



Saint Paul Planning Commission

Speakers:

Luis Pereira, PED
Peter Warner, CAO
Kayla Schuchman, PED

June 26, 2020

Affordable Housing Dimensions: Planning/Zoning, Legal, and Housing Finance Framework



Rice Street Flats

Various Dimensions that are relevant to (Affordable) Housing Development

Planning and Zoning Framework

Comprehensive Plan 2040

- Housing policies
- Implementation actions
- Financial tools
- Adopted small area, district and master plans

The Zoning Code

- Intent and purpose
- Required findings for quasi-judicial applications

Legal Framework

Municipal Planning Act

- Applies to communities statewide

Metropolitan Land Planning Act

- Applies to communities in the Twin Cities Metro

Avoiding arbitrary and capricious decisions (those not based on findings of fact) or a regulatory takings

Housing Development and Finance

Housing and Redevelopment Authority (HRA)

The City Council

- Available financial tools to the City, the HRA (and other public funders)
- Complexity in assembling individual project financing
- Lack of financial resources to address full need
- Housing Trust Fund strategy

What we know about the need

Regional needs are growing:

- Met Council's **Housing Policy Plan** (Thrive MSP 2040): "Between 2020 and 2030, the region will add 37,400 low- and moderate-income households:
 - 18,900 units for households \leq 30% of AMI
 - 9,450 units for 31% - 50% of AMI
 - 9,550 units for 51% to 80% of AMI
- "Over 13,000 new housing units on average per year necessary to house household growth to 2040"

Saint Paul projected growth

| | 2020 | 2030 | 2040 |
|------------|---------|---------|---------|
| Population | 315,000 | 329,200 | 344,100 |
| Households | 124,700 | 131,400 | 137,400 |
| Employment | 194,700 | 204,100 | 213,500 |

Source: Metropolitan Council

Δ = 12,700 households

Saint Paul share of affordable housing need, 2021-2030

Figure H-1: Affordable Housing Allocation for the City of Saint Paul

| Affordable Level | Number of Units |
|------------------------|-----------------|
| At or below 30% of AMI | 832 |
| 31 to 50% of AMI | 128 |
| 51 to 80% of AMI | 1,013 |
| Total | 1,973 |

5.2% of the region's total need



Legal Questions – Q #1

1. How does the **Municipal Planning Act** address affordable housing as compared to the **Metropolitan Land Planning Act** and **how** do these Acts **apply** to the City of Saint Paul?

Answer: The Municipal Planning Act (“MPA”) is silent on affordable housing

The Metropolitan Land Use Planning Act (“MLPA”) specifically addresses affordable housing under Minn. Stat. § 473.859. This section of the MLPA, entitled “comprehensive plan content,” states in relevant part at Subdivision 2(c) – see right

Answer, continued

Metro Land Planning Act (Minn. Stat. § 473.859, Subdivision 2(c):

“A land use plan shall also include 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.” (emphasis added).

SAINT PAUL FOR ALL

2040 COMPREHENSIVE PLAN

Technically still
pending



Housing Chapter of the 2040 Plan



Goal 1:

Decent, safe and healthy housing
for all Saint Paul residents.

Goal 2

Well-designed, energy efficient
buildings and sites constructed
with quality materials.

Goal 3

Fair and equitable access to
housing for all city residents.

Goal 4:

A supportive environment for
homeownership.

Goal 5:

Stable rental housing.

Goal 6:

**Improved access to affordable
housing.**

Goal 7:

Strong neighborhoods that
support lifelong housing needs.

Key Housing Policies, Goal 6: Improved access to affordable housing.

Policy H-31. Support the development of **new affordable housing units throughout the city.**

Policy H-32. Continue to use City/HRA resources to support **affordable rental housing** citywide with at least 30 percent of the total rental units (both market-rate and affordable) financially assisted by the City/HRA being affordable to households earning 60 percent or less of AMI with at least...

New production

Policy H-33. Further **affordable ownership housing** goals in HRA/City-financially-assisted projects by working toward 10 percent of all ownership units being affordable to residents earning 60 percent of AMI and 20 percent of all ownership units being affordable to residents earning 80 percent of AMI.

Policy H-36. Encourage the development of **family-sized affordable housing** in strong market areas.

