl. The Growth Management Ordinance, in place since 1986, limited the total number of housing permits that could be issued annually to 750. The city's refusal to zone for high-density residential uses effectively blocked construction of affordable housing.

Without zoning in place, each proposal to build apartments or other high-density projects had to be debated and approved separately. This led to many Planning Commission hearings, prickly negotiations with anti-growth neighbors, and usually a reduction in the number of affordable units getting built.

Most of the low-income housing that made it through this process served seniors rather than families. Only 20 of the very-low-income units built between 1999 and 2006 were open to families with children.<sup>4</sup>

As Pleasanton was tightening its housing limits, it was becoming more racially diverse. It changed from 95 percent white in 1980 to 67 percent white in 2010 (in a county that is only 35 percent white). But the city's power structure remained 99 percent white and upper middle class, and housing policy became "the electric third rail in Pleasanton politics," says Dennis.

"Opposition to developers and residential growth presenting itself as environmental heroism is irresistible political candy," she says.

While Dennis herself became an outspoken advocate for affordable housing, the growth limits became tools for exclusion—just as they did nationally after the federal Fair Housing Act passed in 1968. Because the Act barred overt discrimination, suburban communities turned to zoning to enforce de facto segregation.

"The power to zone entails the power to exclude," said Richard Marcantonio, managing attorney at Public Advocates and lead counsel on the Pleasanton

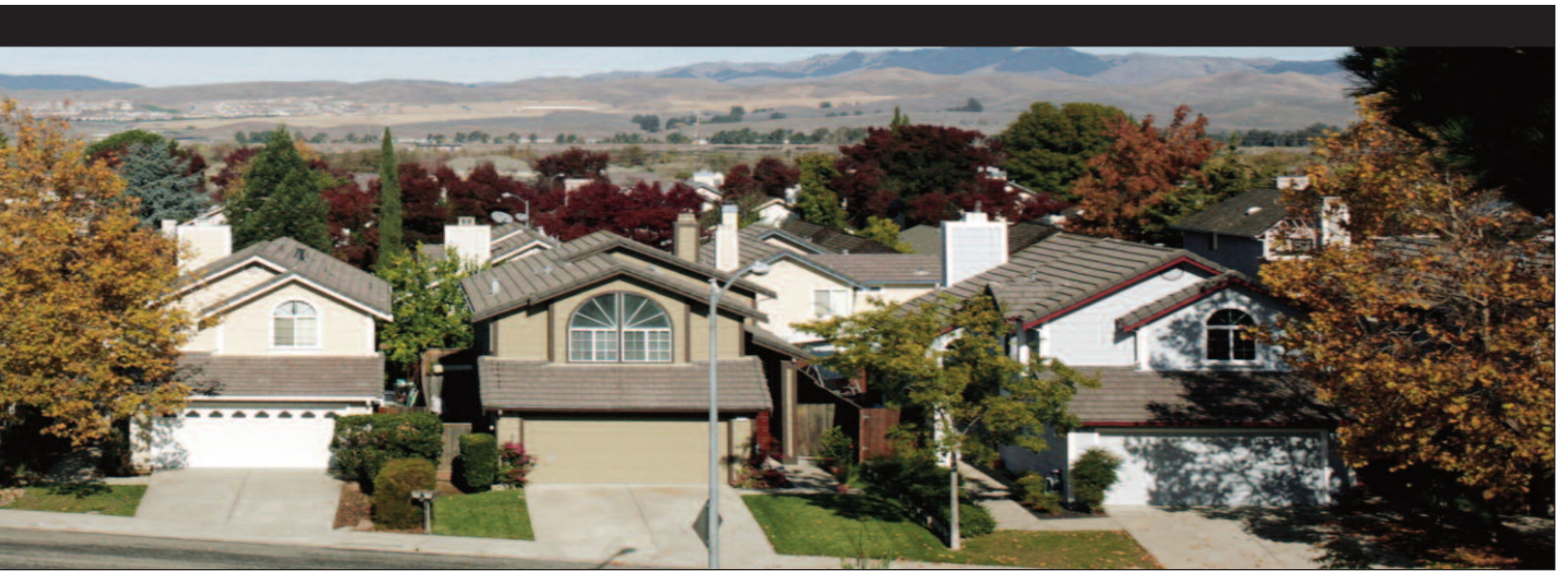


Photo:

Becky Dennis.

©2011 Tiffany Eng/  
Urban Habitat





suit, explaining that communities use zoning powers to block affordable and multifamily (apartment) housing.

The landmark court decisions outlawing exclusionary zoning asserted that land use and zoning policies must serve the regional welfare, holding that regions thrive environmentally and socially when all communities have a share of affordable housing.<sup>5</sup> By 1980, housing activists in California had secured a state law that required periodic “Regional Housing Needs Assessments” (RHNA) to evenly distribute housing for all income levels. (See box.)

