

Enabling Exclusion

The Retreat from Regional Fair Share Housing in the Implementation of the Minnesota Land Use Planning Act

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In the renewed debate over regionalism, there is often an implicit suggestion that we could solve the problems associated with regional growth if only we had the right institutions, operating at the right scale, with the right regulatory structure. We understand that the regional labor market and transportation systems make land use patterns, particularly the provision of affordable housing, a regional problem. In the long term, uncoordinated growth is not sustainable because of inefficiencies and unmitigated externalities. It follows that we need regional institutions to devise regional solutions to jobs-housing imbalances and the shortage of low- and moderate-income housing.

Or does it?

In 1967, the Minnesota state legislature created the Metropolitan Council, a policy-setting and planning agency empowered to review matters of metropolitan significance, adopt a development guide, and ensure the consistency of applications for federal and state aid with regional development goals. By 1975, the Metropolitan Council had devised its Development Framework Plan, a regional plan to contain sprawl. The Minnesota Land Use Planning Act (LUPA) of 1976 provided the basis for mandatory land use planning policy for cities within the seven-county Minneapolis–St. Paul region. LUPA also required implementation of fair share housing programs, “which will provide sufficient existing and new housing to meet the local unit’s share of the metro area need for low and moderate income housing” (Subdivision 4, Minnesota Statute § 473.859).¹ Not only did the Metropolitan Council have the authority to withhold approval for local comprehensive plans for inconsistency with the Development Framework Plan, but also, through the A-95 review process, it was able to tie infrastructure funding to compliance with regional growth plans and affordable housing goals (Harrigan 1996; Martin 1998). A regional institution was in place to coordinate land use planning and distribute low- and moderate-income housing fairly.

Abstract

This article examines the impact of regional institutions and a regional planning framework on low- and moderate-income housing efforts in a metropolitan area. The Minnesota Land Use Planning Act (LUPA), enacted in 1976, sets forth the requirement for communities in the Twin Cities metropolitan area to plan for their share of the metro area’s need for low- and moderate-income housing. After a period of effective regional planning for low-mod housing, changing political and institutional environments have led to significant decline in the willingness of the Metropolitan Council to implement the law.

Keywords: *affordable housing; fair share*

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Twenty-five years later, more than 161,000 households in the Twin Cities region pay more than one-half of their incomes for housing and/or live in substandard housing, and it is generally accepted that the Metropolitan Council framework is too weak to reshape development patterns in the rapidly sprawling Twin Cities region. What happened? Myron Orfield (1997), the proponent of central-city/suburban coalition building, blames the Metropolitan Council itself, which “has narrowly construed its authority” (p. 123). Others blame worsening central-city/suburban economic and social disparities (Harrigan 1996), the lack of both state government support and grassroots mobilization (Weir 2000), and the lack of civic leadership due to corporate restructuring (Harrigan 1996). The implication is that with the right kind of political support, the Metropolitan Council will be able to ensure that regional development and housing goals are met.

This article examines the implementation of the low- and moderate-income housing component of LUPA to explore the question of whether the failure of regional fair share housing policy can indeed be ascribed to politics or whether the institutional and/or regulatory framework is to blame. The LUPA statute requires that the comprehensive plans adopted by communities

include a housing element containing standards, plans and programs for providing adequate housing opportunities to meet existing and projected local and regional housing needs, including but not limited to the use of official controls and land use planning to promote the availability of land for the development of low and moderate income housing. (Subdivision 2, Minnesota Statute § 473.859)

With twenty-five years of implementation gone by, this regional fair share housing program provides a test case of the efficacy of the regional policy framework.

► Method and Data

Research Approach

This study examines how the fair share component of LUPA was implemented and why it failed. We offer three hypotheses about the lack of affordable housing in the region: (1) local comprehensive plans fail to provide for sufficient modest-cost housing to comply with LUPA, (2) planners and developers made little effort to build the housing, and (3) the land originally set aside for low- and moderate-income housing was rezoned or built for different uses or lower densities. After establishing the role of the plans, the actors, and the market in the implementation of LUPA, we draw some conclusions

about whether the failed implementation was due to institutional and regulatory problems or political factors, including the changing demographics of the region.

Data Sources

We selected 25 of the 144 municipal governments in the seven-county Twin Cities region for detailed study. Each community was the subject of a case study examining the correlation between comprehensive plans, zoning practices, development approval practices, and other processes and standards with implications for affordable housing development. All of the approved comprehensive plans between 1976 (the year LUPA was created) and 2001 were reviewed for each community in the sample. The oldest comprehensive plan that we examined was approved by the Metropolitan Council in 1979. Plans were evaluated on the basis of four steps necessary for fair share implementation. First, did communities calculate the existing and projected need for low- and moderate-income housing and their share of the regional need for such housing? Second, how does the plan define income levels and land allocated to different housing densities, and does the plan explicitly or implicitly link high-density housing to the objectives related to low- and moderate-income housing? Third, does the plan lay out a series of steps to be taken by the community to achieve the low- and moderate-income housing goals established? Finally, does the plan explicitly state how many acres of high-density, developable land have been set aside, and can this amount accommodate enough low- and moderate-income housing to meet the stated goals?

We define low- and moderate-income housing as that which is affordable to persons with incomes at 50 to 80 percent of the area median, adjusting for household size. This definition is comparable with the one used in most subsidy programs and the one used by the Metropolitan Council in the early years of LUPA implementation.²

In addition to what the plans say, however, we also examine the practices of each of the sample communities. In-person interviews were conducted with housing and community development and/or planning officials in the twenty-five communities. The interviews were used to determine what types of efforts the communities have made to promote low- and moderate-income housing and to provide a means of checking on the implementation of standards, plans, and programs identified in earlier comp plans. In addition, we conducted in-person interviews with several housing developers to get their perspectives on developing affordable housing in the sample communities. Finally, in-person interviews were conducted with planners at the Metropolitan Council (past and present)

responsible for supervision of comprehensive plans and their housing elements. In all, forty-one informant interviews were completed.

