

Fair Housing Compliance Considerations for Land Use and Planning Decisions

Module Developed by the
MetroWest Home Consortium and
Regional Housing Services Office

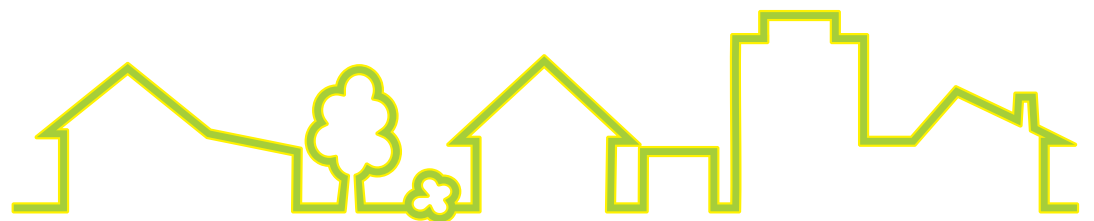
Trainer:

Jennifer M. Goldson, AICP

JM Goldson community preservation + planning

J M Goldson

community preservation
+ planning



The need for this training

1. Many people mistakenly think of fair housing as needed in the past and not as relevant today
2. Local development review boards don't often bring up fair housing considerations explicitly in their reviews



Agenda

Section 1: What is Fair Housing and Why do we need it?

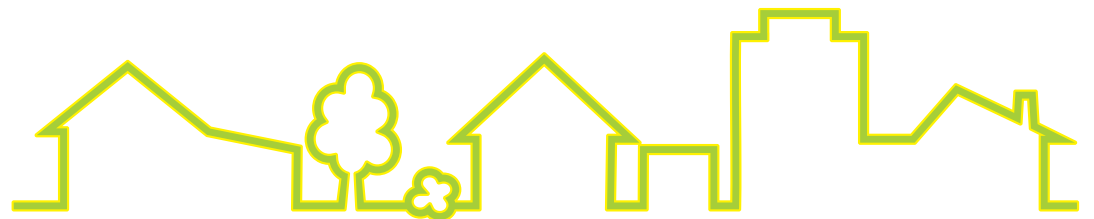
- Overview of civil rights history
- Fair Housing still relevant
- Legislation

Section 2: Fair Housing and Local Land Use Policies and Practices

- Four key concepts

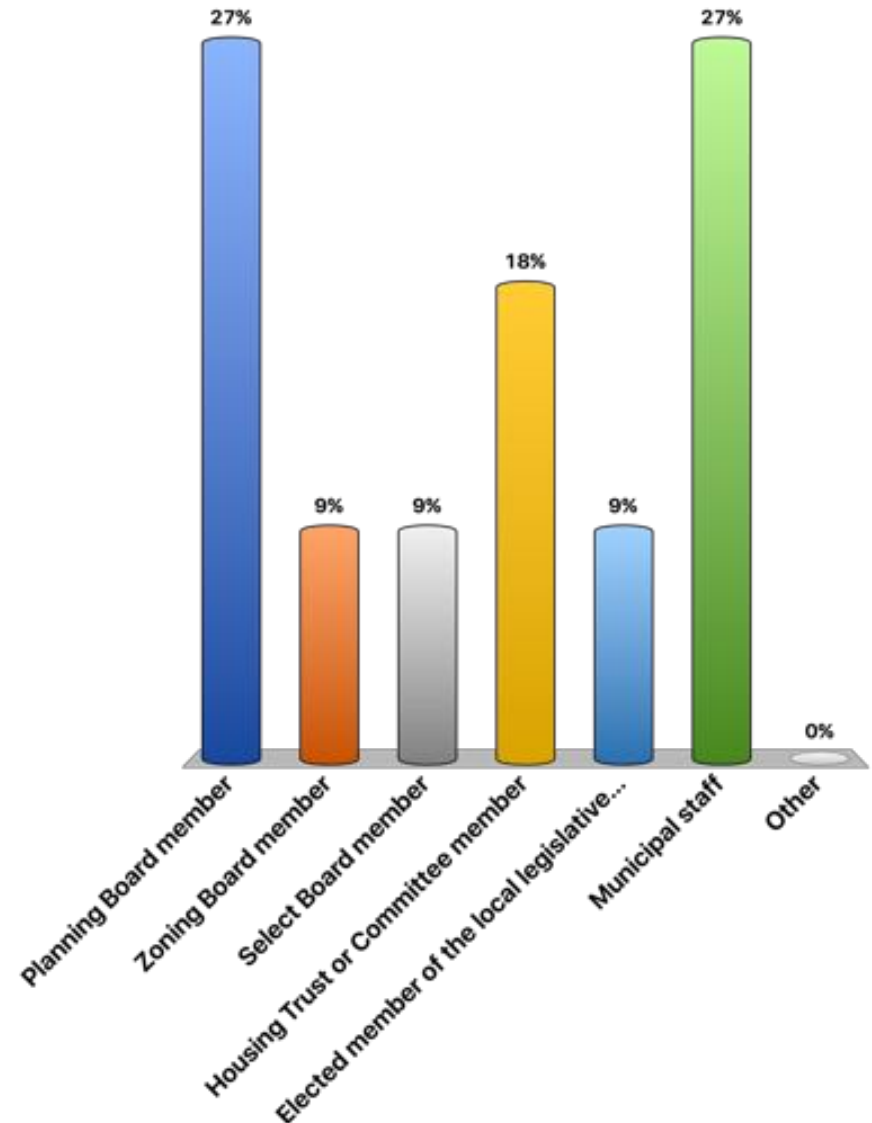
Interactive Elements:

- Case Study Discussion Exercises
- Fair Housing Quiz (it's easy if you pay attention!)



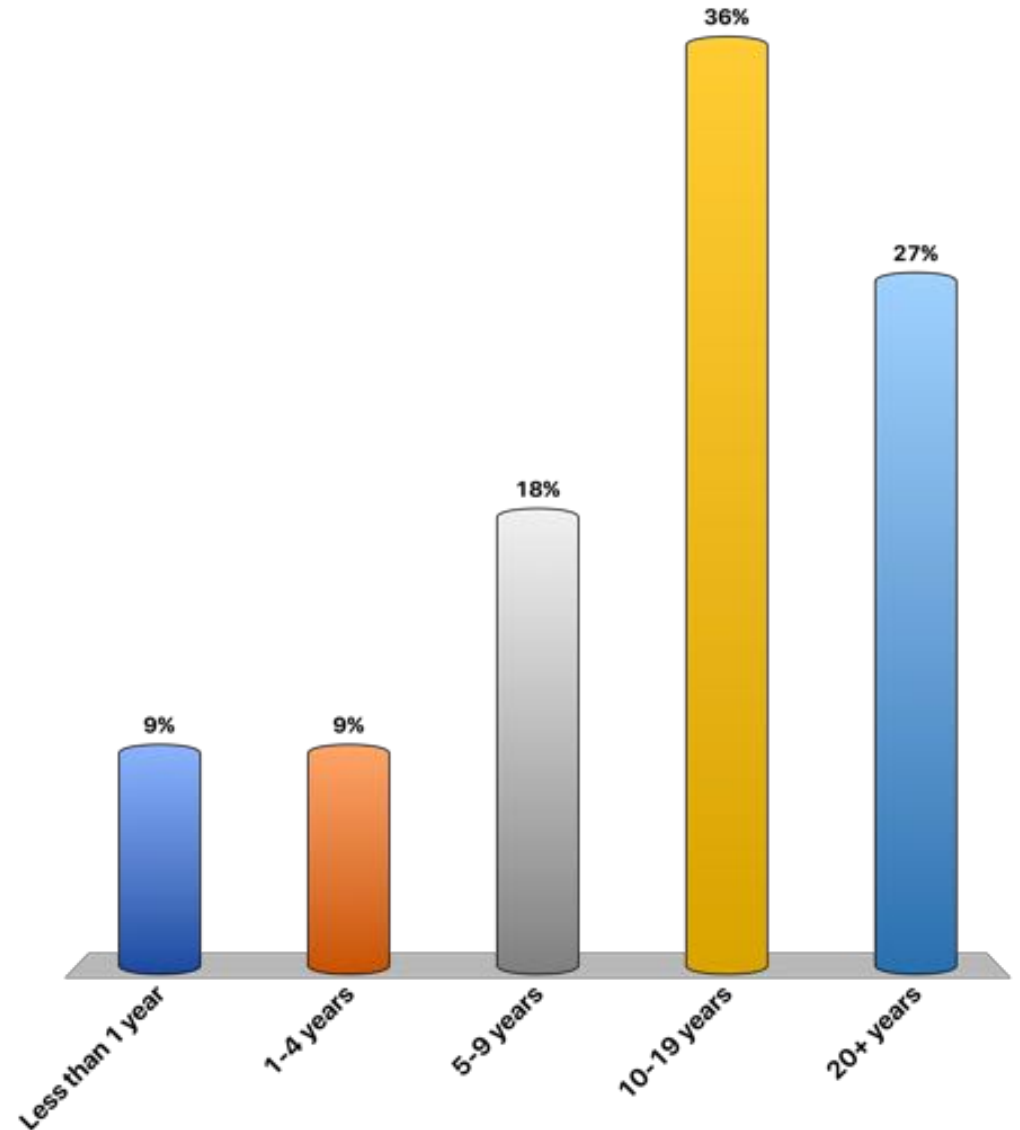
Are you a . . .

