

Summary of Symposium Discussion

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The second environmental symposium sponsored by the U.S. Department of Housing and Urban Development (HUD) was hosted by the National Association of Home Builders (NAHB). Moderator, Robert Fisher, general counsel and senior mediator of RESOLVE, a nonprofit dispute resolution organization, outlined the symposium's objectives:

- To discuss the issue of environmental regulation and affordable housing thoroughly, candidly, and constructively.
- To try to understand the various perspectives of the symposium participants.
- To develop constructive suggestions about ways to deal with those issues.

The morning session began with summaries of the two background papers by their authors, followed by a discussion of issues raised in the papers and other issues the participants deemed important. The afternoon session focussed on suggesting strategies to resolve these issues.

Housing Perspective

The paper prepared by Frank Braconi, executive director of the Citizens Housing and Planning Council of New York, detailed the housing community's perspective on environmental regulations. According to Braconi, housing data reveal that the perceived crisis in affordable housing does indeed exist. This crisis is due partly to changes in household income, but also results from real increases in housing costs relative to other goods. Real home prices, adjusted for inflation, have increased more than other items, but the increase is not easily explained by increases in the costs of labor and materials. It is the result of many factors, one of which is environmental regulation.

Braconi pointed out that changes in housing prices show great variation among regions and, with a few exceptions, have not correlated directly with regional growth rates. Rather, prices have been affected by interactions among considerations such as age of housing stock, density of population, and geography—all of which affect, and are affected by, environmental regulation. Regional differences also exist, because States with complicated or difficult geography or sensitive ecologies, such as California, are more strongly affected by environmental regulations.

Braconi outlined specific issues arising from the environmental review process, particularly the efficiency of administration. He also raised several issues relating environmental regulation to the costs of developing and operating housing, which were discussed in some detail. He concluded by calling for the housing and environmental communities to work together to develop a mutually acceptable, rational approach to these issues.

Environmental Perspective

In response to Braconi, Brock Evans, then vice president for national issues of the National Audubon Society, offered comments from his paper, which gave the environmental perspective. He described the housing and environmental movements as political siblings, noting that both are threatened by possible congressional cuts in programs and funding. He indicated that on a personal level he understands affordability issues and is affected by them.

Evans analyzed Braconi's statistics, noting that statistics must be cited with care. He asserted that no direct correlation could be drawn between increased environmental regulation and the rise in home prices, which are more readily correlated with demographic patterns and demand. But he did agree that lengthy, inefficient review processes should be changed.

In response to Braconi's apparent frustration over the necessity to adapt continuously to changes in regulations, Evans pointed out that laws must reflect changes in knowledge, giving as an example wetlands regulation. Regarding unfunded mandates, he explained that the original purpose of the Federal pollution control laws—to provide a uniform minimum standard—is still valid. Uniform Federal standards prevent States and localities from enacting less stringent pollution control laws than their neighbors in order to attract industries to their jurisdictions. In conclusion, Evans observed that both the housing and environmental movements are motivated by the public good and present numerous opportunities for cooperation.

Issues

Following the Braconi and Evans presentations, symposium participants discussed issues that had been raised and issues they had confronted in their own experience. The most significant of these were:

- The effect of environmental regulations on housing production costs and the price of homes.
- The procedural complexity and overlap resulting from multiple sources of regulation.
- The difference in environmental standards governing publicly assisted and market-rate housing.
- The lack of clear goals and priorities.

Cost Effects of Environmental Regulation

Effect on housing production. Most participants agreed that environmental regulations can sometimes—but not always—increase the cost of housing production, which increases the cost to the homebuyer. Environmental regulations may affect the hard costs of development by limiting the supply of developable land, imposing site and property cleanup or

preparation costs, requiring that specific activities be undertaken and specific materials used during construction, mandating conformance to historic preservation standards, and increasing operating costs such as water and sewer charges. Environmental regulations can also affect the soft costs of development in several ways: by making the development review process more complicated and unpredictable; by making it necessary to hire legal and scientific experts for the studies needed to determine the actions that must be taken; and by delaying development, which increases both carrying charges and market risk.

