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LEVERAGING LOCATION

A Study of the Importance of Location to Effective Affordable Housing Policy in Polk County

Prepared by
The Polk County Housing Trust Fund

“Over 1,000 people in Polk County face each day without the basic need of permanent housing.”¹

What is Affordable Housing?

Affordable housing is a vital component of any vibrant and successful metropolitan community.² It contributes not only to the housing needs of low to moderate income residents, but also their health, childhood development, educational achievement, self-esteem, the local economy, and so on.³

“The generally accepted definition of [affordable housing] is for a household to pay no more than 30 percent of its annual income on housing. Families who pay more than 30 percent of their income for housing are considered cost burdened and may have difficulty affording necessities such as food, clothing, transportation and medical care.”⁴

¹ PCHTF, *About Us*, <http://www.pchtf.org/about-us/> (2012).

² Jessica A. Tober, Student Author, *Bringing Home, Home: Is There A Home Rule Argument For Affordable Housing?* 20 S. Cal. Rev. L. & Soc. Just. 91, 91 (2011).

³ Keith Wardrip et al., *The Role of Affordable Housing in Creating Jobs and Stimulating Local Economic Development*, <http://www.nhc.org/media/files/Housing-and-Economic-Development-Report-2011.pdf> (Jan. 2011).

⁴ HUD, *Affordable Housing*, <http://www.hud.gov/offices/cpd/affordablehousing/> (May 15, 2012).

Why is Affordable Housing Important to the Community?

The lack of affordable housing is a significant problem for low to moderate income individuals. Paying an excessive percentage of income for housing hinders their ability to pay for other necessary needs, such as, education, healthcare, transportation, and impacts their ability to save their income.⁵ Studies show that reducing housing's cost burden may improve health by freeing up resources; diverting the funds to be spent on healthcare.⁶ Affordable housing provides other health benefits, such as improved mental health and increased physical security.⁷

The benefits of affordable housing apply not only directly to the occupant of the property, but it is also economically beneficial for the community at large.⁸ The more affordable housing that is dispersed throughout the community, the closer people can live to their job (this is typically referred to as "workforce" housing), thereby saving on transportation costs.⁹ "Nationally, for every dollar a working family saves on housing, it can spend \$0.77 cents more on transportation."¹⁰ In Iowa, for every dollar that is spent on affordable housing, \$0.64 is produced somewhere else in Iowa's economy just during the construction stage; the long term impact is that with every dollar spent on affordable housing, an additional \$0.47 is spent elsewhere in Iowa's economy.¹¹ For

⁵ *Id.*

⁶ Rebecca Cohen, *The Positive Impacts of Affordable Housing on Health*, <http://www.nhc.org/media/documents/HousingandHealth1.pdf> (2007).

⁷ *Id.*

⁸ HUD, *Affordable Housing*, <http://www.hud.gov/offices/cpd/affordablehousing/> (May 15, 2012).

⁹ See Center for Housing Policy, *A Heavy Load: The Combined Housing and Transportation Burdens of Working Families*, http://www.cnt.org/repository/heavy_load_10_06.pdf (Oct. 2006).

¹⁰ *Id.*

¹¹ Heather MacDonald et al., *Housing's Economic and Social Impacts*, <http://housingtrustfundproject.org/wp-content/uploads/2011/10/Iowa-Economic-Impact-Final1.pdf> (Apr. 2007).

every five jobs that are created by affordable housing projects in Iowa, an additional job is created in some other area of the local economy.¹²

Does the Location of Affordable Housing Matter to the Community?

The location of affordable housing is important to the wellbeing of a community.¹³ Affordable housing cannot and should not be concentrated only in certain portions of the community; rather, affordable housing units should be dispersed throughout the community.¹⁴ However, many times, such as in the Des Moines metro area¹⁵ this is not the case. The location of affordable housing has a tremendous impact on everything, from the educational achievements of children, to personal transportation costs, to the racial and economic segregation of the community.¹⁶

How are Students Impacted by Location of Affordable Housing?

The educational consequence of an over concentration of affordable housing is measurable.¹⁷

“... [O]ne of the central issues that limit educational opportunity for low-income and minority children: their disproportionate concentration in low-performing schools. In particular, limiting the development of inexpensive housing in affluent neighborhoods and jurisdictions fuels economic and racial segregation and contributes to significant differences in school performance across the metropolitan landscape.”¹⁸

¹² *Id.*

¹³ See Keith Wardrip et al., *The Role of Affordable Housing in Creating Jobs and Stimulating Local Economic Development*, <http://www.nhc.org/media/files/Housing-and-Economic-Development-Report-2011.pdf> (Jan. 2011).

¹⁴ See Heather MacDonald et al., *Housing's Economic and Social Impacts*, 8, <http://housingtrustfundproject.org/wp-content/uploads/2011/10/Iowa-Economic-Impact-Final1.pdf> (Apr. 2007).

