

**Regulations and Housing Development:
What We Know and What We Need to Know**

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Executive Summary

Informed public debate concerning the issue of regulatory barriers to housing development is impeded both by the lack of precision concerning the concept of “regulatory barriers” and the absence of sophisticated research on the impact of regulations on the supply and cost of housing. Existing research suggests that a wide range of federal, state, and local regulations, including building codes, environmental laws, land use regulations, impact fees, as well as the government procedures to administer these regulations, reduce the supply of housing and generate substantial costs. Nevertheless, not all of these regulations can fairly be condemned as “barriers.” To the contrary, some costly regulations can be justified because they are necessary to promote public health or safety. Others increase price because they generate amenities and, thereby, increase the demand for housing. However, many forms of federal, state, and local regulation are neither necessary nor efficient. Others may be efficient, but, nonetheless, generate unacceptable affordability problems for low- and moderate-income households.

Existing research on the effects of government regulation on the supply and cost of housing is insufficient to guide public policy. Current studies either ignore entire categories of relevant rules or employ methodologies that are not well designed to separate out the independent effects on demand and supply. Along with political constraints, this lack of research has contributed to insufficient efforts at all levels of government to remove regulatory barriers.

Additional research is needed to inform public debate on the impact of government regulation on the housing market. This research includes cost/benefit analyses of individual regulations, investigations on the impact of regulations on affordable housing, city- or state-specific research on regulatory barriers, and analyses of the effects of regulatory barrier removal in those jurisdictions that have effectively reformed their regulatory processes. In addition, further research would be useful to understand why many jurisdictions employ regulations to thwart housing production and what the impacts of housing shortages created by regulatory barriers are on municipal and regional economic competitiveness.

HUD has an important role to play in stimulating research on the relationship between government regulation and housing supply and cost. This role includes investing research dollars in the collection of both quantitative and qualitative data on regulatory practices throughout the nation. It also includes providing “seed” money to researchers to stimulate use of this data to answer a set of relevant policy questions.

Introduction

In recent years, policymakers and academics have paid increasing attention to the costs of federal, state, and local regulations. Perhaps nowhere is this more important than in the area of housing. From 1990 to 2002, the median sales price of new homes rose by 52 percent outpacing the change in the Consumer Price Index by a substantial margin (National Association of Homebuilders (NAHB) (2004)). At least part of this increase in price is attributable to increased land costs caused by government regulation (Quigley and Raphael (2003)). Inflated land and construction costs, in turn, reduce total housing supply and, in many jurisdictions, contribute to affordability problems.¹ In some municipalities, the high cost of housing may even retard economic growth.

This paper will assess the current state of knowledge about the impacts of federal, state, and local regulations on the supply and cost of housing. As the papers prepared for this conference indicate, we know very little about the effect of many forms of government intervention, such as building codes and environmental regulations, on housing prices in general, let alone their impact on affordable housing. Even where the literature is most abundant (i.e., zoning and land use regulation), the gaps in our knowledge are wide.

In Part 1 of this paper, the concept of “regulatory barriers to development” is explored briefly. In common parlance, the expression *regulatory barrier* is used to refer to something negative; a rule that rational lawmakers should seek to repeal or eliminate. Nevertheless, determining what is a regulatory barrier, in this sense, is neither obvious, nor value-free.

Studies that seek to estimate the costs and benefits of regulations, while perhaps not the final word on whether a given regulation should be rejected or modified, do have an important role to play in helping policymakers analyze the trade-offs involved. In Part 2, the existing state of knowledge based upon the papers prepared for this conference is summarized. Specifically, what we know about the effects building codes, land use regulations, impact fees, environmental regulations, and administrative delays have on the cost and supply of housing, in general, and affordable housing, in particular, is examined.

The ambiguity of the concept of regulatory barriers, together with the gaps of knowledge concerning the impacts of regulations, are two reasons why proposals to eliminate expensive government red-tape and regulatory requirements have only had limited success in the United States (U.S.). In Part 3, these efforts are described and reasons are offered for why the problem is so impervious to solution.

If I am correct that one of the reasons for our modest progress in eliminating regulatory barriers is that we lack sufficient information about the effects of federal, state, and local regulation, then more and better research would seem in order. In Part 4, some ideas about particularly fruitful avenues of inquiry are given, and in Part 5, HUD’s role in stimulating this research is explored.

Part 1: Regulatory “Barriers”: What Are They?

Many regulations increase the cost of housing or reduce its supply, yet are not typically characterized as regulatory barriers. For example, many municipalities enact building codes that mandate the use of fire-retardant materials, or zoning laws that prohibit housing in close proximity to chemical plants. While these laws make housing less affordable, we do not think of this impact as a barrier to be removed, but instead as an unfortunate byproduct of rules that are necessary to promote health and safety. In his 1990 request to former U.S. Department of Housing and Urban Development (HUD) Secretary Jack Kemp to create what came to be known as the Advisory Commission on Regulatory Barriers to Affordable Housing, President George Bush characterized the problem as, “excessive rules, regulations, and red tape that add unnecessarily to the cost of housing . . .” (Advisory Commission on Regulatory Barriers (1991:1)).

It is extraordinarily difficult to distinguish between unnecessary regulatory barriers that should be removed and necessary or useful regulation that should be preserved. Governments frequently enact regulations for a variety of reasons that directly and indirectly affect the supply and cost of housing. In many instances, the regulations are deemed necessary to promote the health and well being of either the residents of buildings or the community as a whole. For example, housing codes were promulgated in the late 19th century to prevent disease and unhealthy conditions by setting minimum requirements for sanitary facilities, light, and air (Lubove (1962)). Building codes were enacted to prevent fire and ensure the safety of adjacent buildings and their residents, as well as the firefighters who would be at risk when fighting fires (Wermiel (2000)).