However, understanding the precise relationship between environmental regulation and housing production costs has proved difficult, both because perception and reality often differ and because the individual and cumulative cost effects of the regulations may not be easy to determine. It is difficult to disaggregate the hard and soft costs of development and assign dollar amounts to specific environmental regulations or to the delay they may have caused. Every development project has unique characteristics, and each will be affected somewhat differently by the same regulations. In addition, the translation of increases in the development costs of a given project into changes in housing prices will be determined by a number of factors.

Effect on the price of homes. Likewise, a precise cause-and-effect relationship cannot be established between environmental regulations and trends in housing prices. As Michael Chapman, president of Chapman Companies in Santa Fe, New Mexico, observed, “We must look at environmental regulations in the context of the myriad of regulations and requirements that affect cost. Many government regulations affect development at the local level.”

Jim Irvine, president of the NAHB, noted that his organization is striving to gain a better understanding of the nexus between environmental regulation and housing. According to Irvine, NAHB members feel the impact of environmental regulation—its benefits in creating a better environment, as well as its costs. A particular concern, and one that defines the issue of price for homebuilders, is that “for every \$1,000 increase in the price of a new home, we remove 480,000 American families from the ability to buy that new home.”

William Connolly, director of the division of codes and standards of the New Jersey Department of Community Affairs, agreed that the rise in home prices is a very significant issue and is the principal impact of environmental regulation. He explained that this impact can be felt in different ways. Housing prices are related to supply as well as to demand. To the extent that environmental regulations constrain the supply, they affect prices. According to Connolly, this effect is not calculable, because the entire environmental protection system imposes costs—especially on land development—that affect prices.

Environmental regulation can also decrease the price of certain properties. Jeanne Gorman, vice president of the National Multihousing Council, pointed out that “in some inner-city areas, the value of the properties went down because of the threat of environmental contamination remediation needs.”

Effects of perception. According to David Slutzky, an environmental consultant from Virginia, public consciousness and perception have more important consequences for housing prices than does any individual regulation, although many of the costs are derived indirectly, rather than directly, from regulation. “For example,” he said, “lender perceptions and fear drive the cost of housing in New York.”

At the project level, the way in which costs are assigned also affects perceptions. David Livingston, director of community resources at the University of Maryland, Baltimore campus, suggested that part of the perception problem is that developers may attribute to environmental regulation the cost of activities that would need to be performed in any event. For example, the full cost of painting and repair work might be attributed to lead-based paint removal, even though only the difference between what is required by regulation and what would have been done in any case should be costed to lead remediation.

Livingston also noted that, unfortunately, some members of both major political parties mistrust the spending of Federal Government dollars by nonprofit organizations for the purpose of preventing environmental problems, even though such spending is the most cost-effective approach and also promotes President Clinton's environmental justice agenda. James Irvine observed that complying with one regulation may raise the costs associated with others: "For example, to be energy-efficient, we use larger studs so we will have larger wall cavities. As a result, we use more wood. Solving one problem can exacerbate others."

Another area affecting the hard costs of development, Kathy Wylde, president of the New York City Housing Partnership, pointed out, is the disposal of solid waste material, even "clean" debris. The difficulty is twofold. First a determination must be made about what to do with the debris—such as old foundations and accumulated garbage, or dumped material—that is removed from a site. Then a way must be found to pay the cost of removal. Wylde commented that "removal of debris has become a huge cost number. Ten years ago it was not even in the pro forma."

Regulatory Unpredictability

Imprecise environmental regulations make the review process and its outcome unpredictable. William Connolly described this imprecision as "a tremendous stone in the road that prevents efficient reviews," and asserted that "regulatory systems and requirements should be set forth clearly and equitably so everyone knows the rules before they start. We should not establish rules on a project-by-project basis, which is what NEPA [the National Environmental Policy Act] does. The objection is not to the measures that must be taken to protect the environment but rather to the manner in which measures are discovered and applied."

Regulatory Intent

This observation raised another issue—that of regulatory intent versus application. For example, NEPA was not intended to be a regulatory tool but has, in practice, become one. The result is that prescriptive planning and zoning has become difficult. Kathy Wylde observed that many localities using planning and zoning processes do not have enough money to determine in advance where development can occur immediately, where mitigation of environmental problems will be needed, or which mitigation procedures will be required. Thus developers frequently become the "deep pockets" that hire the consultants to do the discovery work. Someone must do this work, and someone must pay for it, because "the environmental costs are great, and the potential for litigation is also great."