¹⁵ For the purposes of this memorandum, Des Moines metro area = Des Moines, West Des Moines, and surrounding suburbs.

¹⁶ Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, http://www.brookings.edu/~media/Files/rc/papers/2012/0419_school_inequality_rothwell/0419_school_inequality_rothwell.pdf (Apr. 2012).

¹⁷ See Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, http://www.brookings.edu/~media/Files/rc/papers/2012/0419_school_inequality_rothwell/0419_school_inequality_rothwell.pdf (Apr. 2012).

¹⁸ *Id.*

The majority of high school dropouts (60%) are from families in the bottom 20% of the socio-economic ladder.¹⁹ Minorities are two to four times more likely to not finish high school, compared to their white middle class peers.²⁰ The lack of affordable housing certainly contributes to this problem.²¹ The average, middle income, white student in the Des Moines metro area, ranks at the 55th percentile nationally on standardized school exams; while their African-American peers, who are economically segregated, score at the 27th percentile nationally on the same exams.²² Latinos in the Des Moines metro area score at the 29th percentile nationally on these exams.²³ This is an unfortunate statistic by itself, but it is also worrying for the economic potential of the Des Moines metro area in the future.²⁴ When large numbers of residents are uneducated or undereducated, it is detrimental to overall economic performance.²⁵

The Des Moines metro area has experienced various societal problems, due to the fact that the available affordable housing is located in small concentrated areas. The Des Moines metro area is the 21st most economically segregated metro in the United States.²⁶ At least 46% of low income students and their families would be required to move to a different zip code in the metro in order to balance out the economic segregation.²⁷ This has implications on other elements as well, such as the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, http://www.brookings.edu/~media/Files/rc/papers/2012/0419_school_inequality_rothwell/0419_school_inequality_rothwell.pdf, 2 (Apr. 2012).

²⁵ Javier C. Hernandez, *Study Cites Dire Economic Impact of Poor Schools*, N.Y. Times (Apr. 22, 2009).

²⁶ Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

²⁷ *Id.*

educational achievement of Des Moines area students. “The average middle to high income student, in the metro, scores on average, 28% points higher on state [standardized] exams compared to the school an average low income student attends.”²⁸ This ranks the Des Moines metro area as the 18th worst in the nation, in terms of the vast score differential among low income and high income students.²⁹

Unfortunately, this economic segregation has led to racial segregation in the Des Moines area. Racial segregation is the link between poverty and a lack of affordable housing in suburban communities.³⁰ Exclusionary zoning ordinances have kept minorities out of the suburbs.³¹ In Des Moines, where the majority of the metro’s affordable housing is located, one out of every four individuals is a minority.³² Whereas in the suburb of West Des Moines, where there is a lack of affordable housing, only three out of every twenty-five individuals are minorities.³³

These statistics show that not only is affordable housing important, but also the location of the affordable housing is vital. Segregation, depressed economic performance, and depressed school testing scores are the types of problems that occur, when affordable housing is concentrated in a few areas, while lacking in others.³⁴ The question is what is the solution? There may be several factors that account for these

²⁸ *Id.*

²⁹ *Id.*

³⁰ Marc Seitles, Student Author, *The Perpetuation of Residential Racial Segregation in America*, 1996 J. Land Use & Envtl. L.

³¹ *Id.*

³² U.S. Census Bureau, *Profile of General Population and Housing Characteristics: 2010*, data.iowadatascenter.org/DemographicProfiles/2010DP1/plDesMoinesDP12010.pdf (2010).

³³ U.S. Census Bureau, *Profile of General Population and Housing Characteristics: 2010*, data.iowadatascenter.org/DemographicProfiles/2010DP1/plWestDesMoinesDP12010.pdf (2010).

³⁴ See Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

problems, yet one issue that certainly has an impact, is the lack of affordable housing dispersed throughout the community.³⁵ Most of the affordable housing developments are concentrated predominately within certain portions of the city of Des Moines. The suburbs and West Des Moines by comparison lack affordable housing units. The Brookings Institute found that the metro area has the 72nd most restrictive zoning regulations in the nation.³⁶ Zoning regulations tend to drive up the price of property; in so doing, it unintentionally segregates the metro economically and racially.³⁷

In the Des Moines metro area, it costs 1.8 times more for housing near high-scoring elementary schools compared to the housing costs near the low-scoring schools.³⁸ This ranks the metro area as the 78th worst in the nation.³⁹ The reply from critics, is zoning regulations are not the only reason for segregation, and therefore, to purge zoning ordinances would be a mistake.⁴⁰ According to Jonathan Rothwell of the Brookings Institute, zoning regulations are the most destructive political institution in the United States today.⁴¹ Zoning ordinances may not be the only reason for the problems regarding affordable housing in the Des Moines metro area, however, that is not a

³⁵ See Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, http://www.brookings.edu/~media/Files/rc/papers/2012/0419_school_inequality_rothwell/0419_school_inequality_rothwell.pdf, 2 (Apr. 2012).

