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METROPOLITAN HOUSING ALLOCATION PLANNING

by
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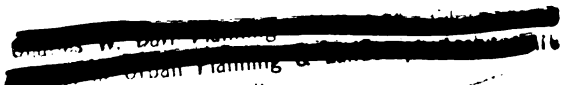

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.	1
FAIR SHARE HOUSING PLANNING DEFINED	3
THE EVOLUTION OF FAIR SHARE HOUSING ALLOCATION PLANNING	5
METROPOLITAN HOUSING DEVELOPMENT PATTERNS	5
THE INFLUENCE OF REGIONALISM	7
FAIR SHARE HOUSING PLANNING AND THE COURTS	8
LEGISLATIVE DIRECTIVES AND ADMINISTRATIVE ACTION	9
THE STATUS OF FAIR SHARE HOUSING PLANNING	21
TWO CASE STUDIES.	24
THE DAYTON PLAN.	24
THE TWIN CITIES METROPOLITAN COUNCIL FAIR SHARE PLAN	25
IMPLICATIONS OF FAIR SHARE HOUSING PLANNING	29
FOOTNOTES	33
BIBLIOGRAPHY	36

INTRODUCTION

The purpose of this paper is to examine and analyze regional housing allocation planning, also called fair share housing planning. The concept of fair share housing planning is applied to metropolitan areas in an attempt to provide a greater degree of equality between urban socio-economic groups and minorities. It is based upon the fact that large disparities exist between income groups located in economically segregated areas within metropolitan areas. Disadvantaged groups located within impacted areas in our cities not only face the difficulties and problems of finding quality of life as a result of their own economic condition, but also suffer the problems associated with the poverty of their neighborhood and community as a whole including poor schools and urban services, crime, pollution, and unemployment. The purpose of fair share housing planning is to provide housing opportunities in areas where the disadvantages imposed upon lower income households due to neighborhood and community conditions are minimized. The theory of fair share planning acknowledges low income housing impaction and associated problems as a regional problem and attempts to provide a solution at the regional scale.

Organizationally, this paper first defines what is commonly termed fair share housing planning. Secondly, the evaluation of the fair share housing concept is analyzed. The analysis includes a description of the development of metropolitan areas and the housing disparities that have evolved as a result of this process. Factors which have motivated the fair share housing approach including the

regionalism movement, exclusionary zoning, and Department of Housing and Urban Development program initiative are also discussed in this section. Third, the legislative and regulative support for the development of fair share planning is discussed. The fourth section provides a brief overview of the status of fair share housing planning. Fifth, two fair share plans are examined including the Dayton Plan and the fair share plan of the Metropolitan Council of the Twin Cities Area. Finally, the implications of fair share housing allocation planning are examined and analyzed.

FAIR SHARE HOUSING PLANNING DEFINED

Fair share housing planning involves the preparation of a plan which allocates low and moderate income housing units among units of government within a metropolitan area based upon a determination of low and moderate income housing need. A fair share plan has been defined as "a plan which typically determines where housing, especially low and moderate income units, should be built within a region according to such criteria as placing housing where it will expand housing opportunity, where it is most needed, and where it is most suitable".¹

In terms of process, fair share housing planning typically is accomplished through the assessment of the total need for low and moderate income housing or the need for assisted housing within a regional area. This need, or a portion of it, is accepted as a numerical goal for the provision of housing over a specified time period for the region. Numbers of housing units proposed in the goal are then allocated among governmental units or geographic areas within the region. This allocation is generally based upon a number of factors including equal shares among communities; the need for assisted housing; the lack of low and moderate income housing opportunities among communities; future population needs; the suitability of the area or governmental unit in terms of services and amenities available such as schools, employment, and shopping facilities and the capacity of these services and amenities to accommodate additional loads; and other factors. The allocation of housing units may be established through actual apportionment of numbers of units assigned to localities or the establishment of

priority ratings for localities within regions. Actual formulas for allocation and priority determination among areas vary widely among regions adopting fair share allocation plans.