New production

Policy H-39. **Promote preservation of existing income-restricted** affordable housing units to ensure continued affordability of those units.

Policy H-40. Prioritize preservation of **income restricted** and naturally-occurring affordable housing in areas with improved/improving transit and/or planned reinvestment to reduce resident displacement.

Preservation

Key Housing Policies, Goal 6: Improved access to affordable housing.

Policy H-41. **Consider use of official controls to require affordable housing** to achieve mixed income neighborhoods.

Policy H-44. Make achieving the **Metropolitan Council's affordable housing goals** a top priority both in planning and legislative efforts

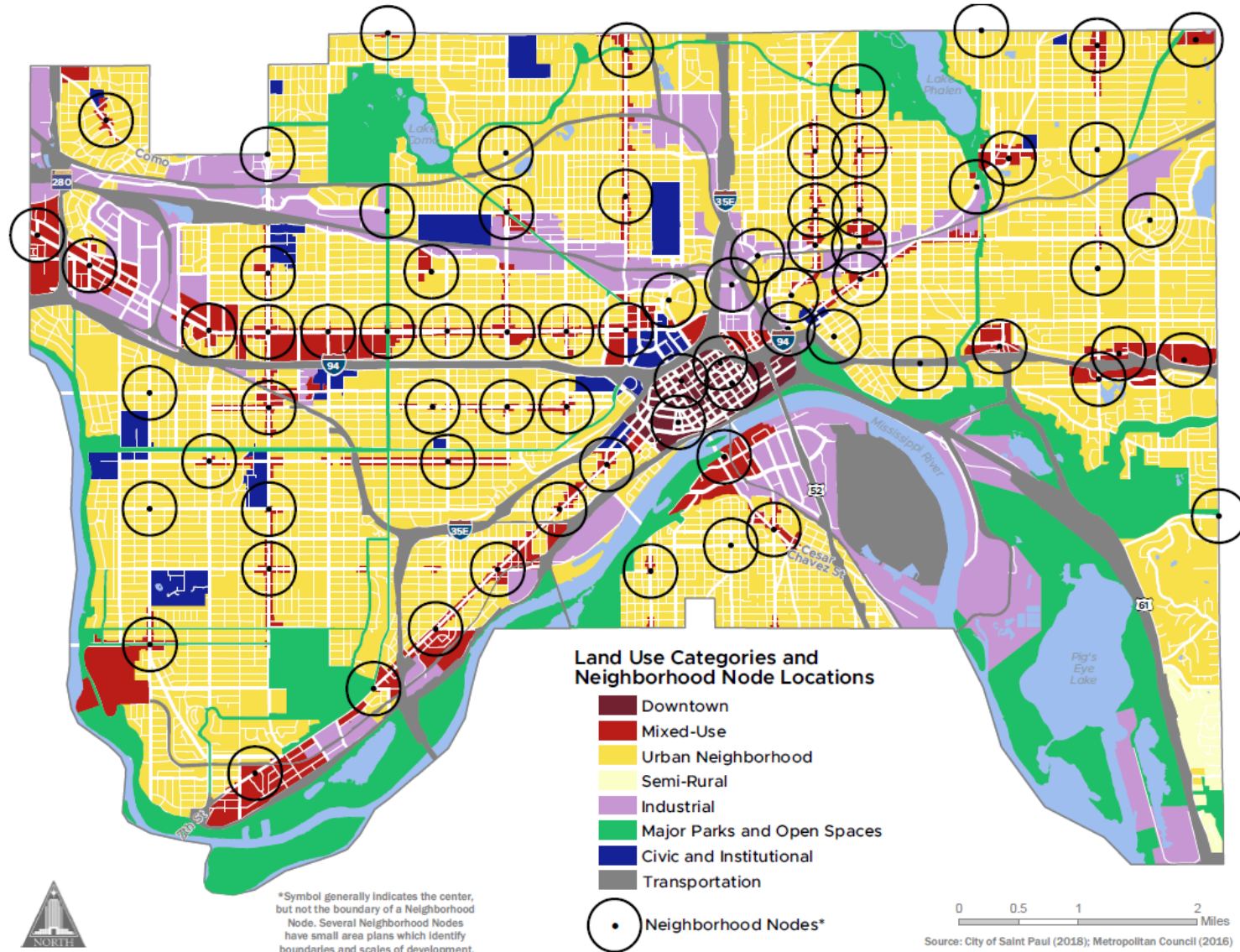
Policy H-42. **Pursue public and private funding sources**, including local sources, for affordable housing preservation and production.