Multiple Sources of Regulation

Housing developments are subject to an array of parallel Federal, State, and local environmental laws. At each level of government, several agencies with distinct missions are involved in environmental protection. In addition, various other formal and informal

regulations and guidance documents apply to environmental issues and housing. For example, an American Society for Testing Materials working group is creating a “health audit” for properties, NAHB’s U.S. Green Building Council is developing a rating system for “green buildings,” and the Consumer Product Safety Commission regulates certain building products such as heating and air-conditioning systems.

David Engel, director of the affordable housing research and technology division at HUD, pointed out that States have enacted “little NEPAs” without thinking of the way they would be applied. Therefore, in any development involving zoning or other development actions by a local government, the State NEPA applies, triggering a separate, additional review process. “It’s a misapplication of policy,” explained Engel. “If you want to be involved in the development process in a local community, you should do it through the zoning board.”

James Irvine added that another level of government, the regional level, is becoming more active in environmental regulation, compounding the layering that contributes to the problem. Moreover, compliance can be difficult when the various regulatory layers have different requirements. As Mike Chapman observed, the cumulative effect of the requirements costs the consumer more, either through the cost of the end product or through taxes. Because most regulations apply to new development, costs accrue disproportionately to new projects and to the new buyer.

Publicly Assisted Versus Market-Rate Housing

Two issues arise in differentiating the effect of environmental regulations on the cost of market-rate housing from their effect on that of publicly assisted housing. First, any additional costs imposed on the construction and operation of subsidized housing cannot be passed through to the consumer. Second, federally assisted housing is held to a standard different from housing that does not receive Federal assistance. Kathy Wylde noted that the cost increases imposed on subsidized housing by environmental regulation—whatever they may be—must be borne through additional taxpayer subsidies. She observed that most of the housing units developed by the New York City Housing Partnership are sold or rented for less than the cost of construction, with the taxpayer paying the difference between the two amounts. Therefore, to the extent that environmental regulation raises the cost of housing, it increases the amount of taxpayer subsidy required per unit.

Wylde also pointed out that the regulatory process and requirements for publicly funded housing differ from those governing housing built by the private sector. For example, HUD has noise regulations that apply only to HUD-assisted housing. She noted that “if health and safety issues make standards apply to one project, they should apply to all.”

Steve Morgan, president of EVA\Citizen Conservation Services, agreed with Wylde, adding that as an energy efficiency contractor he cannot address problems in assisted housing “because the regulations governing assisted housing prevent you from dedicating a portion of your utility bill to pay for energy improvements.” It was Jeanne Gorman’s view that the government sector has been used as a model for political reasons and, as a result, the costs to construct—and often to operate—government-assisted housing have been much higher than average. Therefore, in some areas assisted-housing units rent for more than the area’s fair market rents.

In addition to publicly subsidized housing, a segment of the housing stock that is particularly sensitive to cost increases is unsubsidized, low-income housing. Many people with low incomes cannot afford the housing they rent or own, because it is not subsidized.

According to Cushing Dolbeare, a consultant on housing and public policy, about one-eighth to one-fourth of the stock is “economically distressed.” That is, the owner cannot afford the additional expenditures required by environmental regulations, and the renters cannot pay increased rents. These housing units also tend to have the most significant environmental problems. In such cases, Dolbeare suggested, “there needs to be some sort of subsidy or intervention to deal with the economic requirements.” She added that if subsidies for funding environmental remediation are reduced, the housing community will not be able to deal with the problem effectively.

David Engel suggested that in order to preserve the existing assisted and other low-income housing stock, it might be necessary to consider “realistic urban standards” for urban areas and for the preservation of urban housing—standards that recognize that a city may be dirtier, noisier, and less safe than other areas. “But,” he added, “this is a very sensitive issue. We don’t want to expose poor people to danger.”

