

Response to “Regulatory Implementation: Examining Barriers From Regulatory Processes” by Peter J. May

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Few dispute the notion that many metropolitan areas face a serious housing crisis that threatens the continued economic growth of those regions. Evidence of a housing crisis can include high apartment rents, high home prices, leapfrog development, and an insufficient supply of housing units. The lack of a varied housing stock forces many workers out of the market and can drive households and businesses out of a region, including entrepreneurs and other job-creating enterprises.

Both state and local governments have a legitimate interest in regulating certain aspects of housing development to ensure reasonable safety and health standards and allow for the overall well-being of a community and the preservation of its character. In too many communities, however, developers wishing to create new housing meet resistance—whether at the stage of land acquisition and land planning or later in determining what and how to build.

Developers must meet local zoning laws, satisfy state building and specialty codes as well as local enforcement policies, and interact with state and local appeals boards. Local zoning laws govern what kinds of structures can be built in what parts of town. State building and specialty codes regulate the physical design of buildings. Because state regulations are enforced by local officials, local interpretations of the state regulations can pose additional barriers. Every such barrier has an associated cost, much of which is passed along to the homebuyer or renter.

Affordable housing is important to the vitality of communities, but frankly, many communities remain unconvinced of the desirability or the need to have it. The federal government needs to take the lead in creating new arguments and incentives for housing, including making a more compelling case about the impacts of a lack of housing affordability. States and localities need to take steps to encourage the marketplace to create a broader range of housing types and decline to wield the regulatory process in a manner that raises barriers to housing.

Regulatory Barriers to Housing Construction

Many communities are deeply ambivalent about any kind of growth. Even more have failed to reach a community consensus about the need for affordable housing. As just one example, more than 40 communities across Massachusetts have adopted local provisions that explicitly restrict or ban new construction. Many more communities are expressly reluctant to allow the development of housing appropriate for families with school-aged children because property taxes would not be sufficient to cover the cost of public schools.

Even when a state takes extraordinary efforts to promote affordable housing, local resistance can nullify those efforts. Consider the following examples:

- **A 1969 Massachusetts law known as Chapter 40B**—the Comprehensive Permit Law or “anti-snob” zoning law—gives developers a tool to override local zoning to build affordable housing. But it has become a lightning rod in many communities and fostered antihousing sentiment. According to the Rapport Institute for Greater Boston, the housing backlash has made it difficult to build housing of any kind in the broader Boston metropolitan area.
- **Many Massachusetts advocates championed the Community Preservation Act as an important new source of funding for affordable housing**—but it has been used more frequently to acquire land for parks and open space, sometimes with the effect of removing land from consideration for housing.

Peter May does a good job in his article both identifying possible sources of regulatory process barriers that may raise the cost or reduce the supply of housing and noting the difficulty in assessing the magnitude of those barriers. He identifies the following barriers:

- **Regulatory approvals**—delays associated with permit processes and approvals (which are particular concerns of the development community).
- **Regulatory enforcement strategies and practices**—strict and unsupportive regulatory regimes.
- **Patchy and irregular administrative arrangements**—duplicative administrative structures and gaps in regulatory decision processes.

According to the development community, regulatory process delays and inconsistent, complex, or overlapping requirements are a source of delays in construction, and, perhaps ultimately, barriers to the construction or rehabilitation of housing. They also cite citizen opposition to housing development as a major barrier. Although the development community has been a vocal critic of these sources of delay, researchers have encountered considerable difficulty assessing the extent and impact of these barriers.

Steps Toward Reducing Barriers

Despite the lack of quantitative information about the precise impact of these barriers, many jurisdictions have taken steps to reduce them (or the perception of them as barriers), adopting measures such as the following:

- One-stop permitting and electronic processing
- Third-party certification
- Administrative streamlining
- Consensus building and/or conflict resolution
- Code simplification (“smart codes”)
- Facilitative reviews and more cooperative enforcement

Many of these reforms are familiar—they were implemented in Maryland at the state or local level during my time in state government. State-level one-stop shopping for infrastructure and other assistance was adopted for projects being built in smart growth priority funding areas—designated for growth by local government and supported with state infrastructure funds. Administrative “green tape” streamlining and facilitation was instituted in Montgomery County, Maryland—first for the renovation of the city of Silver Spring, then for the city of Wheaton. The state adopted smart codes: a rehab code that was adopted statewide, following New Jersey’s model and a model overlay code for new development that was produced with state incentives for local adoption. Across the board, even in Maryland, little research has been done to quantify the efficacy of these solutions. Reports of their success are usually anecdotal.