- A. Planning Board member
- B. Zoning Board member
- C. Select Board member
- D. Housing Trust or Committee member
- E. Elected member of the local legislative body
- F. Municipal staff
- G. Other



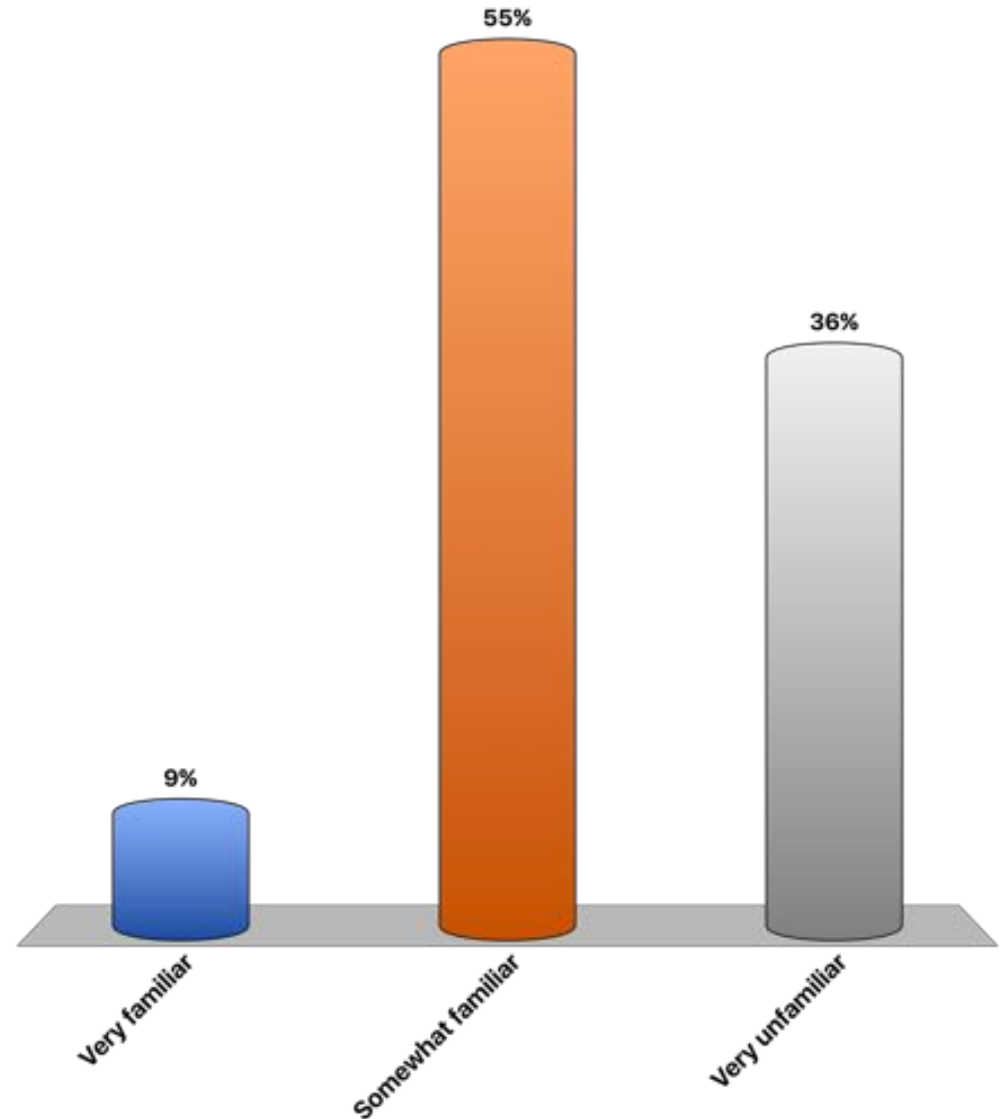
How long have you served as a municipal official/staff?

- A. Less than 1 year
- B. 1-4 years
- C. 5-9 years
- D. 10-19 years
- E. 20+ years



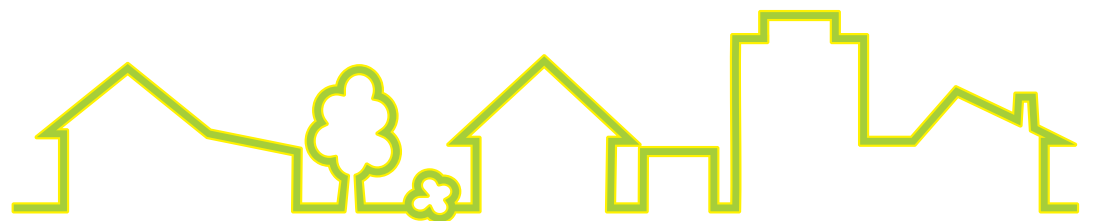
How familiar are you with fair housing requirements as related to local land use policies?

- A. Very familiar
- B. Somewhat familiar
- C. Very unfamiliar



Section One

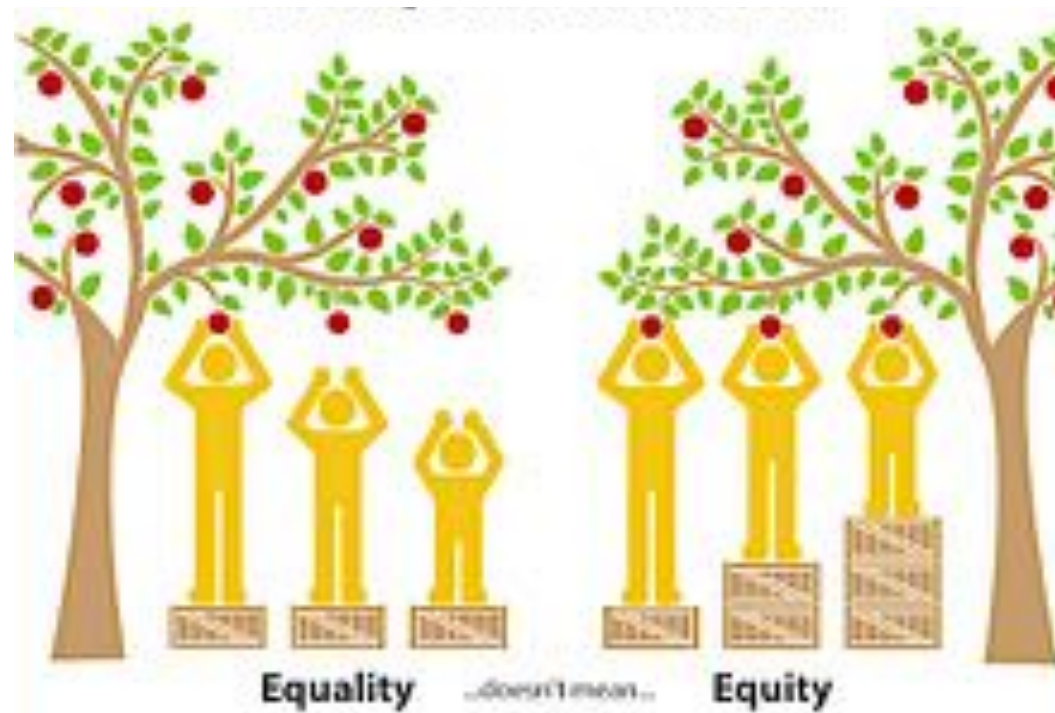
What is Fair Housing and Why do we need it?



Short History Lesson of the Fair Housing Act

Many people don't realize the extent to which federal policies and programs were explicitly designed to racially segregate metropolitan areas in the U.S.

Fair housing's goal is to promote equity by undoing the social engineering of past policies that created highly segregated communities.



Government Policy Explicitly Designed to Racially Segregate Metropolitan Areas

1930s

New Deal

Public Works Administration

1) Segregated public housing by race

Federal Housing Administration

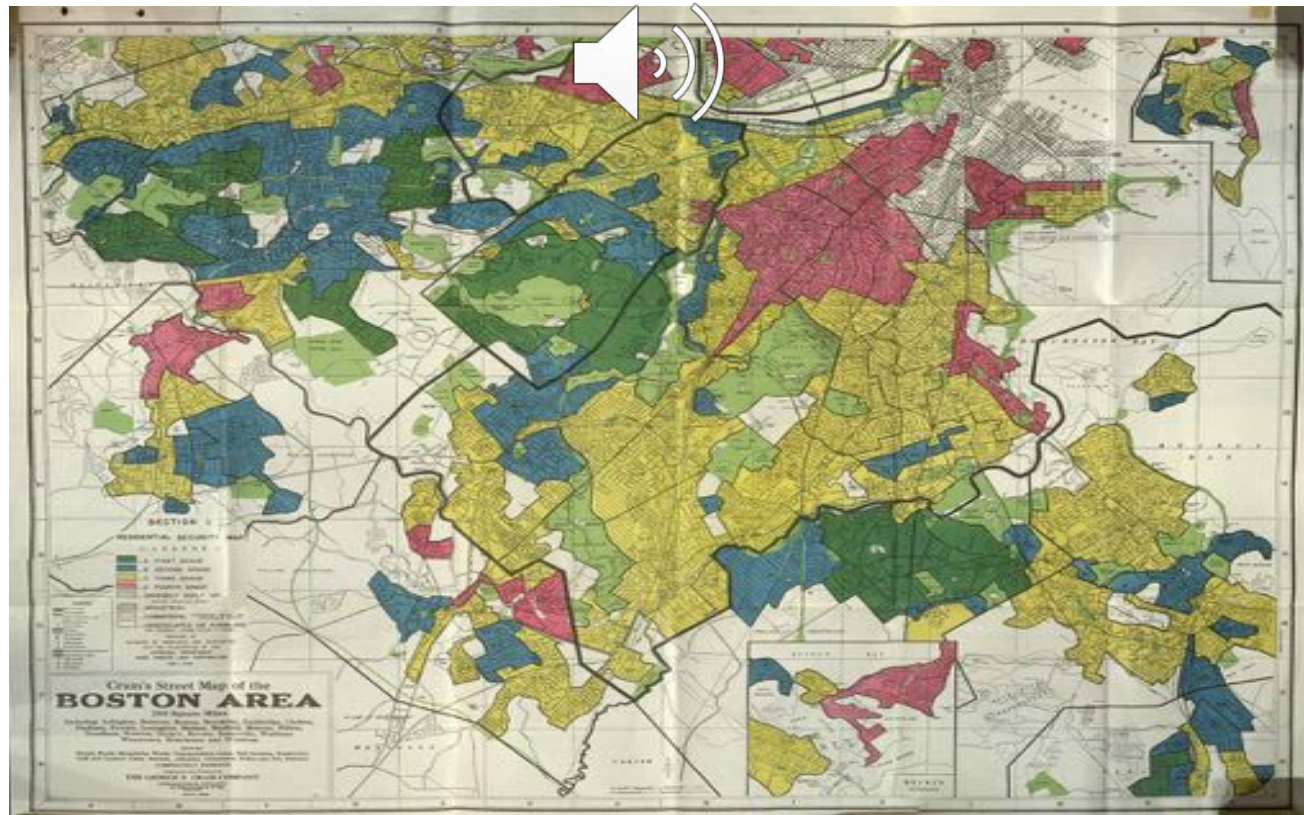
1) Redlining – to determine where to invest federal \$

