



Zoning For Housing Choice

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The Power to Rezone

- The zoning of property is an exercise of the police power.
- Any exercise of the police power restricts the actions of certain people, and sometimes causes an economic loss.
- This loss must be justified by benefit to the community in general.
- The Constitution delegates the legislative power to zone to local governments. Ga. Const. Art. IX, sec. 2, par. 3(c).



Minimum Zoning Application Requirements

- Current zoning and requested zoning
- Names and contact information for property owners and applicant
- Signed and notarized owners authorization
- Legal description of property
- Survey plat
- Site Plan
- Filing fee
- An analysis of the impact of the proposed zoning based on the standards.

The Steinberg Act

- The legislation requires the planning department to examine the proposed zoning and its effect on nearby property at the time the rezoning application is filed. O.C.G.A. § 36-67-3.
- Applies only to those counties which have a population of 625,000 or more and those municipalities located within such counties which have a population of 100,000 according to the US census

Steinberg Act

- The planning departments in these local governments must
 - Review zoning proposals,
 - Make a recommendation with respect to each of the criteria listed in the Act
 - Make a written report for the public record



Steinberg Act Standards


1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
4. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
5. If the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan; and
6. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

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DeKalb County Standards

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties.
2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby properties.
3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.
4. Whether the zoning proposal will result in a use which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools.
5. Whether the zoning proposal is in conformity with the policy and intent of the Comprehensive Plan.
6. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.
7. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.

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- In Atlanta, eight out of every ten homes built in the 1990s were single family homes. (Atlanta Regional Commission, Atlanta Region Outlook, 1998).
 - Where multi-family housing is allowed it is usually used as a buffer zone to protect residents of single-family districts from the noise and traffic of commercial and industrial areas.
 - States uphold the power to exclude apartment dwellers from areas occupied by single-family houses on the Euclidian theory that the exclusion promotes the public, health, safety and welfare.

- “Euclidian” zoning describes the early zoning concept of separating incompatible land uses through the establishment of fixed legislative rules that would be largely self-administering.
- The Village of Euclid decision upheld the exclusion of apartments from single-family districts because apartment in districts of “private houses” were “mere parasites.” See Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 394 (1926).

Rezoning is a political process

- Community support is key.
- This support may not be based on sound land planning principles.
 - What the community wants is often based on myths such as:
 - A single family home on a 10,000 SF lot in a conservation subdivision with walking trails and amenities is worth less than the same house on a 20,000 SF lot with no dedicated open space.
 - Townhomes bring a low economic and social class of people into their neighborhood.
 - Apartments bring crime

Street Networks



Principal “Exclusionary” Land-use Controls:

- Large lot zoning:
 - Courts have upheld based on idea that they serve the public purpose of reducing traffic congestion, reducing fires, preventing overcrowding, creating open space.
- Minimum house size requirements:
 - Courts usually uphold them based on health and aesthetic considerations.
- Prohibition of multi-family housing:
 - Courts have upheld prohibitions based on considerations of overcrowding and aesthetic reasons.
- Prohibition of mobile homes:
 - Courts have upheld based on aesthetic and safety reasons.
- Unnecessarily high subdivision requirements:
 - provide land improvements far above the necessary minimum or to dedicate substantial amounts of land (or pay fees in lieu of such dedication) for open space, schools, recreation facilities, etc.
- Administrative practices:
 - improper notice, administrative delays, the imposition of arbitrary development demands in exchange for local permits.

(The 1978 Report of the ABA’s Commission on Housing and Urban Growth)

The Case Against Manufactured Housing

- In **King v. City of Bainbridge, 276 Ga. 484 (2003)**, the court found a zoning ordinance that prohibited manufactured housing from residential zoning districts, except for mobile home parks, valid and constitutional. The Court stated:
 - A zoning ordinance does not exceed a city's police powers unless it is “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.” Courts routinely uphold zoning ordinances broadly restricting mobile home placement. A wide variety of rationales have been found sufficient to justify these ordinances: preserving land for low density, single-family dwellings, protection of property values, guarding against increased crime, guarding against traffic congestion, maintaining aesthetics, regulating population density, preventing waste and sewage problems, regulating quality of housing stock, and concerns about wind vulnerability.”
 - List was compiled by referring to cases from Texas, South Carolina, North Carolina, Kentucky and several federal District courts.