Barbara Sattler, director of the environmental health education center at the University of Maryland, Baltimore campus, was uncomfortable with a two-tiered standard, describing it as “a slippery slope.” Instead, regulators need to evaluate the nature and level of risk and determine who is at risk. “If we set up a two-tiered standard, we won’t put effort into learning about affordable interventions and economies of scale.” Cushing Dolbeare mentioned that the Task Force on Lead-Based Paint Hazard Reduction and Financing had wrestled with this issue and had decided not to pursue a two-tiered standard. The approach the Task Force agreed upon was “to go for substantial improvement rather than requiring 100-percent assurance of removing all hazards.”

Need for Goals and Priorities

Participants also discussed the need to coordinate and clarify the process and, in particular, to set goals and priorities that all of the parties can accept. As Jeanne Gorman pointed out, “When laws are passed individually, we don’t know which are most important—radon, lead-based paint, asbestos. Which has priority?” Frank Braconi agreed, saying that if a private home has multiple environmental problems, the homeowner can prioritize. In multifamily housing, the law does not permit that kind of prioritization of risk.

Charles Field, staff vice president of NAHB, observed that the process of making such determinations creates its own issues, including questions about the way risks are assessed and whether those assessments are based on valid data.

General Recommendations

Participants recommended various ways of organizing approaches to the problem of conflict between environmentalists and the housing community. They also suggested an array of strategies to solve issues that had been raised.

Barbara Sattler suggested ways that the group could organize their thinking by grouping their recommendations into two areas, new development and existing housing, with different approaches for each. She noted that the Environmental Protection Agency (EPA) is taking a commonsense approach and trying to consolidate the many regulations affecting specific industries. “We need to look at streamlining regulations to enable small developers to operate, to enable multifamily developers to correct environmental problems, and so forth.” Sattler also suggested that environmental systems and regulations be organized by separating those that apply to the outside of a house from those that apply to the inside.

She noted that whole industries have been created around a single issue such as lead or radon, with the result that property owners must rely on an array of costly experts. She recommended a more comprehensive approach to addressing inside-the-house products and systems.

Frank Braconi emphasized the need for better cooperation to make the regulatory apparatus work more efficiently, as the experiences of New York City and New York State illustrate. He noted that interests often coincide as, for example, in recycling of wastes, and such areas of mutual interest should be identified and pursued.

Following up on that idea, John McCarthy, executive vice president of the Community Preservation Corporation (CPC), explained that CPC is heavily involved in the water-sewer issue, with the objective of devising a process for recognizing the overlaps. “It’s a live-or-die issue in the affordable housing stock,” he explained. Though the water-sewer issue has not yet been resolved, he said, it has proceeded more effectively than the lead-based paint issue, because the local broker managing the water-sewer issue is the water utility, which has a stake in a sensible outcome. In the case of lead-based paint, the affordable housing infrastructure can make its arguments, but there is no process in which an “honest broker” has been established to enforce a consensus. “What HUD can do,” McCarthy went on to say, “is to encourage an effective process of ‘honest brokerage’ to get resolution on these issues.”

As Jeanne Gorman suggested, a group such as the present one, discussing issues and presenting potential solutions, could facilitate the policy changes and approaches being proposed to Congress. Echoing her comments, Charles Field advised that a process akin to negotiated rulemaking is needed—one that brings all the stakeholders to the table when environmental policies that affect the housing community are being established. Similarly, Robert Fisher recommended a policy dialog in which all stakeholders seek consensus on proposed policies or policy changes.

Specific Suggestions

The symposium participants made a number of specific suggestions for improving the environmental review process, which can be organized into three broad categories:

- Streamlining the review process and minimizing delay.
- Developing an integrated, comprehensive approach.
- Developing clear standards based on good science.

Streamlining the Review Process and Minimizing Delay

Take a commonsense approach. Barbara Sattler gave as a model the example of EPA. The agency is taking a commonsense approach to the issue of industrial pollution by reviewing the many regulations that apply to specific industrial sectors to see whether they can be streamlined while still remaining environmentally sound.

Require a generic environmental impact statement (EIS), making the information publicly available. Either a city or a group of developers could initiate a generic EIS that incorporates environmental information into an area plan and makes the plan available publicly. William Connolly provided a good example of this type of action, by the Meadowlands Commission in New Jersey. Brock Evans, however, cautioned that, to be meaningful, a generic EIS must be very specific.

