

**Blackland S.M.A.R.T. Housing Cases**

**2002 - 2019**

After the Austin City Council adopted the Upper Boggy Creek Neighborhood Plan in 2002, the Blackland Neighborhood has exercised the Blackland S.M.A.R.T. option ten times in efforts to get new housing developments to include affordable units for low-income families. Because the plan embraces inclusionary zoning, the city Planning and Development Department has opposed any of its recommendations under the premise that Texas law allows only for "highest and best use" which translates to a use that generates the maximum profit for the owners. Never-the-less, the tools has lain the foundation for negotiations in ten developments and it produced for sustained affordable units in half of those. The following is a chronology of the evolving deployment of this tool:

1. ***2002 Rodin Village 1803 East 20th Street***: The developer/owner, Rodin Wilbur, needed several variances and approached the Blackland Community Development Corporation (BCDC) for support. In return for the endorsements, he agreed to increase the number of units from six to eight; lease a minimum of two of the eight units to households at or below 60 percent median family income; and gave a right-of-first refusal to BCDC if he chose to eventually sell the property. He built and leased the property with several units going to low-income wage earners until 2010 when he sold the property to BCDC. BCDC obtained a forgivable loan, federal HOME funds, from the city's Neighborhood Housing and Community Development (NHCD) office. BCDC has since leased all eight units to low income households.
2. **2004 Alamo/22nd Street Properties**: the owners of several properties approached BCDC about obtaining variances for a redevelopment of several older homes near the intersection. BCDC negotiators were firm about the affordable housing criteria and the owners, who lived elsewhere in Texas, abandoned their project to build expensive condos.
3. **2005 Poquito/East 21st area**: the developer approached BCDC to request release of any opposition to variances. No affordable units were offered by the developer so no variances were supported. The developer built as large a structure as possible within the allowable building envelope, without any variances. The resultant structure was huge; out-of-scale, and beyond the means of middle or low-income homebuyers.
4. **2010: 1600 -1608 MLK**: developers offered to purchase the half-block of lots from a private owner on the premise it could rezone from SF-3 to MF-4 and get several variances. The four, large lots were priced at $330,000 each for a total of $1,320,000. The developers proposed 96 units and would make 12 available to low-income families, possibly managed by BCDC. BCDC considered the offer and also the tax impact on nearby owner-occupied housing and decided against the project anticipating it would tax-out as many as 32 middle and lower-middle income households. Garnering support form several nearby property owners, BCDC filed a valid petition which would block the project unless the developers could garner all but two City Council votes. The developers tested the council and discovered enough opposition to abandon their project. The property owner then sold to the University of Texas. Purchase by a state entity cannot be used by Travis County Tax District appraisers as a comparable for nearby privately-owned lots. The tactic forestalled tax hikes and sales of properties by low-income owners that would come more slowly over the next decade.
5. **2012: 1902 East 22nd Street**: BCDC rezoned three lots from SF-3 to MF-4 to allow development of eight apartments. It was opposed by several residents on the premise it would set a presidence for further density in the interior neighborhood but was approved by the Blackland Neighborhood Association by a 9 - 4 vote. The project is presently being re-permitted and anticipates funding in 2019.
6. **2016: 2000, 2004 East 22nd Street:** A developer purchased the site of an historic African-American church that has since been demolished without a public hearing and also a 70-year-old historic residence that also received no public hearing. The developer was contacted via email and made aware of the Blackland S.M.A.R.T. Housing aspect of the neighborhood plan. The developer ignored it and proceeded with a subdivision request to the city that would result in three lots on which condo regimes would be build. At the Planning Commission hearing, several commissioners sympathized with the affordable housing proposal but it was opposed by the legal department and planning departments that claimed Texas law allows developers to build at the "highest and best" level and that imposing an affordable component to the project would violate Texas law.
7. **2016: 2201 East 22nd Steet**: A developer purchased a large corner lot with a house with marginal historic significance. He approached BCDC and offered the house for move to a nearby lot. The dilapidated condition of the structure made it uneconomical to relocate. He eventually found an out-of-town buyer to take away the frame. During this dialog, BCDC asked that he consider construction of some affordable units in the new development. The developer declined and communicated with nearby neighbors who pressed for four, expensive houses His request for subdivision of the lot was unopposed and unquestioned at the Planning Commission (same hearing as #6) and City Council. One of the smaller houses sold for $430,000.
8. **2018: 1800 MLK**: The owner/developer approached BCDC to obtain several variances to build a clinic and three units, one being affordable for 40 years for a household at or below 60 percent MFI. The project was endorsed by the BCDC board and later the Blackland Neighborhood Association and by the Upper Boggy Creek Planning Team. It was later approved by the city Planning Commission and the City Council.
9. **2018: 2107 Alamo Street:** The owner developer approached BCDC with a proposal to rezone the SF-3 lot to MF-4 and built five townhouses, one of which would be affordable to a family at or below 60 percent median family income for 99 years. BCDC would be given right-of-first-refusal on the 5th, affordable unit that would be sold at construction cost, approximately $100,000. After six months of negotiations, the project was approved by the Blackland Neighborhood Association by an 18 - 14 vote. BCDC had previously approved it unanimously. It was unanimously approved by the Upper Boggy Creek Planning Team and has gone to the city Planning Commission for a vote on Feb. 26th.
10. **2108 - 2110 East 22nd Street**: The owner of adjacent commercial and residential lots employed an architect to assist with the selling of her properties who called BCDC and discussed the situation. The Blackland Neighborhood Association was about to vote on the 1708 Alamo rezoning request and she agreed to wait until that was concluded. No negotiations for affordable housing were pursued but the architect was made aware of the Blackland S.M.A.R.T. Housing section of the neighborhood plan. Following the vote on the 1708 Alamo Street project, she was connected with the neighborhood association executive committee. Members of that committee living near the properties immediately approached the seller and discouraged her from any discussions concerning affordable units or BCDC. It has since sold to private developers and its new features are uncertain as of January, 2019.