2) Suburban investment required racial covenants

1940s

GI Bill

Veterans Administration adopts
FHA standards



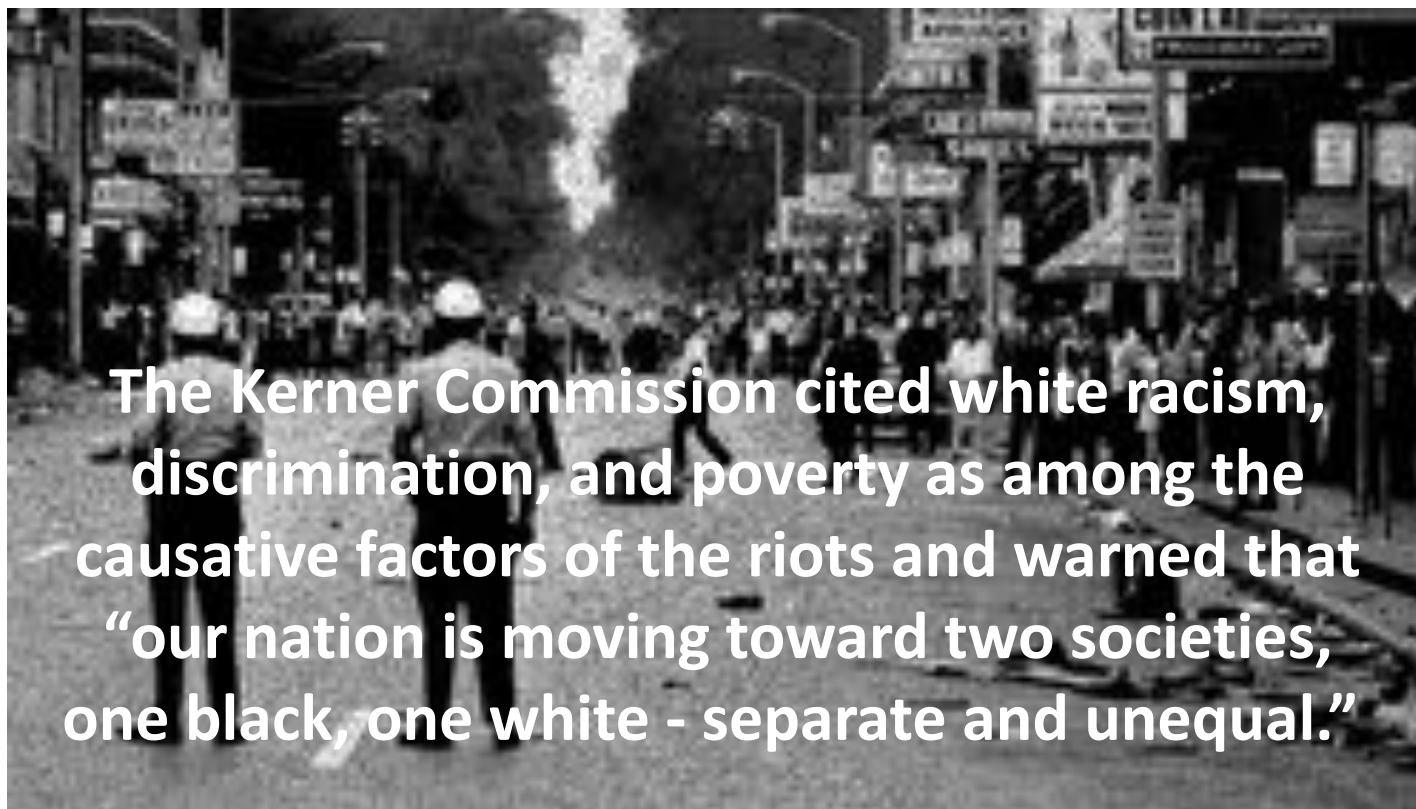
Government Policies Reinforce Segregation and Lead to Civil Unrest

1950s

1954 - Housing Act (Urban Renewal)
1956 Federal Highway Act
Restrictive Suburban Zoning

1960s

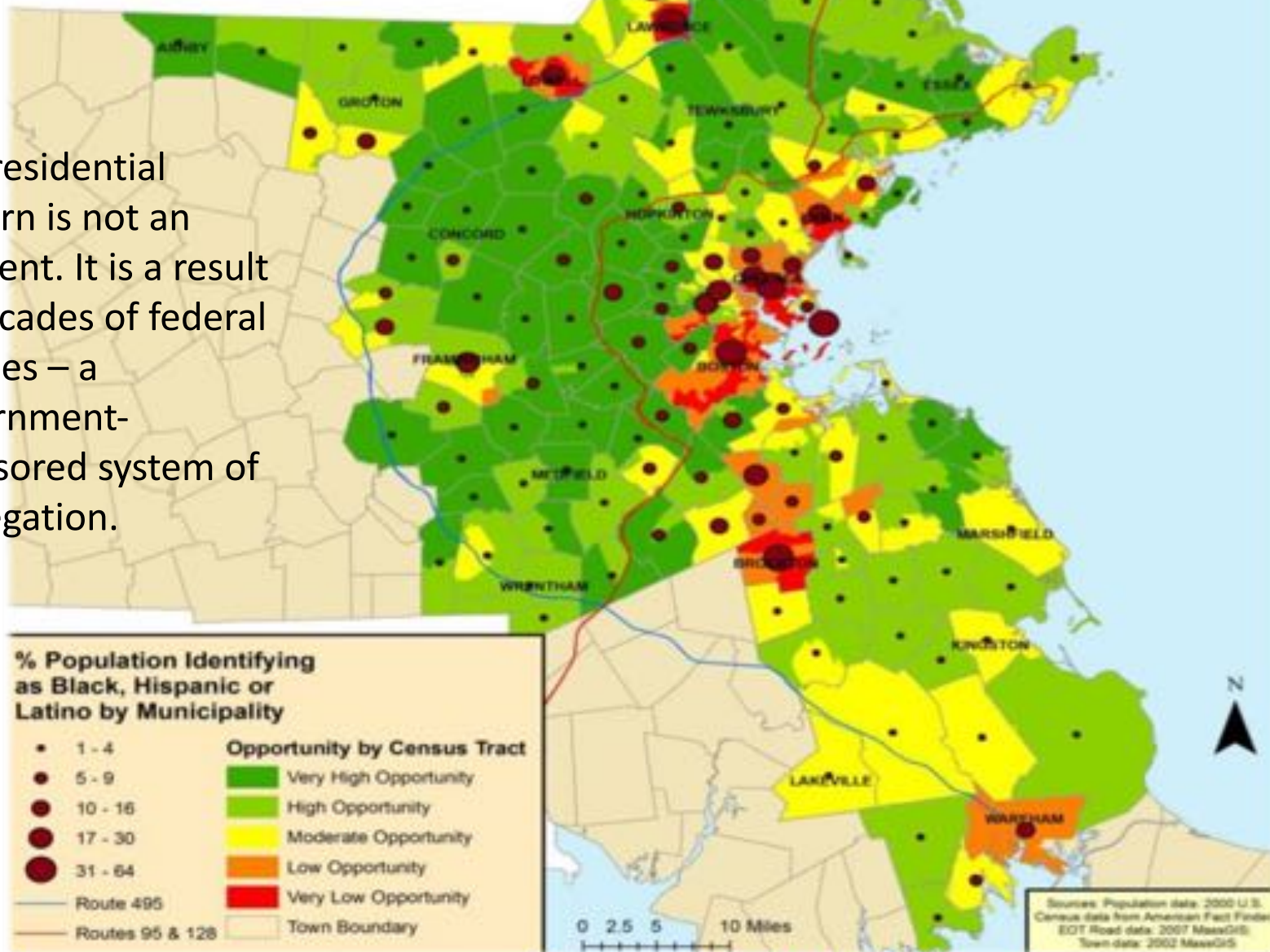
July 1967 - Detroit Race Riots
Kerner Commission
April 4, 1968 MLK Assassinated
April 11, 1968 Fair Housing Act



The Kerner Commission cited white racism, discrimination, and poverty as among the causative factors of the riots and warned that “our nation is moving toward two societies, one black, one white - separate and unequal.”