Where Do We Go From Here? Research and Other Needs

Not surprisingly, May’s article calls for research into these issues to better understand their true costs, the implications and impacts of cited barriers, and the actual impact and cost savings associated with various reforms.

May also calls for research into procedural reforms in regulatory decisionmaking and goal setting. This area of research might be particularly fruitful. Several of the articles presented at the conference make reference to the enormous subjectivity in the application of regulations to housing construction and rehabilitation. Community “hospitality,” with respect to affordable housing, may be one of the most important factors in determining whether communities wield regulatory requirements legitimately or in an exclusionary way—for instance, subjecting housing proposals to successive waves of public hearings and approval processes.

Clearly, the U.S. Department of Housing and Urban Development and the states face considerable constraints in bringing about change at the local level. Federal influence often has been particularly indirect. Sponsored research into the sources and solutions of regulatory barriers is one role. Sharing best practices and information is another avenue, albeit one that is well advanced among housing practitioners.

A third avenue is sponsorship of demonstration programs at the local level as exemplars. The notion that local hospitality to affordable housing is a significant determinant is an important aspect of any demonstration project. Research should look more broadly into how the federal government can further incentivize states and localities to provide affordable housing. For instance, some additional avenues exist for states and localities to pursue in reducing regulatory barriers to encourage the development of more affordable housing.

Local Actions

- Participate in affordable housing development—with the added benefit that the entity with control over the regulatory process now has more of a stake in the outcome (increasingly, affordable housing may also require grants, tax credits, and other participation by government).
- Allow developers to build housing that fits the historic character of the community on parcels acquired from the local government.
- Where commercial or industrial vacancies (and high housing demand) warrant it, encourage conversion of those properties into affordable housing (as in the example of Santa Monica, California).

State or Federal Actions

- Conduct the necessary research to make the case that links housing affordability to economic prosperity in the region.
- Provide incentives for localities to accept new housing in their midst:
 - Create strong incentives for greater density at strategic transportation nodes in the region through the allocation of transportation funds.
 - Offer significant increases in state or federal aid (including transportation and park and school construction funds) when communities produce an adequate balance of jobs and housing or work with neighboring communities on housing development.

Building a Constituency for Affordable Housing

May's article acknowledges that government must balance regulatory objectives; certainly, not all building safety, environmental protections, and land use considerations should be eliminated in pursuit of affordable housing. Some regulation is clearly necessary. May makes the important point, however, that because the "constituency" for affordable housing is often not politically meaningful, the balancing of regulatory objectives now often tilts away from affordable housing.

In Boston, affordable housing is pursued by the city government with increasing zeal. Housing prices have risen so steeply that not just poor- and moderate-income households but also middle-income households are being forced to find housing elsewhere. The housing issue had to reach crisis proportions, however, before Boston really began to pay attention. It is not uncommon lately for companies to announce their decision to relocate out of Boston or avoid Boston altogether because of the lack of reasonably priced housing for their employees. In Boston and places like it, what is the economic impact of not having sufficient affordable housing? Compared to places that do meet diverse housing needs, what happens to places that don't meet needs in terms of job creation, new business formation, and wealth? What happens to civic engagement, access to opportunities, income disparities, and quality of life? What happens to traffic congestion and air quality? What happens to health? If people do not have a deep and abiding concern for housing all the members of the community, is it possible for research to make the crucial linkages between housing and the issues people care deeply about?

Housing poses one of the nation's more daunting challenges. Part of the answer is regulatory—letting it happen. But another part of the answer is *wanting* housing to happen. That the current regulatory scheme *can* raise the cost of construction, which, in turn, restricts the production of housing, is clear. States and localities can and do often pose unreasonable barriers to housing development, but they need to be convinced of why and how housing affordability is linked to economic prosperity, quality of life, and community vitality. If they want families to be housed at reasonable cost, they already have many of the means to reduce the time, expense, and frustration posed by the myriad regulations governing housing development and rehabilitation. Sadly, however, they often don't want to do so.

Author

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