To examine the relationship, if any, between the planning done pursuant to LUPA and the development of low- and moderate-income housing in the region, a database was created of all land parcels set aside for high-density housing in the first wave of plans (1979-1982). Current zoning and land-use maps were then examined to determine how those parcels are zoned at the current time. The database contains more than 7,400 individual parcels of land that initially had been set aside as high-density residential. We then selected a stratified random sample of 250 parcels to represent a variety of current land uses and subregions. Fieldwork was conducted to determine the actual land use on these parcels. For land that was residential, further data on the density, type, and affordability of the housing were collected. In this way, we can examine the degree to which land that was set aside for high-density housing twenty or more years ago actually resulted in the creation of low- and moderate-income housing.

Sample

The study focuses on suburban communities that experienced the greatest rates of growth during the past three decades; among those are included the communities poised for the greatest rate of growth in the next twenty years. We selected these fast-growing, outlying suburbs not only because they had relatively high proportions of developable land on which to add low- and moderate-income housing but also because many of the inner-ring suburbs had already added substantial amounts of moderate-cost housing by 1980. In other words, the selected outer-ring communities demonstrated both the fair share need for affordable housing and the opportunity to produce it. We selected the fifteen communities that added the most population between 1970 and 1990. The final ten were chosen based on both past growth and projected growth, that is, cities that were in the top thirty in both historic and projected growth.

Figure 1 highlights the sample communities and their relationship to the metropolitan urban service area line as of 1998. The map shows a relatively even distribution around the metropolitan area, shows fairly even representation across the counties, and includes many communities that straddle the

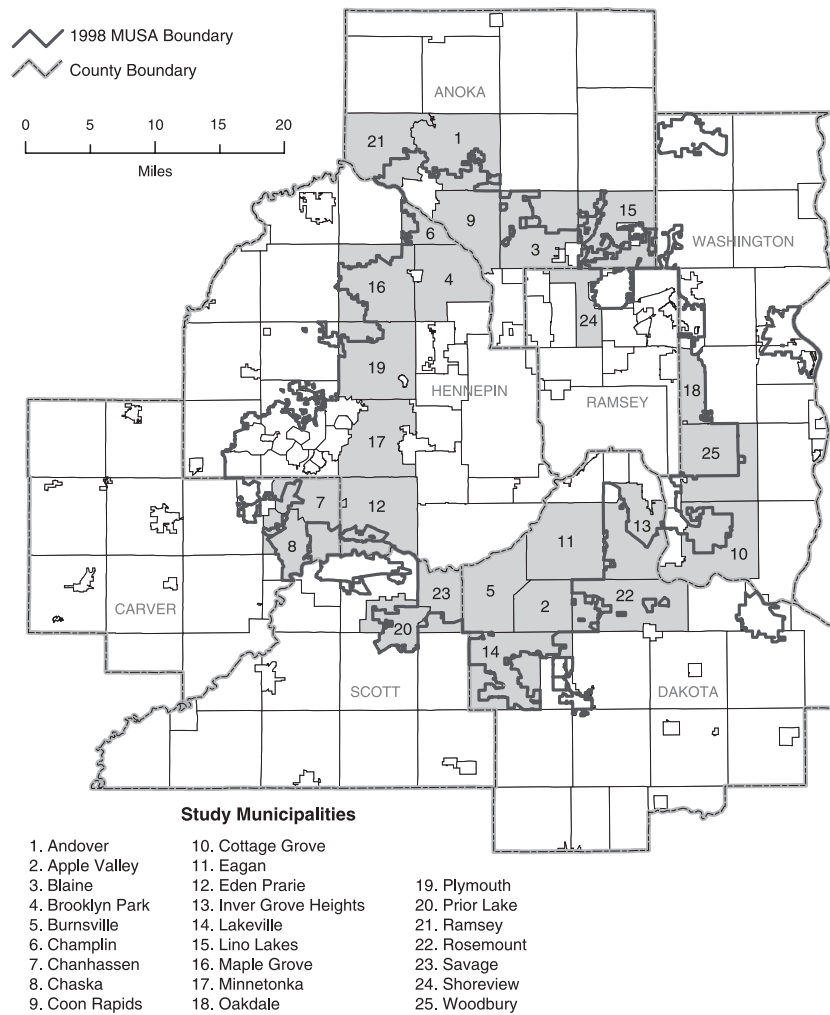


Figure 1. Suburban communities included in the study.

metropolitan urban service area line. The sample excludes not only the built-up, first-ring suburbs but also the more outlying areas of the region, which experience less development pressure. The sample includes at least one city from each of the seven counties in the metropolitan area.

Table 1 provides income information about the twenty-five communities in our sample and comparisons to the region as a whole. The communities we chose have become more affluent compared to the region as a whole. In 1980, ten of our sample communities had median household incomes less than the

Table 1.
Income profile of sample communities.

<i>Municipality</i>	<i>Median Household Income</i>	
	<i>1980</i>	<i>1990</i>
Andover	\$26,507	\$46,515
Apple Valley	\$27,626	\$49,981
Blaine	\$23,992 ^a	\$40,404
Brooklyn Park	\$22,160 ^a	\$40,018
Burnsville	\$26,705	\$43,620
Champlin	\$26,705	\$43,218
Chanhassen	\$26,434	\$52,011
Chaska	\$20,382 ^a	\$34,235 ^a
Coon Rapids	\$25,033 ^a	\$42,069
Cottage Grove	\$26,613	\$46,027
Eagan	\$24,106 ^a	\$46,612
Eden Prairie	\$29,958	\$52,956
Inver Grove Heights	\$22,036 ^a	\$39,378
Lakeville	\$24,234 ^a	\$44,920
Lino Lakes	\$23,615 ^a	\$45,578
Maple Grove	\$27,755	\$50,611
Minnetonka	\$30,214	\$50,659
Oakdale	\$22,597 ^a	\$41,049
Plymouth	\$27,840	\$51,315
Prior Lake	\$26,707	\$45,489
Ramsey	\$25,636	\$46,101
Rosemount	\$22,006 ^a	\$41,992
Savage	\$26,250	\$45,579
Shoreview	\$26,477	\$48,828
Woodbury	\$27,811	\$51,014
Region total	\$25,503	\$36,565

a. Incomes below the regional median.

regional median. Ten years later, only one of the twenty-five had a lower median household income than the region as a whole.