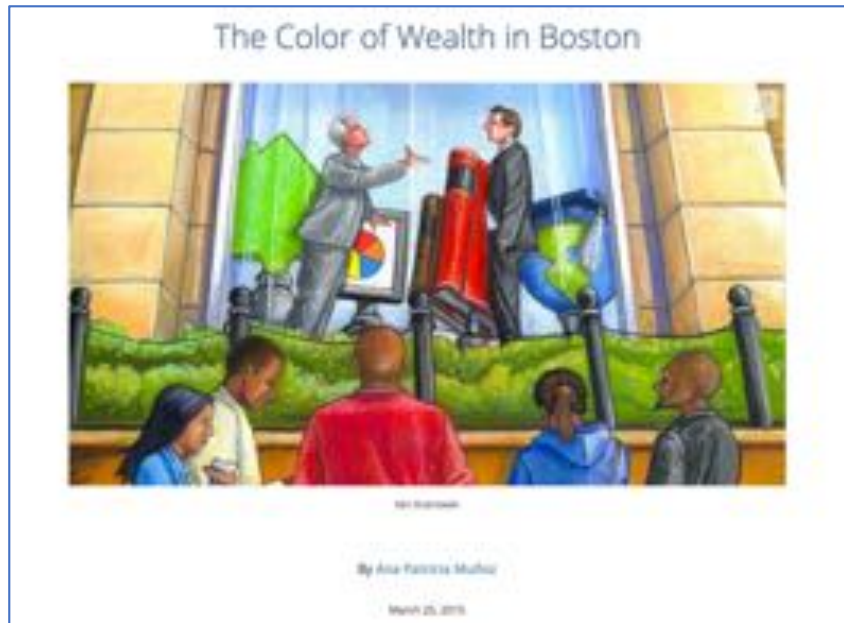
Lasting Effect of Past Policies

Percentage of Population Identifying as Black, Hispanic or Latino in Areas of Opportunity in Greater Boston



This residential pattern is not an accident. It is a result of decades of federal policies – a government-sponsored system of segregation.

Racial Wealth Gap Persists



Around Massachusetts, racial divides persist



Boston Fed study finds wealth disparities 'worrisome'

Naomi Cordova, a first-time homeowner, lives in a four-bedroom ranch-style home in Brockton with her 2-year-old son Ethan Studmire.

By [Katie Johnston](#) | GLOBE STAFF APRIL 17, 2017

Land Use Choices Can Perpetuate Segregation



Single-family houses are an expensive housing product – one unit sitting on one parcel of land



Multi-family allocates land costs across multiple units and can make housing costs a bit more “naturally” affordable

Metro Boston Stats:

- *Median monthly owner costs w/ mortgage = **\$2,250***
- *Median monthly renter costs = **\$1,236***

- ***93%** single-family houses are owner-occupied*
- ***75%** multi-family (2+ units) are renter-occupied*

- *67% black/African American households are renters*
- *74% Latino/Hispanic are renters*
- *31% white (alone) households are renters*

Source: 2011-2015 American Community Survey

The Solution is Not Solely More Affordable Choices

- Cities and towns should be more welcoming and open
- Rather than seeing newcomers as detracting from “character,” suburban communities should embrace diversity
- Local leaders should speak out in favor of initiatives designed to increase diversity



We'll talk more about “Affirmatively Furthering Fair Housing”

Harris and McArdle, *More than Money: The Spatial Mismatch Between Where Homeowners of Color in Metro Boston Can Afford to Live and Where They Actually Reside*, 2004. (Harvard Civil Rights Project)

Inclusivity is Key to Create Healthy, Sustainable Communities

Fair Housing isn't just important to help undo results of past policies, but it is also good for our communities and local/regional economy.



Housing Diversity

A FOCUS ON HOUSING DIVERSITY

Providing a range of residential lot sizes and choice of housing products and tenures helps facilitate housing diversity and choice to meet the different housing needs of the community, including increased residential densities in close proximity to support mixed-use centres, local employment, community facilities and public transport.

“In diversity there is beauty and there is strength.”

Maya Angelou

Meet the Legislation

A set of federal and state laws that protect individuals based on their membership in protected classes

- **Massachusetts Antidiscrimination Law – MGL c.151B (1946)**
 - State's antidiscrimination law applies to employment and housing
- **The Fair Housing Act: Title VIII of the Civil Rights Act of 1968 (strengthened in 1988)**
 - Protects individuals based on membership of a protected class
 - Promotion of equal opportunity to access housing
 - Requires proactive elimination of segregation
- **Section 504 of the Rehabilitation Act of 1973**
 - Expands protected classes when federal funding is involved to include individuals with disabilities
- **American with Disabilities Act of 1990**
 - First comprehensive civil rights legislation protecting people with disabilities from discrimination, including housing

Protected Classes – Federal and State

Federal

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status (*including families with children under the age of 18*)
- Disability

State includes all of the above and:

- Ancestry
- Age
- Marital Status
- Source of Income (*including Section 8*)
- Sexual Orientation
- Gender Identity and Expression
- Veteran/Military Status
- Genetic Information



Note: Income level is not a protected class

Individuals with Disability



Who qualifies as a person with a disability under the Fair Housing Act?

Individuals who have, who are regarded as having, or with a record of physical or mental impairments such as:

- Orthopedic
- Visual
- Speech
- Hearing
- Cerebral palsy
- Autism
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- HIV infection
- Developmental disabilities
- Mental illness
- Drug addiction (*other than addiction caused by current, illegal use of controlled substance*)
- Alcoholism

“Direct Threat”

The Fair Housing Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype

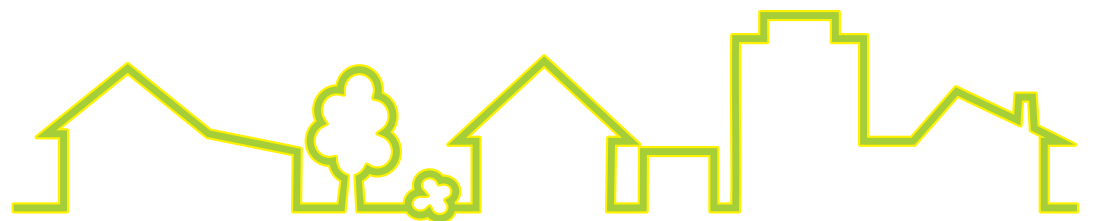
However, the Act does not protect an individual whose tenancy would pose a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage

Unless, this threat/risk can be reduced by “reasonable accommodation”

The fact that one individual may pose a treat does not mean that another individual with the same disability may be denied housing

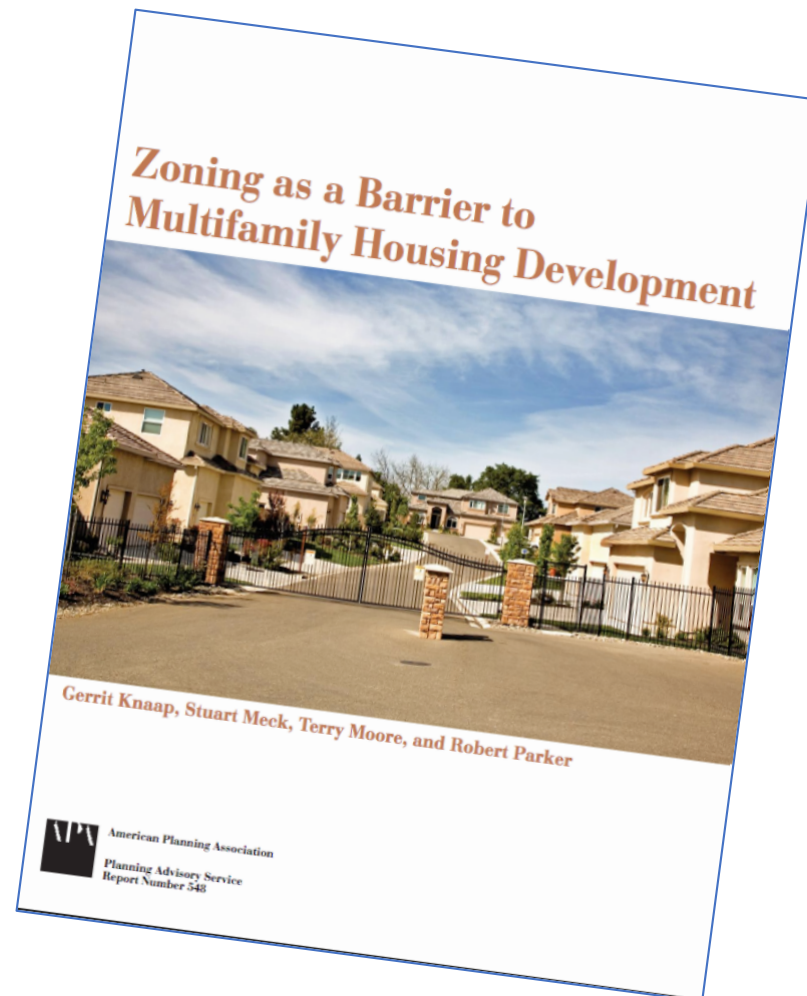
Section Two

Fair Housing and Local Land Use Policies and Practices



Fair Housing and Zoning

Zoning often perpetuates segregation - especially limitations on multi-family housing, which is critical to provide genuine housing choice



Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

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1. Discriminatory Intent & Effect

Discriminatory Intent – An action which intentionally treats a person or group of persons differently because of protected characteristics

e.g.,

- Housing ads for “active adult community” or perfect for “professional couple” may appear to exclude families with children
- Steering, or showing protected classes a different set of available homes than might show other persons

Discriminatory Effect

- A policy or practice adversely affects people of a protected class more than other people and/or perpetuates segregated housing patterns
- Can appear neutral on its face

e.g.,

- Prohibiting multifamily development in a community
- Occupancy limits for unrelated individuals
- Limit # bedrooms per unit
- Local preference

Discriminatory Effects Standard

Three Part Burden-Shifting Test



This rule applies to all public and private entities. Always consult with your Town Counsel if you have any concerns that a project might have a discriminatory effect.

Local Preference Policies

Local Preference Policies can also have a discriminatory effect. State Comprehensive Permit Guidelines state that before requiring Local Preference a community must:

- 1) Demonstrate the need for local preference (i.e. local public housing or subsidized rental waiting list)
- 2) Justify the extent of the local preference - At no time can local preference exceed 70% of the affordable units
- 3) Demonstrate that allowing local preference will not have a discriminatory effect on protected classes

Local Preference can apply to:

- Current Residents
- Municipal Employees
- Local Business Employees
- Families with children already attending school in the community

Note: Local Preference only applies to the first tenancy.