Georgia Supreme and Exclusionary Zoning


- The Georgia Supreme Court has only once considered the issue of exclusionary zoning through large lot requirements.
- The Georgia Supreme Court unanimously affirmed
 - the rezoning decision amounted to an unconstitutional taking and was arbitrary and capricious.
- On appeal the Georgia Supreme Court held:
 - In light of our affirmance of the trial court's ruling that the zoning classification was unconstitutional and the trial court's remand order instructing the county commission to reconsider TJP's application for rezoning under the ordinances in effect at the time of TJP's initial application, we need not determine in this case whether the zoning classification applied to this property is unconstitutional as exclusionary zoning
- Although the court did not directly rule on the exclusionary issue, it did not overrule the Henry County Superior Court's ruling; the trial court's ruling still stands in Henry County. Henry County v. Tim Jones Properties, 273 Ga. 190, 194 (2000).

Zoning is a Political Process (cont.)

- Exterior Facade.
 - Brick, stucco, stone, and glass
 - No vinyl, aluminum or metallic siding
- Size of Units:
 - At least 1,000 square feet for one bedroom condo units
 - At least 1,800 square feet for townhomes
- Restriction on number of for-sale units that can be rented by owners:
 - the total number of residential units occupied by non-owners via lease shall be limited to a maximum of ten (10) percent of the total number of residential units.
- Interiors:
 - Ceiling heights in primary rooms shall be a minimum of nine feet.
 - Kitchens with countertops made of granite, Corian, concrete, quartz, stainless steel or other type of similar or higher quality stone surface;
 - Kitchens with custom designed cabinets and built-in higher quality appliances.
 - Bathrooms shall have ceramic or porcelain tile, stone or hardwood floors
 - Kohler, or similar or higher quality faucets.
 - Master bedrooms shall have walk-in closets.

Zoning is a Political Process (cont.)

- Amenities:
 - Swimming pool and clubhouse area
 - Fitness center
 - Greenspace with walking trails.
- HOA will be responsible for
 - Common Areas
 - Front lawns
 - Facades of the buildings
- Off-site improvements:
 - Traffic lights
 - Sidewalks
 - Road repavement
 - Fixing failed storm water drainage facilities in government right of way
 - Fixing failed detention ponds on adjoining property



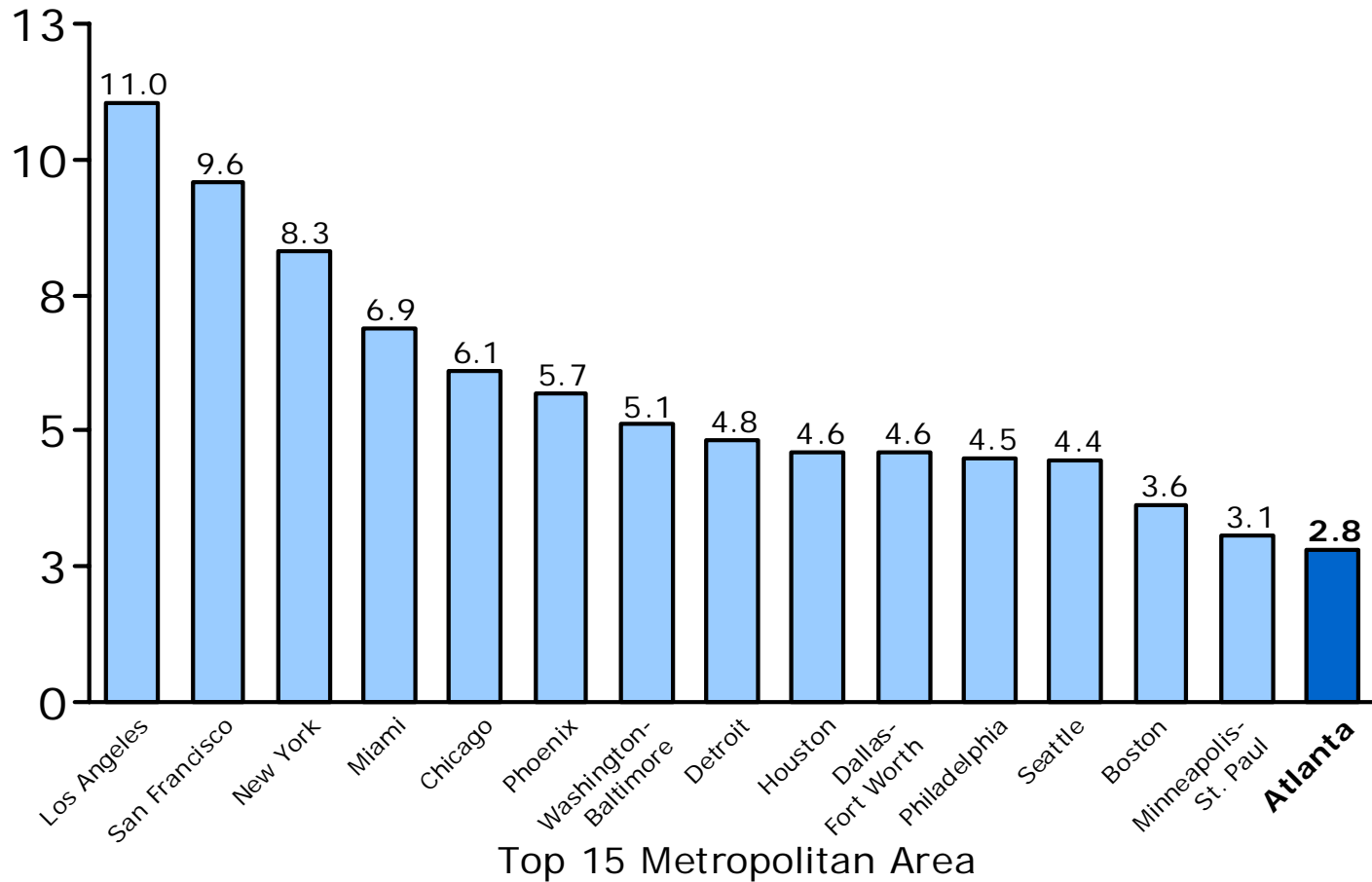
**Are our zoning laws serving the health,
safety, morals or general welfare of the
public?**