► Findings

The Metropolitan Council and Implementation of Fair Share in the Twin Cities

Although the language of LUPA establishes the basis for a fair share housing program, the Metropolitan Council of the Twin Cities had adopted a policy of dispersing modest-cost housing throughout the region five years earlier. To implement this policy, the council weighed each community's record in producing modest-cost housing when it reviewed grant applications for federal infrastructure grants (the so-called A-95 review process, named for the Office of Management and Budget statement providing regional councils of government the power to review grant applications of

communities). After LUPA was adopted in 1976, the council created a housing allocation plan that provided numerical goals for all communities within the region's growth boundaries. The allocation plan was based on the number and projected growth of households and jobs and the number of nonsubsidized low- and moderate-income housing units for each community. This system of individual community allocations was in place through the early 1980s.

The council provided the allocation figures to each community, and these were in turn incorporated into local planning documents. The Metropolitan Council judged the adequacy of local housing plans based on the amount of land set aside for high-density residential development. The assumption used by the council was that high-density development was the most likely to produce affordable units. The council, however, has no authority to require communities to plan for a specific amount of low- and moderate-income housing. As one staff member told us, "we can't say . . . you have to provide affordable housing. All we can say is that you have to provide the opportunity to not discriminate against affordable housing." Thus, the council uses higher-density residential land as a proxy for a community's commitment to low-mod housing.

By the end of the 1970s, the Metropolitan Council had several tools available to coordinate a fair share approach to affordable housing. First, LUPA required that communities make plans for meeting their share of regional housing needs. Second, the allocation plan was a means of establishing regional needs and local shares. Third, the Metropolitan Council had adopted a set of zoning and land-use guidelines aimed at producing more affordable housing opportunities. The guidelines included suggestions related to lot size, garages, square footage of living area, and other items that have a direct impact on housing prices. Fourth, the Metropolitan Council's power of review gave it input into the grant-making decisions of the federal government. Finally, the council's willingness to take into account the affordable housing performance of communities when they reviewed grant applications gave them leverage over local housing efforts.

When this system was in place and functioning, the region's affordable housing profile changed significantly. From 1975 to 1983, the central cities' share of the region's total of subsidized units fell from 82 to 59 percent. This impact made it one of the highest-performing regional programs in the entire nation. Less than one decade later, however, the system lay partially dismantled, and the part not dismantled was ignored.

The federal government reduced its housing subsidies dramatically in the early 1980s. This reduced the ability of local governments to promote development of low- and moderate-income housing. As a result, the council stopped calculating fair share allocations. By the early 1980s, communities were no

longer provided with information about their share of regional needs. At the same time, the volume of federal infrastructure grants declined, reducing the number of opportunities the Metropolitan Council had to exercise leverage over local housing performance through the review process. In the face of these changes, the Metropolitan Council pulled back on making local governments accountable for the low-cost housing they produced. There was no official policy statement to this effect—the council simply ended the practice. Third, the council stopped offering its zoning and development guidelines. The guidelines were never binding on any community, and no sanctions ever existed for deviating from the guidelines. Yet they did provide a standard against which local actions could be judged.

All that remains of the fair share infrastructure that was in place in the region at the start of the 1980s are the LUPA planning requirements. Communities are still required to have a plan that establishes the local share of regional needs for low- and moderate-income housing and an implementation strategy to meet that share. The low- and moderate-income housing elements of LUPA have been so thoroughly ignored during the past twenty years, however, that the Minnesota legislature created a new law, the Livable Communities Act (LCA), in 1995 to generate regional activity in the area of affordable housing. However, LCA establishes housing goals that are not based on need but reflect the existing level of affordability in subsectors of the region. Even these benchmarks, however, are routinely ignored by communities and by the Metropolitan Council in cases where they call for an increase in affordable housing (see Goetz 2000).

The original LUPA, passed in 1976, did not grant the Metropolitan Council any authority to force compliance with the low- and moderate-income housing elements of the statute. Lacking the authority to force compliance, the council never established a system for monitoring whether local zoning conforms to comprehensive plans. As a result, according to one council staffer, they “really [have] no systematic way of knowing that a plan was being followed or how it was being followed.” In fact, for the years following enactment of LUPA, the Metropolitan Council has not monitored cities to determine (1) if local zoning conforms to the approved plan; (2) if the land set aside for high density housing in the plan was, in actuality, set aside as high density; (3) whether the housing built on such land that was set aside as high density was actually affordable to families of low- or moderate-income housing; (4) whether communities have in place other practices that impede the achievement of low- and moderate-income housing goals; or (5) whether the amount of low-mod housing built met the goals set out in the fair share allocation (for those years when the council was providing allocation numbers). There is,

in essence, no centralized information on whether or how communities have followed up on the fair share plans created as a result of LUPA.

Comprehensive Planning for Low- and Moderate-Income Housing

There were three distinct waves of planning by Twin Cities communities during the past twenty-five years. The first wave began when LUPA was created, lasted until 1982, and includes, for most communities, the first plan submitted pursuant to LUPA. The second wave covers the years from the mid-1980s to the mid-1990s. There are very few plans from this wave. Most communities simply continued to operate under the plans approved during the first wave. The third and final wave begins in 1995, the year LCA was passed and provided a different framework for establishing local housing plans.

Declining Commitment to Meeting Regional Housing Needs

LUPA language suggests that to identify a community’s share of the metro need for low- and moderate-income housing, the comprehensive plan must make reference to regional needs or, if not explicitly to regional needs, to the local share of regional needs. The first round of plans meet this requirement by referencing the fair share allocation established by the Metropolitan Council. Almost without exception, the plans we reviewed from this era identified the city share of regional low-mod needs. Furthermore, the plans indicate an acceptance of the fair share methodology. Some plans even indicate that the regional allocation system was the best way to determine local needs. The third round of plans, however, just as overwhelmingly does not meet this requirement. As the Metropolitan Council halted its practice of identifying the local share of the regional need, the local planners failed to institute their own efforts. There is not a single plan submitted later than 1990 that we reviewed that identified local share of regional low-mod housing needs. Instead, these plans rely on LCA-related goals negotiated with the Metropolitan Council that are neither low-mod in nature nor based on need.