Four Key Concepts

- 1) Discriminatory Intent & Effect
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2. Affirmatively Furthering Fair Housing

Taking meaningful actions to overcome patterns of segregation and foster inclusive communities free from discrimination.

The duty to affirmatively further fair housing extends to all of a federal program participant's activities and programs relating to housing and urban development.

What can communities do to affirmatively further fair housing?

- Adopt a fair housing policy and designate a fair housing director/committee
- Implement an outreach program to provide education and resources to residents, municipal employees, realtors, etc.
- Amend zoning that restrict or impede multi-family

Example of AFFH – Move Beyond Minimum Accessibility Requirements

At a minimum must adhere to:

- MA Architectural Accessibility regulations
- Architectural Barriers Act of 1968
- Title VIII of the Civil Rights Act of 1968
- Section 504 of the Rehabilitation Act of 1973

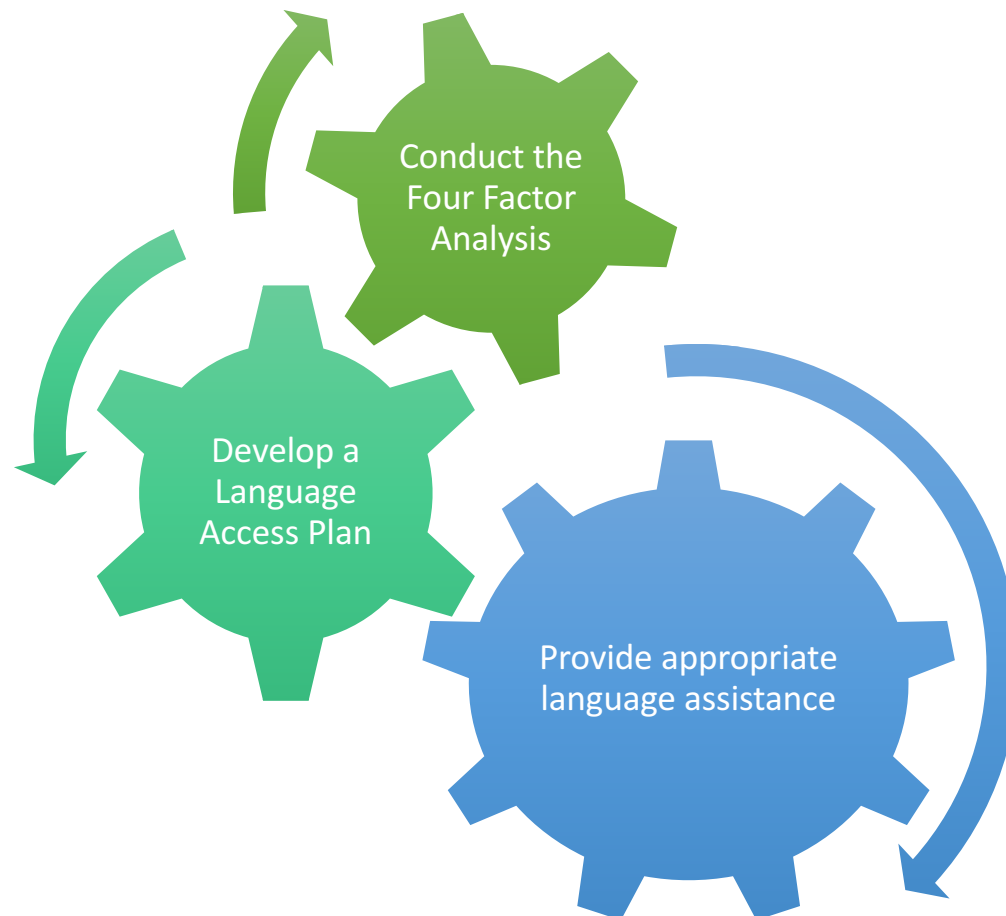
Best Practices to AFFH:

- 1) Adopt provisions to require or encourage new development include:
 - Visitability standards (e.g., Westport overlay district)
 - Universal design
- 2) Ask applicants how they are meeting both state and federal requirements for accessibility



Example of AFFH – Language Access Plan

Federal funding recipients must develop a Language Access Plan to broaden access for persons of limited English proficiency (LEP). It is a way to help ensure broader participation in programs.



Four Key Concepts

- 1) Discriminatory Intent & Effect
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- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

3. Community Sentiment & Coded Language

Board decisions can be discriminatory if they reflect bias in the community.

- Community members have First Amendment right to free speech, however, a municipal board is not bound by everything that is said by community members.



Coded Language

Coded Language - Sometimes it is not just what is said but what lies behind the statement that can cause an issue.

For example,

- 1) Questioning impact on schools can be interpreted as not wanting children or families in the community
- 2) Restricting number of bedrooms can be interpreted as not wanting larger families, often code for minority households
- 3) Senior only communities can be interpreted as not wanting to see children and families added to the community

Please Note: A community may have a legitimate reason for restricting the number of bedrooms or creating senior housing. The point is that these policies must be based on identified, legitimate non-discriminatory reasons to avoid fair housing liabilities.

How can a board respond to biased community sentiment?

Something like. . .

“We recognize your right to express your point of view, but these are not considerations that the board can take into account because they may violate fair housing laws.”

Four Key Concepts

- 1) Discriminatory Intent & Effect
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- 4) Reasonable Accommodation

4. Reasonable Accommodation

An exception or change to rules, policies, or regulations to allow accommodations to allow a person with disabilities equal opportunity to use and enjoy a building.

Such as:

- Allowing ramps in the front yard setback
- Allowing parking in front or side yard setback
- Exceed the maximum occupancy standards imposed through zoning for unrelated individuals (particularly to allow group homes)



In addition to federal Fair Housing Act, the Mass. Antidiscrimination Law c.151B (s. 7A) requires reasonable accommodation, as does MGL c.40A.

Reasonable Accommodations and M.G.L. c.40A

Per the MA Zoning Act cannot discriminate a disabled person:

- a) Occupancy standards for group homes that are more restrictive than that imposed on families (state sanitary code)
- b) Ramps for handicap access

Massachusetts Zoning Law, General and Community Residences

M.G.L. c. 40A § 3 74

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination.

ZONING

Massachusetts Zoning Law, Access Ramps

M.G.L.c. 40A § 3 78

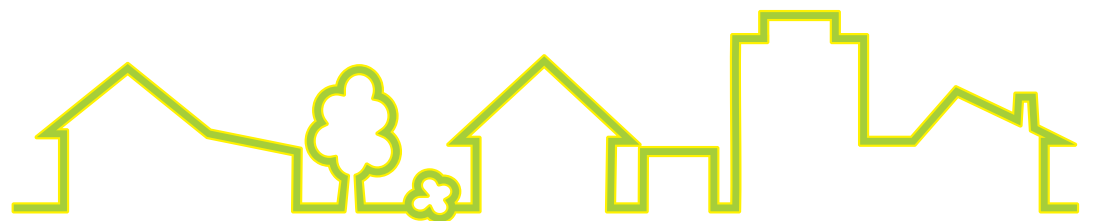
No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person. Although not required to meet the AAB Standards, the standards can be used as good design recommendations.

Required Reading

- Read the HUD/DOJ Joint Statement
- Set up as Q&A with 27 questions including:
 - How does the Fair Housing Act apply to state and local land use and zoning?
 - What types of land use and zoning laws or practices violate the Fair Housing Act?
 - When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?
 - Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?
- It includes an extensive section on Group Homes
- The following examples are taken from the Joint Statement

Case Study Discussion Exercises

Let's apply some of these Fair Housing concepts to real situations



Case Study

- Arlington Heights is a suburb northwest of Chicago
- In 1970, population was about 64,000, mostly white with 27 black residents
- Community zoned mostly single-family but allowed multi-family in transition zones between commercial/industrial and single-family neighborhoods
- Religious institution wanted to build affordable housing on some of its land – sought a local developer to build 190 units on 15-acres
- Some residents raised concerns about decreased property values and the proposed new residents
- Village Plan Commission votes against proposal finding the site was not appropriate citing the single-family zoning assumptions of neighbors



Fair Housing Considerations

1. What federal protected classes may be affected in this situation?

- **Race/color**

2. What key concepts may be relevant to this situation?

- **Discriminatory Intent**
- **Discriminatory Effect**
- **Community Sentiment**

Village of Arlington Heights v. Metro Housing Development Corporation

- Village denies request by Metro Housing Development Corporation (MHDC) to rezone a parcel from single to multi-family for a low/moderate-income development.
- MHDC files suit alleging that the denial of the rezoning was racially discriminatory and that it violated the Equal Protection Clause of the 14th Amendment and the Fair Housing Act.
- The US Supreme Court weighed in on the case and found no evidence of discriminatory intent under Equal Protection Clause. It remanded the case back to the Seventh Circuit Court of Appeals.
- In 1977, the Seventh Circuit reconsidered case under the Fair Housing Act and established that there are two types of discriminatory effect: 1) disparate impact and 2) perpetuation of segregation.
- The case establishes precedent that a discriminatory effect alone can establish a Fair Housing violation.

Case Study #1 – Zoning Amendment for Greater Density

- Developer Y requests a zoning amendment to reduce required lot size.
- The developers plan to build “moderately-priced” housing on the border of predominantly white community. Developer Y’s is known for developing Hispanic neighborhoods.
- Neighbors expressed concerns that developer “catered” to low-income families and that people in their developments tend to have large households, lack pride of ownership, and fail to maintain their properties, resulting in increased crime.
- Quote from a neighbor: “We find it very disappointing that we have worked very hard to keep our children out of areas like this, as well as worked very hard to buy the home that we live in.”
- The lot size reduction was a fairly standard request in this community which regularly granted these changes. Zoning Board voted to recommend the rezoning to the local legislative body, despite community sentiment.
- However, the local legislative body denied the zoning amendment.
- This was the first zoning amendment rejection in three years and in more than 76 requests.

