

Responding to the Threat to the Twin Cities Region's Supply of Naturally Affordable Rental Housing

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The region's supply of naturally occurring affordable rental housing (unsubsidized) is at risk. National investment companies have turned to the Twin Cities market seeking investment opportunities and are increasingly buying up Class C apartment properties. In many of those cases, the new owners are then repositioning the buildings in the market—undertaking rehab, adding amenities to appeal to more upscale tenants, dramatically escalating rents, toughening admission standards, ending or cutting back involvement in government programs like Section 8, and generally attempting to move the building more upscale. The result has been a dramatic reduction in the supply of affordable housing and the involuntary displacement of many lower income households, who find themselves competing for an ever smaller supply of affordable housing. In one recent example, the Crossroads apartments in Richfield, 700 units of deeply affordable housing have been converted, which, effectively canceling out virtually all of the gains from new affordable units built in the Region in 2014.

Also contributing to this threat are the escalating land values in parts of the Region where strong market conditions exist or where the construction of public amenities like transit lines will likely enhance value over time.

Given that this housing is privately owned and not subject to rent and income restrictions associated with subsidized housing, what can be done? This memo is an attempt to begin a discussion on possible strategies and policy responses.

1. **Document the problem.** There should be an organized effort to track the most significant examples of this trend. Getting the facts clear in each case is important. Not all the situations are the same.
2. **Strategies to preserve affordability.**
 - a. **Identifying buildings** as soon as they come on the market, and, if possible, before that. Identification as early as possible is critical if a preservation purchase is to be negotiated. Brokers typically market these units through broadcast emails to potential buyers, which then requires quick analysis and response with a purchase offer.
 - b. **Helping preservation buyers to buy at risk buildings.** Several of our non-profit housing providers are actively competing in the market for these properties, but they are disadvantaged in competing against for profit purchasers on price and on timing (the long delay in assembling funding from public and philanthropic sources). The Greater Minnesota Housing Fund is currently leading an effort to create a fund of low cost financing which will allow preservation buyers to compete more effectively.

c. **Policies which can help facilitate preservation purchases.** These would be actions by local governments or by the Legislature which would be designed to help preservation purchasers to buy these properties.

i. **Right of First Refusal.** When owners offer their buildings for sale, they would be required to notify the tenants and a designated unit of government of any purchase agreement entered into. The tenants or the government unit would then have a defined period of time to meet the price and purchase the building themselves. There are existing examples of this approach, most often applicable to subsidized buildings, most notably in Washington D.C. and Chicago (for SROs). Minnesota has a ROFR for the sale/closure of manufactured home parks, though it doesn't work very well, primarily because the time to respond to the purchase price is only 45 days. A Minneapolis ordinance provides that when apartments are converted to condos, the renter has the first right to purchase the unit, for a 60 day period. One challenge with this approach is that it can be hard to anticipate where these purchase opportunities will materialize, making it difficult to know where to push for local ordinances.

ii. **Notice Period.** A softer approach than ROFR, this would be a local (or regional if by state law) requirement that for certain defined buildings, the tenants and local government must be given advance notice prior to the sale of any building. The tenants or local government would have the opportunity to attempt to negotiate a purchase with the seller, though they would not have a legal right to match any price negotiated by another buyer. Several cities have taken this approach, including Denver and Portland. We will be investigating to see what the experience has been with those two cities. In addition, both the City of Minneapolis and Hennepin County are concerned with the lack of advance notice when rent controls are expiring on locally assisted housing developments, such as bond deals. The City and County both want to explore imposing notice requirements in such situations in the future. (While not technically NOAH properties, they are transitioning to NOAH status as controls expire.)

d. **Creating incentives for a "socially responsible" alternative business model.** The reality is that many of these properties are as affordable as they are due to long deferred investment and upgrades. Such investments are necessary in the long run. The goal, though, should be to encourage an alternative business model to simply upscaling the building and driving out those who most need the housing. How do we create incentives for owners or buyers to invest in their buildings while maintaining affordability?

i. **Local programs offering rehab financing in return for affordability commitments.** Some cities offer attractive financing to multifamily property owners in exchange for affordability covenants. How well are they working? Could they be expanded /improved? Centerpoint and Excel have a new program designed to encourage energy efficiency investments in multifamily properties, with enhanced incentives for subsidized rental properties. Perhaps those incentives could be extended to NOAH owners in exchange for affordability commitments.