Emblematic of the shift in planning priorities among suburban communities is the case of south suburban Apple Valley. In 1979, Apple Valley’s plan specifically acknowledges the superiority of a regional approach to defining housing needs.

The need for low and moderate income housing within Apple Valley must be identified on a regional basis because Apple Valley is a suburb within the Minneapolis/Saint Paul Metro-

politan area and there is nothing of particular significance within the community that would cause it to stand apart from regional considerations. (City of Apple Valley 1979)

The Apple Valley plan of twenty years later reads, “the City is in the best position to determine the most responsible option for meeting the future needs of Apple Valley rather than the Metropolitan Council, especially as it relates to residential densities” (City of Apple Valley 1999)

Interviews with planners from our sample communities indicate that about one-half (incorrectly) regard the LCA goals as the working statement of low-mod housing needs in their cities. With the exception of only two communities, none of the later plans we reviewed identify existing or projected low-mod housing needs at all. Interviews indicate that most planners in our twenty-five communities have shifted their vocabulary about low-cost housing from “low-mod,” which is typically used in reference to subsidized housing, to “affordable,” which is the term of use in LCA. When asked what their working definition of “low- and moderate-income housing” was, more than two-thirds referred to the LCA guidelines for “affordable” housing. One respondent indicated that his community used the LCA affordability guidelines even though they are “a joke” because they are so high. In general, it is clear that the current wave of comprehensive plans violates LUPA in that there is typically no calculation of local low-mod needs, there is no calculation of regional needs, and there is no attempt to identify the local units’ share of regional needs.

Plans from the first wave typically list possible subsidized housing programs from all three levels of government—local, state, and federal. While this represents in many ways the easiest statement to make in the implementation section (it merely obligates the locality to investigating the use of existing subsidy programs), during the last wave of plans, most communities fail to mention programs from even two of the three levels of government. One city official attributes this to a changed political environment, saying, “more programs were available in 1981 when people wanted to change the world. . . . Today, there is the idea that government shouldn’t be involved in private developments with public monies, so there is less public support.”

There is even a greater disparity between first-wave and third-wave plans when one looks at the various local initiatives

Table 2.
Potential regulatory relief mentioned in comprehensive plans.

<i>Local Regulatory Actions to Facilitate Low-Mod Housing Listed in Comprehensive Plans</i>	<i>First Wave^a</i>	<i>Percentage</i>	<i>Third Wave^b</i>	<i>Percentage</i>
Rezoning	4	16	3	18
Increased densities	14	58	3	19
Planned unit development	18	75	9	56
Decreased square footage requirements	14	58	2	12
Streamlined permit approval	2	8	0	0
Reduction in fees	4	16	1	6
Reduced setbacks	6	25	1	6
Manufactured housing	7	29	1	6
Nondiscrimination	4	16	1	6
Tax increment financing	2	8	4	25
Other	10	42	3	18
Average	3.54		1.75	

Source: Authors’ review of comprehensive plans.
a. First-wave plans were reviewed for twenty-four communities.
b. Third-wave plans were reviewed for sixteen communities.

Table 3.
Description of multifamily or high-density acreage in comprehensive plans.

<i>Type of Acreage Information in Plan</i>	<i>First-Wave Plans</i>	<i>Third-Wave Plans</i>
No information provided	6	3
Multifamily/high-density acreage provided	19	14
Developed acreage only	2	0
Undeveloped acreage only	2	0
Total acreage only	10	3
Developed and undeveloped acreage	5	11
Total	25	17

Source: Authors’ review of comprehensive plans.

listed. Table 2 lists the number of communities that mentioned each of eleven different local regulatory steps in first- and third-wave plans. For example, rezoning as a means of facilitating low-mod housing was mentioned by four of the community plans we reviewed from the first wave (or 16 percent) and three plans from the third wave (18 percent). While there is essentially no difference on that item, there are large differences in many of the others. Fifty-eight percent of the first-wave plans mentioned increasing densities and reducing square footage requirements, compared to just 19 percent and 12 percent of third-wave plans. All of the items except two show up in first-wave plans more frequently than in the latest round of plans. These techniques as a group were twice as likely to appear in first-wave plans than in the current plans.

Plans also vary in how they describe the amount of developed and undeveloped acreage designated for multifamily or high-density housing (see Table 3). In the first wave of plans, only five communities specifically listed their developed and undeveloped acreage for multifamily or high-density use. Ten communities gave only their total multifamily or high-density acreage, and six of the cities actually provided no information whatsoever. However, there was substantial improvement by the third wave of plans, when eleven cities were able to describe the vacant and built-up land designated, possibly because of the use of Geographic Information System technology.

From Planning to Action: Carrying Out the Community Plans

The successful implementation of a fair share housing program requires initiative on the part of both local planners and developers. Local community planners must monitor low-mod housing production, change their planning regulations to promote production, educate their ever-changing city councils about implementation, and if possible, take active steps to attract low-mod housing. Developers must navigate a sea of obstacles to low-mod housing production. The following examines the extent to which planners and developers followed through on LUPA.

Planner Follow-Through

Although this seems a fairly minimal obligation on the part of communities involved in meeting housing needs, two-thirds of the communities in our sample do not have an inventory or database on the amount of low- and moderate-income housing they have. Ten of these communities indicated that the county housing authority would have information on the number of low-mod units within their jurisdictions. Of those that did keep track, three have been doing so only since LCA was created in 1995, and only one indicated that its list went back as far as the mid-1970s, when LUPA was initiated. Another community planner reported that her city had only eight subsidized units, and keeping track of them did not require anything as formal as an inventory or database.

The cities we studied also showed little inclination to use various zoning and regulatory mechanisms to promote low- and moderate-income housing. We asked our interviewees whether any of a series of specific techniques was in place in their communities for enhancing the production of low- and moderate-income housing. Table 4 shows that most of these techniques show up in only a minority of communities.

