

## **RIGHTS, RESPONSIBILITIES, AND PREEMPTION IN MINNESOTA**

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Chair Masin, Vice Chair Elkins, and members of the Local Government Division, thank you for inviting me to comment on residential zoning. I study land use regulation and housing markets as codirector of the Urbanity Project at the Mercatus Center at George Mason University. The Mercatus Center is a research center dedicated to applying market-oriented academic ideas to real-world problems.

Local governments have power over land use, and they bear the final responsibility in using these powers justly. But the exercise of local land use authority relies on institutions designed by the state. Thus, the state legislature has the responsibility of adjusting institutions that are working poorly for citizens, markets, or local governments.

The bill before you, HF 3256, touches several aspects of the state's role in setting the framework for the exercise of local power over land use. It would limit the use of some fiscal tools and newly allow the use of others, preempt some zoning controls, and adjust the planning process.

### **LAND OF 10,000 PLANNED UNIT DEVELOPMENTS (PUDS)**

Mounting evidence suggests that the institutions of development in suburban Minnesota are broken. An increasing number of suburbs are abandoning traditional zoning in favor of PUDs. PUDs are appropriate for unique or innovative projects, but they are an invitation to opaque policymaking and favoritism. In addition, the creation of a PUD agreement involves up-front administrative costs, making it uneconomical for small-scale builders.

PUDs used for routine subdivisions are a warning that something is not working as it should.

In the Twin Cities area, about half of recently built suburban single-family homes are in PUDs.<sup>1</sup> Table 1 shows the 10 most PUD-dependent cities.

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1. In some cities, including Minneapolis, developments built under PUD agreements retain a conventional underlying zoning, so the data do not allow one to distinguish PUDs.

TABLE 1. NUMBER AND SHARE OF 2010S HOUSES IN PUDS

City	Houses	Share of houses in PUDs (percentage)
Chaska	931	97
Maple Grove	1,864	95
Carver	396	93
Blaine	2,935	91
Victoria	983	90
Rosemount	766	86
Savage	1,183	86
Dayton	479	86
Eagan	560	74
Lino Lakes	595	74

Note: This table includes only cities with at least 200 houses built in the 2010s. Data include houses built from 2010 to early 2019 on land zoned for residential use or for PUDs.

Source: Michael Corey and MaryJo Webster, tax appraisal records from metropolitan Minnesota counties and zoning maps from cities (data on file with author, n.d.).

Here, the problem appears to be that local governments cannot, using the fiscal tools the state has allowed them, make new development pay for itself. Instead, localities impose uneconomical zoning to force builders into PUD negotiations.

In addition, Minnesota suburbs, like many local governments nationwide, use zoning to curate which types of people can move to town. This is an inappropriate use of government power and tramples on property rights and fair housing principles.

To address these interrelated problems, HF 3256 proposes to empower local governments fiscally in exchange for limits on their ability to force developers into using PUDs, either as an explicit requirement or by setting minimum lot sizes uneconomically high so that land value can be unlocked only via a PUD.

### MINIMUM LOT SIZES

The most universal form of residential land use regulation in the United States is minimum-lot-size requirements. In metropolitan Minnesota,<sup>2</sup> about 43 percent of houses built in the 2010s were on lots very close to, or significantly smaller than, the minimum lot size. In some cases, local governments routinely grant exceptions to their own minimum-lot-size requirements, resulting in noncompliant lots. In other cases, a large share of lots is very close to the minimum lot size. In either case, the data show that there is strong demand for lots smaller than the legislated minimums.<sup>3</sup>

2. The metropolitan area is defined in section 473.121 subdivision 2 and covers most of seven counties. Minn. Stat. § 473.121 (2021). My data cover the Metropolitan Urban Service Area.

3. The analysis used here follows a method developed in M. Nolan Gray and Salim Furth, "Do Minimum-Lot-Size Regulations Limit Housing Supply in Texas?" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, May 2019).

Table 2 shows the 10 metropolitan cities with the highest share of newly built houses on lots that are either near or smaller than the minimum lot size. The list includes both Minneapolis and St. Paul, as well as eight suburbs. Minimum lot sizes vary within each jurisdiction, but all the suburbs have median minimum lot sizes between 9,000 and 15,000 square feet, or three to five homes per acre.

The additional cost of land can be substantial. Regulations that effectively add 1,000 square feet of land to the lot size increase the cost of a home by about \$10,000 in most jurisdictions, although the figure is as high as \$29,000 in Edina. In research undertaken in another context, I find that households rarely value extra yard space by as much as it costs.<sup>4</sup>

TABLE 2. CITIES WHERE MINIMUM LOT SIZES ARE TOO TIGHT FOR THE MARKET

City	Share of lots that are tightly zoned (percentage)	Share of lots that are noncompliant (percentage)	Median minimum lot size	Cost of 1,000 sq ft
Edina	14	37	9,000 sq ft	\$29,346
Woodbury	25	42	10,000 sq ft	\$12,907
Eden Prairie	33	19	13,500 sq ft	\$12,070
Minneapolis	55	9	5,000 sq ft	\$10,181
Minnetrissa	16	46	14,500 sq ft	\$10,063
Farmington	39	9	10,000 sq ft	\$9,246
St. Paul	59	5	5,000 sq ft	\$7,565
Dayton	17	54	15,000 sq ft	\$7,449
Forest Lake	20	47	15,000 sq ft	\$6,530
Rogers	33	34	15,000 sq ft	\$2,857

Note: Includes only houses built in 2010–2019 for which a minimum lot size can be identified and thus excludes most PUD zones. Tightly zoned lots are those with a lot size between 90 percent and 110 percent of the minimum. Noncompliant lots are those less than 90 percent as large as the published minimum. The fourth column lists the median minimum lot size that applies to recently built houses. The final column shows the median land value, as appraised for tax purposes, on these lots. Data include houses built from 2010 to early 2019 on land zoned for residential use or for PUDs.

Source: Michael Corey and MaryJo Webster, tax appraisal records from metropolitan Minnesota counties and zoning maps from cities (data on file with author, n.d.).

Thus, smaller minimum lot sizes would likely result in a more diverse housing stock, better value for home buyers, and new homes that are attainable to a greater number of Minnesota households.

## CONCLUSION

Land use authority is not a purely local prerogative. It takes place within an institutional framework defined and regularly adjusted by the state. When warning signs emerge, such as the dominance of PUD regulation in growing metropolitan suburbs, the legislature should consider adjustments to those institutions to ensure that local land use authority can be used in ways that are fair, protect property rights, and serve the interests of Minnesotans.

4. Salim Furth, “Foundations and Microfoundations: Building Houses on Regulated Land” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, October 2021).