

Overview of the Council's response to the fair housing complaint filed with HUD

May 27, 2015

Overview of presentation

- Council's roles in housing
- Allegations in the fair housing complaint and Council's responses
- Council activities to promote affordable housing in high-opportunity communities

Council's roles in housing

Council's roles in housing

- Reviewing local comprehensive plans, including helping local governments define their share of the regional need for low- and moderate-income housing
- Funding housing development through the Metropolitan Livable Communities Act grant programs
- Providing rental assistance to low-income households
- Providing technical assistance to local governments to support orderly and economical development
- Collaborating with and convening partners and stakeholders to expand the regional housing dialogue

Allegations and responses

About the complaint

- Complainants: MICAH and the Cities of Brooklyn Center, Brooklyn Park, and Richfield
- Represented by Myron Orfield (local) and Michael Allen of Relman, Dane and Colfax in Washington, DC
- Filed with HUD on December 17, 2014
- Council notified January 9, 2015
- HUD is reviewing the complaint under Title VI of the Civil Rights Act and Section 109 of the Housing and Community Development Act of 1974

Allegation: Fair Share Housing Goals

“Under the Metropolitan Land Use Planning Act, the Met Council has the obligation and authority to set fair share housing goals and require communities to eliminate exclusionary zoning. Minn. Stat. 473.859 (2) (4).”

Response: Minn. Stat. 473.859

- “...a housing element containing standards, plans and programs for providing adequate housing opportunities to meet existing and projected local and regional housing needs, including but not limited to the use of official controls and land use planning ***to promote the availability of land for the development of low and moderate income housing.***”
- “... a housing implementation program, including official controls to implement the housing element of the land use plan, which will provide sufficient existing and new housing to meet the local unit's share of the metropolitan area need for low and moderate income housing.”

Response: Fair Share Housing Goals

- Council may only “require” a city to modify its plan if the local comprehensive plan is “more likely than not to have a substantial impact on or contain a substantial departure from metropolitan system plans.” (*City of Lake Elmo v. Metropolitan Council*)
- Council reviews and comments on the consistency of the comprehensive plans with Council policy
- Allocation of Affordable Housing Need
 - Cities guide adequate land at densities to support Need
 - Cities that do not guide enough land are inconsistent with Council policy and are not eligible to participate in the Livable Communities Act programs

Allegation: Withholding funds

*“It [the Council] also has the authority to **withhold state and federal funds to local governments in the Twin Cities region that fail to meet such goals or that maintain exclusionary zoning communities.** Minn. Stat. 473.172 Minn. Stat. 473.173 Met Council Housing Development Guide Chapter Policy 39 (1985).”*

“Despite its clear authority to withhold such funding pursuant to Policy 39, the Met Council is refusing to use its authority over the comprehensive plans of local governmental units to advance the provision of affordable housing in high opportunity communities.”

“It [the Council] also has the authority to withhold state and federal funds to local governments in the Twin Cities region that fail to meet such goals or that maintain exclusionary zoning communities.”



Response: Withholding state and federal funds

- Minn. Stat. 473.171 requires the Council to “review” other governments’ applications for federal grants, loans, loan guarantees, or state aid but only when review by a regional agency is required by federal or state law, or federal or state agency / program
- The Council is only to *review and comment* on applications submitted to the Council, not withhold funds.

Response: Withholding state and federal funds

- Minn. Stat. 473.173 addresses the procedure for reviewing matters of metropolitan significance:
 - Effects on metropolitan systems (e.g., transportation / transit, wastewater treatment, regional recreation open space)
 - Adverse effects on publicly-financed facilities
 - Substantial physical effects on local governments other than the unit in which the proposed project is located
 - Per state rules, metropolitan significance review is not intended to “stop development but rather to work out differences among parties and arrive at consensus.”

Response: Policy 39

- *Housing Development Guide (1985)*: “In reviewing applications for funds, the Metropolitan Council will recommend priority in funding based on the local government’s provision of housing opportunities for people with low and moderate incomes, and its plans and programs to provide such housing opportunities in the future.”

Allegation: Requiring affordable housing

“Despite these [the Fair Housing and Equity Assessment’s] findings, the Met Council continues to fail to use its authority to overcome these impediments to fair housing choice, by requiring local governmental units to provide their fair share of affordable housing...”

Response : Requiring affordable housing

- “...as the MLUPA reads currently, the Council does not have the power to compel or guarantee that cities will adopt official controls to implement housing plans that satisfy the MLUPA.”
- “...it is the cities responsibility to address the “need” for low- and moderate-income housing.”
- From *Alliance for Metropolitan Stability v. Metropolitan Council*

Allegation: Housing Policy Plan

“...the Met Council released for public comment a new Housing Policy Plan that has the purpose and effect of increasing segregation by, inter alia, repealing the existing strong fair share policy, eliminating the Council’s use of transportation and park funds to encourage compliance with communities’ statutory fair share obligations, and incentivizing affordable housing development along transit lines in areas of minority concentration and of racial transition.”