³⁶ Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

³⁷ Bradley C. Karkkainen, *Zoning: A Reply to the Critics*, J. Land Use & Envtl. L. (1994), http://www.law.fsu.edu/journals/landuse/vol101/karkkain.html#FNT*

³⁸ Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Jonathan Rothwell, *The Social Costs of Anti-Density Zoning*, <http://www.brookings.edu/up-front/posts/2012/04/19-zoning-housing-education-rothwell> (Apr. 19, 2012).

legitimate reason to ignore exclusionary zoning's negative practices. While zoning may be useful in certain situations, changes to the zoning regulations should be considered.

Location, it matters.

The metro ranks in the top 100 in the nation in many of these unflattering statistics. It is apparent that the concentration of affordable housing is having a negative impact in the Des Moines metro area. Affordable housing is concentrated in certain pockets of the Des Moines metro, creating economic segregation, racial segregation, and skewed student achievement scores.⁴² One possible policy solution to these problems in the Des Moines metro area is to modify the zoning practices through inclusionary zoning. There are various ways a community can provide affordable housing.⁴³ Yet, with the metro area's highly concentrated areas of affordable housing and restrictive zoning laws,⁴⁴ inclusionary zoning is policy the metro should consider. Inclusionary zoning is not a policy that has been implemented at this time by Polk County or the Des Moines metro area governments. It has however been used in hundreds of other jurisdictions nationwide.⁴⁵

⁴² Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

⁴³ Bill Berkowitz & Tim Brownlee, *Providing Affordable Housing For All*, http://ctb.ku.edu/en/tablecontents/sub_section_main_1305.aspx (2012).

⁴⁴ Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

⁴⁵ Nicholas Brunick, *The Impact of Inclusionary Zoning on Development*, http://www.bpichicago.org/documents/impact_iz_development.pdf (accessed May 23, 2012).

A Possible Solution to the Concentration of Affordable Housing?

“Inclusionary zoning is a flexible tool for creating new affordable rental and ownership opportunities in connection with market-rate housing development.”⁴⁶ Inclusionary housing policies are varied depending on the jurisdiction and include several different elements. A typical inclusionary zoning ordinance states that a minimum percentage of units in a residential development must be affordable to persons at a particular income level (this is usually determined by a percentage of the median income in the area).⁴⁷ “The share of units allocated to such households is termed a “mandatory set-aside.””⁴⁸ After the properties are built, restrictions such as a deed or other price controls are placed on the units deemed “affordable housing units.”⁴⁹ This is to prevent a windfall on the unit. It would defeat the purpose of the inclusionary zoning policy, if the developer was required to build a home, and sell it below market value, if the buyer could then turn around and sell it at market value or more. Typically this stock of affordable housing is subject to price controls for at least 10 years.⁵⁰

When the private developer builds the affordable housing units, the city, in return, will typically offer various incentives such as,

“waivers of zoning requirements, including density, area, height, open space, use or other provisions; local tax abatements; waiver of permit fees or land dedication; fewer required developer-provided amenities and acquisitions of

⁴⁶ HousingPolicy, *Inclusionary Zoning: Overview*, http://www.housingpolicy.org/toolbox/strategy/policies/inclusionary_zoning.html (last updated July 19, 2010).

⁴⁷ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 23, 2012).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

property; “fast track” permitting; and/or the subsidization or provision of infrastructure for the developer by the jurisdiction.”⁵¹

It is up to the local governments regarding which of these, if any, are feasible and constructive for their area.

There are other practicalities that would need to be determined when implementing an inclusionary zoning policy. For example, would the policy be city wide or neighborhood by neighborhood? Can the developer choose to pay a fee to the city in lieu of actually building affordable units? Must the developer build the affordable units on the same site as the market value units or can they build somewhere else? Must the affordable units look structurally similar to the market value units? Who economically qualifies for the affordable units? What is the longevity of the pricing restriction on the affordable units? What incentives will be offered to the developer? These are all questions that must be answered to develop an effective inclusionary zoning policy; the answers will vary depending on the area.

Inclusionary zoning provides several benefits to a community other than simply just providing more affordable housing units in locations of need. One of the most attractive aspects of this policy is that there is little, if any, public money spent on this policy.⁵² This is because the inclusionary units are built by private developers who take part in the program; while the city government generally would provide something like density bonuses to the developer in return.⁵³ This policy would lead to affordable units

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

being constructed, while saving the city or county money that could be used in other areas of need.