Policy H-43. Encourage and support state and federal legislation that **preserves existing programs and provides new funding**, including a **dedicated funding source**, for affordable ownership and rental housing.

Planning & Zoning

Funding

Future Land Use Map – Comprehensive Plan 2040



A major point of the Comprehensive Plan is to guide a sufficient amount of land toward multifamily housing (Future Land Use Map, policy, rezoning recommendations) to meet our City growth forecast, and the City's portion of the regional need for affordable housing

| Future Land Use Category | Density Range (units/acre) | | % Res | Acres | Net Acres |
|--------------------------|----------------------------|-----|-------|----------------|--------------|
| | Min | Max | | | |
| Downtown | 50 | 300 | 30% | 16.0 | 4.8 |
| Mixed-Use | 50 | 200 | 40% | 656.5 | 262.6 |
| Urban Neighborhood | 20 | 55 | 90% | 344.8 | 310.3 |
| Industrial | 0 | 0 | 5% | 78.4 | 3.9 |
| Total | | | | 1,095.7 | 581.6 |

Legal Questions – Q#2

2. Legal limits on the **Planning Commission's** authority to **require** the inclusion of affordable housing units as a condition of approving a development project that requires a **zoning application** absent a City-adopted project-by-project affordable housing requirement or mandatory Inclusionary Zoning rule?

- Planning staff note:
 - Policy H-32 and H-33 are not project-by-project affordable housing requirements
 - Inclusionary Zoning Study underway, currently paused

Answer

In the absence of specific language in the zoning code specifying an affordable housing requirement or standard applicable to residential uses seeking a **conditional use permit**, unilaterally imposing an affordable housing condition on the approval of a conditional use permit is **not advisable**. Likewise, the same cautions apply to a **site plan application**.

The unilateral imposition of an affordable housing condition on the approval of a **variance** application is **not advisable** although in some rare instance it **could theoretically be possible** that an affordable housing condition could be attached to a variance application provided that **the condition is directly related to and in rough proportionality to the impact** created by the variance.

Legal Questions – Q #3

3. What are legal limits on **City staff's** ability to **require the inclusion of affordable housing units** as a condition of approving an **administrative site plan application** review absent a City-adopted project-by-project affordable housing requirement or mandatory Inclusionary Zoning rule?

- Planning staff note:
 - Policy H-32 and H-33 are not project-by-project affordable housing requirements
 - Inclusionary Zoning Study underway, currently paused

Answer

Because the same legal standards that apply to “agency” zoning decisions [the planning commission] equally apply to “administrative” zoning [commission staff] decisions, the answer to Question 2 also applies to Question 3.

Legal Questions – Q #4

Initial answer

4. Can a **district plan or small area plan** contain **policies mandating project-specific affordability** – including a certain number or percentage of units, or percent of area median income, if these policies are **not entirely consistent** with policies H-31-45 of the pending 2040 Comprehensive Plan?

It is **strongly advised against** a district or small area plan containing **mandatory or regulatory affordable housing standards** at this time. Doing so would create a conflict with the pending Comprehensive Plan's policy H-41 which calls for the City to "consider the use of official controls to require affordable housing." The process to consider adopting official controls to require affordable housing has yet to be completed. If a policy decision is reached to adopt official controls to require affordable housing, the City will be required to adopt zoning ordinances and regulations to implement the comprehensive plan's objective. Minn. Stat. §§ 473.865, .852, Subd. 9. The regulations would then apply City-wide. It should be noted that **using a comprehensive plan alone as a regulatory device, especially with respect to the approval of conditional use permit and site plan applications, is reasonably doubtful.** See, *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 79-88) (Minn. 2015) (Anderson J., concurring) ("Even under the current legislative framework, neither the municipal nor the metropolitan planning act supports using a comprehensive plan to grant or deny a conditional use application.")