Central to the notion of fair share housing allocation planning is the achievement of social change within metropolitan areas. It represents a regional approach to housing inequity and its primary impetus is the expansion of housing opportunity for low and moderate income families. Fair share housing planning is a reality and is likely to increase as regional approaches to regional problems become even more firmly established.

THE EVOLUTION OF FAIR SHARE HOUSING ALLOCATION PLANNING

Metropolitan Housing Development Patterns

Existing development patterns within metropolitan areas and the social disparities inherent in these patterns between socio-economic groups provides the climate justifying the concept of fair share housing planning. Metropolitan areas in the United States follow similar evolutionary patterns evolving from small settlements which experience growth and expand to engulf surrounding land areas. As this expansion occurs the older residential portions of the city become congested, suffer from mixed land uses and other urban problems, and generally become less attractive for residential purposes. Those who are financially mobile move out of these areas into new less developed areas having amenities for residential living. This phenonena, and deterioration of housing stock within the older areas of the city because of age reduce the demand for housing in these areas. The reduction in cost of housing associated with the reduction in demand make inner-city housing accessible to lower income households. Typically waves of immigrants, usually racial or ethnic minorities or rural poor, have moved into these areas, gradually improved their economic condition, and then moved into better quality residential areas vacated by other groups engaged in the same process but a step ahead in improving their living conditions. This process, in operation in metropolitan areas over the past two hundred years, continues, resulting in the economically segregated patterns of development existing today.

Not only has this process resulted in an inequitable pattern of

development, but the disparity tends to increase over time. Residential housing in core areas continues to age, and therefore to deteriorate, while the cost and quality of housing in suburban areas continues to increase. This process has resulted in large enclaves of households of similar income with lower income households occupying, in many instances, the majority of housing in central city areas. This factor, in conjunction with reduced land values, shrinks the financial reservoir available to the city. Thus the city is left with the problem of providing vitally needed services and facilities without a means of paying for these services and facilities.

Suburban units of government generally tend to have higher median incomes and higher property values providing higher tax bases, while serving a population having less need for government supported services and facilities.

This pattern of development has resulted in inequities in the provision of services. Suburban areas generally tend to have better schools, less crime and other social problems, less pollution, and generally offer a better living environment.

As these characteristics have been identified, reformers have made attempts to correct inequities. Examples of these attempts include: the busing of school children to equalize educational opportunity, open housing laws, property tax reform, and metropolitan government. Federal programs aimed at the redistribution of wealth geographically in metropolitan areas have also been established.

Fair share housing planning represents one such attempt at promoting quality within the metropolitan area among socio-economic groups. It

is a step toward reducing the concentration of lower income households within localities that already have such a concentration and creating opportunities for low and moderate income households in areas which have better living environments and are more able to accommodate such households. Fair share housing planning is an attempt to (1) create additional housing opportunity, (2) partially alleviate disparity among socio-economic groups within metropolitan areas, (3) distribute assisted housing among localities in metropolitan areas to reduce problems associated with the provision of necessary services among localities presently burdened with concentration of lower income households.

The Influence of Regionalism

Fair share housing planning is rooted in the philosophy of regionalism. The regional perspective views urban development and the existence of metropolitan areas systematically. The region is a unit which includes functionally related components operating simultaneously to create a viable urban environment. The operation of the urban organism overruns municipal boundaries. The regional philosophy, therefore, focuses upon the operation of component systems as they extend through the metropolitan area and in the interaction of their components at the regional scale.

This philosophy has received a great deal of attention and emphasis of late. The idea is not new, however. Lewis Mumford, in 1925 described in the benefits of regionalism:

"Regional planning asks . . . how the population and civic facilities can be distributed so as to promote and stimulate a vivid, creative life throughout the whole region - a region being any geographic area that possesses a certain unity of climate, soil, vegetation, industry and culture. The regionalist attempts to plan such an area so that all its sites and resources, from forest to city, from highland to water level,

may be soundly developed, and so that the population will be distributed so as to utilize, rather than to nullify or destroy its natural advantages. It sees people, industry, and the land as a single unit".²

Regional approaches to problem solving and planning are firmly established within the context of local government. In some instances regional governments have been established because of the recognition of regional philosophy as a means to more directly manage many urban problems. Regional approaches have been applied to the provision of public water and sewer systems, transportation facilities, and social services.