The 1999-2007 RHNA tasked Pleasanton with building 5,059 units of housing; 729 of them had to be affordable for very-low-income families and 455 for low-income families. By 2006, the city had not even rezoned sites for affordable housing, despite the best efforts of Citizens for a Caring Community (CCC)—a small interfaith group that has become Pleasanton’s most vocal and persistent housing advocate.

Thanks to CCC, Pleasanton’s 2003 Housing Element included a plan for accommodating its affordable housing need. Under Program 19.1, the city had one year after the adoption of the Housing Element to identify enough sites for high-density residential use to meet its regional housing needs goal. It then had until June 2004 to modify its general plan and rezone so the housing could be built.

For three years, CCC lobbied for enforcement of Program 19.1. Members wrote to the Planning Commission, the City Council, and the California Department of Housing and Community Development; they met with commissioners and council members and testified at zoning hearings.

“We kept speaking out at City Council about fair share, but it was like talking to a stone wall,” says

CCC activist Pat Belding, who then sought legal help from Public Advocates.

By June 2006, the number of units that could be built under the Housing Cap was too small to meet the city’s RHNA. City staff reports disclosed that only 1,686 units could be built under the Cap, far fewer than the 2,889 units in the RHNA. Public Advocates sent Pleasanton an official “demand letter” detailing the city’s violations of state housing law,<sup>6</sup> and a coalition made up of CCC, East Bay Housing Organizations (EBHO), the East Bay Community Foundation, and the Tri-Valley Interfaith Poverty Forum began meeting to discuss next steps.

### Regional Housing Needs Assessments (RHNA)

To distribute housing needs evenly within each region of the state, California’s Housing Element law provides for “Regional Housing Needs Assessments” (RHNA), prepared periodically by regional councils of government (COG). Schedules vary by region, but the assessments typically cover an eight-year period.

The RHNA includes existing and projected needs for housing at all income levels: very low-income (50 percent or less of area median income); low-income (50-80 percent of median); moderate income (80-120 percent of median); and above-moderate (more than 120 percent of median).

COGs calculate housing needs by looking at population and employment growth, existing employment, and household and employment growth near transit in the entire region and in each city or town. A jurisdiction’s housing needs obligation reflects its share of regional growth. ■

Photo:  
Pleasanton vista.

©2011  
Tiffany Eng/  
Urban Habitat

**When All Else Fails, Sue**

“Because Pleasanton’s low- and moderate-wage workers could not afford to live there, they were effectively without a voice to impact the policies keeping them out,” Galambos Malloy says. “That’s why it became important for regional groups to take action.”

Public Advocates filed suit against the city of Pleasanton in October 2006.

*Urban Habitat, et al v. City of Pleasanton, et al* charged the city with violating state laws that require communities to meet their fair share of regional housing needs and with discriminating against people of color, female-headed households, and families with children, all of whom suffered disproportionately from the lack of affordable housing.

Because the case included a discrimination claim, one plaintiff had to be an individual who had been harmed personally. Sandra DeGregorio, a Latina single mother and student teacher who had been active in the Tri-Valley Interfaith Poverty Forum for years, stepped forward.

DeGregorio had been spending more than half her

income to rent in Pleasanton. “Some places said they had affordable apartments, but they had a waiting list and it took more than two years for one to open up,” says DeGregorio. She and her two children ended up moving out of town to find housing that would not break their budget.

Because the case also claimed that Pleasanton’s actions impacted the entire Bay Area, Urban Habitat stepped in as a plaintiff to represent the regional welfare.

The Alameda County Superior Court dismissed the case in May 2007. Public Advocates and its co-counsel, the California Affordable Housing Law Project, appealed and won reinstatement of the suit. The California Attorney General’s office joined the suit in 2009, concerned that the imbalance between jobs and housing would keep the region from meeting the greenhouse gas reduction targets set by AB32, the state’s climate change law.

Superior Court Judge Frank Roesch upheld the plaintiffs’ claim when the case came to trial. His March 2010 ruling overturned Pleasanton’s Housing Cap and ordered

**Settlement Points Way for Climate Change Planning**

By opening up this opportunity-rich community, the settlement in *Urban Habitat, et al v. City of Pleasanton, et al* could make Pleasanton a model for organizers trying to ensure that the regional planning required by SB 375 serves equity as well as the environment.

SB 375—one of the laws passed to implement California’s climate change legislation—seeks to reverse decades of suburban sprawl. It directs regions to develop a “Sustainable Communities Strategy” (SCS) that will reduce driving and greenhouse gas emissions by supporting transit service that links jobs and affordable housing.

“The same policies that drove segre-

gation and disinvestment in communities of color have also generated the sprawl that SB 375 aims to curtail,” says Richard Marcantonio, managing attorney for Public Advocates and lead counsel on the Pleasanton suit. “SB 375 provides a powerful opening for redrawing the regional map of opportunity and exclusion—on top of its environmental goals.”

Though Pleasanton has one of the region’s sharpest imbalances between jobs and housing, many other Bay Area communities follow its pattern. Most Bay Area cities and towns of more than 25,000 people—41 out of 57 studied by the Association of Bay Area Governments—lack sufficient housing for their low-income workers.