The availability of affordable housing is a main concern of employers, because, locations where housing is expensive tend to require employers to pay higher wages.⁵⁴ Naturally then, the presence of affordable housing or the lack thereof has an effect on where businesses decide to locate.⁵⁵ Therefore, a benefit of increasing the amount of affordable housing units is a potential increase in businesses and workforce housing. Workforce housing allows essential workers (i.e. police officers, nurses, and firefighters) to be able to afford to live in the community they serve.⁵⁶ In turn this also cuts down on their transportation expenditures.⁵⁷

Additionally, urban sprawl could be diminished, if there is more affordable housing in locations where people work.⁵⁸ This in turn would cut down on pollution, which would improve the health of the residents in the community.⁵⁹ Inclusionary housing promotes economic and racial integration, which is desperately needed in the Des Moines metro area.⁶⁰ Increased integration leads to other positive outcomes such as improved schools, reduction of poverty, and decreased crime; all of which would be

⁵⁴ Ari Alowan Goldstein, *Municipal Strategies for Affordable Housing: Incenting and Exacting Public Goods from Private Developers*, 28 (Masters Dissertation, Mass. Institute of Tech., June, 2007).

⁵⁵ *Id.*

⁵⁶ Nicholas Brunick, *The Impact of Inclusionary Zoning on Development*, http://www.bpichicago.org/documents/impact_iz_development.pdf (accessed May 23, 2012).

⁵⁷ Center for Housing Policy, *A Heavy Load: the Combined Housing and Transportation Burdens of Working Families*, http://www.cnt.org/repository/heavy_load_10_06.pdf (Oct. 2006).

⁵⁸ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 23, 2012).

⁵⁹ *Id.*

⁶⁰ Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012) (Ranking Des Moines metro as the 21st most economically segregated metro in the nation).

economically beneficial to the community.⁶¹ Finally, inclusionary zoning can stimulate the economy by freeing up more expendable income.⁶²

One of the main criticisms of inclusionary zoning is that the public sector is pushing a public problem onto the private sector, asking the private developer to fix a public problem.⁶³ Another major criticism is that implementing an inclusionary zoning policy could harm the community's tax base.⁶⁴ Developers that don't want to be required to build affordable housing units or pay an in-lieu fee will not build where the policy is in place, and thus the city will lose tax money.⁶⁵ Opponents of inclusionary zoning also claim that developers cannot make a profit on the affordable units, so it is a waste of resources for the developer at best, and even potentially detrimental to the developer.⁶⁶ Another concern is that only the "best" (i.e. the individuals with the most money/opportunity) of the low to moderate income individuals will be able to afford the affordable units anyway, and thus many individuals still won't be able to afford this housing.⁶⁷ However, this last argument is weak. Upward mobility is the nature of economic and residential choices for all people.⁶⁸ The more economically mobile

⁶¹ Nicholas Brunick, *The Impact of Inclusionary Zoning on Development*, http://www.bpichicago.org/documents/impact_iz_development.pdf (accessed May 23, 2012).

⁶² *Id.*

⁶³ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 23, 2012).

⁶⁴ Nicholas Brunick, *The Impact of Inclusionary Zoning on Development*, http://www.bpichicago.org/documents/impact_iz_development.pdf (accessed May 23, 2012).

⁶⁵ *Id.*

⁶⁶ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 23, 2012).

⁶⁷ *Id.*

⁶⁸ *Id.*

individuals would move without the inclusionary zoning policy anyway, if possible, so the concern isn't very noteworthy.⁶⁹

Many of the criticisms of inclusionary zoning can be placated if the city simply implements a *voluntary* inclusionary zoning policy, as opposed to a mandatory policy. The developer can then choose whether the benefits (i.e. density bonuses) offered by the city are worth the cost of building the affordable housing. If not, the developer can simply build the property according to the existing zoning regulations.⁷⁰ Thus, the concerns that the developer would be harmed or refuse to build in the city are no longer an issue. The developer would choose which course to take. If selling the affordable units was so burdensome that the developer could not make a profit even with the zoning variances, the developer will choose not to participate in the program.⁷¹ Moreover, it is not clear if the critics of inclusionary zoning are correct in their assessment on the hardship to the developer;

“To a large extent, it is not the presence, but the absence, of a free market in housing that has helped create a shortage of affordable homes for many Americans. And the first repressed fact about inclusionary zoning is that many, if not most; inclusionary programs increase the profitability of housing construction. This is why the vast majority of inclusionary programs are actively sought by builders and developers.”⁷²

One of the potential problems of making inclusionary zoning voluntary, as opposed to mandatory, is that developers will not participate in the program, therefore it could be ineffective. However, developers typically want the incentives offered by the city, such as high density variances, if possible, because it allows them to build more

⁶⁹ *Id.*

⁷⁰ Andrew G. Dietderich, *An Egalitarian's Market: the Economics of Inclusionary Zoning Reclaimed*, 24 *Fordham Urb. L.J.* 23, 49 (1996).