Many other regulations are justified on the ground of externalities that might be less immediately threatening. For example, in 1926, when the U.S. Supreme Court ruled in *Euclid v. Ambler Realty* that zoning was a constitutional exercise of the police power, it did so expressly on the ground that zoning would prevent nuisances. The prohibited activity need not be something illegal, but might be “merely a right thing in the wrong place—like a pig in the parlor instead of the barnyard.” Large lot zoning, minimum set backs, and required architectural standards all fit within this set of purposes.

A wide variety of environmental regulations also fit, ranging from federal and state laws to preserve wetland habitats, to those that limit development that would endanger certain species of animals. More recently, efforts to limit suburban sprawl also may be thought of as efforts to internalize externalities such as automobile pollution and traffic congestion.

Governments also enact regulations to fund needed or desired facilities and public services. Subdivision regulations typically require developers to set aside land for roadways, schools, and parks. Impact fees, at least in theory, are imposed to charge developers the marginal costs of services that arise from new housing and its occupants.

As described above, each of these regulations serves an important public purpose. Their potentially negative impact on the supply and cost of housing is a secondary byproduct of the government action. Of course, these same regulations can be adopted by governments for the primary purpose of inhibiting the supply of housing built in a jurisdiction and/or increasing its

price. One reason for this might be to promote scarcity, thereby increasing the values of homes and the wealth of residents (Thorson (1996)).

More commonly, local governments will seek to limit housing development for fiscal reasons. Because local governments must raise taxes to fund schools and other needed public services, they typically are under pressure to promote certain types of development over others. Commercial uses and large homes that generate substantial tax collections are favored; dense housing developments and low-cost housing that increase demand for schools and social services beyond the tax revenues they generate are disfavored. Large-lot zoning, “gold-plated” subdivision regulations, excessive building codes, and prohibitions on multi-family housing can effectively ensure that the price of housing is so expensive as to prevent cross-subsidization (Hamilton (1978)).

While sometimes very difficult to distinguish from fiscal zoning, many of these same regulations can be used by municipalities to promote social or racial homogeneity. In some instances, residents of a town will be concerned with the disamenities that could arguably arise from close proximity with people who are different from themselves. In other instances, residents may be motivated by racist or classist impulses.

Indeed, the difficulty of distinguishing an economically valid use of government regulation from one that is less acceptable is exemplified by the *Euclid* case itself. Much of the Court’s opinion in *Euclid* was devoted to a defense of efforts to separate apartment buildings from single-family homes, even though that issue was not implicated by the facts of the case. This has led many to believe that the decision is less a case about externality prevention than it is a case about the use of government regulation to preserve income homogeneity.²

In seeking to separate “bad” regulations (i.e., regulatory barriers) from “good” ones, it is extremely perilous to look solely at the effects of these regulations on the price of housing. First, many regulations may increase the price of housing by affecting the desirability of the neighborhood in which it is located or the quality of the structure. Increased demand induced by the greater amenities required by the laws may generate price increases (Fischel (1985)). Second, even in instances where a regulation does not increase the demand for housing, yet through supply effects increases its price, this price increase tells us nothing about the external benefits that might be generated.

Thus, one is immediately drawn to the concept of economic efficiency. To the extent that the social costs of a regulation exceed its social benefits, then it would seem that the rule or ordinance would meet President Bush’s criteria of “excessive” or “unnecessary.” A more difficult question surrounds those regulations that are efficient, but generate unsatisfactory distributional results. This problem is highlighted in Vicki Been’s paper on impact fees (Been (2004)). Theoretically, impact fees could be imposed in such a way as to promote an economically efficient level of development activity in a jurisdiction if they were set at an amount that reflected the marginal cost of development to that community. At the same time, to the extent that the impact fees were to be passed forward to future owners of housing or were to cause an owner of land to substitute other more expensive housing types for dense, moderate-income housing, this gain in economic efficiency might be achieved at the cost of affordability.³

Is the impact fee a barrier to affordable housing, or is affordable housing an inefficient use of land in this community?

To some degree the answer to both of these questions is “yes.” The question of whether a regulation constitutes a barrier that needs to be removed may sometimes depend upon how much one values housing compared to other social objectives. Research may not provide a clear answer to a question that is inexorably intermixed with politics and difficult moral and social questions. Nevertheless, that does not mean that social science is entirely unhelpful either. Cost/benefit analysis of regulations can be useful in identifying which laws do little except drive up the cost of housing. Presumably, those regulations whose economic costs exceed their benefits, and which reduce affordable housing, would be prime candidates for removal. Even in instances when economic efficiency and equity concerns point in different directions, careful theoretical and empirical research can help us understand the relevant trade-offs and identify which regulations are least beneficial and/or most problematic. It also may provide us with information to modify existing regulations to reduce their negative effects on affordable housing.

Part 2: Regulations and Housing: An Assessment of the Literature

The papers prepared for this conference extensively review the theoretical and empirical literature on the effects of regulation on the supply and cost of housing. One of the most consistent findings of the papers is how little we know about the subject. For some regulations, such as building codes and environmental regulations, the literature barely exists. For others, such as land use regulations and impact fees, many studies exist, but the results are often contradictory and difficult to interpret.

Building Codes

Building codes set forth the minimum standards that developers are required to meet when they construct housing. There is widespread consensus that building codes are both a legitimate and necessary exercise of government’s police powers. The fact that codes may raise the price of housing is unsurprising since, in many instances, the housing that is built is of a higher quality than would otherwise be constructed.