Density

- Regional Business Coalition
 - Eleven only allowed densities of eight units to the acre or less.
 - Generally large lots were required for single family residential zoning on septic
 - Means the developer can't build a small town community in the traditional sense.
 - Many suburban streets require excessive pavement widths that reduce walkability.

The Atlanta region's urbanized area is the least dense of the top 15 regions

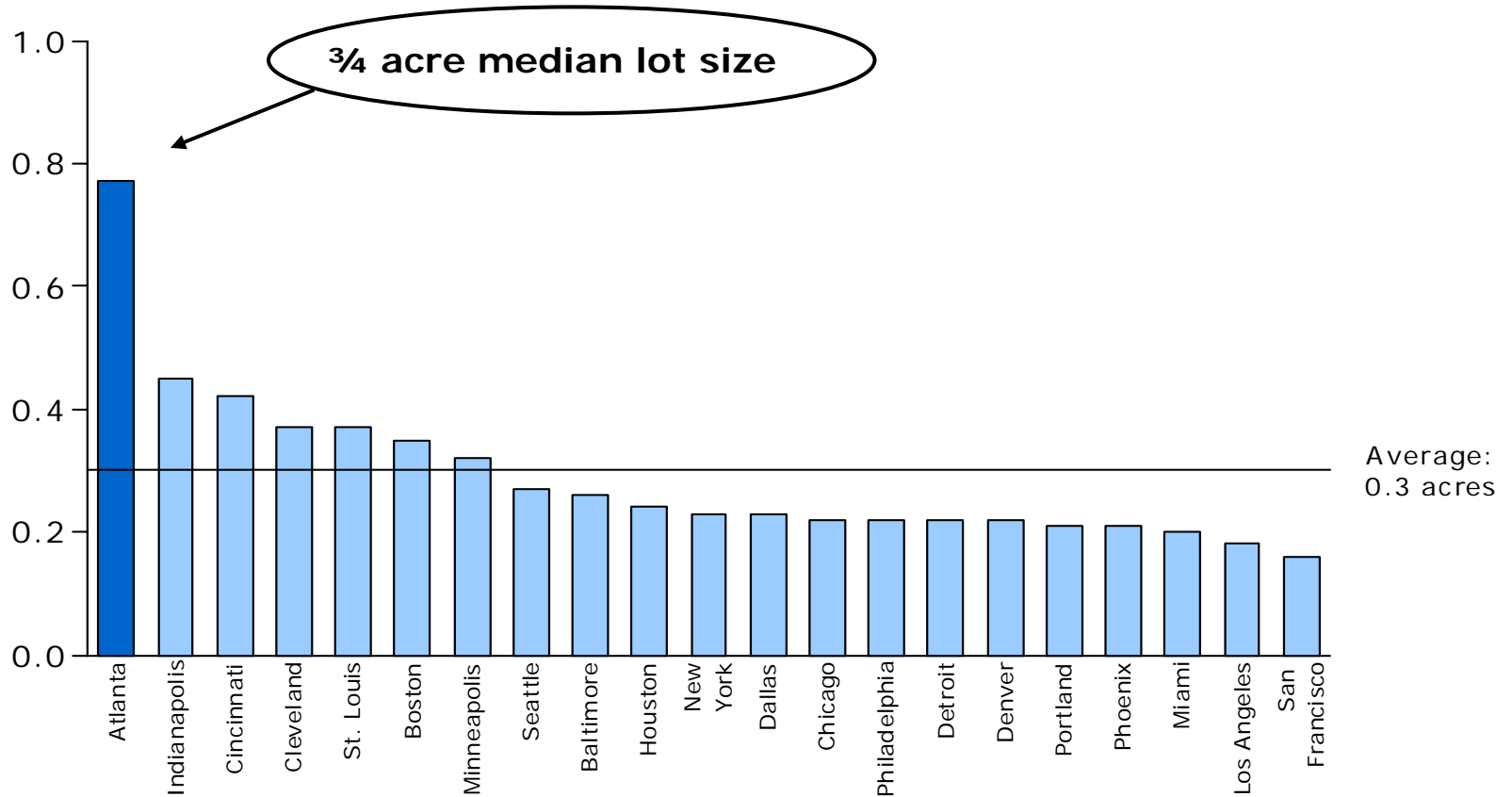
Population density of urbanized area* (people/acre)



*All areas with population density of >1,000 people per square mile
Source: US Census Bureau