⁷¹ *Id.*

⁷² *Id.*

units on a portion of land, thereby increasing their potential profit.⁷³ Additionally, this would allow the developer to save on construction costs and could potentially save the developer more money, by not having to comply with exclusionary restrictions.⁷⁴ These requirements include things like set-back requirements and unwarranted parking spaces.⁷⁵ If the developer will make or save money by partaking in the program, there seems no reason that a voluntary inclusionary zoning policy would not be successful in the Des Moines metro area. An inclusionary zoning program would potentially allow for more affordable housing in the suburbs as well, which would have various positive societal impacts in the community.

An issue that is important to the existing residents where affordable housing is built (particularly to suburban residents) is whether the affordable housing units will negatively affect their property values. “[T]he vast majority of studies have found that affordable housing does not depress neighboring property values, and may even raise them in some cases.”⁷⁶ In general, the research suggests that if the affordable housing units are properly maintained, efficiently managed, and the exterior design is appealing then surrounding property values shouldn’t be negatively affected.⁷⁷ Interestingly, while many suburban locations reject affordable housing, it may actually raise the surrounding property values in the suburban community.⁷⁸ Studies show that when affordable

⁷³ *Id.* at 51.

⁷⁴ *Id.* at 52.

⁷⁵ *Id.*

⁷⁶ The Center for Housing Policy, “*Don’t Put it Here!*”, http://furmancenter.org/files/media/Dont_Put_It_Here.pdf (accessed May 23, 2012).

⁷⁷ *Id.*

⁷⁸ *Id.*

housing is built in strong neighborhoods (higher value, low poverty neighborhoods) it will likely either have a positive impact or no impact on surrounding property values.⁷⁹

In Iowa, mixed-income, high quality, affordable housing developments increased surrounding property values on average by 8%.⁸⁰ There may be short term fluctuations, but overall, affordable housing, if done right, can actually raise the surrounding property values.⁸¹ Whereas, when affordable housing is located in more vulnerable neighborhoods it is more likely that it may have a negative impact on the surrounding property values.⁸² Typically, fears about property values are misplaced, having more to do with racial or class biases.⁸³ When implementing affordable housing policies, as long as the design, management, concentration of the units, and the strength of the neighborhood is taken into account, there can be a positive impact on the surrounding property values.⁸⁴

⁷⁹ *Id.*

⁸⁰ Heather MacDonald et al., *Housing's Economic and Social Impacts*, 6, <http://housingtrustfundproject.org/wp-content/uploads/2011/10/Iowa-Economic-Impact-Final1.pdf> (Apr. 2007).

⁸¹ *Id.*

⁸² The Center for Housing Policy, *"Don't Put it Here!"*, http://furmancenter.org/files/media/Dont_Put_It_Here.pdf (accessed May 23, 2012).

⁸³ *See id.*

⁸⁴ *Id.*

What Issues May Arise if an Inclusionary Program Were Implemented?

If the Des Moines metro area or Polk County were to implement an inclusionary zoning policy, there would be four major areas of concern that would need to be considered: (1) the social, (2) the economic, (3) the political, and (4) the legal aspect, as all of these would be impacted by an inclusionary policy.⁸⁵

Social

The negative impact of exclusionary zoning policies can be seen in the Des Moines metro area, where segregation and high standardized testing gaps are rampant.⁸⁶ Inclusionary zoning policies can have a positive impact on a number of social foundations in a community.⁸⁷ Many of the social elements that would be impacted by an inclusionary zoning policy have already been discussed. Therefore, it is not necessary to go into great detail about the social impacts an inclusionary zoning policy would have. Inclusionary zoning is a policy which if done correctly can help reduce economic and racial segregation.⁸⁸ It is also a policy that will lead to better educational opportunities for minority students.⁸⁹ The health of the Des Moines metro area community can also be improved through affordable workforce housing which cuts back on transportation and pollution costs.⁹⁰

⁸⁵ Ari Goldstein, *Municipal Strategies for Affordable Housing Incenting and Exacting Public Goods from Private Developers*, 27 (Masters dissertation, Mass. Institute of Tech., June, 2007).

⁸⁶ Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

⁸⁷ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 29, 2012).

⁸⁸ *Id.*

⁸⁹ See Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, http://www.brookings.edu/~media/Files/rc/papers/2012/0419_school_inequality_rothwell/0419_school_inequality_rothwell.pdf (Apr. 2012).

⁹⁰ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 29, 2012).

It is apparent from the Brookings Institute study that the Des Moines metro area is highly segregated and the educational opportunities for many minority students are not equal to their white peers.⁹¹ The positive social impacts of an inclusionary policy will be the indirect byproducts experienced through the direct political, economic, and legal outcomes an inclusionary zoning policy would present.⁹² However, the Des Moines metro area community will need to consider the misplaced fears that affordable housing can bring to a community where it has not been before.⁹³ Educating residents in the Des Moines metro area on the positive implications of an inclusionary program would be imperative to avoid any misplaced social concerns.