However, building codes also can become regulatory barriers under certain circumstances (Downs (1991)). For example, some codes require the use of materials or production processes that go well beyond minimum health and safety requirements. Sometimes, the reason for this is benign, such as legislative delays in revising a code to keep current with new technology. States and municipalities also might mandate redundant, or “belt and suspenders,” regulations out of an overabundance of caution. In other instances, however, expense-generating code provisions might result from lobbying by building materials manufacturers or labor unions. Alternatively, building codes may be a covert way to exclude housing affordable to low- and moderate-income families.

In recent years, tremendous progress has been made in promoting the adoption of model building codes throughout the nation. Most recently, the three regional codes have been supplanted by two national/international codes. Yet, a few jurisdictions have not adopted either of the model

codes. Many more have made significant changes to the model code provisions. The ability of states and municipalities to customize codes can serve important public purposes, especially when the type of construction in a jurisdiction, or the soil or seismic conditions, are sufficiently different from those in the rest of the country. However, as building codes become less uniform, more complexity is introduced, and the likelihood increases that they could serve as barriers to entry for national developers. Each of these factors could lead to higher production costs. Complexity also can create delay because of the greater need for discretionary approvals or explanations from government officials.

The literature on the impact of building codes on the price of housing is extremely thin. Much of it is so old as to be useful only for historic interest. Among the handful of studies completed after 1980, most are based upon anecdotal accounts or poorly specified models. According to Listokin (2004), the more quantitative studies suggest that the impact of building codes on price is no more than five percent.

Depreciation will reduce the quantity of housing services a given housing unit provides over time. Building codes, therefore, also can affect housing supply by hindering the rehabilitation of buildings. In many jurisdictions, rehabilitation is subject to the same minimum standards as new construction. Therefore, to meet the requirements imposed by newer technologies, entire systems will have to be replaced at great expense. Some states have enacted “smart codes” specifically geared toward rehabilitation with an eye to reducing cost. For example, according to Listokin, the adoption of a rehabilitation code by the State of New Jersey may have reduced costs by between 10 and 40 percent, and increased the amount of building renovation activity substantially.

Environmental Regulations

Over the past 25 years, the scope and quantity of environmental protection regulations has grown tremendously. Many of these laws have a direct or indirect impact on housing development. Among the two most important are the federal Clean Water Act that limits development in wetlands and the Endangered Species Act, which restricts development in areas where over 600 species live. Many states also have enacted environmental protection laws, which limit where and how development can take place. In addition, governments at all levels often require developers who need discretionary government approvals, or who build on government land to undertake extensive environmental impact analyses, sometimes culminating in the preparation of voluminous environmental impact statements.

More recently, states and municipalities have enacted additional regulations under the banner of “smart growth.” Municipalities, most often those located in the outer suburban rings, have reduced permitted densities or begun to ration building permits. A few jurisdictions, most notably the State of Oregon, have adopted urban growth boundaries—strict restrictions on residential construction at the periphery. The stated purpose of these regulations is to preserve greenfields, reduce traffic congestion, and, occasionally, to promote reinvestment and development in more dense, urbanized areas.

Economic theory unambiguously predicts that environmental regulations will increase the price of housing. One way that this could happen is through their effect on the price of developable land. Assuming constant demand, as the supply of land available for development decreases, its price should increase. In addition, it is likely that at least some environmental protection statutes generate amenities that may increase demand, thereby further intensifying the price effect.

Government rules requiring developers and/or public entities to undertake environmental impact analyses also are likely to generate higher costs and lead to a diminished supply of housing. This would occur for two reasons. First, the review itself and the possible resulting environmental impact statement could be very costly. Second, potential lawsuits from neighbors or environmental activists challenging the review could be even more problematic. In addition to the costs of defending the case, the developer would have to factor into the project the costs of delay and settlement. In some instances, this uncertainty may actually deter builders from undertaking projects in the first place, thereby reducing the overall supply of housing and increasing price.

Surprisingly, very few academic studies have investigated the relationship between environmental protection statutes and housing supply and prices. As Kiel (2004) indicates, the few studies that have been completed tend to show that, as expected, the value of land that is restricted falls and demand for land nearby tends to increase. The most relevant study by Frech and Lafferty (1984) of land preservation regulations implemented by the California Coastal Commission found that the prices of homes close to restricted areas increased by between \$2,882 and \$5,040 in 1975 dollars, and that those further inland went up by \$989 to \$1,700. The difference between these two sets of numbers captures the amenity effect, whereas the increases further away capture the supply effects of the regulations.

Portland, Oregon's, urban growth boundary, while not technically an environmental regulation, has been the subject of much debate and recent analysis. Some studies have suggested that the restrictions on development imposed by the greenbelt increased housing prices (Staley and Mildner (1999)). Other studies have argued that any increase in housing prices in Portland was more attributable to increased demand for living in the city and other demographic factors (Downs (2002); Phillips and Goodstein (2000)).

Land Use and Zoning

Zoning and land use regulations are ubiquitous in the U.S. Traditionally, zoning sought to separate uses that might be incompatible— industrial uses were to be located in certain portions of a municipality and residential uses in another. Over time, ordinances made finer distinctions within each type of use (e.g., single-family v. multi-family) and imposed an array of requirements on the permitted size and bulk of the buildings allowed (e.g., height restrictions and minimum floor area requirements). In addition to traditional zoning requirements, municipalities enacted requirements for developers who sought to subdivide their properties. Oftentimes, developers would need to provide roads, schools, and other public facilities to the municipality in return for the privilege of being able to develop and sell the housing. Over time, the variety of land use regulations has mushroomed. Today, many jurisdictions have implemented growth control ordinances that ration the number of building permits that will be granted in any

particular year. In addition, many municipalities prescribe and enforce architectural standards through their land use and subdivision regulations.