The proponents of fair share housing allocation planning view the housing problem as a regional phenomenon. Recent emphases of the HUD Section 701 Comprehensive Planning program on regional planning and the preparation of housing elements as a part of comprehensive plans have firmly documented urban-suburban inequities and restricted housing opportunities for low income households.³

The decades of 1960 and 1970 witnessed a proliferation of regional planning and governmental bodies, the development of regional review requirements for programs, and the expansion of these review requirements.⁴ These events have resulted in increased attention upon regional approaches to housing problems and interest in fair share housing planning. To many who are involved in the housing problem, fair share approaches are a critical component of the regional planning process. Trudy Mcfall, the Metropolitan Council of the Twin Cities Housing Program Manager said:

"An allocation plan for subsidized housing is an absolutely essential element in a regional housing program. I do not know how an agency could conduct an action-oriented program aimed at affecting decision-making in regard to housing in an area without such a plan".⁵

Fair Share Housing Planning and the Courts

The philosophy of fair share housing allocation has been provided impetus, both directly and indirectly, by court decisions. This is evidenced in *Gautreaux vs. the Chicago Housing Authority*. In this case, the Chicago Housing Authority was sued because of the patterns of public housing which had developed within the City of Chicago. At the time, 99.5 percent of the public housing in Chicago existed in areas that were at least fifty percent Black. Although the Authority was actively developing public housing, it was failing to alleviate the problem of segregated housing. The court, in its determination, went beyond a determination of validity and extended its decision into the area of policy in terms of public housing location. The court ordered seventy-five percent of future housing to be built in census tracts having less than a thirty percent non-white population. The court in this case used "judicial activism to induce integrated housing".⁶

While this case did not involve assisted housing at the regional scale, it did enter into an area typically reserved for the legislative function, that of locational policy for assisted housing. Conceivably such a philosophy could be applied for a regional area.

The courts have been very active in the area of exclusionary zoning. Exclusionary zoning may be defined as the perpetuation of "racially, socially and economically homogeneous communities achieved through zoning out poor and racial minorities".⁷ The courts tend to be encouraging the idea of some type of low income housing opportunity by striking down zoning ordinances found to be exclusionary.

Perhaps the case most closely supporting the fair share housing

planning concept while ruling on the exclusionary zoning problem is that of the Southern Burlington County NAACP vs. the Township of Mount Laurel, 1972. In this case, the court decision "stresses the regional aspect of housing allocation, affirming that zoning should no longer have solely a local orientation but must consider broader needs and forces".⁸ The term "fair share" was used in the court decision:

"We conclude that every community must, by its land regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective need therefor."⁹

Legislative Directives and Administrative Action

The primary impetus toward the development of fair share housing allocation plans originates in Housing Acts passed into law in recent years. Two programs established by these acts are of particular importance. These include: Comprehensive Planning Assistance and the Community Development Block Grant Program.

The Comprehensive Planning Assistance Program originated with the passage and signing of the Housing Act of 1954. Section 701 of the Act made funds available to localities for the preparation of Comprehensive Plans. Initially established for the provision of grants to local jurisdictions the focus of the program has, with the passage of more recent housing acts, shifted in emphasis toward regional planning efforts. The Housing and Community Development Act of 1974 extended emphasis in this direction with the inclusion of Title IV Comprehensive Planning Section 401(a)(3), amending Section 701(a) of 1954 to read:

"Activities assisted under this Section shall, to the maximum extent feasible, cover entire areas having common or related development problems. The Secretary shall encourage cooperation in preparing and carrying out plans among all interested municipalities, political subdivisions, public agencies, and other parties in order to achieve coordinated development of entire areas".¹⁰