Economic

In terms of the economic impact of an inclusionary zoning policy, there are four main actors in the Des Moines metro area that are relevant; the government, the developer, the Polk County Housing Trust Fund (and similar entities) and the private resident. As for the government, “[p]romoting affordable housing will pay us back as a society with reduced costs in many other areas of our budget.”⁹⁴ Inclusionary zoning saves the public money, because there is very little, if any public money that goes towards implementing the policy.⁹⁵ An inclusionary zoning program, “need not spend a

⁹¹ Brookings Institute, *Housing Costs, Zoning and Access to High-Scoring Schools: Des Moines-West Des Moines, IA metro area*, http://www.brookings.edu/~media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/profiles/des_moines.pdf (Apr. 2012).

⁹² See Ari Goldstein, *Municipal Strategies for Affordable Housing Incenting and Exacting Public Goods from Private Developers*, 27 (Masters dissertation, Mass. Institute of Tech., June, 2007).

⁹³ See The Center for Housing Policy, “Don’t Put it Here!”, http://furmancenter.org/files/media/Dont_Put_It_Here.pdf (accessed May 29, 2012).

⁹⁴ Ari Goldstein, *Municipal Strategies for Affordable Housing Incenting and Exacting Public Goods from Private Developers*, 29 (Masters Dissertation, Mass. Institute of Tech., June, 2007).

⁹⁵ Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 29, 2012).

public dime.”⁹⁶ Therefore, less government money will go towards affordable housing, because the developer will cover more of the costs. For example, in Montgomery County, Maryland, an inclusionary zoning policy was implemented in 1973, since then, \$477.4 million dollars of private sector money has been invested in affordable housing.⁹⁷ This is money the county government did not have to pay towards affordable housing. Overall, a voluntary inclusionary zoning policy should be economically beneficial to the local government.

Local developers in the Des Moines metro should not be economically hurt by an inclusionary zoning program, especially if it is voluntary.⁹⁸ Either the local developers will not participate in the program, because it does not economically make sense or if the developer does participate, they will have considered the economic ramifications.⁹⁹ Therefore, there should be no economic harm to any local developers from a voluntary program. Typically, the developer will want to participate in the program, *because* of the potential economic benefit.¹⁰⁰

In addition, this is when the role of the Polk County Housing Trust Fund [hereinafter PCHTF] could become relevant to an inclusionary zoning program. For instance, the PCHTF could establish an economic incentive fund for any developers that participate in the inclusionary zoning program. The PCHTF could provide a grant to the developer in order to cover any potential losses that would result from building the

⁹⁶ Andrew G. Dietderich, *An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed*, 24 Fordham Urb. L.J. 23, 41 (1996).

⁹⁷ Nicholas Brunick, *The Impact of Inclusionary Zoning on Development*, http://www.bpichicago.org/documents/impact_iz_development.pdf 6 (accessed May 29, 2012).

⁹⁸ Andrew G. Dietderich, *An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed*, 24 Fordham Urb. L.J. 23, 49 (1996).

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 51.

affordable units. This may even incentivize some local developers to construct affordable housing that otherwise wouldn't. Furthermore, the PCHTF could purchase affordable units built under this program and rent them out to individuals who meet the economic criteria for the unit.

The private resident in the Des Moines metro area is the last actor that has an economic interest in an inclusionary zoning policy. There is little evidence that residents in the Des Moines metro area would be negatively economically impacted by an inclusionary zoning policy. According to the Iowa Finance Authority the opposite may actually be likely.¹⁰¹ The Iowa Finance Authority declared that mixed income affordable housing actually increased the surrounding property values by 8%.¹⁰²

When an inclusionary zoning policy is implemented correctly there probably will not be a negative economic impact on any of the actors. Thus, there doesn't seem to be a strong economic reason against this policy as long as it's implemented correctly. If anything, there is evidence that it can be economically beneficial to all parties involved.

Political

“Given the complicated economic and legal liabilities, effective policy implementation is especially dependent on political actors.”¹⁰³ Many local officials will support exclusionary zoning practices under the guise of controlling urban development or maintaining the status quo.¹⁰⁴ Politically any affordable housing policy may not be the most attractive policy, especially to suburban jurisdictions such as West Des

¹⁰¹ Heather MacDonald et al., *Housing's Economic and Social Impacts*, 6, <http://housingtrustfundproject.org/wp-content/uploads/2011/10/Iowa-Economic-Impact-Final1.pdf> (Apr. 2007).

¹⁰² *Id.*

¹⁰³ Ari Goldstein, *Municipal Strategies for Affordable Housing Incenting and Exacting Public Goods from Private Developers*, 39 (Masters Dissertation, Mass. Institute of Tech., June, 2007).