Since SB 375 only sets goals and does not prescribe the planning strate-

gies for regions to bring jobs, affordable housing, and transit closer together, Bay Area activists have formed a broad network called “6 Wins for Social Equity” to engage in the SCS planning process. They are advocating for a strategy to bring affordable housing to all the area’s job-rich transit-connected communities and expand existing local transit service. This will help spread the social benefits of communities like Pleasanton and reduce sprawl as well.

Cities that export their housing needs, as Pleasanton did, create a sprawling “commute-shed” of low-wage workers. Affordable housing near jobs will cut vehicle miles traveled to work and greenhouse gas emissions, benefiting low-income workers and the regional environment alike. ■

**By the Numbers:**  
**Exurbia Stays White**

By William H. Frey

While suburban America overall is becoming much more racially diverse, there exists great demographic diversity among suburbs within metropolitan areas. In particular, the peripheral, low-density portions of large metro areas, often termed “exurbs,” remain distinct exceptions to the melting pot image.

Exurban counties represent 2.5 million people or just over 1 percent of the total large metropolitan population, but many are expanding very rapidly.

The 20 fastest growing exurban counties in the 2000s are located in a broad range of U.S. regions, from metro areas in the South (Atlanta, Richmond, Raleigh), to the West (Ogden), Midwest (St. Louis), and Northeast (New York). Population growth in these counties proceeded at three to five times the U.S. average rate from 2000 to 2010.

In contrast to the overall suburban populations of their metropolitan areas, most of these exurban counties are overwhelmingly white.

Sixteen of the 20 are more than 75 percent white. (Wilson County, TX near San Antonio is the most diverse, with Hispanics representing 38 percent of residents.)

Whites also account for the bulk of the recent population growth in the exurbs—at least 80 percent in 15 of the 20 exurbs.

Across all exurban counties, whites account for 73 percent of recent population growth, many times that group’s 8 percent contribution to overall U.S. population growth in the 2000s. In some ways, these exurban areas reflect the historic image of suburbia in terms of new housing, growth, and demographic detachment from the more urban portions of their metropolitan areas. ■

*Excerpted from “Melting Pot Cities and Suburbs: Racial and Ethnic Change in Metro America in the 2000s,” a Brookings Institute report.*

the city to zone for affordable housing. Pleasanton opted to settle rather than appeal.

Under the settlement agreement signed in August 2010, the city agreed to pass an ordinance prohibiting discrimination against families with children needing affordable housing; to prepare a new Housing Element for its General Plan by August 2011; and to rezone three sites in Hacienda Business Park for high-density housing, with a minimum of 15 percent or 130 units (whichever is greater) of affordable housing.

**Settlement Helps Community Rethink “Green”**

In implementing the settlement agreement, Pleasanton opened a new community conversation on sustainability. It set up a 20-member task force to review plans for the new development at Hacienda Business Park and held community meetings to get input on the new Housing Element, especially on potential locations for affordable housing.



CCC members began working with the Great Communities Collaborative to ensure that the settlement terms were fulfilled. The collaborative comprises seven organizations that are dedicated to equitable transit-oriented development. The Non-Profit Housing Association of Northern California and EBHO took the lead in Pleasanton, with support from Greenbelt Alliance and Urban Habitat.

“People were having conversations about density, about what Pleasanton means to them,” says Peter Cohen, former policy director of EBHO, which has been involved in Pleasanton housing issues for years. “They were changing their idea about protecting the community and seeing their community in relation to the region.”

If the Hacienda Plan discussions prompt a broader shift in thinking, Pleasanton could be a model for other communities trying to move toward a more inclusive, regional perspective—one that sees affordable housing near jobs and transit as a building block for sustainability, not an obstacle to it.

“Pleasanton has some real lessons to teach us about how to find common ground in a political moment of dramatic demographic change,” says Galambos Malloy. ■

**Endnotes**

1. [money.cnn.com/magazines/moneymag/bplive/2010/snapshots/PL0657792.html](http://money.cnn.com/magazines/moneymag/bplive/2010/snapshots/PL0657792.html)
2. [abag.ca.gov/planning/interregional/pdf/projections/IRP\\_Projections.pdf](http://abag.ca.gov/planning/interregional/pdf/projections/IRP_Projections.pdf)
3. Data compiled by BART between July 2010 and May 2011 show an average of 3,666 people taking the train from Pleasanton during the evening commute.
4. Letter from Public Advocates to Pleasanton City Manager Nelson Fialho, June 20, 2006.
5. Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, NJ, 1975 and Associated Homebuilders of Greater East Bay v. City of Livermore, CA, 1976.
6. Letter from Public Advocates to Pleasanton City Manager Nelson Fialho, June 20, 2006.

Photo:  
Hacienda  
Business Park in  
Pleasanton.

©2011  
Tiffany Eng/  
Urban Habitat

*Marcy Rein is a freelance writer and editor living in Richmond, California who works with Urban Habitat as a communications consultant.*