Recipients of funds through the 701 Program are required to carry out an ongoing comprehensive planning process. Housing is considered to be an important component of the Plan resulting from this process. Title IV, Section 401(c) establishes the requirement for a land use and a housing element. The housing element:

" . . . shall take into account all available evidence of the assumptions and statistical bases upon which the projection of zoning, community facilities, and population growth is based, so that the housing needs of both the region and local communities studied in the planning will be adequately covered in terms of existing and prospective population growth."¹¹

Both the housing element and the land use element must set forth goals and annual objectives in measurable terms, programs to accomplish these objectives, and procedures for evaluating programs and activities to determine whether objectives are being met.

Given this legislative mandate, the Department of Housing and Urban Development has established program regulations to define and carry out comprehensive planning as established in the Act. The establishment of program regulations represents the exercise of authority delegated by Congress to the executive and independent agencies to issue specific regulations to carry out federal law. Regulations can be considered delegated legislation and, as properly issued and published in the Federal Register, have the force and effect of law.¹²

Program regulations for the Section 701 Program, housing element,

located at 24 CFR require Areawide Planning Organizations (APO's) to:

- "1. identify housing needs of current and prospective population by appropriate geographic sectors and identifiable segments of the population and provide for distribution of housing resources (including assisted housing) to meet needs of all citizens in order to provide a choice of housing types and location.

2. develop public and private policies, strategies, and implementation activities necessary to accomplish housing goals and objectives, including provision of essential public services and facilities.

3. take into account the housing planning activities and plans undertaken pursuant to Titles I and II of the Housing and Community Development Act of 1974 in developing their housing element."¹³

Although program regulations require Areawide Planning Organizations to prepare housing elements as a part of the Comprehensive Plan the regulations fall short of actually requiring a "Fair Share Housing Allocation Plan". Certainly the requirement of the housing element in the preparation of Regional Comprehensive Plans represents a trend in this direction.

While the housing element affects all Areawide Planning Agencies receiving 701 Comprehensive Planning Assistance, a greater incentive is offered for the preparation of fair share housing plans through Title I, the Community Development Block Grant Program and special allocations of housing available through Title II, Assisted Housing.

The legislation establishing the Community Development Block Grant program, Title I of the Housing and Community Development Act of 1974 (PC 93-383) included as one of the objectives of the Act in Section 101 (c)(6) the:

"reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating and deteriorated neighborhoods to attract persons of higher income."¹⁴

Three inducements have been developed to facilitate the achievement of this objective. Each of these inducements are based in supplemental or special allocations in the form of grants or the provision of additional assisted housing unit allocation and they are based upon the commitment of localities to accept assisted housing based upon a regional, or area-wide plan, called an Areawide Housing Opportunity Plan (AHOP).

Program regulations define an Areawide Housing Opportunity Plan as:

"a strategy for a program of implementation activities developed by an Areawide Planning Organization (APO) which addresses areawide housing assistance needs and goals in accordance with the program objective of providing for a broader geographical choice of housing opportunities for lower income households outside of areas and jurisdictions containing undue concentrations of low income and minority households."¹⁵

The intent of the AHOP, therefore, is a cooperative effort between the APO and participating local jurisdictions within the plan area for the development and implementation of an areawide strategy plan which will both meet housing needs and promote the deconcentration of lower income households.¹⁶

The requirement that the plan be developed by an APO implies the need for consensus of support by participating jurisdictions. Regulations address this issue by defining a participating jurisdiction as:

"a jurisdiction within the plan area with which the APO has reached agreement on percentage goals for the distribution of housing assistance and on activities for the implementation of the plan."¹⁷

The regulations further state that at least fifty percent of the total number of jurisdictions in the plan area participate with the APO in developing the AHOP and that these jurisdictions include at least seventy-five percent of the total population in the plan area.