¹⁰⁴ *Board of Supervisors v. DeGroff Enterprises, Inc.: A Case Study of Inclusionary Zoning* 60 Iowa L. Rev. 413, 415 (1974).

Moines, because of the stigma associated with affordable housing.¹⁰⁵ Because of this, both local politicians and residents in the Des Moines metro area need to be educated on the positive benefits to them from a voluntary inclusionary program.

The most effective way to get unwilling politicians to change the zoning laws is for organizations such as the PCHTF, Anawim, Habitat for Humanity, and others like them to team up with local developers and lobby the city governments to change the zoning ordinances.¹⁰⁶ If the issue can be framed around the economic benefits to not only the developer, but also the city and the surrounding residents there should be less resistance to an inclusionary program. This may be the most important factor overall, at least practically, because without the support of the city council and the mayor, it is unlikely that this policy would come to fruition.

Legal

Whenever there is a new law put into place there are of course potential legal issues that arise from its implementation. If the Des Moines metro area were to implement an inclusionary zoning policy, it would need to consider whether it would constitute a taking of private land by the government.¹⁰⁷ The other issue that would arise is whether the specific municipalities would have the legal authority to implement a new zoning policy without the state's approval.¹⁰⁸

¹⁰⁵ See Andrew G. Dietderich, *An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed*, 24 Fordham Urb. L.J. 23, 31 (1996).

¹⁰⁶ See Ari Goldstein, *Municipal Strategies for Affordable Housing Incenting and Exacting Public Goods from Private Developers*, 41-42 (Masters dissertation, Mass. Institute of Tech., June, 2007).

¹⁰⁷ *Id.* at 36.

¹⁰⁸ *Id.*

The fifth amendment of the U.S. Constitution states, “nor shall private property be taken for public use, without just compensation.”¹⁰⁹ The Iowa Constitution has a similar provision, which states, “private property shall not be taken for public use without just compensation first being made...”¹¹⁰ A taking can be a physical seizure of property or a regulatory taking, where a governmental regulation affects the value of the land.¹¹¹ An inclusionary zoning policy could be considered a regulatory taking, because it is a regulation on the land use, rather than a physical seizure of the land.¹¹² There are various kinds of takings including variations on the regulations taking, however the type of taking that is relevant to inclusionary zoning is where the “government requires an exaction as a condition for receiving some benefit, such as development rights.”¹¹³ The U.S. Supreme Court in *Nolan v. Cal. Coastal Commn.* and *Dolan v. City of Tigard* created the rule for when this type of regulation constitutes a taking:

- (1) there must be a nexus between the condition imposed and the reason for the legitimate state interest¹¹⁴, and
- (2) the exaction must be proportional to the projected impact of the development.¹¹⁵

If either of these elements is lacking, then the regulation may become a taking. In essence, this rule states that the inclusionary policy must be congruent and proportional in pursuance of the legitimate state interest. This rule is the legal formula

¹⁰⁹ U.S. Const. amend. V

¹¹⁰ Iowa Const. art. I, § 18

¹¹¹ Ari Goldstein, *Municipal Strategies for Affordable Housing Incenting and Exacting Public Goods from Private Developers*, 36-37 (Masters dissertation, Mass. Institute of Tech., June, 2007).

¹¹² *See id.*

¹¹³ *Id.* at 37.

¹¹⁴ *Nolan v. Cal. Coastal Commn.*, 483 U.S. 825, 835 (1987).

¹¹⁵ *Dolan v. City of Tigard*, 512 U.S. 374, 386 (1994).

for the extent of land use regulation.¹¹⁶ More than likely the only way a developer could claim that an inclusionary policy was an unconstitutional taking is if they could prove that there was undue economic hardship.¹¹⁷ Generally, the courts will grant deference to the government, because providing affordable housing is a police power that advances a legitimate state interest.¹¹⁸ However, if the Des Moines metro area or Polk County were to implement a *voluntary* inclusionary program then there likely wouldn't be a constitutional taking argument anymore. The developer would choose to take part, thus there would be no taking by the government. There are potentially several more legal issues that would need to be considered depending on what kind of incentives or penalties were provided by a voluntary program or if the program was made mandatory.¹¹⁹

The last legal issue is which entity has the power or legal authority to implement an inclusionary policy?¹²⁰ Do the individual jurisdictions such as Des Moines or West Des Moines have the legal power to implement zoning ordinances? This is an important question not only legally, but politically as well, because the answer will dictate which level of government should be lobbied to implement an inclusionary policy.

The Iowa Constitution gives each of the 99 counties home rule power.¹²¹ This grant of power gives each county the power to “determine their local affairs and

¹¹⁶ Ari Goldstein, *Municipal Strategies for Affordable Housing Incenting and Exacting Public Goods from Private Developers*, 37 (Masters Dissertation, Mass. Institute of Tech., June, 2007).

