

Municipal Responses to the Housing Affordability Challenge

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Presentation Outline

- History of Housing Affordability in the U.S.
- Examples of municipal responses to the housing affordability crisis
  - Zoning reform
  - Accessory dwelling units
  - Funding mechanisms

Pre-1900 “Affordable” Housing

- High percentage of renters vs. homeowners
  - Due to lack of federal mortgage insurance
- High percentage of rural vs. urban dwellers
  - Predominant forms of housing in urban areas: high-density detached and attached housing
- Low construction costs
  - Attributable to available materials, less building regulation controls
- Housing market not an investment vehicle
  - No REITs, securitization of mortgages, etc.
- Localized markets
- Social planning movements in late 1800s parallel rise of urban planning
  - Focused on improving living conditions in urban areas, namely in “affordable” forms of housing such as tenements
- Segregated living patterns (but not as much as you might think)

Planning and Land Use Controls

- 1916: first zoning ordinance in the nation (New York City)
  - Not the first land use regulation…
- *Buchanan v. Warley*, 245 U.S. 60 (1917)
  - U.S. Supreme Court invalidates Louisville, KY ordinance prohibiting "colored people" from occupying a dwelling on a majority white block, and vice versa
- 1922: Standard State Zoning Enabling Act
  - "For the purpose of promoting health, safety, morals, or the general welfare of the community…"
  - Regulation of population density, "character" specifically contemplated

Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)

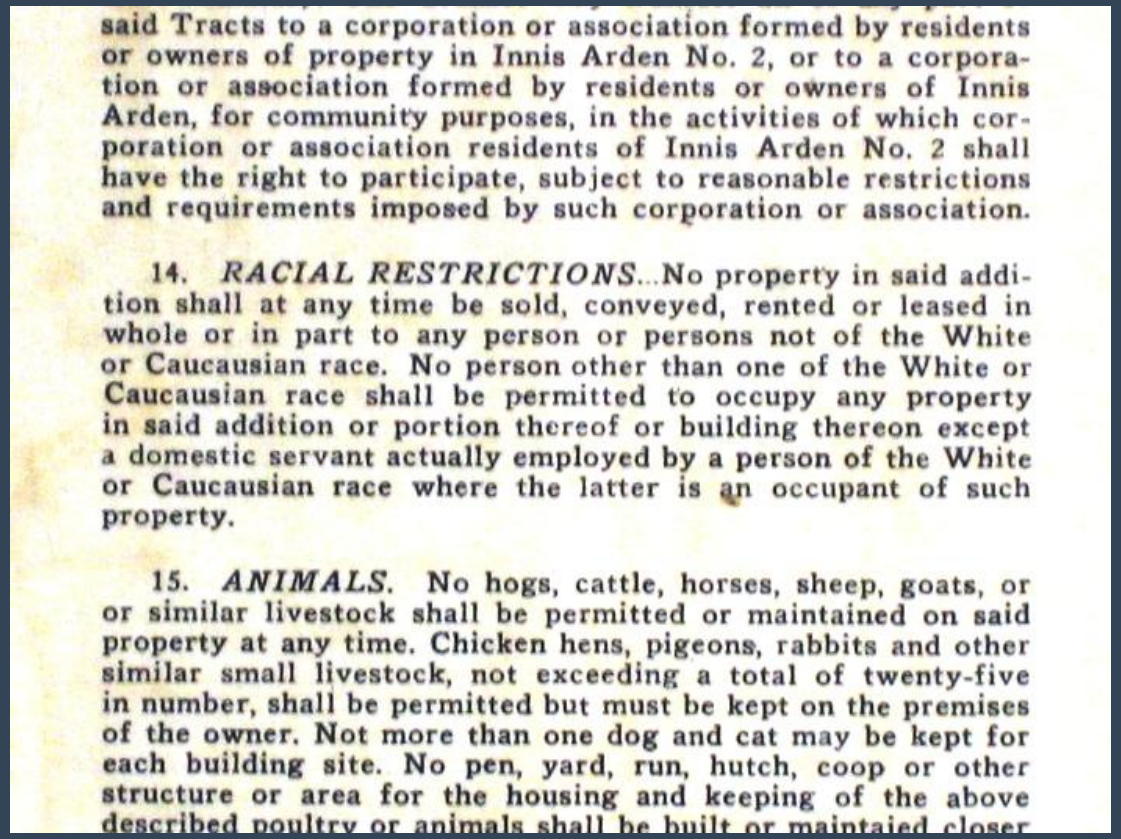
- Local zoning code contained use districts
  - Single-family residential, two-family residential, multi-family residential, and handful of commercial and industrial districts
- Zoning upheld as a constitutional exercise of the police power reserved to states (and by extension, local governments)

New Deal Housing Market Interventions

- National Housing Act of 1934
  - Created Federal Housing Administration
  - Insurance and loans to financial institutions to avoid foreclosures
  - Mortgage insurance
- Housing Act of 1937
  - Subsidized local public housing agencies

Meanwhile, in the private sector…

- *Shelley v. Kraemer*, 334 U.S. 1 (1948)
  - U.S. Supreme Court invalidates state enforcement of private racially-restrictive covenants as violating Equal Protection Clause



said Tracts to a corporation or association formed by residents or owners of property in Innis Arden No. 2, or to a corporation or association formed by residents or owners of Innis Arden, for community purposes, in the activities of which corporation or association residents of Innis Arden No. 2 shall have the right to participate, subject to reasonable restrictions and requirements imposed by such corporation or association.

