

New Tool Could TILT Property Owners in Favor of Housing Development

By **Edward Segal**, FORMER CEO OF THE BEVERLY HILLS/GREATER LOS ANGELES ASSOCIATION OF REALTORS® AND THE MARIN ASSOCIATION OF REALTORS®

KEY TAKEAWAYS

- Property owners often use a variety of strategies and tactics to block affordable housing plans and proposals.
- Tax Increment Local Transfers (TILTs) could become a novel way to address the country's housing crisis by helping to reduce opposition to and generate support for the construction of new and affordable housing developments.
- TILTs could be an effective lobbying tool for affordable housing advocates. If enough residents participate in the innovative tax rebate program, it could place additional pressure on elected officials to support housing initiatives.
- There's no reason why TILTs would not work in California. REALTORS® and their local associations should consider asking local lawmakers to be among the first in the country to pass and implement TILTs in their communities.

Case Study Abstract

Proposals to build affordable housing are often met with fierce opposition by property owners in local and nearby neighborhoods. David Schleicher, Associate Professor of Law at Yale University, has proposed a novel way to help reduce that resistance by offering an incentive to property owners. The incentive would take the form of temporary tax rebates funded by the new tax revenue generated by the housing development.

Dubbed by Schleicher as Tax Increment Local Transfers (TILTs), the incentive builds on the successful practice of international trade deals that can provide benefits and concessions to opponents in exchange for their support of agreements. It also borrows from the tactics of municipal governments who, in an effort to convince communities to accept new development, offer various enticements to help win them over.

Key provisions of TILTs – such as the size and duration of the tax rebates and how property owners could qualify to receive them – would be up to local governments to decide.

Case Presentation

Efforts to help solve California's decades-long shortage of affordable housing have been stymied by staunch (and sometimes strident) opposition of neighbors who do not want affordable housing projects or any new development to be built near them. Three frequently used acronyms symbolize the resistance by individuals who are loath to allow new development of any kind in their midst: NIMBY (Not In My Back Yard), BANANA (Build Absolutely Nothing Anywhere Near Anybody), and LULU (Locally Unaccepted Land Use).

OPPOSITION FOLLOWS A FAMILIAR PATTERN

Over the course of the 10 years that I served as the CEO and Government Affairs Director of the Marin Association of REALTORS® in Northern California, I saw firsthand how vocal and persistent opponents to housing projects could be. Their tactics would often include writing news releases, letters to the editor, and op-eds; soliciting support from elected officials; testifying at public hearings; calling radio talk shows; organizing and publicizing town hall meetings; conducting petition drives; placing postings on social media sites; establishing coalitions of like-minded citizens; and requesting that the REALTOR® association take a stand. The association could be caught in the middle of the debates as it sought on the one hand to defend private property rights while advocating for affordable housing on the other.

Resistance was predictable, whether the proposals were for a small Habitat for Humanity project, a row of affordable housing units, proposed regional zoning changes, suggested modifications to countywide housing elements, or plans for large residential tracts with carve-outs for below market-rate housing.

A DIFFERENT APPROACH

A novel approach has been put forth from the world of academia that could become a new tool for affordable housing advocates in California. David Schleicher is an Associate Professor of Law at Yale Law School and an expert in land use, local government law, and urban development. In an article he wrote for the Yale Law Journal that was published in 2013, Schleicher proposed that local governments offer property owners a financial incentive not to oppose new development in their neighborhoods.

The incentive would take the form of a multi-year rebate of a portion of that individual's property taxes, such as 25 percent. The rebate would be paid from the increased tax revenues that would be generated after the new development is completed. Schleicher dubbed this innovative approach Tax Increment Local Transfers, or TILTs.

Schleicher posits that the rebates would give property owners an incentive not to oppose affordable housing projects or new development. "The money



(for the rebates) would be tied to property taxes created by the new project for a number of years, starting from the date of the (project's) proposal. This would give potential recipients an incentive to not slow down the project," he noted.

Indeed, this approach could help encourage support throughout the community for a range of projects that might otherwise be blocked. If enough people agree to take the rebates, that alone could place additional pressure on reluctant elected officials.