Case Study #1 – Fair Housing Considerations

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?
3. How well do you think this town handled the situation?
4. Have you experienced or witnessed any similar situation in your town? What was the outcome?

Case Study #1 – Here's what actually happened

Avenue 6E Investments, LLC v. City of Yuma: 2016

- Developers filed suit for discriminatory intent under Equal Protection Clause of the 14th Amendment, as well as for discriminatory effect under the Fair Housing Act.
- Outcome: The Ninth Circuit Court of Appeals ruled in favor of the developer finding discriminatory intent.
 - The Court concluded that there was sufficient evidence that the City had rejected the developer's application for reasons of barely disguised animus toward the expected residents of the new development.
 - There appeared to be no principled opposition to the requested zoning amendment.
 - The record was replete with "racially-tinged code words" and for the Hispanic influx that the neighbors anticipated.

"None of the alleged statements expressly refers to race or national origin; rather, they raise various concerns about issues including large families, unattended children, parking, and crime. We have held, however, that the use of "code words" may demonstrate discriminatory intent." Ninth Circuit

Case Study #2 – Local Preference in Affordable Housing

- In a primarily white, middle class suburban community with no public transportation, the Housing Authority is planning to update its wait list for public housing and Section 8 vouchers.
- It develops an application process that requires pick up of applications during a 2-day window and to return them by Friday the following week. No online applications are made available.
- Submitted applications will be placed in a lottery with local preference.
- Four extremely low-income minority households from neighboring communities are interested in applying for the wait list. However, they do not have cars and have a difficult time meeting the application pick up and drop off requirements.
- Once submitted, their applications go to the bottom of the wait list because they lack a current connection to the community.
- These applicants join together to file suit against the Housing Authority, charging that the application process is discriminatory.

Case Study #2 – Fair Housing Considerations

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?
3. Dig deeper – think like a sociologist . . . What underlying goals could lie behind a desire for local preference?
4. What would be a legitimate and substantial goal for local preference?
5. Do you think local preference policies could have discriminatory effect in your community? Why or why not?

Case Study #2 – Here's What Actually Happened

Langlois v. Abington Housing Authority (2002)

- Four extremely low-income women of color and the Coalition for the Homeless brought suit against the Housing Authorities of Avon, Abington, Bridgewater, Halifax, Holbrook, Middleborough, Pembroke and Rockland, after experiencing barriers in their attempt to participate in the lottery system.
- The communities where the Housing Authorities were located were characterized as predominantly white, with a low overall rate of poverty.
- The plaintiffs asserted that the Housing Authorities' implementation of residency preferences in the lottery system was discriminatory.
- U.S. District Court for MA found that residency preferences of 6 Housing Authorities had a discriminatory effect on racial minorities.
- Did not find that the application procedures had a discriminatory effect, but that it was a violation of the Housing Authorities' duty to affirmatively further fair housing.

Case Study #3 – Group Home

- Recovery House operates a group home for 10-12 individuals recovering from alcoholism and drug addiction in a neighborhood zoned for single-family residence.
- Town of Z issued citations to Recovery House charging violation of the town's zoning bylaw.
- The zoning bylaw requires that the occupants of single-family dwelling units must compose a "family."
- Bylaw defines family as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons."

Case Study #2 – Fair Housing Considerations

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?
3. What would be a legitimate goal for occupancy standards?

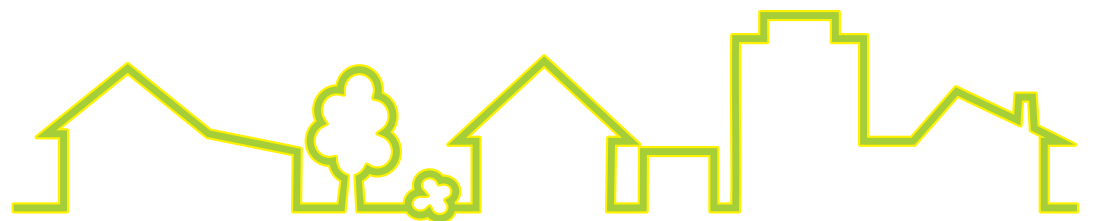
Case Study #3 – Here's What Actually Happened

City of Edmonds v. Oxford House, Inc. (1995)

- Discrimination covered by the FHA includes “a refusal to make reasonable accommodations . . . to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling.”
- Oxford House asked the City to make a reasonable accommodation by allowing it to remain in the single-family dwelling.
- Oxford House explained that the group home needed 8-12 residents to be financially and therapeutically viable.
- The City sued Oxford House seeking a declaration that the FHA does not constrain the City's zoning code family definition rule.
- U.S. Supreme Court held that despite FHA's allowance for reasonable restrictions regarding maximum number of occupants, the FHA does not exempt prescriptions of the family-defining kind (e.g., provisions to foster the family character of a neighborhood).
- Justice Ginsburg reasoned that the provision was a family composition rule and not a maximum occupancy restriction.

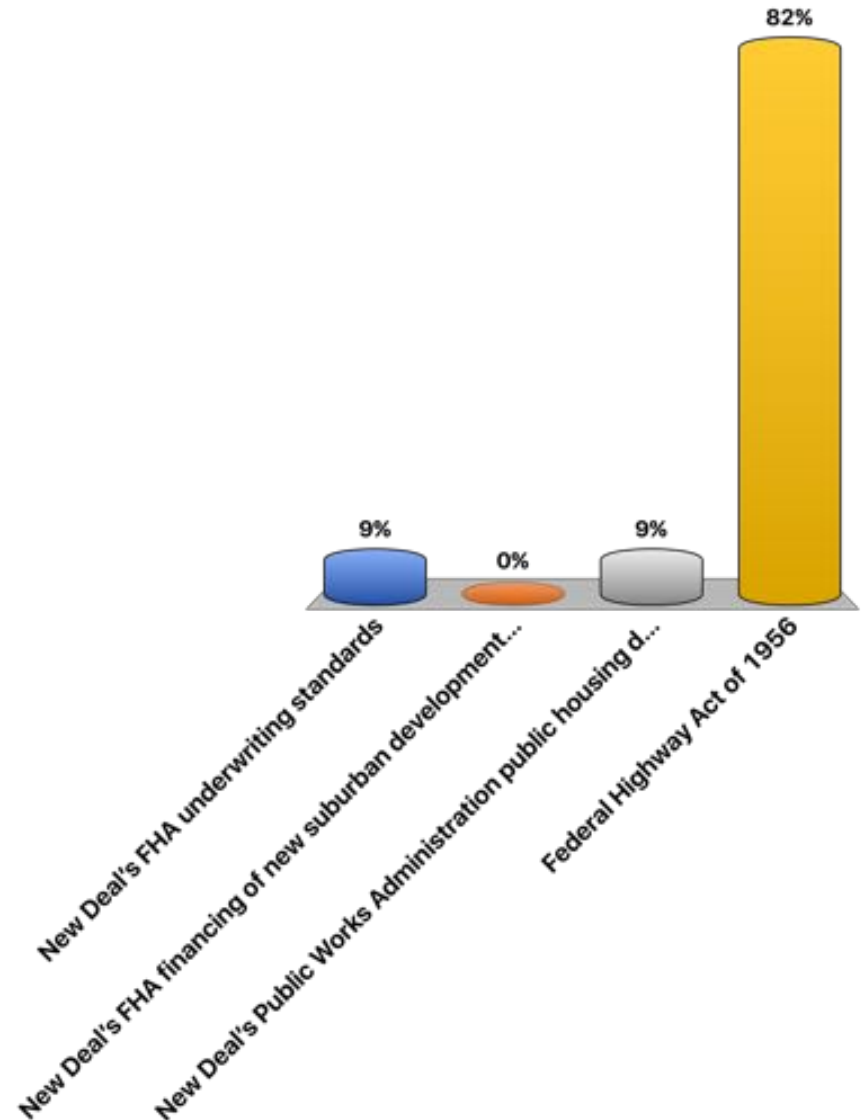
Quiz

Were you paying attention?