The Atlanta region has the largest residential lot sizes of major regions

Median single-family lot size (acres) within MSA





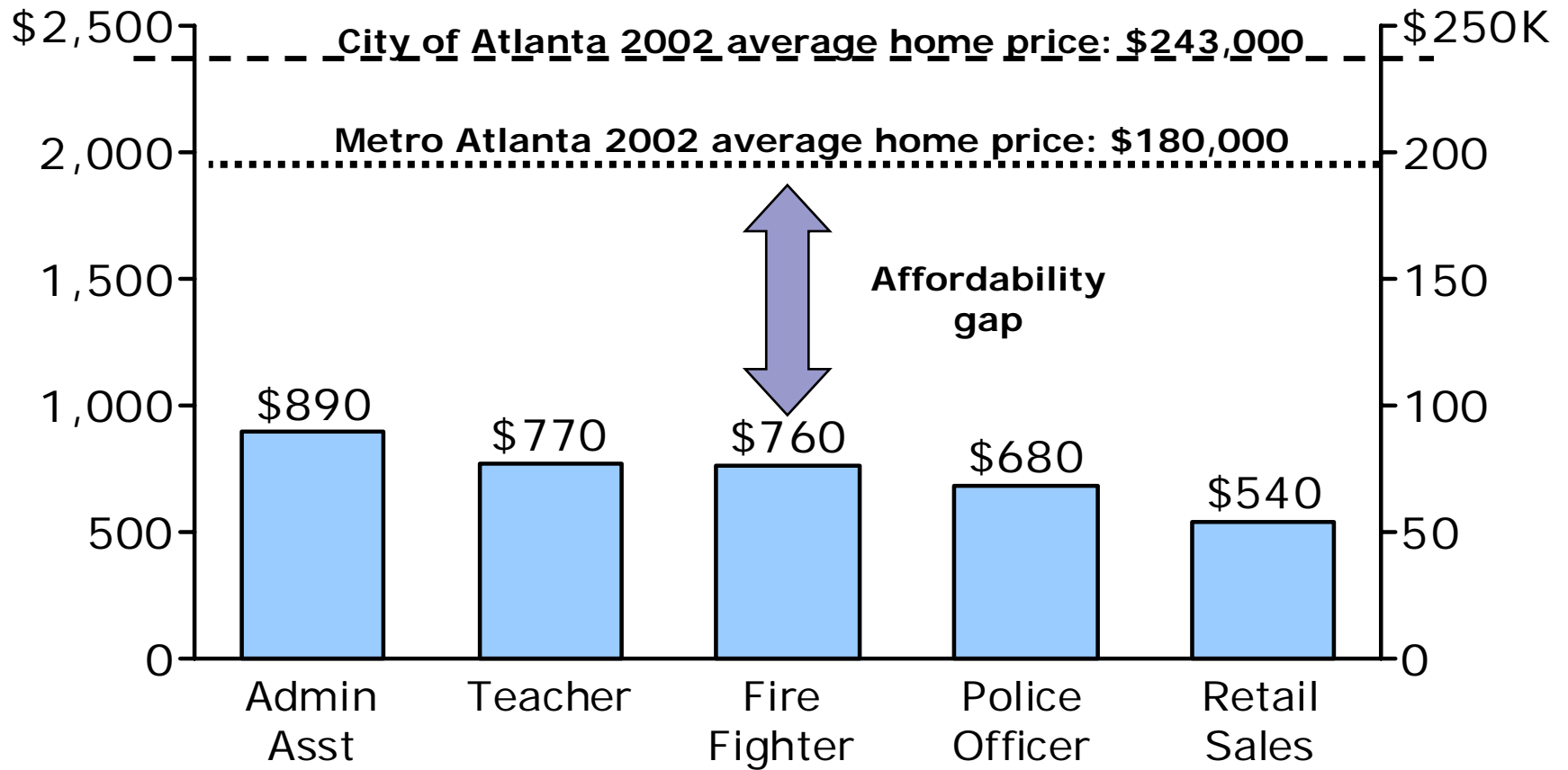
Exclusionary effect

- Suburban counties promote low-density development and price out less affluent residents through minimum lot size requirements
- Many middle-class families are unable to afford to live in many of the City of Atlanta's residential areas or in job-rich parts of the suburbs.

Many working families can not afford to buy a house in Metro Atlanta

Monthly housing spend

Equivalent house price



Assumptions: average annual salaries (not starting salary); 30-yr mortgage; 3% down; 7.5% interest

Source: Mayor Shirley Franklin's Housing Task Force (methodology); Bain analysis



Effect on Land Use Development

- Development "leapfrogs" farther out because many families are priced out of the housing market.
 - Middle-class families simply move further and further away from the center in order to find more affordable and desirable housing.
- Thus commuting costs become a factor in determining affordability.

Comprehensive Plans

■ Powers of the DCA

- Can mandate that communities create comprehensive plans and adopt policies to implement the goals stated in the plans.
 - The housing requirement for instance requires local governments to include policies to achieve higher and more affordable densities and create mixed use communities.
- Can not mandate specific goals of these policies or that the policies be implemented.
- No repercussions if these goals are not met.

Zoning and Regional Planning