Schleicher's idea builds on other strategies and tactics that have been used to placate NIMBYism, including impact fees and privately-negotiated concessions from developers that help benefit the community, such as open spaces, parks, or roads.

TILTs would have no impact on the cost of construction, housing, or rents. Indeed, because developers would not have to spend money to placate local opposition to their projects, the use of TILTs could help make housing cheaper.

Schleicher has suggested that TILTs would be similar to some international trade deals, such as trade adjustment assistance, which "takes money that the general public gets from something that is generally positive, and uses some of the gains to buy off local opposition."

However, to help put the TILT concept to work in their communities, local governments would have to consider, address, and flesh out several important details, particularly the following:

- **Proximity:** How close to new developments do property owners need to live in order to qualify for the rebate?
- **Density:** Should people who live in sparsely populated areas adjacent to proposed housing projects be offered rebates?
- **Amount:** How large of a rebate would they be entitled to?
- **Duration:** How long would the rebate last?
- **Impact:** How would the tax rebate affect a government's budget and revenue projections?
- **Paperwork:** What documents would the property owners have to sign?

NOT A PERFECT SOLUTION

In his article for the Yale Law Review, Schleicher acknowledges that TILTs would have their limitations. "While TILT payments probably would not be sufficient to quell opposition among the most affected residents – a tax rebate is not likely to change the mind of someone who owns property right next to a proposed skyscraper that would ruin her view – they would limit the ability of those residents to garner broader support in the neighborhood," he wrote.

In an interview for the Journal of Case Study Research™, Schleicher said he came up with the idea for TILTs as part of several ways to help address the country's housing crisis. "Many of our biggest and richest cities restrict development excessively. In the face of high-demand places like San Francisco or New York, restrictive zoning has meant huge price increases. This has become a national economic problem," Schleicher said.

He added, "The politics of land use in rich regions and in big cities are biased against development."

Schleicher went on to say in the interview that, "The TILT proposal is meant to provide local governments where there is a great deal of housing need (and high prices) – but massive opposition to housing construction – a tool for overcoming that opposition."

Other than laying out the basic concept of TILTs, the professor has not fleshed out a detailed explanation of the tactics or offered any statutory language for policymakers to consider. He said he is content to put forth his proposal as an idea that could work.

Although TILTs have received favorable coverage in the media, his unique approach has not yet been implemented. "Cities have offered all sorts of goodies to neighborhoods to accept new development – look at what New York City is offering as part of the East New York rezoning – but no one has actually adopted anything like TILTs," he said.

PUTTING THE IDEA TO WORK

Schleicher sees no reason why TILTs would not work in California. "You should remember that the TILT

idea is not a very specific proposal, but rather is a way of approaching opposition to new projects. Homeowners near new development are not simply going to sit on their hands, so we need to change development politics—understanding that this is the case. TILTs are a way to approach payoffs that does not result in a tax on development,” he said.

He added, “The only reason to give such rebates is to lessen opposition, so the amount should be driven by the extent of the opposition. The two biggest problems with implementation are [to] determine who should get the rebates – property owners on the same block or blocks or more distant ones – and how big (and for how long) they should be given. [...] I think experimentation is necessary to figure out exactly who should get how much, but the amount should be enough that it provides incentives not to oppose projects, and small enough that the city as a whole still gains from the project.”

When leading the Marin Association of REALTORS®, I used a variety of strategies and tactics to advocate the association’s affordable housing-related policy positions and activities. Looking back, I wish that TILTs had been in place as a way to help tip the balance in our favor.

Today, TILTs have the potential to help REALTORS® and their local associations gain the upper hand in the affordable housing arena. Asking their elected officials to be among the first in the country to adopt and implement TILTs may be the next step to helping solve California’s housing shortage. ■

REFERENCES

- City Unplanning, by David Schleicher
Yale University - Law School, January 23, 2012
Yale Law Journal, Vol. 122, No. 7, pp. 1670-1737, May 2013
George Mason Law & Economics Research Paper No. 12-26

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