14. *RACIAL RESTRICTIONS*...No property in said addition shall at any time be sold, conveyed, rented or leased in whole or in part to any person or persons not of the White or Caucausian race. No person other than one of the White or Caucausian race shall be permitted to occupy any property in said addition or portion thereof or building thereon except a domestic servant actually employed by a person of the White or Caucausian race where the latter is an occupant of such property.

15. *ANIMALS*. No hogs, cattle, horses, sheep, goats, or or similar livestock shall be permitted or maintained on said property at any time. Chicken hens, pigeons, rabbits and other similar small livestock, not exceeding a total of twenty-five in number, shall be permitted but must be kept on the premises of the owner. Not more than one dog and cat may be kept for each building site. No pen, yard, run, hutch, coop or other structure or area for the housing and keeping of the above described poultry or animals shall be built or maintaied closer

Source: WOSU Public Media

Continued Federal Housing Development

- Housing Act of 1949
  - Financing for slum clearance and urban renewal
  - Increased mortgage insurance
  - Federal funding to construct more than 800,000 housing units



Berman v. Parker, 348 U.S. 26 (1954)

- Slum clearance upheld as a constitutional exercise of Fifth Amendment eminent domain authority
- Aesthetic regulation deemed a constitutional exercise of the police power: "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

Civil Rights Era

- Housing and Urban Development Act of 1965
  - Formation of U.S. Department of Housing and Urban Development
  - Expansion of funding
  - Rent subsidies, housing rehabilitation grants, grants to local governments

Civil Rights Era

Fair Housing Act of 1968 (and 1988 amendments)

- Prohibits housing market discrimination on basis of:
  - Race, color, religion, sex, handicap, familial status, or national origin
- Prohibited discrimination
  - Refusal to sell or rent
  - Services
  - Lending
  - Brokerage



More Federal Housing Grants

- Nixon Administration funding freeze in 1973
- Housing and Community Development Act of 1974
  - Section 8 housing vouchers
  - Grants to states and local governments under Community Development Block Grant program
    - Block grants = less federal oversight

Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)

- U.S. Supreme Court sustained local ordinance defining "family" as related by blood, marriage, or adoption or up to 2 unrelated people

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. […] The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Today's Housing Market

- Continued pro-homeownership policymaking
- Highly urbanized population and investment
  - Affordability concerns largely concentrated in most economically productive U.S. metro areas
- High concentrations of wealth in housing
  - High-wealth individuals/families, investors
  - Investment vehicles in housing market
- Globalized real estate market
- High construction costs
- New housing subject to significant regulation
- NIMBY opposition to new development
  - Driven by race, class, property values, etc.

Withdrawal of Federal Involvement

- Decline in federal CDBG program investments
  - $11B in 1975 → $6B in 1986 → $3B in 2014+
- Low Income Housing Tax Credit program
  - Enacted as part of 1986 Tax Reform Act
  - Provides tax credits for private investments in low- and moderate-income housing
- HOPE VI program
  - Commenced in 1992
  - Redevelopment of public housing with New Urbanist principles
  - Phased out by 2010

Affordable Housing Without Federal Funding

- Federal grant programs (CDBG, HOME, etc.)
  - Continue to support some housing development efforts
- State and local funding programs
  - Local taxes support local housing efforts
- LIHTC to provide low- to moderate-income housing
  - Investment in tax credits
- Other tax/fiscal tools
  - Urban renewal, TIF
  - Tax rebates, infrastructure development, etc.
- Private sector grants, social impact investments
- Private sector production
  - Inclusionary housing ordinances: require a percentage of units to be set aside as affordable
- Loosening zoning restrictions

Addressing the Housing Affordability Crisis

- Tenants' rights reforms
- Construction defect reform
- Exactions on developers
- Zoning reform
- Land trusts and other financing tools
- Funding shortfalls

Responses to the Crisis: Single-Family Zoning Reform

- Minneapolis
  - 2014: accessory dwelling unit ordinance approves ADUs
  - April 2017: City Council adoption of 2040 Comprehensive Plan
  - December 2019: Zoning code amendment to make one-, two-, and three-family dwellings by-right uses in residential districts
- Other cities that have implemented or are presently considering single-family zoning reform: Portland, Sacramento, San Jose, Berkeley
- State level single-family zoning reform efforts: Oregon (passed), North Carolina (under consideration), Connecticut (under consideration)

Responses to the Crisis: Accessory Dwelling Units

- Seattle
  - 2019: Zoning changes to allow ADUs in single-family neighborhoods
- State-level ADU efforts: California (passed), Washington (passed), Connecticut (under consideration), North Carolina (under consideration)

Responses to the Crisis: Funding and Fees

- Dedicated housing funds
  - Example: Boulder, CO
    - Fund collects cash-in-lieu on projects that do not provide affordable housing
  - Other models
    - Local taxes (Vancouver, WA), linkage fees (Denver, CO), tax subsidies/abatements
- Fee reductions
  - Permit fees, exactions/impact fees, etc.

Questions and Answers

Contact information:

Brian Connolly
Otten Johnson Robinson Neff + Ragonetti, P.C.
950 17th Street, Suite 1600
Denver, Colorado 80202
(303) 575-7589
bconnolly@ottenjohnson.com