Table 4.
Reported use of regulatory mechanisms to promote low-mod housing among sample communities.

<i>Techniques to Promote Low-Mod Housing</i>	<i>Number of Communities</i>	<i>Percentage</i>
Planned unit development law allowing smaller lots, density bonuses, and so forth	17	71
Zoning variances	5	21
Density bonuses	3	12
Expedited approval for low-mod housing projects	0	0
Reduced fees	5	21
Reduced lot sizes allowed	10	42
Allowance of accessory apartments	12	50
Set asides for low-mod housing	7	29

Source: Interviews with community planners.

Most of the communities we studied had in place a planned unit development (PUD) ordinance allowing negotiated lot sizes and densities between developers and city officials. The next most common technique, reported by half of the interviewees, is an allowance for accessory apartments. Less than one-half of the communities allow smaller lot sizes. Seven communities report that they use set-asides, in which developers are told that a certain percentage of units developed must be built to low-mod income levels. Three communities each report using five of these eight techniques, the most among the sample. Another four cities report using four. On the other end of the spectrum, two communities use none of these, while two others report using only one. The mean across all communities we studied was slightly less than two and one half.

Many communities followed through on regulatory changes described in their comprehensive plans, such as reducing lot widths, increasing the maximum units per acre in townhome districts, eliminating the minimum floor area requirements for single family, and eliminating garage requirements for multifamily housing. One community changed its zoning to provide for a greater range of density (up to thirty units per acre is now allowed in high-density areas), and another community fast-tracked developer proposals for modest-cost housing and also increased mobile home densities.

More frequently, however, communities simply failed to carry out specific zoning and regulatory changes intended to facilitate lower-cost housing. For example, one 1980 plan stated that the community would establish an ongoing subcommittee to make periodic (at least every three years) reviews of the city's housing program and to make recommendations for change as necessary to the city council and planning

commission. The committee was never established. Our interview-contact commented, "I couldn't have told you that was in the plan. Sounds like one of those great consultant ideas."

Part of the problem with follow-through stems from lack of coordination with the city council. A housing plan adopted in one year is not necessarily embraced by the city council in subsequent years. One of our informants said it was typical for her city council to participate in workshops to help develop the comprehensive plan. "The problem is that the council members that may have worked on these things are not necessarily the same ones as we have today." Since staff find it difficult to keep council members current on comprehensive plan contents, council support for the plan often wavers.

But changeable political support is only part of the story. Many of the regulatory mechanisms used are actually ineffective in increasing low-mod housing production. For example, several communities passed PUD ordinances as their plans suggested they would, but our informants clearly indicated that they had no impact on low-mod housing development. Similarly, respondents indicated that some costs had been reduced by the measures taken by the city, but the total amount of cost reduction was insignificant.

Most critically, planners seem unfamiliar with not only the LUPA requirements, as discussed previously, but also their own comprehensive plans. In one community, our respondent, the city's top housing and community development official, was surprised to hear that the 1999 plan states that his city will "notify developers of single family homes that about 8 percent of homes in their developments should be affordable to lower-income homebuyers; provide any zoning or regulatory concessions needed to facilitate this." In this case, the policy is just another "great consultant idea" that was never seriously entertained by the community, despite being in the comprehensive plan.

Planners also seem unfamiliar with the difficulties associated with building low-mod housing generally. Rarely had the communities we studied taken active steps to create low- and moderate-income housing: only one-third of the cities regularly solicit proposals for low- and moderate-income housing. A slightly lower percentage has ever acted as a developer of low- and moderate-income housing. In only two of the cities we examined do officials both solicit proposals and actively develop low- and moderate-income housing.

Given a list of potential barriers to low-mod housing development, city planners were hard-pressed to identify them as limitations on production (see Table 5). The list of regulations we developed for the purposes of the interviews is certainly not an exhaustive list of regulatory factors that might limit low- and moderate-income housing development. Nor are these necessarily the most prevalent. Nevertheless, they represent possible

Table 5.
Regulations limiting low-mod housing development.

<i>Regulation</i>	<i>Limits</i>		<i>Total</i>	<i>%</i>	<i>n</i>
	<i>Somewhat</i>	<i>Very Much</i>			
Lot size requirements	10	5	15	68	22
Amount of land zoned for high density	5	6	11	48	23
Prohibition on accessory units	2	5	7	33	21
Limits on manufactured housing	5	2	7	33	21
Subdivision regulations	4	2	6	26	23
Local building material requirements	6	0	6	26	23
Requirement for code enforcement with rehabilitation	4	1	5	26	19
Permit process	3	0	3	13	22

Source: Interviews with community planners.

obstacles faced by suburban communities attempting to increase low-mod housing development. Sixty-eight percent of the suburban officials (fifteen out of twenty-two) indicated that lot-size requirements limited affordability at least somewhat, while just less than half of the officials agreed that the restricted availability of land zoned for high density also limited low- and moderate-income housing development. None of the other regulations was mentioned by more than one-third of the officials with whom we talked.

In summary, planners generally failed to take initiative in monitoring and promoting low-mod housing production through either regulatory or political means. In such a climate, how do developers perceive the barriers to producing housing for low- and moderate-income households?

Developers' Views of Obstacles

Private-sector developers specializing in low-mod housing development do not find it easy to build low-cost housing in the Twin Cities suburbs. Their views of the obstacles to development are similar to those of public officials, although they were more unanimous in their criticism of planning regulations. The availability of land zoned at higher densities is of major concern to all of the developers we spoke to, and this land availability is directly linked not only to the acreage zoned but also to the specifications in the ordinance that establishes the number of units per acre. When asked to identify the two most important factors, availability of land was ranked number 1 most often. A variety of other factors clumped together in second place: zoning regulations, cost of land, and the availability

of financing to put a feasible project together. One developer stated that “the most difficult [obstacle] is the environmental regulations, especially requirements to preserve wetlands [and] trees and provide buffer zones. These regulations decrease the effective use of the property.”

