

# Guest Editor's Introduction

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The theme of this issue's symposium, regulatory innovation and affordable housing, evaluates the extent to which state and local governments are committed to removing barriers to affordable housing. Many of the most restrictive barriers are exclusionary zoning regulations that are permitted under state-enabling legislation and adopted at the local level. The articles in the symposium challenge traditional assumptions about the costs of urban sprawl, the resistance involved in the contemporary planning and review process, and the success and failure of programs that seek to provide solutions to the housing and transportation crises. Many state and local governments recognize the need for more affordable housing. In addition to raising awareness of this issue among fellow citizens through community organizing, our governing partners at the state and local levels have come to believe that restrictive local regulations are part of the problem.

Land use regulations and zoning requirements may impede access to housing and jobs, especially for low- and moderate-income families. Increasing the supply of affordable rental units and owner-occupied affordable housing is the U.S. Department of Housing and Urban Development's (HUD's) highest policy priority. Unnecessary, duplicative, excessive, or discriminatory planning and zoning practices significantly increase the cost of housing development. Many public statutes, ordinances, regulatory requirements, standards, and procedures substantially impede the development or availability of affordable housing without providing commensurate or demonstrative health and safety benefits.

Addressing these regulatory barriers to housing affordability is a critical component of any overall national housing policy agenda. New, innovative policy tools, such as inclusionary zoning (IZ) and smart growth, have been implemented in various communities across the country as state and local governments continue to reform their regulatory environments. Unfortunately, well-intended reforms might actually impose additional constraints on the construction of affordable housing. The need to measure their effects is clear.

The articles selected for this symposium address three underlying issues that, taken together, advance our knowledge of the effect of land use regulations and their impact on housing:

1. What challenges to affordable housing are present as a result of outdated, unnecessary land use regulations?

2. What strategies have been used to address and achieve regulatory reform at the local level?
3. Are these strategies effective in achieving affordable housing goals?

## **HUD's Role in Addressing Innovative Strategies for Achieving Regulatory Reform**

HUD has been a leader in addressing barriers to affordable housing through its research and development efforts. During the George W. Bush Administration, these efforts took the shape of the National Call to Action for Affordable Housing Through Regulatory Reform campaign, also known as the National Call to Action (NCA). In previous years, the NCA has been a major component of the America's Affordable Communities Initiative, which encourages state and local governments across the nation to create task forces to examine their local zoning and housing ordinances and identify regulations that may impose barriers to the construction of affordable housing. The NCA recognized innovative approaches for achieving affordable housing at the state and local levels and acknowledged for-profit and nonprofit organizations that also engage local political offices in the planning and growth management process to raise awareness about outdated land use standards and requirements. Reducing barriers to affordable housing and promoting sustainable development continue to be important departmental priorities of the Obama Administration.

In 1990, for the first time, Congress recognized the effect of public policy decisions and processes on the supply of affordable housing. Section 105(b)(4) of the Cranston-Gonzalez National Affordable Housing Act required state and local governments to explain whether housing affordability was affected by their planning and development decisions reflected in their Comprehensive Housing Affordability Strategies. They were also required to describe each jurisdiction's strategy for removing or mitigating the negative effects, if any, of such decisions. This requirement remains in effect to this day. Congress continues to realize this commitment in Title XII of the Housing and Community Development Act of 1992, reiterating its interest in this important subject by authorizing grants for regulatory barriers removal and through the establishment of HUD's Regulatory Barriers Clearinghouse. The clearinghouse continues to receive congressional reauthorization to carry out its mandate to provide updated information on regulatory reform.

Due to the generally accepted view that inappropriate, excessive, or exclusionary practices have an adverse effect on housing development, the challenge to remove barriers to affordable housing continues to be a pressing issue. Over the years, HUD's Office of Policy Development and Research has sponsored a series of studies that have all concluded that excessive, unnecessary, or duplicative regulations are major contributors to rising housing costs. The costs of complying with these regulations continue to rise as more rules and restrictions are adopted, making new homes unaffordable and preventing potential homeowners from buying homes. Although housing affordability is a critical issue of national concern, local communities are responsible for developing sound policy solutions. HUD therefore continues to support state and local

governments' efforts to identify and examine the effect of their regulations on housing and homeownership through its formula and competitive grant programs.

In 2005, HUD published "Why Not in Our Community?" *Removing Barriers to Affordable Housing*, an update of a 1991 report, to provide an overview of how regulatory barriers continue to pose serious impediments to providing affordable housing throughout the country and how federal, state, and local governments are beginning to address these issues and to outline the additional actions needed at all levels of government to make progress. As part of this larger effort, in 2006 HUD published a report entitled *A "Smart" Start for Regulatory Reform: Successful Strategies for Overcoming Barriers to Affordable Housing*, which provided assistance to and policy strategies for local public-private partnerships to improve their institutional capacity to implement plans for regulatory reform. This initiative established a toolkit for mitigating regulatory barriers and other guidance materials, which are available on the HUD USER website (<http://www.huduser.org>).