Kayla Schuchman, Director of Housing, PED

- Nine years developing and implementing affordable housing policy through successive roles at **Minnesota Housing**, the state's affordable housing agency
- Most recently, a project manager for the Saint Paul-based **affordable housing provider CommonBond Communities**, where she developed affordable multifamily housing projects
- She also served as co-chair of the Metropolitan Consortium of Community Developers Housing Committee; and serves as a board member for Urban Homeworks, a nonprofit that transforms vacant properties into housing, Minnesota Housing Partnership, Twin Cities Community Land Bank, and Family Housing Fund
- Education
 - Certified Housing Development Finance Professional through the National Development Council
 - Bachelor's degree in economics from Macalester College
 - Master's degree in Public Policy with a concentration in economic and community development from the University of Minnesota's Humphrey School of Public Affairs



Appendix C: Housing Implementation Toolkit

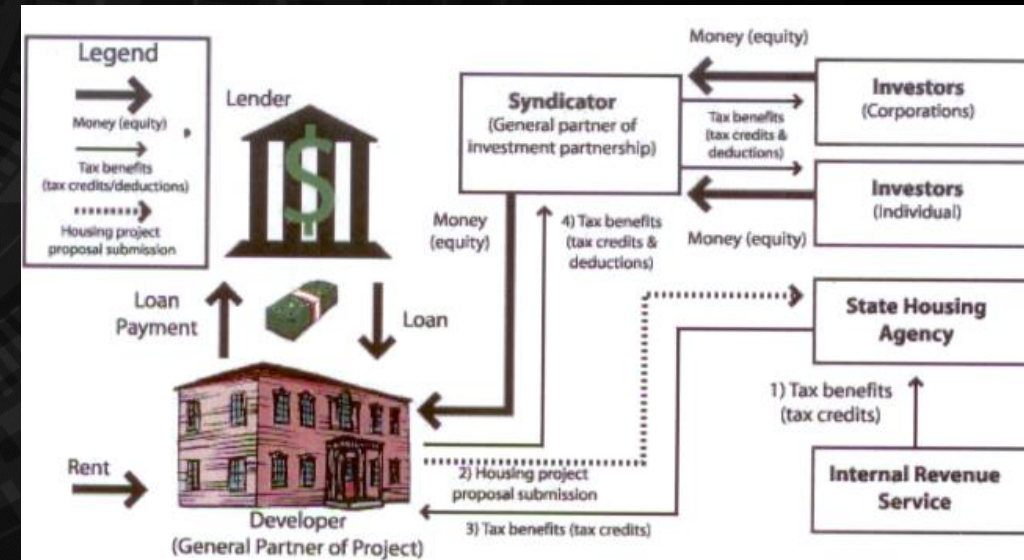
Resources are many but limited. A focus on:

- Low Income Housing Tax Credits (LIHTC)
 - Tax Increment Financing (TIF)
- The Housing Trust Fund