1. Which federal policy below was not explicitly designed to racially segregate metropolitan areas?

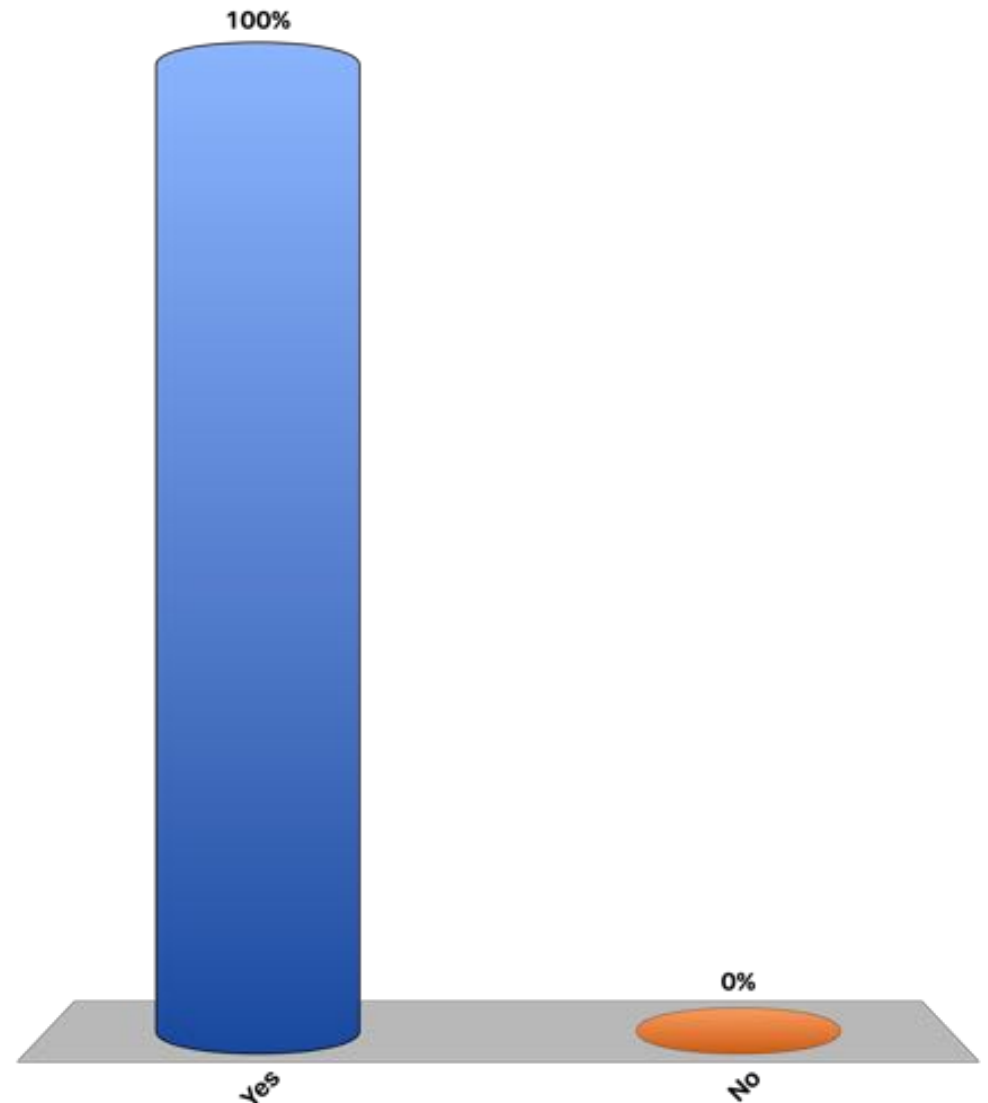
- A. New Deal's FHA underwriting standards
- B. New Deal's FHA financing of new suburban development requiring racially restrictive covenants
- C. New Deal's Public Works Administration public housing developments
- D. Federal Highway Act of 1956



3. Concerned about school enrollment, the board conditions approval of a development to require studio and one-bedroom apartments only. Could this decision violate Fair Housing laws?

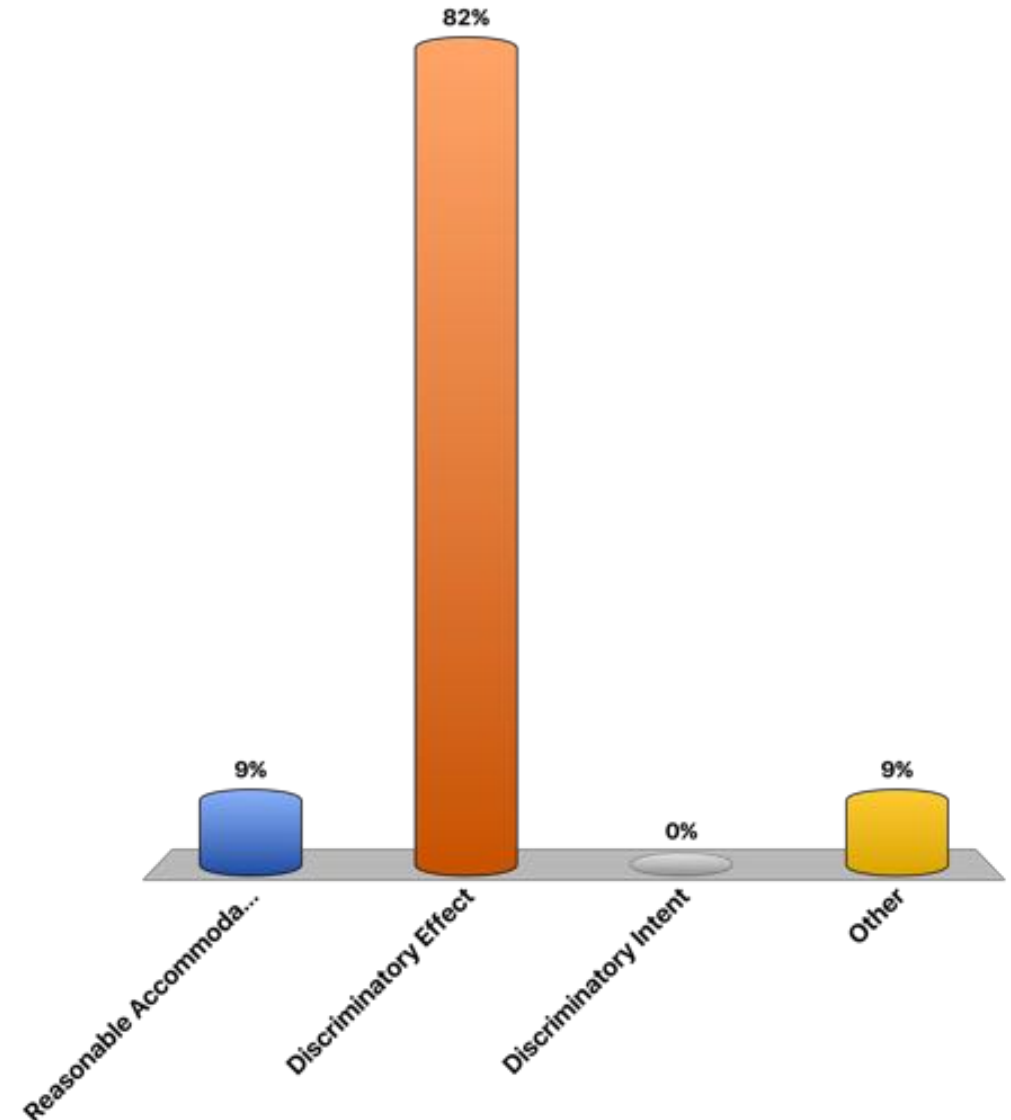
A. Yes

B. No



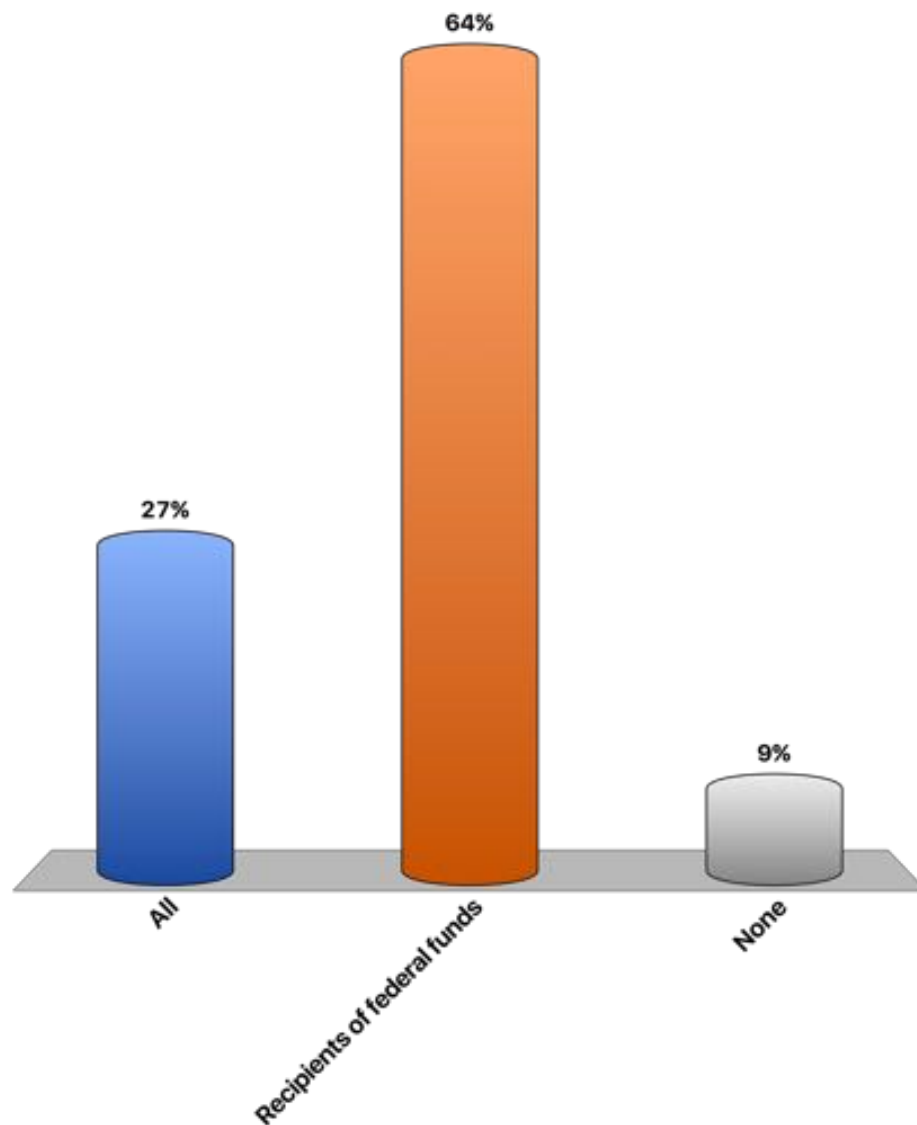
4. When would you use the Three Part Burden Shifting Test? To determine if your land use decision complies with Fair Housing requirements for:

- A. Reasonable Accommodation
- B. Discriminatory Effect
- C. Discriminatory Intent
- D. Other