As William Duncan, director of the Rehab Working Group at the Enterprise Foundation added, an EIS is required for projects that obtain HOME funds. HOME projects require a jurisdictionwide plan and decisions about environmental requirements. Many communities are preparing these EISs and passing the information along to developers working in the area.

Institute single-agency reviews to reduce the layering and complexity of governmental intervention. According to William Connolly, single-agency review means that “wherever the requirements come from, they are integrated in such a way that only one agency actually reviews the project. Single-agency review is an elegant way to force communication among interested agencies.” He again mentioned the Meadowlands, where all existing building issues are integrated into one set of rules implemented by a single agency.

To reinforce the need for single-agency review, Mike Chapman noted that EPA, HUD, and the U.S. Department of the Interior are all working on the same issues. He cited the example of radon, saying, “There are more than 90 Federal programs that deal with radon.”

Delegate Federal land use regulatory authority to State and local authorities.

Connolly recommended that Federal Government environmental regulations and implementation requirements be integrated and funnelled to the State government level, from which they would be delegated to local government agencies. In response to James Irvine’s concern that this approach was “top down,” Connolly elaborated, “You establish tiers of concern. Governments each address the appropriate level of generality. We need a tiered, integrated system rather than parallel systems.”

Brock Evans cautioned that the designated local agency would need to have the necessary expertise in order to carry out its responsibility. He also raised the issue of whether local governments could be trusted to act objectively in exercising authority delegated by the Federal Government. “We view State and local governments as much more in the control of local economic interests.”

Establish clear goals. The results that regulations are intended to achieve must be made explicit. Once goals have been determined and clearly articulated, regulations can be written to advance those goals. Mike Chapman gave an example of what can happen when the process, rather than the intended goal, determines the outcome: “The Endangered Species Act is a good example of a program with ambiguous goals. It has become a growth restriction rather than a means of protecting the environment.”

Enact Federal tort reform and use public sessions to define the scope of an EIS.

According to Kathy Wylde, tort reform would help keep the process focussed on true environmental issues because, as Frank Braconi added, “We need to prevent frivolous litigation without frustrating legitimate litigation.” He said that public “scoping” sessions are being tried in New York to provide community members with a well-publicized opportunity to raise legitimate issues related to the development of an EIS. Issues not raised during the scoping session cannot be used later to block the development. Braconi noted that the procedure is being tested, but whether, or how well, it will work, or who will benefit, is unclear.

Brock Evans added that there should be a provision for introducing information that was not available at the time of the scoping session, perhaps through an appeals board.

Developing an Integrated, Comprehensive Approach

Conduct pilot programs. According to Barbara Sattler, who views the problem as one of implementation, pilot projects are the most economical way to hone delivery systems. “We have created whole infrastructures around chemical and exposure categories. We need to create integrated systems for identifying, inspecting, and remediating the hazards.” She suggested that HUD fund pilot programs on implementation systems that would involve the public and private sectors and would include cost comparisons of various systems. Reviews by a technical advisory board, EPA officials, and other regulating offices would help to ensure that the evolving system made sense.

However, Kathy Wylde expressed the concern that pilot projects take too long. “We need immediate responses to what is going on in Congress, to what our values are, and how we are going to address them. If leadership groups like ours cannot sit down and forge commonsense solutions, it’s not going to happen in our lifetime.”

Develop better information about effective review procedures. Better information is needed in order to make the review process predictable, set clear standards, and develop cost-effective implementation approaches. Both HUD and the environmental community can agree on the need for supporting studies. Richard Alexander, director of environmental planning in HUD’s Office of Community Planning and Development (CPD) called for the creation of an environmental database “so that developers, the public, everybody knows what the pain pill looks like.” Jeanne Gorman suggested that, as research budgets are being slashed, demonstration programs can serve to highlight effective techniques.

Incorporate environmental requirements into project planning. Robert Bush, executive director of the Advisory Commission on Historic Preservation saw the real issue as one of little or no planning in project design. “We need planning to address regulatory requirements early. We are now working to train HUD people in the field and have done a number of publications to get information to practitioners on the ground.”