*Upper Boggy Creek Neighborhood Plan*

Appendix B Blackland S.M.A.R.T. Housing Statement (pp. 75-76)

Developers and redevelopers who wish to produce housing in higher densities should communicate early in their planning with the Blackland Community Development Corporation (BCDC). The corporation is committed to preserving the residential quality of the neighborhood by encouraging compatible architecture and mixed-income housing, a significant portion of which is at affordable rates. The corporation will support and work constructively with developers and redevelopers whose housing endeavors effectively address these goals. Such support is dependent on the negotiation of contractual agreements that clearly describe and assure performance by the developers and redevelopers toward providing affordable housing in the neighborhood.

In order to preserve affordable housing, any developer or redeveloper in the Blackland Neighborhood (bounded by Manor Road, Chestnut Avenue, MLK Blvd. and Comal Street) who develops and/or redevelops four or more units of housing should make at least 25 percent of those units available for sale or rent to low-income families at affordable rates for a minimum of twenty years. “Low- income”is defined as earning at or less than 50 percent median family income (MFI) for Travis County. (See figures below.) “Affordable rates”is defined as costing no more than 65 percent market rate or $80,000 for a two-bedroom unit, which ever is lower; and renting for no more than 65 percent market rate or $600 per month for a 2- bedroom unit, whichever is lower. These figures are approximations that will vary with interest rates and other cost factors that will be negotiated.

The developed or redeveloped units need not be adjoined, and the counting of units will be cumulative through multiple years beginning with city council approval of the Upper Boggy Creek Plan, for example, the units could be on several blocks and accumulated over several years. The affordable units must be made available to qualified low-income families. Developers and redevelopers who choose not to make 25 percent of their units available to low- income families at affordable rates should pay a mitigation fee of 30 percent of the average total price of the non-affordable (higher priced) units price to BCBC to build affordable housing. For example, a developer who builds four units at an average price of $100,000 should pay BCDC $30,000 in mitigation fees.

An affordable unit originally leased to a qualified lower income family shall automatically lose its status as an affordable unit if the family no longer qualifies as a lower income family at the end of the primary term of the lease. When this occurs, the next vacated dwelling unit should be offered for lease as an affordable unit until the required number of affordable units is provided. This provision may not be used as grounds for evicting a previously qualified lower income family from a unit if the family wishes to pay the market rate for the unit.