5. What communities must have a Language Access Plan?

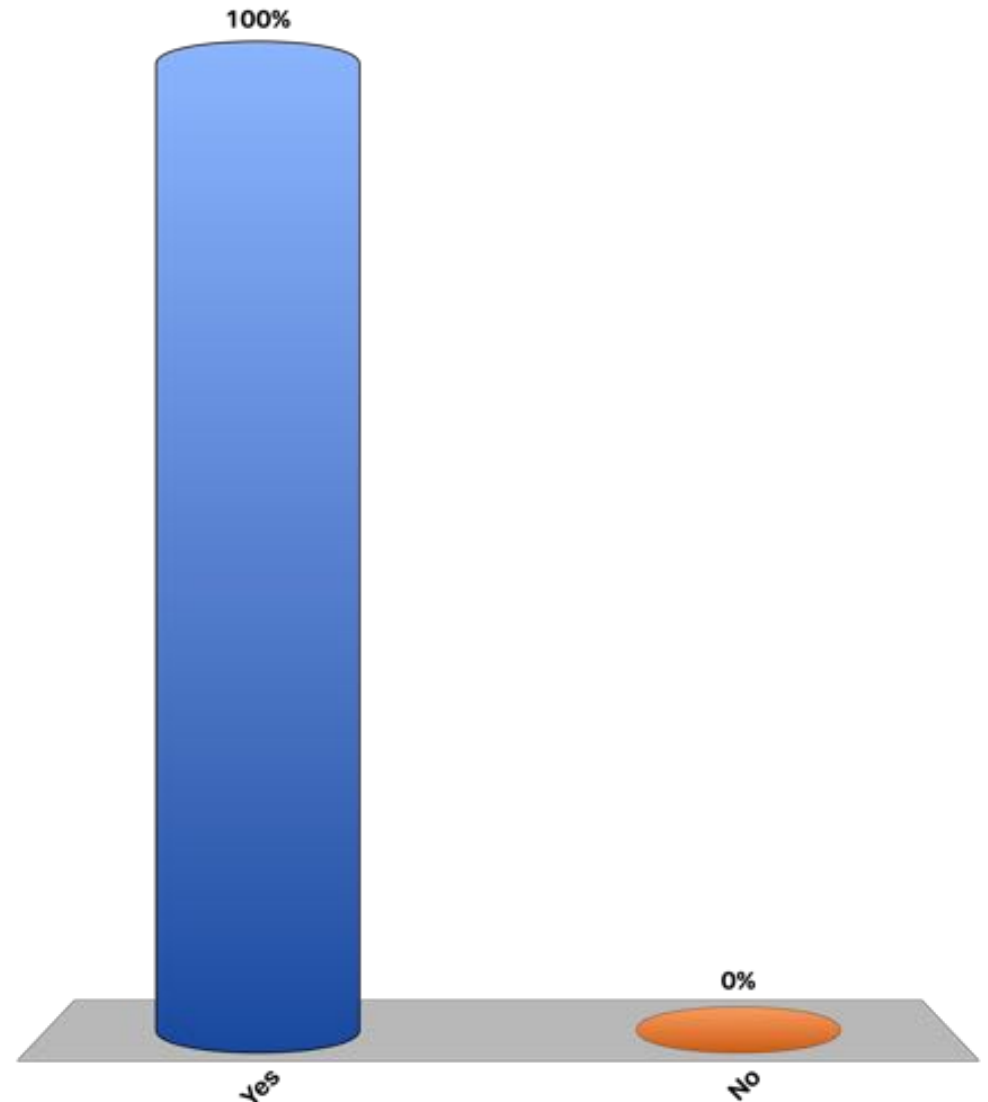
- A. All
- B. Recipients of federal funds
- C. None



6. Could individuals with drug addiction or alcoholism qualify as a person with disabilities under the Fair Housing Act?

A. Yes

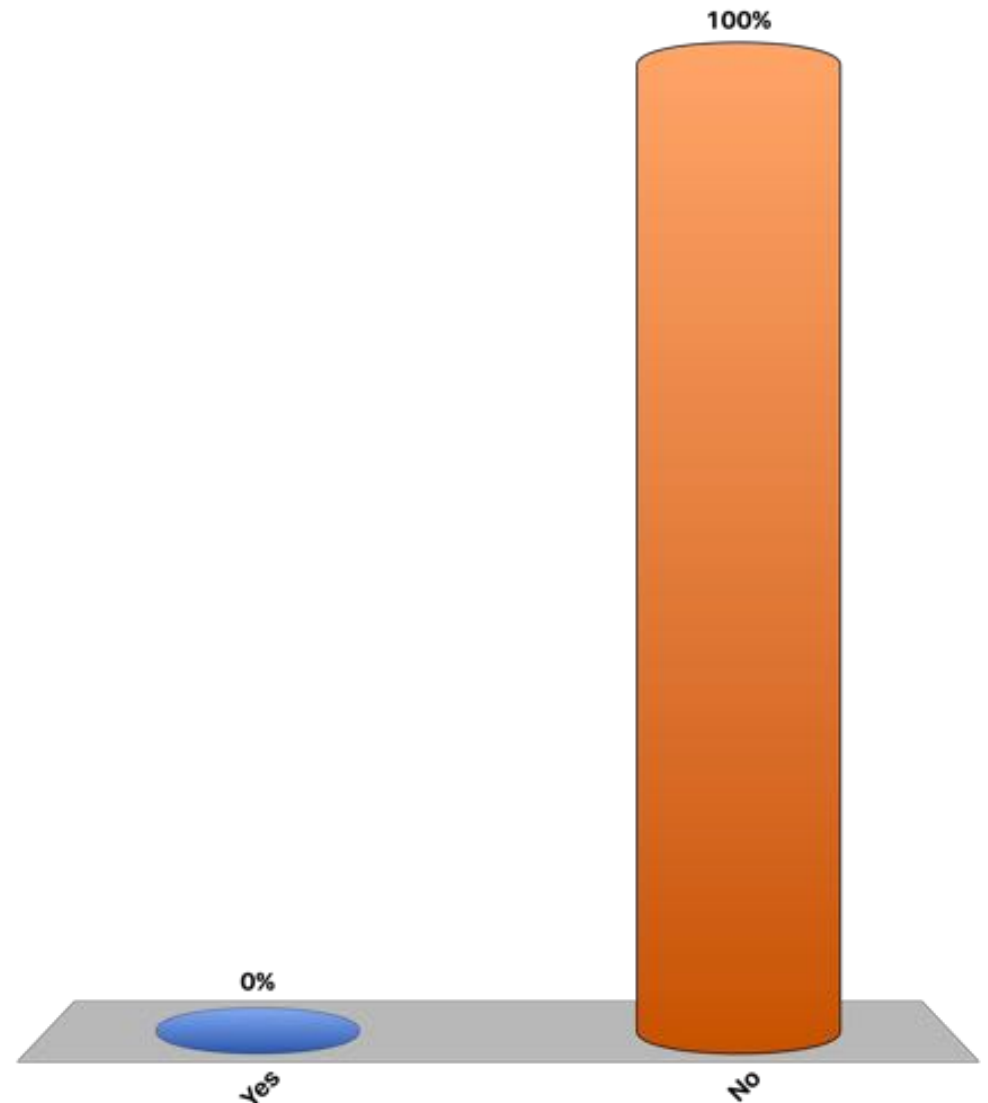
B. No



7. Should a municipal board base a land-use decision on biased community sentiment?

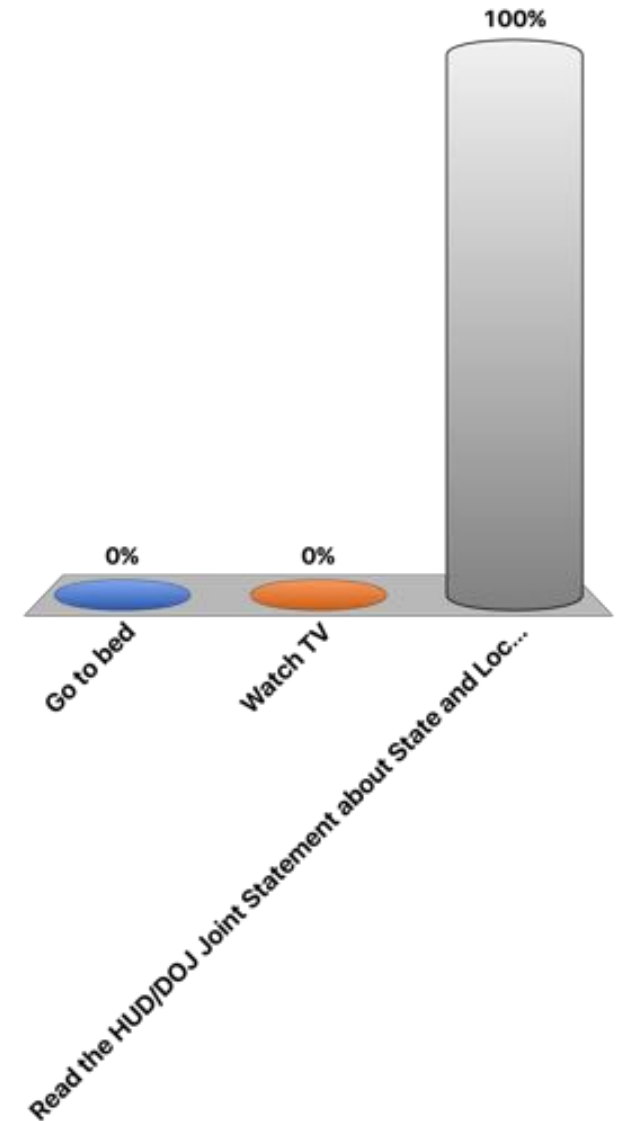
A. Yes

B. No



8. What should you do when you get home tonight?

- A. Go to bed
- B. Watch TV
- C. Read the HUD/DOJ Joint Statement about State and Local Land Use Laws and distribute it to all your board members



Questions?