As described in Part 1 of this paper, municipalities have a variety of motives for imposing limitations on the use and density of new housing. Among these rationales are the desires to reduce negative externalities, keep tax rates low, achieve monopoly profits, and promote racial and economic homogeneity. Just as with environmental regulations, typical zoning and land use regulations are likely, if enforced, to increase the price of housing. Limitations on density or requirements that developers provide costly amenities to a community, if not capitalized into the price of land, will be passed forward to the ultimate purchasers or renters of housing. Even if the cost of the regulations are passed back to the owners of vacant land, density restrictions of the type imposed by most towns and cities, and growth controls, will lead to lower levels of production, and, therefore, higher prices for existing housing. At the same time, to the extent that land use regulations successfully protect against negative externalities, housing prices will go up because of increased demand.

In contrast to building codes and environmental regulations, there are many studies that examine the impact of land use regulations on the price and quantity of housing. According to Quigley and Rosenthal (2004), “[c]aps on development, restrictive zoning, limits on allowable densities, urban growth boundaries, and long permit-processing delays have all been associated with increased housing prices.” With the exception of a few studies suggesting that some municipalities use zoning as a way to achieve monopoly pricing, however, the research largely fails to sort out whether the supply effect or the amenity effect predominates.

Impact Fees

In addition to or in lieu of subdivision exactions, many jurisdictions impose impact fees on the developers of new housing. The purpose of these fees, at least in theory, is to promote efficient development by requiring developers or consumers of new housing to absorb the marginal cost of the development to the municipality. A second related purpose is to shift the financial burden of new development away from existing residents. Of course, as with zoning, land use regulations, and subdivision controls, impact fees also can intentionally be used to discourage new development by raising its cost.

As Been (2004) demonstrates, economic theory does not provide us with a clear answer to the question of whether impact fees lead to more or less expensive housing in a given jurisdiction. In the end, much will depend upon who bears the fee. If the impact fee is passed back to the owner of vacant land, then it should not affect either the quantity of housing produced or its price, unless the owner is permitted under applicable zoning to substitute different and less costly (from the perspective of the impact fee) forms of housing or other uses. For example, if a municipality imposes a flat fee based upon the number of apartments or homes built, a developer might choose to build larger homes, thereby leading to less overall supply and higher prices. A similar result could occur if the landowner could choose to build a commercial development in place of the housing. If the fee is not passed back to the owner of the land or borne by the developer, then it will fall upon the ultimate consumer of the housing. This will cause the housing to be more expensive and likely lead to less overall supply.

Been adds two additional complications to the already difficult question of what effects impact fees have on the price and quantity of housing. The adoption of an impact fee by a municipality is endogenous to its other land use regulatory decisions. For example, if the municipality were not to adopt an impact fee, it might instead choose to restrict housing construction with large lot zoning or growth controls because it wishes to avoid having to raise taxes to pay for the incremental costs of the development. Thus, it is possible that the ability to impose an impact fee might make a municipality more—not less—willing to permit housing to locate within its borders. Second, some impact fees will selectively exclude “affordable” housing, and, thus, may actually be neutral or positive with respect to this type of accommodation.

Several studies have examined the effect of impact fees. These studies generally show that impact fees are associated with higher housing prices for newly constructed housing, as well as existing housing. In many instances, researchers have found that the increase in price is significantly higher than the fee itself. Once again, as was the case with each of the regulations discussed so far, increased prices for housing do not necessarily mean that an impact fee is a barrier that should be removed. To the extent that the impact fee is calculated in such a way that housing consumers value the amenities it pays for, the price increase may only reflect increased demand. Nevertheless, while the impact fee might be efficient under this scenario, it may effectively make housing in the jurisdiction unaffordable to low- and moderate-income families. Furthermore, the empirical result showing that impact fees seem to have a positive impact on existing housing, as well as newly constructed housing, may be attributable to the fact that fees are structured in such a way as to exceed the marginal cost of the new development, thereby providing a cross-subsidy to existing homeowners.

Administrative Processes

According to the academic literature, each of the regulations discussed so far (building codes, environmental regulations, zoning and land use regulations, and impact fees) is likely to increase housing prices. These price increases are ambiguous in terms of social welfare since it is possible that increased housing prices might reflect the benefits the regulations generate (not just the burdens). The final regulatory barrier to be covered in this part of the paper, however, is unambiguous. In many municipalities throughout the nation, the costs of regulation are multiplied as a result of inefficient and duplicative government administrative processes.

As the complexity of government regulation rises, housing developers and government officials must interact more frequently. These contacts might be at the approval stage for a project when the developer must negotiate a zoning change or variance, satisfy an environmental review, or obtain a building permit. Long, costly delays frequently occur and may be attributable to insufficient staffing of governmental agencies, long backlogs in processing, and antiquated procedures. The problems are multiplied when, as often happens, the developer must deal with multiple agencies, and even multiple governments, to obtain permits and approvals.

In addition to the costly delays attributable to administrative inefficiency, the more times a developer must come into contact with government, the greater opportunity there is for politics to intervene. Much development will require discretionary government approvals. These

approvals will frequently be influenced by public pressure, sometimes from community residents or other developers threatened with increased competition. In addition, each government approval provides citizens with the opportunity to bring lawsuits against a project. The uncertainty generated, in many instances, can be more detrimental to a project than any of the substantive regulations described in this paper.