- Local governments must submit Comprehensive Development Plans to the Georgia Department of Community Affairs to qualify for a range of state and federal assistance programs
- Each Comprehensive Development Plans must contain five essential goals, including:
 - Housing Goal to ensure that residents of the state have access to adequate and affordable housing and
 - Land Use Goal to ensure that land resources are allocated for uses that will accommodate all of the above.
- The housing component of the comprehensive plan should “create affordable housing opportunities to insure that all those who work in the community have a viable choice or option to live in the community.” Ga. Comp. R. and Regs. 110-12-1.04(12)(c)(2)(iii).

Zoning and Regional Planning

- The DCA can mandate
 - That local governments in communities with a population greater than 15,000, inventory existing housing and the cost of housing compared to wages and household incomes.
 - That these local governments create policies to implement the community's housing goals.

- DCA can only make recommendations as to which programs and initiatives the community adopts.
 - It may not “limit or compromise the right of a municipality or county to establish and administer its own zoning laws and regulations.” O.C.G.A. § 50-8-94 (e) (2001).



Success stories

- Fulton County exempts affordable housing from development impact fees. Fulton County Code, Section 58-178
- City of Atlanta gives density bonuses for providing affordable housing as well as exemption from development impact fees.
- DeKalb County does not have an affordable housing ordinance, but allows conditional zoning to provide affordable housing.