Kathy Wylde explained that EPA has begun to encourage better planning on brownfields issues through its grants to States and localities. “The point of the Notice of Funds Availability is to get the regulator and the regulated together to collaborate on problems we do not have the resources to resolve in the old ways.” HUD Deputy Assistant Secretary Margery Turner noted that the Department has conferred with EPA regarding the role HUD can play in determining the lessons to be learned from brownfield planning grants to communities.

Tom Frost responded that Wylde’s suggestion sounds like the model code development process, a negotiated policy process in which consensus is built through consideration of integrated criteria.

Richard Alexander reminded the group that these ideas are not new. From 1954 to 1981, the HUD-funded Comprehensive Planning Assistance (701) program and areawide planning requirements for water and sewer systems helped to ensure that various planning requirements were coordinated. He suggested these programs as models that could be followed today. In communities receiving HUD Community Development Block Grants, for example, the 20 percent of funds set aside for administrative expenses could be used for environmental planning in conjunction with block grant projects.

Developing Clear Standards Based on Sound Science

As noted above, standards should advance clear goals.

Clarify the standards and make them more consistent. What is needed, according to Mike Chapman, is not only a more accurate definition of standards and improved correlation of standards with risk but also a better analysis of the way the standards relate to one another. “And,” added Cushing Dolbeare, “we also need a means to review and modify standards.”

Jeanne Gorman advised that all the players need to operate under the same rules in order to compare risks. “Every regulation,” she explained, “sets a different standard, based on technology or health. We need to look at each contaminant through the same lens. We may need more information, but right now we don’t have a structure for learning what we don’t know.”

Use cost-effectiveness as one of the criteria for determining appropriate standards. David Livingston advised that it is important to know the cost of full abatement of each hazard. Approaching each problem with the question, “What is the most cost-effective delivery system on a health basis?” will lead to low-technology, decentralized solutions. He expressed concern that the process is usually driven by technicians, just as legislation is usually drafted by lawyers. “We need to break out of the cycle of experts arguing.” Once again, the recommendation was that HUD facilitate the gathering of information through neighborhood-based pilot programs that would provide practical, real-world experience. Resulting rules would then reflect experience, not theory.

Other participants were less receptive to the potential for using cost-effectiveness as the basis for setting standards. Barbara Sattler cautioned that “we need to continue to have health-based standards.” Kathy Wylde pointed out that issues such as clean water and clean air have a significant impact on new housing that is difficult to quantify in terms of risks and benefits.

William Connolly felt that it would be difficult, if not impossible, to perform an objective, scientific cost-benefit analysis. As an alternative, he recommended negotiated, consensus-based approaches. Jeanne Gorman agreed, calling for a national discussion that would lead to a consensus on the best way to set standards and assess risks. Furthermore, she expressed concern that “one of the problems is that everything has to be done today. Some things should be phased in over a reasonable time frame.”

Conclusion

The symposium aired a number of controversial issues having to do with the creation, cost, and administration of environmental regulations and their effect on the supply and affordability of housing. Though the issues were not resolved, the symposium gave participants with a variety of perspectives a better understanding of one another’s positions and furthered the ongoing dialog between the housing and environmental communities.

The symposium also yielded a number of specific suggestions for HUD, including:

- Spearhead coordination and communication among Federal Government agencies.
- Fund pilot programs to test implementation systems and share information on programs and procedures that work.

- Where appropriate, delegate authority to State or local agencies.
- Participate in a consensus-based process for setting environmental goals.
- Through “honest brokerage,” encourage consensus on specific issues in which housing and environmental values conflict.
- Convene and participate in working groups that would advise policymakers concerning proposed or revised environmental legislation.
- Bring the environmental requirements for HUD-assisted housing into conformance with the requirements for all other types of housing.
- Continue the Department’s commitment to train its field staff to help developers meet environmental requirements (as has been done by other Federal agencies in the historic preservation area).
- Participate in a single-agency environmental review process at the Federal level and facilitate that review by consolidating the review requirements in the HOME program and making them conform to a single standard.
- Continue the dialog.

A number of issues remained outstanding at the end of the symposium. The dialog will continue on such issues as:

- The tension between the need for immediate action to resolve differences and reduce the cost of compliance and the need to develop an effective framework for information building and decisionmaking.
- The desire for certainty versus the need for flexibility and discretion in regulation.
- The need to determine who will pay to create and protect the clean, safe environment that Americans desire and value.