Research on administrative processes affecting the development process is truly embryonic. Most estimates of the impact of administrative inefficiency and delay on development come from anecdotal accounts or surveys of developers, which, for obvious reasons, may be biased. With that caveat in mind, most of these studies, as described by May (2004), suggest that administrative roadblocks add significantly to the cost of housing and truly constitute barriers to development. This finding is further supported by a recent analysis by Glaeser and Gyourko (2003) in which the relationship between several measures of housing and land cost and an index based upon the average length of time between an application for rezoning and the issuance of a building permit was studied. The authors find that the increase in time to obtain a permit is strongly associated with rising land and housing prices.⁴

Overall Impacts

The papers prepared for this conference describe research that seeks to estimate the impacts that individual sets of regulations have on housing development. Importantly, though, a housing developer is likely to encounter many of these regulations (and others) simultaneously. For example, to successfully complete one development in the suburbs, a typical builder will need to apply for subdivision approval, pay an impact fee, obtain a building permit and a certificate of occupancy and, if he is unlucky enough, apply for a rezoning or a variance. Thus, the costs generated by government regulations and their impacts on housing are cumulative.

Several studies have sought to examine the cumulative impact of different types of local development regulations on the cost of housing and each finds it to be quite substantial. For example, NAHB (1998) surveyed builders in 42 metropolitan areas in 1998 and asked them to provide a detailed breakdown of the cost of constructing a 2,150-square-foot house on a 7,500- to 10,000-square-foot lot. The average sale price of such a home was estimated to be \$226,668. Of this total, the builders estimated that approximately 10 percent could be shaved off “if unnecessary government regulations, delays, and fees were eliminated.”

Luger and Temkin (2000) also use survey data from developers, engineers, and planners to estimate the impact of “discretionary” or “excessive” costs imposed by regulation in New Jersey municipalities. They find these costs to be sizable, albeit somewhat more modest than those reported in the NAHB study, ranging from \$10,000 to \$20,000 per unit on a home with a median sales price of \$236,000. The authors further conclude that the impact of these regulations is more likely to be felt at the lower end of the market.

Two recent studies use indices of regulatory restrictiveness to estimate the impact across metropolitan areas of varying levels of land development regulation. According to estimates by Green and Malpezzi (2003), moving from a lightly regulated environment to a heavily regulated environment would raise rents by 17 percent, increase house values by 51 percent and lower

homeownership rates by 10 percentage points. According to Mayer and Somerville (2000), a metropolitan area with a 4.5-month delay in approval and two different types of growth-control restrictions would have an estimated 45 percent less construction than a metropolitan area with a 1.5-month delay and no growth management policy.

Part 3: Removing Regulatory Barriers to Housing: A Short History

Concerns about the impact regulatory barriers have on the housing market have existed for decades. For example, in 1968, the National Commission on Urban Problems described how different building code standards impeded the development of housing in the U.S. The proposition that regulation stood in the way of affordable housing was echoed by the President's Commission on Housing in 1982, and found its fullest exposition in the 1990 report of the Advisory Commission on Regulatory Barriers to Affordable Housing. In its report entitled, "*Not in My Back Yard*": *Removing Barriers to Affordable Housing*, the Commission set forth a comprehensive program for deregulation with state governments playing pivotal roles. The approach of using states as a fulcrum was justified because local governments derive their regulatory powers from the states. In addition, states were thought to be in a better position than the federal government to take into account inter-regional variations, while at the same time being sufficiently centralized to take into account the extra-municipal effects of local actions.

The 1990 Commission report proposed that the federal government "inspire" state and local governments to reform their regulations using a "carrot and stick" approach. All states and localities that received federal assistance would be required to include in annual reports to the government a description of what they were doing to reduce regulatory barriers. HUD would have the power to condition assistance on satisfactory barrier removal strategies. A state that failed to adequately remove regulatory barriers to housing development would lose its ability to issue tax-exempt bonds for housing and its authority to allocate tax credits to developers of low- and moderate-income housing.

The Commission's proposals were never adopted by Congress, despite praise from some quarters (Schill (1992)). Instead, in 1990, Congress required that jurisdictions that receive federal housing submit a comprehensive housing affordability strategy that would include an explanation of whether the cost of housing in the jurisdiction was affected by policies such as land use controls, zoning ordinances, building codes, and growth limits.⁵ The existence of these regulations, however, would not justify HUD disapproval of assistance.⁶ In 1992, Congress passed a minor piece of legislation authorizing HUD to make grants to states and localities to develop removal strategies for regulatory barriers, including drafting model legislation and simplifying and consolidating administrative procedures. In addition, HUD created the Regulatory Barriers Clearinghouse to facilitate the dissemination of best practices about barrier removal strategies. Several years later, an even more modest effort to require the federal government to publish a cost impact statement when it imposes regulations that would drive up the cost of housing was not passed by Congress despite being proposed several times.

At the federal level, the issue of regulatory barriers to development was dormant throughout the Clinton Administration, but has been revitalized by the current administration. HUD has established a new Department-wide initiative, "America's Affordable Communities Initiative,"

to tackle the problem. Thus far, HUD has set aside funds for research on regulatory barriers and sought to build coalitions to address the problem. More tangibly, in 2004, the Department published a Federal Notice announcing its intent to include in most of its competitive FY04 funding opportunities (Notice of Funding Availability) a series of questions on the local regulatory environment. Applicants for HUD funds have an opportunity, if they desire, to respond to these questions; and those applicants who meet the requisite minimum criteria for regulatory reform can receive additional “points,” which can assist them in the competitive selection process.

