The Pros and Cons of Mandatory Inclusionary Zoning
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Introduction

- appreciate the opportunity of speaking at today’s housing forum

- in addition to speaking today as a builder of homes throughout the Twin Cities, I am also offering the perspective of the Builders Association of the Twin Cities, the Builders Association of Minnesota and the National Association of Home Builders

- collectively these organizations and their members account for the majority of new housing that is built in the United States on an annual basis

- our membership fully embraces the public policy goal of working towards ensuring that all Americans are appropriately housed – whether it be in ownership or rental housing

- our organizations have adopted policies dedicated to attempting to make all housing as affordable as it can be

- we do recognize that certain members of society are not currently appropriately housed – the homeless, those residing in transitional housing, living in substandard or crowded conditions or those who may be paying too much of their income on the consumption of housing

- I believe that society is increasingly accepting the proposition that all should be appropriately housed and as such society has the responsibility or obligation to bring forth the necessary resources to work toward the meeting of this goal. Yet, there does not appear to be a universal public policy and resource allocation to support this goals. INSTEAD …

- the debate surrounding inclusionary zoning strikes to the very heart of this proposition and fails. Current expressions of inclusionary zoning unfairly and inequitably transfers a goal of society to a selected sub-set of the population

- to ask few to assume the obligation of the many is antithetical to the nature of American society

- society, if housing is truly viewed as a necessity, must collectively and not selectively support this activity
during the time that I have been given I want to touch upon three distinct areas
  ➢ why mandatory inclusionary zoning is not good public policy or an effective tool;
  ➢ the lack of a legal basis for mandatory inclusionary housing in Minnesota; and,
  ➢ alternatives.

Why?
  ➢ the suggestion is that mandatory inclusionary zoning will result in the production of the affordable housing units that are needed on an annual basis
  ➢ the suggestion that inclusionary zoning regimes should be triggered whenever something is being sought from a city
  ➢ the suggestion that a model can be developed which ensures financial feasibility, including a fair profit to the builder
  ➢ collectively these three notions represent a tool that does not exist nor has it delivered the quantity of affordably priced housing in a way that maintains the economic viability of the housing business
  ➢ the form of inclusionary zoning being advocated would represent an unwarranted intrusion into the market, distorting and skewing critical elements
  ➢ the approaches that I have seen across the country impose inclusionary zoning without a parallel set of measures to ensure economic fairness, meaningful offsets, unconditional political support, market relevance and flexibility, and ongoing administrative support
  ➢ instead of being a fair and balance public policy, examples are rather draconian and simply impose the requirement of the builder to provide a certain percentage of new housing units at a specific price point. Rarely is there the appropriate offsets to eliminate the costs, the cross subsidy (where one party pays the costs of another without compensation) imposed by inclusionary zoning
  ➢ for example:
    ➢ 50 unit development
    ➢ 20% inclusionary zoning requirement
    ➢ 40 market rate housing units, 10 inclusionary housing units
    ➢ market price of $200,000
    ➢ inclusionary housing units targeted to the 60th income percentile of a price of $150,000 – a $50,000 cross subsidy per unit
    ➢ total cost of cross subsidy of $500,000 or +$12,000 per market rate housing unit
few models that I have seen propose meaningful concessions to offset the total cost of inclusionary zoning, instead the consumer of market rate housing is asked to pay more for the cost of providing subsidized housing units

the strange thing about current expressions of this policy is that the result has been an increase in the overall cost of housing to a large segment of the population

the Housing Preservation Project naively states that inclusionary zoning measures can be enacted ensuring financial feasibility while providing a fair profit. How? What specifically will be provided to eliminate the identifiable cross subsidy? How are benefits calculated? Are all concessions coming from one municipality despite affordable housing being a regional benefit? What if concessions cannot be made to equal the amount of the cross-subsidy?

it is fine in theory to develop a model, but without specific guarantees it can be an extremely heavy handed tool. Further does it make sense that all housing projects are candidates for inclusionary zoning measures? Million dollar subdivisions. Also does it make sense to require the production of inclusionary housing units in municipalities that are not proximately located and supported by the full range of support services?

what constitutes a fair profit? Who decides this? On what basis? And, according to what standards? (cutting profit in half for affordable units – how is this maintaining financial feasibility?)