- ii. **Property tax and rent subsidy incentives.** Minnesota’s 4d property tax program provides a 40% tax break for subsidized rental properties. However, this benefit could be extended to any properties receiving local “financial assistance” as long as the owner agrees to rent and income restrictions. One idea is that the local government provides a modest rent subsidy for some share of the units, meeting the “financial assistance” requirement, thus making those units also eligible for the 4d tax break. In return, the owner would commit to keeping that share of the units affordable for an agreed upon period of time.
 - iii. **Incentives to address landlord concerns about renting to certain groups of tenants.** This year the Legislature funded a pilot program to provide a landlord guarantee fund which would cover certain landlord losses in return for agreeing to rent to tenants with issues in their rental history. When the Oregon legislature recently enacted anti-discrimination protections for Section 8 tenants, they also created a fund to reimburse landlords for losses. A similar program could be created at a local level or, through state law, at a regional level.
- e. **Increasing local government leverage through zoning.** A city could perhaps structure its zoning so as to require an owner engaging in certain conversion actions from doing so before obtaining the city’s zoning related approval. Standards would have to be defined to spell out the scope of the city’s approval requirements in this situation but it could provide the city with substantial leverage to influence the outcome of the building changes. In Washington State, for example, some cities have expressly zoned manufactured parks as such, so that attempts to change use would require a zoning change and city approval.
- f. **Limiting exclusionary rental practices.** Another approach is to adopt local or regional requirements that limit a landlord’s ability to unfairly exclude tenants.
 - i. **Prohibiting discrimination against Section 8 voucher holders and other recipients of government programs.** Although landlord participation in the Section 8 Housing Choice Voucher program is generally considered voluntary, a number of local and state laws have prohibited excluding applicants simply because they use a rent subsidy (often referred to as source of income discrimination). Minneapolis is currently considering such an ordinance. The state Human Rights Act includes a prohibition on source of income discrimination, but the Minnesota Court of Appeals has interpreted that provision to not cover Section 8 (a ruling which the Legislature could reverse by amending the Act.) The ultimate impact of such laws is not clear, though they do seem to dramatically reduce the number of landlords advertising, “No Section 8.” To be maximally effective, these laws need to include the proposed Minneapolis provision that the prohibited discrimination is based on status with regard to public assistance or any requirement of a public assistance program. The Massachusetts state law is similar.
 - ii. **Other unfairly exclusionary admission standards.** Though this may be partly a function of the tight market and the ability landlords have to choose among many tenants, there does seem to be a trend toward tightening admission standards. In some cases these standards

may go too far. HUD recently issued a guidance setting out situations where overly broad criminal background checks may violate the Fair Housing Act. https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf. Standards around minimum income requirements and minimum credit scores could go too far as well, and could be regulated through local ordinance or state legislation if a consensus can be developed on reasonable versions of these standards. Several of the larger nonprofit housing providers are currently jointly reviewing admission standards. Could the result of that lead to a set of best practice admission standards that cities in turn could require or encourage as part of their rental licensing programs? The tension between cities encouraging crime free housing that may entail overly restrictive admission requirements and this goal would have to be addressed.

iii. **For cause eviction.** This would establish a standard incorporated into leases requiring landlords to only evict for good cause, similar to the standard in most subsidized housing leases. Minnesota law also establishes a good cause standard for evictions from manufactured home parks, and two states and 16 cities have enacted similar laws to prevent arbitrary evictions. A recent legal analysis concluded that a local government just cause requirement would not conflict with or be preempted by Minnesota law.

3. **Strategies to mitigate the harm of displacement.** Where the affordability of the housing cannot be preserved, there may be ways to partially mitigate the harm caused by displacement.

a. **Relocation benefits.** In certain situations, the law now requires that displaced tenants be paid relocation benefits (such as government sponsored redevelopment or the closure of manufactured home parks). Chicago's SRO ordinance requires this of owners of purely private housing. The obligation to pay relocation benefits to displaced tenants could be imposed upon the owner by local ordinance or state law. In some cases, if the relocation obligation is substantial enough, it may deter the owner from the displacement actions altogether. There may be legal issues however.

4. **Strategies to replace or create more affordable housing in anticipation of losing some.**

a. **One for One replacement.** This would impose on the owner an obligation to replace any affordable units removed or rendered no longer affordable. Chicago has a provision like this, and Minneapolis has one for the limited situation where an owner eliminates SRO housing with the help of city financial assistance.

b. **Inclusionary Zoning.** This is a strategy often recommended for areas experiencing gentrification because the same conditions that cause the gentrification—a robust residential real estate market—often provide the circumstances for an effective Inclusionary Policy. IZ (or Inclusionary Housing or Mixed Income Housing) is a local government policy that either requires or incents owners building market rate apartments to include affordable units.

- c. **Metro Home Grown Fund.** Efforts are underway to develop a proposal to the Legislature which would create a dedicated funding source for affordable housing, in addition to the annual appropriations the legislature typically provides. If enacted, this Fund could be useful in creating replacement housing.

Housing Justice Center

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