To address issues affecting the supply and provision of multifamily housing, in 2007 HUD published the report *Zoning as a Barrier to Multifamily Housing Development*, which evaluates how communities, through exclusionary zoning, may limit the development of multifamily housing and thus limit the supply of affordable housing in communities. In addition, to address barriers to developing affordable single-family housing, HUD published the 2007 report *Study of Subdivision Requirements as a Regulatory Barrier*, which provides a thorough investigation of how local subdivision requirements, which establish specifications for site plans and infrastructure (for example, streets, sidewalks, and water systems), exceed what is necessary to meet health and safety requirements and thereby act as a regulatory barrier to affordable housing. The study presents a national estimate of the cost of excessive requirements for single-family housing built in this country.

Most recently, HUD undertook the Regulatory Barriers Database project in 2008 to support the development of a national regulatory barriers database for researchers who want to learn more about how excessive regulations have affected the housing market. Finally, the researchers for *A Review of Regulatory Barriers to Employer Ability to Recruit and Retain Employees*, which was published in 2008, developed a research framework for evaluating the effects of high housing costs on employers and on regional economic competitiveness.

## **Overview of the Symposium Articles**

Inclusionary zoning, also known as inclusionary housing, is a policy tool that links affordable housing to the production of market-rate housing. IZ policies either require or encourage builders of new residential developments to set aside a certain percentage of their housing stock for low- or moderate-income residents. In exchange, many IZ programs provide cost offsets to developers, such as density bonuses, that enable developers to build more units than would normally occur under conventional zoning. Some IZ programs promote fast-track permitting so that developers can build affordable housing more quickly.

Although IZ programs have grown in scope and popularity over the past decade, relatively little is known regarding their overall results and effect (that is, costs and benefits). Recent studies have begun to shed light on these issues, but the assessments are neither comprehensive nor definitive. Three overriding policy questions to be answered are (1) how well IZ programs have fared in providing affordable housing options to individuals and families who reside in communities that have affordable housing, (2) what costs are associated with the implementation of these programs, and (3) whether IZ programs restrict the supply and increase the cost of market-rate housing in these communities.

In the introductory article, “Housing Market of Inclusionary Zoning,” Antonio Bento and his colleagues get us closer to an answer. Although the authors acknowledge that inclusionary zoning has yielded positive results, they find that these programs increase housing prices and restrict the production and supply of single-family housing. Based on a longitudinal evaluation of the costs associated with inclusionary housing programs in cities across Northern California, the researchers’ findings also show that local land use regulations have the effect of reducing available housing options solely to multifamily housing, with the number of affordable units also restricted by those regulations. Subdivision zoning standards that specify house size have a greater effect on the production of housing. Similarly, inclusionary zoning requirements that mandate the provision of below-market units lead developers to shift the burden of providing those affordable units onto consumers in the form of higher housing prices.

The good news, however, is that inclusionary zoning programs were successful in increasing opportunities for multifamily housing. Thus, it is safe to conclude that, although inclusionary zoning may have the effect of depressing the number of housing starts or restricting single-family options, researchers should shift their focus on how to design an inclusionary zoning ordinance that accounts for changes in the local housing market. Some attention should also be devoted to how existing zoning regulations may hinder the development of an inclusionary zoning program that works to create more housing options for consumers and families. The next step is to consider a more extensive evaluation of existing programs, given these mixed results, and to consider a broader range of methodological approaches for investigating the costs and benefits of inclusionary zoning that would lead to a better understanding of how well these programs work.

Douglas Porter and Elizabeth Davison shed some light on how communities may overcome the challenges highlighted by Bento et al. and other skeptics who question the effectiveness of IZ programs. In their timely article, “Evaluation of In-Lieu Fees and Offsite Construction as Incentives for Affordable Housing Production,” the authors discuss the results of their pilot study of IZ programs that exist in three communities: Boulder, Colorado; Montgomery County, Maryland; and Pasadena, California. The IZ programs under review are unique in their approach and response to the specific housing needs of their respective communities. In addition, they all enable builders to take advantage of incentives for the offsite construction of affordable housing units.

In-lieu fees provide opportunities for builders to satisfy IZ requirements by giving them the opportunity to transfer payments to a local housing trust fund or land grant program. Local

government can then use these funds to build affordable housing, according to where housing is most needed. Alternately, builders may reserve the option to locate the required affordable units at a less costly, designated site instead of including those units in the same development as the market-priced units. These incentives offer some flexibility in how builders provide affordable housing and, in theory, are meant to encourage them to continue to satisfy mixed-income housing goals.