| Type of Tool | Specific Tool |
|---|--|
| <p>City Financial Resources</p> <p>Supported Uses:</p> <ul style="list-style-type: none"> • Production of affordable rental housing • Preservation of affordable rental housing, including income-restricted and NOAH • Production and preservation of affordable ownership housing • Housing for the homeless • Home maintenance and improvement programs | <p>Housing and Redevelopment Authority (HRA) Resources: HRA resources include levied funds and property sale proceeds. These resources can be used for specific development projects, rehabilitation and maintenance programs, and other housing opportunities as determined by the HRA Board in accord with City goals and policies.</p> <p>Tax Increment Financing: Cities may elect to create a tax increment financing (TIF) district as a means of supporting affordable housing and redevelopment projects. Under TIF, the City allocates future property tax gains to fund current development. By legislative definition, TIF created specifically for housing projects must provide affordability to those at 60% of AMI or less for rental projects and 115% of AMI for owner-occupied housing projects, while other types of districts do not have this requirement TIF is a tool that may be considered for gap financing of housing projects that would not occur "but for" this type of assistance.</p> <p>Tax Abatement: Tax abatement is a financing tool that reduces taxes or tax increases for owners of specific properties. Local governments offer the tax reduction to provide a financial incentive for a public benefit, such as creation of housing affordable to low- and moderate-income households. The City/HRA has not used tax abatement for affordable housing projects in the past.</p> <p>9% Low-Income Housing Tax Credits (LIHTC): The LIHTC program is administered by the Internal Revenue Service (IRS) where tax credits are granted for eligible costs over a period of ten years. Often these tax credits are syndicated to be used as equity in the project to leverage additional financial resources. Annually the IRS allocates tax credits to each of the states based on population. The states are then responsible for distributing the tax credits to eligible projects. In Minnesota, the state sub-allocates a portion of its allotment of tax credits to five other entities, one of which is the Saint Paul HRA. Under federal law, a project must either provide 20% of the units to households earning 50% of AMI or less or 40% of the units must be affordable to households earning 60% of AMI or less to be eligible for a tax credit award for a minimum term of 15 years; A tax credit allocator must develop a Qualified Allocation Plan (QAP) detailing selection criteria The HRA will continue to award affordable housing projects this resource based on the objectives set forward in its QAP.</p> <p>4% LIHTC/Conduit Revenue Bonds: HRAs can issue tax-exempt housing revenue bonds that help to finance affordable housing development, such as new construction, acquisition and rehabilitation or refinancing. In addition to the tax credit requirements described above, bond-financed projects support affordable housing in which at least 20% of the units meet HUD's fair market rents, which reflect Section 8 HCVs rent limits. The City/HRA considers issuing bonds for housing developments through an application process.</p> <p>Community Development Block Grant (CDBG): The City receives an annual allocation of CDBG from the U.S. Department of Housing and Urban Development. Uses of the funds need to meet one of three national objectives, which include benefit to low- and moderate-income persons; aid in the prevention or elimination of slums or blight; and meet a need having a particular urgency. Housing-related eligible uses include real property acquisition, disposition of property acquired with CDBG funds, clearance, public services, relocation, loss of rental income, privately owned utilities, rehabilitation, and construction (only allowed with the participation of a community based development organization), and code enforcement. Saint Paul has not identified code enforcement and loss of rental income as uses of these funds in its most recent Consolidated Plan, which sets forth how the City intends to use funds for a five-year period. The City of Saint Paul allocates these resources through the City's Capital Improvement Plan process, and allows for community organizations to apply for these resources. Past uses for housing have included capitalizing neighborhood housing rehab programs, City rehab and emergency loan programs, and rehab of affordable housing.</p> |

Low Income Housing Tax Credit Program (LIHTC)

- Primary national funding source for new construction and rehabilitation of affordable multifamily housing since 1986, administered by the IRS
- Tax credits are granted for eligible costs over a period of ten years
 - Typically these tax credits are syndicated to be used as equity in the project to leverage additional financial resources
- IRS allocates LIHTCs based on population to states, State of MN sub-allocates to Saint Paul (HRA), Minneapolis and a few counties
 - A project must either provide 20% of the units to households earning $\leq 50\%$ of AMI, or 40% of the units must be affordable to households earning $\leq 60\%$ of AMI
 - 9% competitive LIHTCs
 - 4% LIHTCs/conduit revenue bonds



Notes: Source: Adapted from U.S. General Accounting Office, [Tax Credits](#).

Tax Increment Financing

- Financing tool authorized by State law
- Cities and redevelopment authorities capture increased property taxes from development
- Properties in a TIF district pay property taxes like every other property
- Revenues generated from increased value in TIF district are captured by TIF Authority* (HRA or Port Authority)
- Revenues are used to pay eligible costs associated with development, including **construction of affordable housing, public improvements and administrative expenditures**
- Up to 25 years of increment
- Development Program / Redevelopment Plan

Types of district

- Housing District
- Redevelopment District
- Economic Development district
- Renewal & Renovation District
- City's informal policy to capture no more than 10% of its tax capacity in TIF districts
 - In place to address how bond rating agencies look at TIF commitments
 - For Pay 2020, our 58 TIF districts are capturing 8.34% of the City's total tax capacity

| | No. of Districts |
|-----------------------|------------------|
| HRA Districts | 44 |
| Port Districts | 14 |
| TOTALS | 58 |

22 Housing districts
 21 Redevelopment districts
 1 Economic Development district

Housing Trust Fund Strategy

Objective 1:

Meet the needs of those with the lowest incomes by increasing supply

Objective 2:

Invest in low and moderate income residents by investing in the supply

Objective 3: Explore innovative approaches to meeting housing needs

Objective 4:

Build wealth for residents and communities

Objective 5:

Promote fair access for all of us

www.stpaul.gov/departments/planning-economic-development/housing/housing-trust-fund/housing-trust-fund-strategy

Case Study: Hamline Station Station (two projects)

Mixed use - former Midway Chevrolet lot, University Ave

108 units – two separate projects, all affordable to households at 30-60% of Area Median Income

Mix of 1, 2, 3-BR units; 14 are permanent supportive housing

Developer and on-site service provider: PPL

13,700+ square feet of commercial/retail space on first floor

Separate developer, owner: Excelsior Bay Partners

\$14.3M Total Development Cost (for the 4% LIHTC part of the project):

\$9.56M in Hard Construction

\$4,834,353 in Soft Costs

Non-City government sources are \$8.28M

Non-gov't grants are \$600K

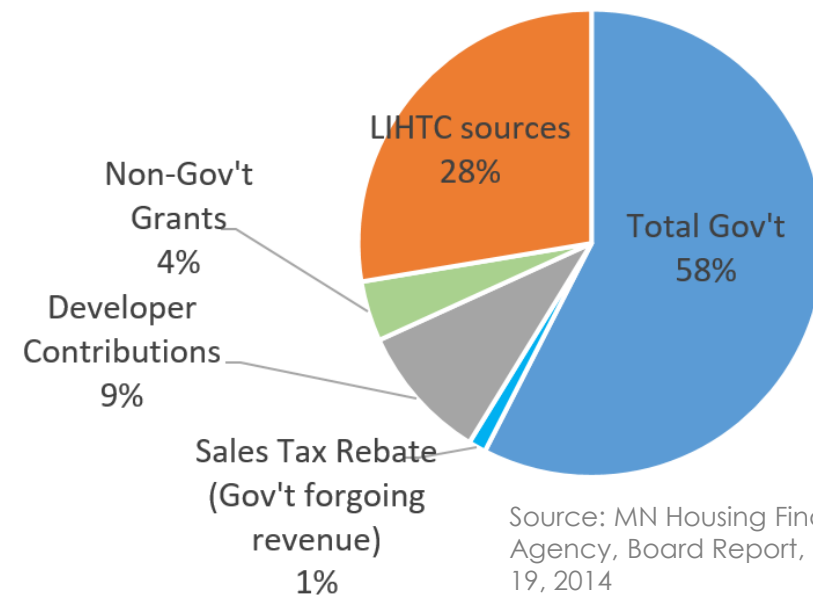
Developer contributions (equity and deferred developer fee) are \$1.35M

Low Income Housing Tax Credit sources are \$3.97M (again for the 4% LIHTC project)

Caveat: The City of St. Paul also provided TIF and allocated 9% LIHTCs as a sub-allocator (**NOT** shown here in image below)



Sources of Financing - Hamline Station



Source: MN Housing Finance Agency, Board Report, June 19, 2014

Recent Housing Production

Recent City/HRA-supported New Construction

| 2019 Projects | 30% AMI | 50% AMI | 60% AMI | TOTAL |
|--------------------------|---------|---------|---------|------------|
| Pioneer Press Apartments | | 29 | 115 | 144 |
| Selby/Milton/Vic | 26 | | 8 | 34 |
| 1500 Thomas | | 11 | 40 | 51 |
| Ain Dah Yung | 42 | | | 42 |
| Dorothy Day | 171 | | | 171 |
| Union Flats | | 44 | 174 | 218 |
| TOTAL 2019 | 239 | 84 | 337 | 660 |
| % of total, City/HRA | 36% | 13% | 51% | 100% |

| 2020 Projects to Date | | | | |
|-----------------------|--|----|-----|------------|
| Legends at Berry | | 48 | 193 | 241 |
| Millberry | | 24 | 97 | 121 |
| TOTAL YTD 2020 | | 72 | 290 | 362 |

45% of new housing* permitted in Saint Paul in 2019 (660 units) was City/HRA-assisted housing affordable to households earning up to 60% of AMI

Total New Housing Units Permitted by DSI*, 2019

*Issued building permits for units in multifamily and mixed use buildings = **1,465 housing units**