The most frequently mentioned obstacle to getting a project approved was neighborhood opposition, suggesting that politics may play an important role in the failure to build modest-cost housing. In several instances, the developers report record turnouts at public meetings, distribution of flyers and leaflets urging neighbors to come and oppose a proposed development, and one instance of the developer’s getting threatening phone calls at home. “Nitpicking the project design,” as one developer put it, has been one of the neighborhood strategies, together with opposition to rental units. Active opposition of neighbors is so prevalent that developers expressed surprise when a development of theirs did not attract vocal opposition. One developer reported that when he arrived at the city council meeting for the vote on his development, the absence of a crowd led him to believe he had shown up on the wrong night.

Another possible major obstacle would be resistance from city staff or elected officials. Almost all of the developers, however, found city staff members supportive and helpful in pursuing projects. In some instances, assistance in project design was provided to make the development fit better into the neighborhood; in two instances, the staff supported use of tax increment financing funds; and in one community, staff actually helped the developer find an appropriate site. According to one developer, city staff “pushed on the Met Council and lobbied the Minnesota Housing Finance Agency for tax credit designation. . . . MHFA tax credits was critical . . . couldn’t have done it without them.” Another developer credited city staff with trying to “help with elected officials and countering neighborhood opposition.”

Typically, however, elected officials were not as uniformly supportive of the projects proposed by these developers. Comments on support from elected officials were more tentative, ranging from “quieter support,” “passive support,” and “generally supportive” to instances of opposition when a project was proposed in a council member’s district. Support from one mayor was specifically cited as extremely helpful. In one city, officials were anxious to support the project because the city was hoping to sell a city-owned piece of property.

Developers are well aware of the lack of receptivity of communities to affordable housing. Few of them, if any, relish the opportunity to be reviled by neighbors at a public meeting. Furthermore, most developers can ill-afford to devote time and resources on projects that are blocked by local governments. Therefore, developers select their cities carefully in an

attempt to minimize costs associated with projects that die. As one said, “we don’t bother to go out and work in communities where we are not wanted.” What results is a cycle in which the difficulties of low-mod housing development become self-perpetuating. Developers avoid certain communities until a point is reached where the more receptive communities become concerned that they already have too much affordable housing. Then these communities become less receptive, and the pool of eligible and willing communities shrinks.

The Fading Relevance of LUPA

Even among those local officials who knew of LUPA and what it was meant to be, there was a fairly widespread sense that it does not play a large role in what actually happens in residential development. Several respondents said their efforts to address low-mod housing and the amount of such housing built in their communities had nothing to do with LUPA. “It wasn’t LUPA; it was economics,” according to one official. Another maintained that LUPA had no teeth when it came to low- and moderate-income housing. “The comp plan can reflect the (development) guidelines, but if there is no political will, they are just words on a page,” said one planner. Another said, “LUPA is dated and it doesn’t have much discussion as to how cities are supposed to make affordable housing work. Other things contribute to getting affordable housing done in this community.”

One planner maintained,

From a planning or technical standpoint, affordable housing is easy—it’s just the politics and the values behind the regulations and how the council feels about those. What is lacking is the political courage. Affordable housing gets done if there’s money and the political willingness to do it.

Several other officials echoed these statements, arguing that what is most useful in promoting low- and moderate-income housing is a good set of tools to accomplish such development and the political will to see it happen.

That the law has not been adequately implemented for a twenty-year period obviously contributes to the sense that many officials have that it has been irrelevant. It was made irrelevant by being largely ignored. Whether it is inherently irrelevant is a more difficult question to answer.

Tracking Land Set Aside for High-Density Housing

The evidence discussed so far suggests that both the Metropolitan Council and the individual communities failed to

implement LUPA, in terms of identifying local share of regional need and adopting and implementing measures to promote low- and moderate-income housing production. But there is an additional explanation possible for the lack of affordable housing in the region. Perhaps the land originally set aside for high-density development has been redesignated for lower-density residential use or other uses altogether.

To address this question, we examined what actually happened with high-density land during a twenty-year period from 1980 to 2000. We began by identifying land that had been set aside for high-density residential uses in the first wave of comprehensive plans by our twenty-five sample communities; where comprehensive plan maps were unavailable, we used zoning maps. This exercise produced a database of 7,463 parcels (8,590 acres) of land set aside as high density in the first-wave plans.

An examination of current zoning designations revealed dramatic changes during the twenty-year period. As Figure 2 shows, overall, approximately 38 percent of the acreage designated for high-density development had been redesignated for low- or medium-density residential development. An additional 16 percent had been redesignated for PUDs at indeterminate densities. Seventeen percent of the land is now zoned for nonresidential use. Only 22 percent of the acreage has remained high density or has been redesignated for higher-density development.

The extent of redesignation differs substantially across communities. Overall, just eleven cities account for 95 percent of down-designated acreage. Interestingly, communities that have changed their designation to accommodate lower-density development are significantly more likely to be in the lower income group of communities ($p < .10$). This could reflect efforts to catch up in the exclusion game by reducing opportunities for more low-cost housing. Likewise, just six communities account for most of the redesignation to PUD or nonresidential use. Some communities have been vigilant about protecting their high-density designated land, while others are more flexible about allowing changes.

With such flux in the designation of the land these communities set aside in the early 1980s for high-density housing, how much did the capacity for housing change? For 6,500 acres of this database, we were able to ascertain current allowable densities.