After a careful review of the local regulatory environment, laws, procedures, and requirements of the respective IZ programs in the selected communities, Porter and Davison conclude that the success of these programs greatly depends on the confluence of factors such as (1) the trends in the local housing market that may affect land costs; (2) the existing political climate or governing structure (Maryland); and (3) the influence of the types of housing desired, where the demand for owner-based, market-rate housing is preferred over below-market housing targeted to renters (Pasadena). The review of in-lieu fees demonstrates that incentives are generally effective for encouraging builders to provide affordable housing in all three communities, with some minor exceptions in Maryland. In short, IZ works when the economic, political, and social conditions under which IZ programs operate generate favorable opportunities for the provision of affordable housing. They fail not entirely due to the mandate to provide affordable housing; rather, they are unsuccessful when external factors, such as a housing bubble or crisis or resistance from the community at large, interfere with carrying out that mandate.

Sam Casella and Stuart Meck offer a glimpse of the planning review and development process at the local level. In their article, "Removing Regulatory Barriers to Affordable Housing in Development Standards, Density Bonuses, and Processing of Permits in Hillsborough County, Florida," the authors devise a strategy for local governments that want to refine and streamline their regulatory processes by implementing innovative tools for overcoming regulatory barriers, using Hillsborough County, Florida, as a case study. The results of their case study yield some insight about why the community has been unable to respond to its critical housing needs. Unnecessary, antiquated, or duplicative regulations have crippled the housing market and placed a strain on the development community in its efforts to provide high-quality affordable housing. Specifically, the authors find that the county's Comprehensive Plan and Land Development Code do not provide flexibility due to strict requirements for minimum lot size, lot width, and yard setbacks, among other subdivision standards; the arbitrary minimum thresholds that govern density bonuses; and excessive red tape provisions involved in the review and permitting process. Reform must take place in these three areas, which are often cited as regulatory barriers that restrict the construction of affordable housing. The Hillsborough County example may provide teachable lessons for communities that face similar challenges.

Smart growth efforts have expanded greatly in the past 15 years. Advocates contend that antisprawl programs have successfully addressed major challenges stemming from unplanned development, such as traffic congestion, lack of housing mix, the obesity epidemic, and energy consumption. Smart growth policies call for more compact land development that offers a variety of housing and transportation options. To be effective, smart growth strategies should promote a range of mixed-use, mixed-income housing with a variety of densities for residential and commercial development. They should also encourage the construction of high-quality

affordable housing and public facilities near transit and within walking distance. This “smarter” mode of growth management lessens the effect of sprawl by reducing automobile use, thereby saving energy and improving air quality. It also conserves valuable land and other natural resources while supporting community goals for growth, development, and economic prosperity.

Throughout the 1990s the smart growth movement was well under way. With the support of HUD and the Henry M. Jackson Foundation, the American Planning Association encouraged states to conduct comprehensive reviews of their growth management laws to ensure that states paid attention to fair and affordable housing, improved their transportation systems, and enacted environmental protection. Although most smart growth activities took root at the state and local levels, President William Clinton and Vice President Albert Gore promoted their Livability Agenda, which highlighted smart growth objectives such as the protection of farmland and the preservation of valuable land and water resources. Under smart growth, the primary focus was on how states, local jurisdictions, and their federal partners could balance growth and environmental goals simply by making better, more effective planning decisions. Planning under the smart growth concept incorporated many new urbanist principles, such as creating walkable streets and mixed-used communities that provide a diversity of commercial development, offices, apartments, and onsite housing.

The final article in this symposium provides a timely discussion on the smart growth approach to land use planning and evaluates how well smart growth policies have responded to housing and planning needs. In “Urban Sprawl and the Transition to First-Time Homeownership,” Casey Dawkins presents an alternative view of the effect of urban sprawl on housing. The traditional assumption about sprawl, Dawkins notes, is that it creates a mismatch between jobs and housing, leads to ineffective transportation systems, and restricts housing choice. He argues that sprawl actually enhances housing opportunities, particularly for low-income, working minorities who make the transition from renters to first-time homeowners. After constructing a database that consists of panel data used to construct various measures of density, the author finds that a broader range of various public service options commonly found in sprawling metropolitan areas may be available to first-time homeowners.

Using economic theory first advanced by Charles Tiebout, Dawkins finds that exclusionary zoning practices constrain housing choices for lower income families hoping to move to suburban enclaves. Thus, the sprawl that results from excessive development, ineffective planning, and governing structures in suburbs may in fact provide more, not fewer, valuable amenities for those who reside within the urban core. The most compelling argument is that containment policies do not lead to higher housing prices in central cities, as many previous studies contend. To the contrary, the presence of a containment strategy, such as a regional growth boundary, may actually decrease housing prices, which creates many affordable options for first-time buyers who tend to earn less and rely more on public transportation. The reason for this anomaly is that local officials often face political pressure to provide affordable housing and resist planning decisions that have exclusionary effects. Dawkins’ findings shed some light on the complex nature of the relationship between sprawl and the governing structure within which planning and growth management decisions are rendered.