¹¹⁷ *Id.*

¹¹⁸ Western Center on Law & Poverty, *Inclusionary Zoning: Legal Issues*, <http://www.oaklandnet.com/BlueRibbonCommission/PDFs/BlueRibbon12-legal%20issues.pdf> 7 (Sept. 2002).

¹¹⁹ See Western Center on Law & Poverty, *Inclusionary Zoning: Legal Issues*, <http://www.oaklandnet.com/BlueRibbonCommission/PDFs/BlueRibbon12-legal%20issues.pdf> (Sept. 2002).

¹²⁰ *Id.* at 38.

¹²¹ Iowa Const. art. 3 § 39A

government...”¹²² The Iowa Constitution grants this same power to the municipal cities as well.¹²³ This grant of power from the state to the cities also includes implied powers, not just expressed powers.¹²⁴ Therefore, both Polk County and the cities and suburbs that make up the Des Moines metro area can implement their own zoning policies. The Iowa Code includes a provision that dictates that local county and city governments will consider smart planning principles such as zoning for occupational diversity or housing diversity when making a zoning ordinance or development plan.¹²⁵ The authority of local governments to engage in land use planning has been sustained against repeated constitutional challenges.¹²⁶ As a result, either Polk county or the Des Moines metro area should be able to implement an inclusionary program without any further grant of power from the state

Conclusion

Location is arguably the most important aspect of any affordable housing policy. The location of affordable housing has an impact on everything from workforce housing, racial segregation, economic segregation, school achievement gaps, and transportation costs.¹²⁷ Polk County, Iowa has at any time between 800 and 1000 persons without permanent housing options.¹²⁸ The county and Des Moines metro area must do more for affordable housing and they must disperse the affordable housing throughout the

¹²² *Id.*

¹²³ Iowa Const. art. 3 § 38A

¹²⁴ *Id.*

¹²⁵ Iowa Code §§ 18B(1)-(2) (2012).

¹²⁶ *Dolan*, 512 U.S. at 385.

¹²⁷ See Keith Wardrip et al., *The Role of Affordable Housing in Creating Jobs and Stimulating Local Economic Development*, <http://www.nhc.org/media/files/Housing-and-Economic-Development-Report-2011.pdf> (Jan. 2011).

¹²⁸ Iowa Institute for Community Alliances, http://www.iowainstitute.net/index.php?option=com_docman&Itemid=86 (accessed May 30, 2012).

community, rather than concentrating them, for the best possible results.¹²⁹ An inclusionary zoning policy would be one way that affordable housing could be spread throughout the community; it would also be a policy that would save the community money.¹³⁰ Inclusionary zoning is a policy in which the Polk County Housing Trust Fund along with similar entities and local developers could participate together to bring about more affordable housing units throughout the community. Affordable housing is a vital component of any vibrant and successful metropolitan community.¹³¹ The metro area and Polk County should expand and locate its stock of affordable housing throughout the community.

The location of affordable housing is important to the wellbeing of a community.¹³² Affordable housing cannot and should not be concentrated in certain portions of the community; rather, affordable housing units should be dispersed throughout the community.¹³³ However, many times, such as in the Des Moines metro area¹³⁴ this is not the case. The location of affordable housing has a tremendous impact on everything, from the educational achievements of children, to personal transportation costs, to the racial and economic segregation of the community.¹³⁵

¹²⁹ Nicholas Brunick, *The Impact of Inclusionary Zoning on Development*, http://www.bpichicago.org/documents/impact_iz_development.pdf (accessed May 30, 2012) (mixed income communities lead to lower crime rate, etc.).

¹³⁰ See Dr. Robert W Burchell & Catherine C. Galley, *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis*, <http://ginsler.com/sites/ginsler/files/NHC-2.html> (accessed May 30, 2012).

¹³¹ Jessica A. Tober, Student Author, *Bringing Home, Home: Is There A Home Rule Argument For Affordable Housing?* 20 S. Cal. Rev. L. & Soc. Just. 91, 91 (2011).

¹³² See Keith Wardrip et al., *The Role of Affordable Housing in Creating Jobs and Stimulating Local Economic Development*, <http://www.nhc.org/media/files/Housing-and-Economic-Development-Report-2011.pdf> (Jan. 2011).

¹³³ See Heather MacDonald et al., *Housing's Economic and Social Impacts*, 8, <http://housingtrustfundproject.org/wp-content/uploads/2011/10/Iowa-Economic-Impact-Final1.pdf> (Apr. 2007).

¹³⁴ For the purposes of this memorandum, Des Moines metro area = Des Moines, West Des Moines, and surrounding suburbs.

¹³⁵ Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, http://www.brookings.edu/~media/Files/rc/papers/2012/0419_school_inequality_rothwell/0419_school_inequality_rothwell.pdf (Apr. 2012).