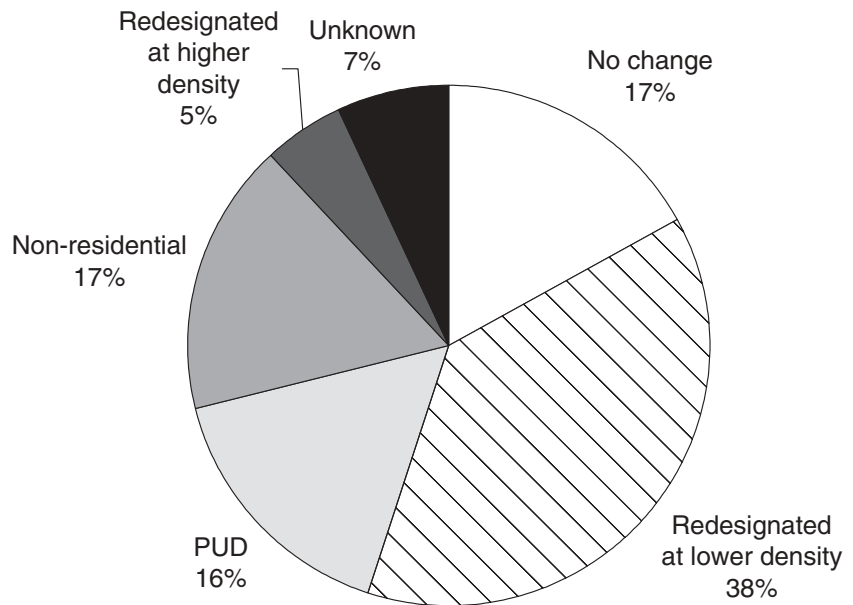


Figure 2. Current designation of the acreage originally designated for high-density development. Note: PUD = planned unit development.

Had this acreage remained high density, 104,733 housing units could have been built. But by 2001, these parcels of land would accommodate only 46,052 units, a staggering 56 percent reduction in residential development potential. (These calculations use the maximum possible units under the zoning designation.) This means a potential 58,681 units were lost on these parcels. In particular, some communities have changed their zoning or plan designation of this land quite extensively or perhaps never updated their zoning maps to conform to their comprehensive plans: just thirteen communities account for more than 99 percent of these lost units.

But just as high-density land can be rezoned to different uses, other land use types may be converted into high-density land over time. In fact, it is possible that in these communities, the amount of land converted from other categories into high-density residential use is enough or more than enough to compensate for the dramatic loss of high-density residential acreage documented above.

We were able to get information on the current number of acres zoned for high-density residential for twenty-three of our twenty-five communities. In these communities, there was a net loss of 17 percent of the original total high-density designated acreage (assuming that the original comprehensive plan designations corresponded to zoning designations). So the cities in the sample have been adding high-density land from acres that had been set aside for other uses.

What actually has been built on land designated for high-density housing? Field visits to a sample of 243 parcels

provided more reliable information on what happened to the high-density parcels. The site visits revealed that 55 percent of the high-density acreage (71 percent of the high-density parcels) actually had housing in 2001. Overall, 24 percent of the acreage was high-density housing, more than 90 percent of which was renter occupied. However, 30 percent of these parcels already had high-density housing on them by the time of the first-wave plan. This suggests that only a portion of the land originally set aside for high-density development was actually intended for future housing production.

Given the analyses above, it is possible to calculate the rate at which high-density land set aside in year 1 will yield affordable housing units in twenty years. We assume that there is some rate at which the redesignation of high-density land for low-density or other use occurs. We estimate that to be 55 percent, based on the experience of these twenty-five communities between 1980 and 2001 (excluding land with the same, upzoned, or PUD designations). We adjust that, however, to account for land originally set aside for other uses that is rezoned or upzoned into high-density residential land. Thus, the adjusted rate of zoning change is a 17 percent reduction in acreage over time. We then make an additional adjustment to account for the percentage of land zoned for high density that actually has housing on it. We have found this to be 24 percent of the acreage in our twenty-five communities. Another adjustment is necessary to account for the problem that much of the land (30 percent) designated for high-density development had already been built at high densities.

We make one final adjustment to the figures. Using the rents charged by other providers of subsidized low- and moderate-income housing as a guideline, we were able to estimate that only 33 percent of the new housing units on high-density land was low- and moderate-income housing. Thus, we argue that given the experience of these twenty-five high-growth communities during the period from 1980 to 2001, it is possible to estimate the likely production of high-density housing units by $X = a \times .83 \times .24 \times .7 \times .33$, where a is the number of acres set aside for high-density housing in year 1 and X is the estimated number of acres on which new, low- and moderate-income, high-density units will have been built during a twenty-year period.

Thus, in practice, for every 100 acres of land set aside for high-density residential development in 1980 by the communities in our sample, roughly 5 contained new, low- and moderate-income, high-density housing in 2001. To develop a given number of acres as high-density, low- and moderate-income housing during a twenty-year period, the cities in our sample had to designate twenty times that number for high density in their initial land use plans. This suggests that even had the Metropolitan Council and the cities administered LUPA faithfully, they would have failed to provide the local share of regional

need for low- and moderate-income housing. That so much high-density acreage has been redesignated for different density and use suggests both that it is easy to do and that there are perceived market pressures for development at lower densities and for different uses. If most of the land designated for high-density use in comprehensive plans will not result in new high-density housing production, LUPA cannot succeed even with compliance.

Whither Fair Share?

The new organizations [councils of government] often found it difficult to define and implement regional policies, in large part because their voluntary governance structures tended to reinforce existing arrangements at the local level. (Barbour and Teitz 2001, 16).

This study has shown that the twenty-five years after the passage of fair share housing legislation in Minnesota have resulted in minimal changes in either the planning or the implementation of the housing elements of municipal land use plans in the high-growth suburbs with most potential for housing development. Despite an initial burst of city compliance and Metropolitan Council enforcement, the 1980s and 1990s saw growing inattention to the LUPA statute. Indeed, neither the Metropolitan Council nor fast-growing suburbs in the Twin Cities region consider LUPA, and the fair share provision of low- and moderate-income housing generally, part of the comprehensive plan approval process today. There is not a single plan submitted within the past twenty years, in the twenty-five communities we reviewed, that meets the housing standards implied by LUPA. As it stands, the fair share housing statute serves simply to enable exclusion: on the books, the region is one of the few national models for the local provision of regional housing needs while in practice, it is readily ignored.