In addition, a number of states and cities have shown renewed interest in the issue of regulatory barriers. For example, several jurisdictions have sponsored studies that outline strategies for barrier removal (Colorado Department of Local Affairs (1999); Commonwealth of Massachusetts (2000); Salama, Schill and Stark (1999)). A few have even implemented the proposals. For example, California, Florida, and New Jersey require municipalities to plan for affordable housing.⁷ Other states have taken steps to expedite permitting procedures for affordable housing,⁸ or to exempt some affordable housing projects from environmental impact requirements.⁹ New York City, long known for chronic housing shortages exacerbated by cumbersome development rules, also has seemingly changed its approach. In 2002, Mayor Michael Bloomberg announced an ambitious agenda to rezone manufacturing land for housing development and adopt a model building code (New York City (2002)).

Nevertheless, it is business as usual in most states and municipalities. With the exception of a handful of states that have either passed statutes or had activist courts require fair share housing plans (Schill (2002)), regulatory barriers abound and may even be intensifying. The persistence of regulatory barriers in the U.S., despite the prevalence of rising housing prices and extraordinary rent-to-income burdens among many renters, can be explained by many factors. The simplest and most important of these is that in our federal system, states have traditionally vested the police power in municipalities. Because each city or town pursues its own parochial interest, it is not forced to consider the cumulative impact of regulation on housing in the metropolitan area or region. Indeed, each municipality has strong fiscal incentives to erect regulatory barriers to avoid tax increases to pay for needed services. In addition, direct participation by citizens tends to be most intense and effective with respect to local governments. Many existing residents would prefer to avoid development because they want to preserve the status quo, are concerned about congestion, or want to maintain racial or economic homogeneity. Although some states have shown interest in statewide planning, many more are interested in responding to the desires of their suburban constituents. Thus, many states, instead of reducing regulatory barriers, have clamped down on development sometimes under the banner of smart growth.

Smart growth presents both an opportunity and a hazard for those who wish to remove regulatory barriers to development. In many ways, smart growth is more of a political slogan than a coherent set of proposals. To suburban residents, it represents an opportunity to erect barriers to development, slow demographic change, and reduce congestion on the roads. To environmentalists, it means the preservation of greenfields and the reduction of air pollution. To urban advocates, it holds out the promise for renewed interest in dense development as options in the suburbs are restricted.

However, smart growth is a risky strategy for those who would like to see increased production of affordable housing. Because of the fact that cities and suburbs are politically independent, there is no guarantee that restrictions at the periphery would be matched by increased development in the city. City-dwellers may wonder why they should have to shoulder the burden of increased development, both in terms of increased service costs and congestion. In the absence of some form of regional or state authority, smart growth could merely exacerbate current inequities and make affordable housing even scarcer for low- and moderate-income Americans.¹⁰

At the federal level, Congress has never strongly supported the removal of regulatory barriers. Part of the reason for this is that members of Congress, like state legislators, are ultimately responsive to their increasingly suburban constituencies. In addition, advocates for reducing regulatory barriers have repeatedly failed to form effective coalitions among natural allies. Unfortunately, the only vocal group consistently advocating for barrier removal is the real estate industry. Traditional low-income housing advocates, with the exception of some groups dedicated to the fight against exclusionary zoning, are—at best—generally silent, or—at worst—hostile when the debate turns to deregulation. One explanation for this may be sympathy with the purposes underlying many of the regulations that so negatively affect housing production, such as environmental protection.

An additional impediment to effective mobilization on the issue of regulatory barriers is the simple fact, described in detail above and in the papers prepared for this conference, that we know too little about the subject. It is to this final issue that I turn in Parts 4 and 5.

Part 4: Future Research Priorities

The papers prepared for this conference clearly demonstrate that insufficient research exists on the subject of regulatory barriers to development. For most forms of land development regulation, more questions exist than answers. Below are some of the avenues of research that I believe would be most fruitful.

Cost/Benefit Analysis of Regulations that Affect Housing

As discussed in Part 1 of this paper, the efficiency of a given regulation may not determine whether or not it constitutes a barrier to housing, but it is certainly relevant to that conclusion. Complete cost/benefit analyses that take into account the effect of the regulations described in this paper on housing simply do not exist. Part of the problem is methodological and part is data-driven. In many instances, it is difficult to disentangle costs and benefits because of the joint effects of supply and demand. Second, the adoption of regulations often is endogenous to the types of impacts one would study in a cost/benefit analysis.

Although these methodological difficulties are significant, they pale next to the problem of data limitations. As many of the papers prepared for this conference indicate, there is no up-to-date nationwide census or compendium of regulations and regulatory practices in the U.S. Ideally, information would be collected over time on the types of regulations each jurisdiction has on the books. In addition, it would be necessary to identify what proportion of developable land is

subject to the regulations. A strict building code in a jurisdiction with little vacant land would be unlikely to have the same impact on housing as a comparable code in a growing locale. Data collection cannot solely rely upon objective information from zoning maps and building codes. As May (2004) suggests, the stringency with which government officials and line staff enforce a given legal requirement varies tremendously across jurisdictions. Some municipalities are facilitative, while others go by the book. Any comprehensive collection of data to be used in a cross-sectional cost/benefit analysis would have to include a combination of quantitative and qualitative data.

While current data limitations might inhibit cost/benefit analysis of regulations throughout the nation, researchers should be able to conduct studies based upon individual jurisdictions or groups of municipalities. In many instances, both the data and methodological problems would be more tractable if this type of strategy were employed.