Response: Housing Policy Plan

- Housing Performance Score used as a scoring criterion in the 2014 Regional Solicitation for federal transportation funding to incent local plans and policies to maintain and expand each city's stock of affordable housing.
- Regional parks implementing agencies:
 - Housing never a criteria for regional parks funding
 - By definition, regional parks serve more than one community

Response: Housing Policy Plan

- “Create or preserve a mix of housing affordability around emerging transit investments” (HPP, p. 37)

Allegation: LCA Goals

“...under the auspices of the Livable Communities Act (“LCA”), the Met Council sets specific affordable housing goals for individual metropolitan communities. Over time, it has dramatically reduced the goals of predominately white outer-ring suburbs, while increasing the relative share borne by the heavily nonwhite and Hispanic central cities as well as by Complainant Brooklyn Park.”

Response: LCA Goals

- In 1995, LCA goals were negotiated for 1996-2010:
 - Originally defined as percentages of growth, subsequently converted to production goals
- In 2010, LCA goals were renegotiated for 2011-2020 to align with the Allocation of Affordable Housing Need
 - Growth forecasts increased in the central cities

Allegation: LCA Funding

“In assigning LCA funding, the Met Council also employs a ranking system that provides additional affordable housing funds to communities that already rank highly in terms of affordable housing efforts, and holds back such funding for municipalities that rank poorly on such efforts.”

Response: LCA Funding

- Competitive grant program based on applications
- Council can only award funds to cities and projects that apply for Livable Communities funding
- Local Housing Incentives Account: Preference to cities having *lower* Housing Performance Scores
- Livable Communities Demonstration Account: Held harmless for projects that help meet their affordable and life-cycle housing goals

Allegation: Land reverting to lower-density zoning

“As part of a continuing pattern and practice, the Met Council has also permitted the conversion of suburban land once zoned for high-density, affordable multifamily development to revert back to low-density zoning classifications, thereby destroying the opportunity to provide for integrative, affordable housing.”

Response: Land reverting to lower-density zoning

- The Council maintains a running inventory of the land guided to meet each community's Allocation of Affordable Housing Need
- The Council monitors comprehensive plan amendments to assure that, even when amendments reguide land to lower densities, there continues to be more than sufficient land to meet their need.

Allegation: Low-Income Housing Tax Credits

“...pursuant to authority from the State, the Met Council also exercises substantial discretion over the regional distribution of federal Low Income Housing Tax Credits, and has exercised that discretion with the purpose and predictable effect of locating a disproportionate number of LIHTC units in racially-segregated, low-income, low-opportunity communities.”

Response: Low-Income Housing Tax Credits

- In 1991, per 1990 legislation, the Council convened a ten-member task force to develop a plan for allocating tax credits between Minnesota Housing and the tax credit sub-allocators – that is, the Cities of Minneapolis and Saint Paul, and Dakota and Washington Counties
- The allocation plan neither identified specific projects nor specified areas where projects should be located.
- Minnesota Housing is responsible for the distribution plan; the Council does not have the authority to allocate tax credits.

Allegation: Concentration of affordable housing

“...pursuant to authority from the State, the Met Council also exercises substantial discretion over the regional distribution of federal Low Income Housing Tax Credits, and has exercised that discretion with the purpose and predictable effect of locating a disproportionate number of LIHTC units in racially-segregated, low-income, low-opportunity communities.”

Response: Concentration of subsidized affordable housing

City	Publicly-subsidized affordable units	Share of region's publicly-subsidized affordable units	Share of region's housing units
Minneapolis	22,107	36.6%	15.1%
Saint Paul	12,724	21.1%	10.1%
Brooklyn Center	418	0.7%	1.0%
Brooklyn Park	640	1.1%	2.3%
Richfield	611	1.0%	1.3%

Response: Concentration of unsubsidized affordable housing

City	All affordable units	Share of all affordable units	Share of region's housing units	Built before 1980
Minneapolis	141,055	16.6%	15.1%	83%
Saint Paul	102,127	12.0%	10.1%	84%
Brooklyn Center	10,919	1.3%	1.0%	81%
Brooklyn Park	23,702	2.8%	2.3%	49%
Richfield	14,625	1.7%	1.3%	87%

Response: Concentration of new affordable housing

City	New affordable units, 1996-2013	Share of new affordable units, 1996-2013	Share of region's housing units	Share of new units, 1996-2013
Minneapolis	6,784	11.9	15.1%	8.6%
Saint Paul	3,218	5.6%	10.1%	3.6%
Brooklyn Center	32	0.1%	1.0%	0.05%
Brooklyn Park	1,028	1.8%	2.3%	2.4%
Richfield	327	0.6%	1.3%	0.4%

How the Council promotes affordable housing in high-opportunity communities



HOUSING POLICY PLAN

Create housing options that give people in all life stages and of all economic means viable choices for safe, stable and affordable homes.

Council activities to promote affordable housing in high-opportunity communities

- Funding for affordable housing development
- Planning an adequate supply of land
- Incentives for housing performance
- Housing Choice Vouchers
- Technical assistance to local governments
- Moral support to local governments

Questions?