let’s be honest inclusionary zoning is not about financial feasibility it is about income redistribution. Advocates don’t really care about economic fairness and are motivated to shift the burden of the cost to others who they contend are more able to assume the added cost.

some will argue that concessions can be provided to eliminate the full amount of the subsidy, i.e. density bonuses, reduced fees and charges, accelerated approvals, lesser standards, etc….

political support – the question can be asked as to whether there is the desire or fortitude on the part of elected representatives to support and advocate for affordable housing. While many elected representatives talk positively about encouraging affordable housing when push comes to shove there is a reluctance to provide all the necessary support. If an inclusionary zoning regime were to be enacted the question could be asked as to whether cities would be prepared to provide the necessary concession to eliminate the cross subsidies. Hypocrisy

market relevance and flexibility – many of the inclusionary initiatives are enacted without balancing them against what is happening in the marketplace. To suggest that it is only new housing that is considered ignores a significant and substantial part of the market. It is widely recognized that the most affordable housing is
already on the ground, yet many inclusionary housing initiatives do not recognize this fact. Nor is there any adjustment made for the prevailing conditions within the market. Affordability index. Filter theory of market connectedness.

- administrative support – both at the front end and on an on-going basis. Commitment on the part of regulatory authority to implement the requirements and maintain the program for the longer term.

- voluntary vs. mandatory – There is no evidence to suggest that voluntary measures are not working. In fact, anecdotal evidence from elected representatives from the SE metro indicate just the contrary. This is the fairest and most equitable approach. It ensures that financial fairness is a central part of all discussions. Eliminates the heavy handedness of have a mandatory program without the guarantees. Voluntary has not worked as well as it could because in some cases there to provide the necessary concessions to eliminate the cross subsidy.

- look at the risk – if measures are enacted that alters the business environment and fails to guarantee financial feasibility this may chase individuals from the industry. If this happens who will build the housing that will be needed. Failure to balance supply and demand may have unintended consequences. The public and non-profit sector is not equipped to step in and fill the void.

- the bottomline lines is that theory or principles of inclusionary zoning are understood – the “thou shalls” – but what is missing are the precise details

**Legal**

- disagree with the Attorney General’s opinion

- strict constructionist, express vs. implied authority

- tortured interpretation on the part of the Attorney General

- to suggest that Minnesota statute ss. 462.358 provides the authority suggested by the AG is a stretch, particular in light of the language of the 2002 statute. It is my belief that specific language touching squarely upon inclusionary zoning as a voluntary measure trumps general language

- we clearly have a difference of opinion that may have to resolved in the courts

- without a clear legal basis an inclusionary zoning regime aggressively applied and without the necessary safeguards could be argued to represent a taking and therefore at odds with the US Constitution (5th amendment)

- I am sure that the argument will be made that municipalities are legally compelled to provide a targeted number of under the under the Land Planning Act and The
Livable Communities Act require specific measures – like inclusionary zoning. This is nonsense. What is required by the Metropolitan Council is for cities to adopt policy measures to ensure the production of affordable housing.

Alternatives

- focusing on how to make housing as affordable as it can
- if we concentrate on lowering the overall cost of housing affordability will become less of a concern and assistance dollars will go that much further
- the plain fact is that housing has become too expensive, why? Unwarranted escalation in the cost of factors – land, labour, materials, and regulation
- policy makers and all involved in the industry are doing a disservice by not aggressively making decisions that minimize costs
- a double standard – talking about the importance of making housing affordable yet making decisions that work in the opposite direction
- land cost – adequate supply to moderate demand pressures, not just in time
- labour – exclusivity
- materials – substitutes, free trade
- regulation – at all levels of government no one is really assessing the cost/benefit of proposed regulation on the affordability of housing, except the industry and its views are given short shrift or dismissed outright as being self serving
- mortgage finance environment – the sub prime/foreclosure crisis has cause significant change and uncertainty within the financial community. There has been a dramatic change to mortgage programs offered by the market, to the “rules of the game” and to the processes to be followed. The upshot of the change has been that financing certain individuals within society has become very difficult and more expensive. Notwithstanding some very affordable prices for housing today financing for some will not be available. Unfortunately, this impacts many of the individuals who are needing the most affordable housing. Rather to continue to concentrate on supply considerations, what is being done on the part of the advocacy community to ensure meaningful financing reform?

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