The Effect of Regulations on Affordable Housing

As discussed in Part I of this paper, it is possible that even if the benefits of land development regulations exceed the costs they generate, policymakers still might be concerned about their impact on particular segments of the market. For example, environmental restrictions on certain types of development may be efficient in the sense that they prevent externalities or congestion, but they also may push the cost of housing beyond the reach of low- and moderate-income families. This distributional result may be unsatisfactory either because it intensifies concentrated poverty or racial segregation elsewhere or leads to labor shortages or extremely burdensome commutes to work.

Very few of the studies examining the effect of government regulation on the cost and supply of housing have focused specifically on affordable housing. Instead, most of the studies examine impacts on the housing market as a whole. Additional research on this issue, therefore would be useful. Definitions of what is affordable housing could be tied to commonly used criteria for housing assistance. Alternatively, affordable housing also could include what some have called workforce housing—housing that can be afforded by the types of employees needed in a given community.

To the extent that efficient regulations generate distributionally undesirable results, policymakers have several tools within their arsenal to alleviate the problem. For example, government could subsidize affordable housing for those households who are priced out of the market. A second option would be for the state or municipality to enact some form of inclusionary land use ordinance that would either mandate affordable housing as part of any market-rate development or grant density bonuses or other regulatory relief to developers who provided the housing voluntarily. Additional research is needed to identify which strategies are feasible and productive. Some have suggested that inclusionary requirements might operate as a tax on housing development and actually reduce overall housing supply rather than increase it (Ellickson (1994)). Studies that examine empirically which market conditions are most likely to facilitate the production of affordable housing through regulatory means would certainly be in order.

City- or State-Specific Studies of Regulatory Barriers

Although cross-sectional statistical analyses of the impact of regulations are necessary to develop a complete understanding of the problem of regulatory barriers to housing, it is likely that actual change on the ground will occur only as a result of city- or state-specific research. Typically, such a study will involve interviews with a broad array of builders, bankers, housing advocates, and policymakers to learn what regulations in a particular jurisdiction pose the greatest impediments to housing developers. Researchers can then propose changes to these regulations that will enable the municipality to achieve its legitimate purposes, while, at the same time, promoting housing development. This type of analysis has recently been done in Boston (Euchner and Frieze (2003)) and New York City (Salama, Schill and Stark (1999)).

The Effects of Barrier Removal on Municipalities

Closely related to the previous two research topics is research on the impacts of efforts to reduce regulatory barriers. As described in Part 3 of this paper, some municipalities and states have begun to experiment with efforts to reduce regulatory barriers to housing. It would be immensely useful to understand what happens as regulations are relaxed. Specifically, do municipalities substitute other regulations for the ones removed in an effort either to limit production overall or limit certain types of housing? A second question is the extent to which removing regulatory barriers would lead to the creation of lower-cost housing. It is plausible, of course, that just as the cost of regulations are partially borne by landowners, so too, the benefits of deregulation may be capitalized into land values.

Understanding the NIMBY Phenomenon and How to Alleviate It

The 1990 report of the Advisory Commission on Regulatory Barriers identified the “Not In My Backyard,” or NIMBY, mindset as one of the primary reasons that municipalities erected barriers to development. The reasons for this aversion to new development have been described in detail in the literature. What has not been nearly as well examined, however, is whether the fears are justified and what can be done to reduce the problems that might occur.

One of the principal concerns communities have when faced with new development is that their property values could decline. This fear is particularly acute when low- and moderate-income housing is proposed, but frequently exists for market-rate housing as well. The literature on the spillover effects of housing is growing rapidly. Most studies, however, have examined only the effects of subsidized housing. According to one recent review of the literature (Galster (2003)), several studies have found positive, rather than negative, impacts. The magnitude of these impacts tends to vary with the number of units built, the context of neighborhoods, and the share of housing that is owner-occupied.¹¹ Unfortunately, very little research has studied carefully the impact of the most likely type of housing that would be built in communities that reduced regulatory barriers—market-rate “workforce” housing (Montezemolo (2004)).

It is possible that housing developments sometimes will create negative impacts for communities. Crime may increase as lower-income people move into the community, congestion might intensify, and taxes might need to raise to pay for public schools. Research is needed to

show how communities that have encountered these challenges have dealt with them. Over the past 10 to 15 years, developers have experimented with a variety of mixed-income development models. An analysis of what designs work best, what services are most useful, and what tenant mixes are most successful would seem to be useful. In addition, Been (2004) suggests that one of the theoretical benefits of impact fees over more traditional growth controls is that they might make a community more willing to accept additional housing. It would be useful to learn whether this is true, and, if so, how the impact fees are calculated.

Finally and in a related vein, it is likely that much of the support for regulatory barriers to housing derives from our system of public finance. Municipalities rely heavily on local property tax revenue to fund local services, and, thus, have a tremendous incentive to bar development that leads to an influx of population demanding more in services than it provides in revenue. Some cities and states have experimented with a variety of equalization and tax-base sharing mechanisms. Whether these fiscal “reforms” reduce opposition to development and whether they lead to more socially optimal expenditure patterns is a subject that certainly deserves increased academic attention.

The Effects of Housing Shortages on Economic Competitiveness

Much of the concern over the shortage of “workforce” housing revolves around the fear that the absence of affordable housing could endanger the economic competitiveness of cities and regions. To the extent that affordable housing is unavailable nearby, employers will need to pay their employees more to compensate them for the increased housing expenses, or, alternatively, for their longer commutes to work. The fear is that over time, inflated labor costs will cause businesses to relocate elsewhere where the cost of living is lower.