The failure of regional fair share policy can indeed be ascribed, in part, to politics. Beginning in the late 1970s, the state government, under both Republican and Democrat governors, showed little interest in regional planning, and the governors were sure to appoint Metropolitan Council members of like mind (Johnson 1998). As Orfield (1997) has documented, not only the central cities but also the inner-ring suburbs of the region began to change demographically in the 1980s with the influx of minorities and the increasing concentration of poverty. During the 1980s, areas of concentrated poverty tripled in the region (Orfield 1997). By the end of the 1980s, the core areas of Minneapolis had unemployment rates $2\frac{1}{2}$ times that of the region as a whole, and the Twin Cities had the sixth highest level of wealth disparity between central cities and wealthy

suburbs of the twenty-five largest metropolitan areas in the country (Metropolitan Council 1992). As the 1990s began, minorities in Minneapolis and St. Paul were more likely to live in poverty than were minorities in any other major metropolitan area in the country (Draper 1993). Violent crime and fear of crime escalated markedly in the late 1980s and early 1990s (Orfield 1997), leaving Minneapolis with a homicide rate that exceeded that of New York City by 1995. The public school systems in the two central cities had become close to 70 percent students of color, evidence of white, middle-class withdrawal both from the cities themselves and their public institutions. As the social and economic homogeneity that had been the foundation of almost two decades of regional problem solving began to disappear, with it disappeared the language of regional commitment to low-cost housing needs. In the absence of any political support—or pressure—from above (or below), cities and Metropolitan Council staff readily let LUPA compliance slide.

But perhaps more important were institutional changes in government funding for subsidized housing. The Metropolitan Council and LUPA were designed at a time when federal monies provided the sole support for most low- and moderate-income housing production in the region (and in the nation). But in the early 1980s, Housing and Urban Development endured dramatic budget cuts, totaling an 80 percent reduction in budgetary authority during a six-year period that reduced the availability of housing subsidies for local governments building low- and moderate-income housing. The decline in budget authority has been accompanied by a change in the form of housing subsidies from developer subsidies to vouchers. Moreover, the 1986 tax reform act changed the tax code to discourage further construction of multiple-unit buildings. The impact of these changes on the LUPA fair share model was exacerbated by the Metropolitan Council's equation of low-mod housing with subsidized housing. Even if there had been political support for LUPA implementation, cities would have been hard-pressed to develop their own subsidized housing, let alone find developers willing to bear the new transaction costs of affordable housing production. Councils of government and other regional bodies such as the Metropolitan Council were created at a time when federal money flowed readily for housing and infrastructure investment. This time of cutbacks and devolution to state governments has caught the cities unprepared to be entrepreneurs and has left the Metropolitan Council with fewer carrots and sticks with which to enforce its mandates. Although it is now tying some transportation funding to housing performance, the effects are likely to be weak in the absence of housing subsidies and given that the transportation network is nearly built out within the seven-county metropolitan urban service area.

Despite these financial and institutional obstacles to implementing LUPA, it is noteworthy that many communities—indeed, all but eleven—found it possible to build housing on land set aside or at least preserve most high-density designations for future development. This wide variation in implementation indicates, again, the weakness of the regional framework. But interviews also showed that many planners do not know the contents of their own comprehensive plans, let alone how to facilitate development of low-mod housing. Taken together, this suggests that the failure to implement LUPA consistently is due, in part, to the shortcomings of planning professionals. Compliance with LUPA would mean not only producing a housing element that technically meets LUPA requirements but also denying permits to developers seeking to downzone land set aside for high-density housing and proactively following up on comprehensive plan recommendations.

Do we need new regional institutions or a new regulatory framework? Although the Metropolitan Council seems incapable of flexible adaptation to the changing federal-state-local funding relationship, it could still play a useful role in monitoring LUPA compliance—if the right incentive structure is in place. A regional fair share housing policy needs to include not just low-mod housing production goals but outcome measures and new incentives for local governments to address regional concerns. As is now done in Oregon, new residential density mandates should require minimum, rather than maximum, densities. The state of Minnesota will need to overhaul its own disincentives for apartment construction, including its tax surcharge on rental housing. But even these incentives and oversight will fail in the absence of greater collaboration and local coalition building. Despite the interest of both for-profit and nonprofit developers in building higher-density housing, as well as the activity of legislators like Orfield, a grassroots constituency for regionalism—or low-cost housing—has not yet mobilized in the Twin Cities (Weir 2000).

Two of the findings here—the distinction between passive approaches to allow affordable housing to occur versus active attempts to produce it and the lack of any compliance mechanism—replicate the experience of other communities with regional housing efforts. The lack of actual low- and moderate-income housing production resulting from modest changes in the local regulatory system is reminiscent of the disappointment following the initial Mt. Laurel case in New Jersey. The New Jersey State Supreme Court in that case felt it necessary in subsequent decisions to make communities go well beyond passive barrier reduction to the active facilitation of affordable housing to meet specific regional goals. The lack of any compliance mechanism, as with California's regional housing planning system, ultimately reduces the entire process to a relatively

meaningless exercise. Beyond precluding action that might force communities to reduce barriers and promote low-mod housing, the lack of enforcement in Minnesota has resulted in a law that is so irrelevant that the regional body charged with oversight routinely ignores it, and some local officials subject to its requirements do not even know of it.

► Notes

1. Fair share programs, according to Listokin (1976), are designed to “improve the status quo by allocating units in a rational and equitable fashion. . . . [A] primary impetus for and emphasis of fair share is expanding housing opportunity usually, but not exclusively, for low- and moderate-income families” (p. 1). The term “fair share” does not imply equal share; indeed, there are a number of different criteria that might be used to devise a fair share formula including the need for affordable housing in various communities, the suitability of the land or local environment to housing development, and concerns about racial or income integration (Listokin 1976). “Fair share” refers to the general objective of increasing affordable housing opportunities throughout a metropolitan region. The cities of Dayton, Chicago, San Francisco, and Washington DC and others had brief experiments with fair share housing programs during the early 1970s.

2. Because the Minnesota Land Use Planning Act (LUPA) statute did not define the term *low- and moderate-income housing*, what the term has come to mean is itself evidence of how LUPA has been implemented by the Metropolitan Council and what impact it has had. In the years immediately following passage of the act, the Metropolitan Council associated the LUPA housing goals with federally subsidized housing. “Low-mod” was equated to the income eligibility levels under various federal housing subsidy programs. When those programs were dramatically curtailed, the fair share allocations were ended. In their place twenty-five years later are the Livable Communities Act goals for affordable housing using income limits that reach much higher than those applying to subsidized units.

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