- 16% of units @ 30% AMI
- 6% of units @ 50% AMI
- 23% of units @ 60% AMI

Saint Paul share of affordable housing need, 2021-2030

Figure H-1: Affordable Housing Allocation for the City of Saint Paul

| Affordable Level | Number of Units |
|------------------------|-----------------|
| At or below 30% of AMI | 832 |
| 31 to 50% of AMI | 128 |
| 51 to 80% of AMI | 1,013 |
| Total | 1,973 |

Summary

- Comp Plan 2040 says that the City will address its need for affordable housing of 1,973 units \leq 80% AMI by 2030 (49% of these units \leq 50% of AMI)
- Comp Plan policy is that 30% of aggregate housing production supported by the City/HRA must be affordable to households up to 60% of AMI (rental) and 80% of AMI (ownership)

Planning and Zoning

Absent a City-adopted project-by-project affordable housing requirement or mandatory Inclusionary Zoning rule, **there are legal limits on requiring affordable units in housing projects*** in

- Administrative site plan reviews
- Planning Commission zoning applications

*Exception: When City/HRA funds are in the project

Legal Framework

The City/HRA are highly supportive of affordable housing:

- \$16M Housing Trust Fund
- The City/HRA supported 660 new units affordable to households up to \leq 60% of AMI in 2019 alone (1/3 of our 10-year Comp Plan need)
- City/HRA has a policy that TIF projects will contribute to an affordable housing pool, up to 25%, when applicable

Housing Development and Finance

Possibilities

1. Study Inclusionary Zoning and adopt an ordinance

- This zoning study is underway, but now on pause

2. Articulate and communicate the Commission's emphasis on affordable housing in the "Equity Guide/Worksheet for Comp Plan Consistency in Zoning Applications" document, under development

- To be provided to all zoning applicants, once finalized
- A 2nd staff draft still needs to come to the Zoning Committee responding to its feedback from Feb.

3. Consider an amendment to the Comp Plan 2040 (once adopted and only if needed)

- Policy H-41 already exists to consider use of official controls to require affordable housing to achieve mixed income neighborhoods

Could we develop a formal place in the interim that spells out the Planning Commission's priorities on affordability in housing projects that require Planning Commission review/action?

- *Interim = before an Inclusionary Zoning ordinance is developed/adopted?*
- *Ensure that the document reflects adopted Comp Plan/City policy*
- *Ensure that facts/findings are based on standards*
 - *CUPs and Site Plans (not advised, per CAO)*
 - *Variances – it's possible that an affordable housing condition could be attached to a variance application provided that the condition is directly related to and in rough proportionality to the impact created by the variance (per CAO)*

Questions and Discussion

- Key questions for our guests?
 - Legal clarifications?
 - Housing finance/development questions?
- General comments
- Next steps?

Thank you to Mr. Warner
and Director
Schuchman!

Variance findings

- a) The variance is in harmony with the general purposes and intent of the zoning code.
- b) The variance is consistent with the comprehensive plan.
- c) The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.
- d) The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- e) The variance will not permit any use that is not allowed in the zoning district where the affected land is located.
- f) The variance will not alter the essential character of the surrounding area.

Conditional Use Permit findings

- a) The extent, location and intensity of the use will be in substantial compliance with the **Saint Paul Comprehensive Plan** and any applicable subarea plans which were approved by the city council.
- b) The use will provide **adequate ingress and egress** to minimize traffic congestion in the public streets.
- c) The use will not be detrimental to the **existing character of the development** in the immediate neighborhood or **endanger the public health, safety and general welfare**.
- d) The use will not impede the **normal and orderly development and improvement of the surrounding property** for uses permitted in the district.
- e) The use shall, in all other respects, **conform** to the applicable regulations of the district in which it is located.

Site Plan Review findings

1. The city's adopted comprehensive plan and development or project plans for sub-areas of the city.
2. Applicable ordinances of the city.
3. Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.
4. Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.
5. The arrangement of buildings, uses and facilities of the proposed development in order to ensure abutting property and/or its occupants will not be unreasonably affected.
6. Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.
7. Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.
8. The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development.
9. Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.
10. Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.
11. Provision for erosion and sediment control as specified in the Minnesota Pollution Control Agency's "Manual for Protecting Water Quality in Urban Areas."