Although surveys of business executives typically suggest that housing and living costs are often instrumental in their location decision, there have been no empirical studies to support the argument that high housing costs and economic activity are inversely related. Indeed, it is very possible that high housing costs are actually a reflection of the economic vitality of a region. In other words, housing expenses and economic activity are most likely endogenous.

Even so, it is plausible that regulations could serve as barriers to entry in the housing market and may independently reduce the overall economic competitiveness of a region. Research on this question would be useful, but would require cross-sectional data on regulatory stringency that do not currently exist, as well as a sophisticated methodology to tease out causation.

Part 5: HUD’s Role in Supporting Research on Regulatory Barriers

As part of the America’s Affordable Communities Initiative, HUD has requested a \$2 million appropriation from Congress for fiscal year 2005 to fund research on regulatory barriers. This sum of money, while large, is no doubt insufficient to support all of the research that would be necessary to address the issues outlined in this paper, plus many other related questions. To obtain the greatest leverage from this appropriation, HUD might consider creating a partnership with foundations to support a research program in the area of regulatory barriers.

HUD's money would best be invested in data gathering. The single most important reason for the absence of research on the impact of regulations on housing development is the lack of systematic and consistent data on local regulatory practices. This absence of data was mentioned in each of the papers prepared for this conference. To fill this gap in our knowledge and spur additional research, HUD could support a census of regulatory practices throughout the nation. The data collected would include both objective data about regulation in each municipality (e.g., amount of land zoned for multi-family housing, whether certain cost-saving technologies are permitted), as well as data from interviews on the average time it takes to obtain approvals and certifications. Although on a much smaller scale, Quigley and Rosenthal (2004) note that similar data-gathering efforts have been undertaken by researchers at the University of Pennsylvania (Linneman et al. (1990)) and the University of California (Glickfeld and Levine (1992)). The questionnaires used, the problems encountered, and the data collected would be immensely helpful in structuring HUD's own efforts.

If HUD were to undertake a census of regulatory practices, the agency could then make this data freely available to researchers throughout the nation. Together with its foundation partners, HUD could provide small, competitive research grants to academics who have innovative ideas for using the data to answer a pre-selected set of important policy questions. One model for this type of research is the "Moving To Opportunity" (MTO) grants program sponsored by HUD in the mid-1990s. This program used centralized data on the experimental program, plus \$50,000 research grants to leverage additional resources and generate a substantial body of useful and sometimes path-breaking research (Goering and Feins (2003)). Like the MTO research, HUD should reach out to fund cross-disciplinary work on the relationship between regulation and housing. To a large extent, real estate economists, thus far, have dominated the field. Other academics with different perspectives or institutional knowledge, such as economists, civil engineers, sociologists, planners and lawyers, also should be encouraged to do research on the impact of regulations on housing development.

There are several advantages of this strategy. First, it is unlikely that any individual researcher would have the resources to put together the type of data necessary to provide an accurate picture of regulatory stringency in the U.S. This generation of knowledge is something particularly well suited for a government agency with access to funds and a mission to generate public benefits. A second and substantial benefit of a small-grants program is that it might spark an interest in research on the relationship between regulation and housing among more junior academics and build a field of intellectual inquiry. As each of the papers prepared for this conference indicate, that field will likely be quite fertile for years to come.

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Endnotes

¹ Many households pay extremely high proportions of their incomes for housing, leaving little at the end of the month for other necessities. For example, according to the American Housing Survey (U.S. Department of Commerce (2001)), in 2001, 23.2 percent of all renter and 9.8 percent of all homeowner households in the U.S. paid more than half their incomes for housing.

² Indeed, this interpretation of the function of the Village's zoning ordinance was offered by the lower court judge in a decision that would have invalidated the ordinance: "The purpose to be accomplished is to classify the population and segregate them according to their income or situation in life." 297 F. 307, 316 (N.D. Ohio 1924).

³ One possible way to resolve the conflict between efficient regulations and affordability concerns might be to increase levels of housing subsidies. Nevertheless, in today's fiscal environment, it is doubtful that the amount of public resources devoted to housing will be substantially augmented.

⁴ Glaeser and Gyourko regress two dependent variables over the index values, the log of median family income and percentage population growth. The first dependent variable is the fraction of units in a metropolitan area that are valued at or above 140 percent of construction costs. The second is an "implied zoning tax" which is derived by subtracting the cost of land estimated by a nonlinear hedonic equation from the cost of land obtained by subtracting the structure cost from total home value.

⁵ See 42 U.S.C. section 12705(b)(4).

⁶ "[T]he adoption of a public policy identified pursuant to subsection (b)(4) of this section shall not be a basis for the Secretary's disapproval of a housing strategy." 42 U.S.C. section 12705(c)(1).

⁷ See Cal. Gov. Code sec. 65580 et seq.; Fla. Stat. Ann. Sec. 163.3191; N.J. Stat. Sec. 52:27D-301-334.

⁸ See Fla. Stat. Ann. Sec. 373.4141 (requiring expedited permitting procedures for affordable housing developments).

⁹ See, e.g., Cal. Pub. Res. Code sec. 21080.14 (exempting from CEQA affordable housing of up to 100 units).

¹⁰ Smart growth also can be criticized for restricting opportunities for minority households to live in suburban locations and for infringing on property rights. See Schill (2003).

¹¹ According to Galster (2003), most studies tend to show that positive spillover effects will tend to be larger when greater numbers of units are provided (up to a threshold level, at which point additional units tend to generate negative externalities), when developments are located in more affluent locations and when greater shares of total units are composed of owner-occupied dwellings.