The role of the APO in preparing to AHOP is also defined in program

regulations and includes:

1. AHOP development.
2. Coordination with participating jurisdictions to assure plan compatibility with the housing assistance plan developed by the jurisdiction as a part of its Community Development Block Grant application.
3. Submission to the Department of Housing and Urban Development.
4. Coordination with A-95 Clearinghouses.
5. Provision of data to local jurisdictions for Housing Assistance Plan preparation in conjunction with Community Development Block Grant applications.
6. The securing of agreements with participating jurisdictions on housing assistance goals and implementation activities.¹⁹

The plan, to be acceptable, must include the following items:

1. An areawide assessment of housing assistance needs.
2. A procedure for distributing housing assistance to each jurisdiction in the plan area which promotes the program objective.
3. Percentage goals for housing assistance for each jurisdiction in the plan area.
4. Goals for outreach activities (activities designed to promote accessibility of lower income housing resources).
5. Implementation activities for the APO and participating jurisdictions.²⁰

As noted above the Areawide Housing Opportunity Plan is required to enable participation in supplemental and special allocation programs in housing, the Community Development Block Grant, and in planning. These programs serve as inducements to the provision of housing which reduces the isolation of income groups. These inducements include:

1. Supplemental Housing Allocations made under Title II - Assisted Housing Section 213(d)(1);
2. Community Development Block Grant Special Discretionary Funds under Title I - Community Development Section 107(a)(2) for areawide projects; and
3. Special allocations under Title IV Comprehensive Planning, Section 701 of the Housing Act of 1954.

Supplemental Housing Allocations. Title II of the Housing and Community Development Acts of 1974 and 1977 provide for Supplemental Housing Allocations in accordance with the following provision:

"In allocating financial assistance under the provision of law . . . the Secretary, so far as practicable, shall consider the relative needs of different areas and communities as reflected in data as to population, poverty, housing overcrowding, housing vacancy, amount of subsidized housing, or other objectively measurable conditions, subject to such adjustments as may be necessary to assist in carrying out activities designed to meet lower income housing needs as described in approved housing assistance plans submitted by units of general local government or combinations of such units assisted under Section 107(a)(2) of this Act."²¹

Of significance here is the inclusion of units assisted under Section 107(a)(2). This Section allows the Secretary to provide grants for area-wide projects.

Program regulations associated with Supplemental Allocations of housing allow the Secretary to select areas for the purpose of allocating additional assisted housing contract and budget authority to implement the Areawide Housing Opportunity Plan according to priority considerations among approved AHOPs.²² Priorities for special allocations are assigned when:

1. The APO has or assists in a program which provides housing information, referrals, counseling and other assistance to lower income and minority households in areas outside of areas of undue concentrations;
2. The area makes substantial use of the Section 8 Existing Housing Assistance Payments Program;
3. The APO has taken an active role in combating discrimination in the private housing market;
4. Residency preferences or requirements by Public Housing Agencies are eliminated; and
5. 75 to 100 percent of jurisdictions within a plan area are participating jurisdictions.²³

When assigned priority under these criteria, a Special Allocation in the amount of between ten and fifty percent of the existing contract authority for any existing housing program may be made available upon application. If approved, the Supplemental Allocation is made within the plan area distributed to the maximum extent feasible, in accordance

with the approved AHOP. Special Allocations are not restricted to only participating jurisdictions, however. Non-participating jurisdictions may be included and may be the most suitable recipients of housing assistance according to program objectives.

The use of Supplemental Allocations may be limited to participating jurisdictions at APO option. In addition, the APO assumes additional responsibility upon adoption of an AHOP. It then participates in the determination by HUD of annual distribution of housing assistance among all jurisdictions within the approved plan area.²⁴ Supplemental Allocations are a means of providing assurance that the objective of the reduction and isolation of income groups is achieved through spatical deconcentration of housing opportunity.

A trend appears to be emerging with the use of Supplemental Allocations to implement AHOPs. In Federal fiscal year 1977 as much as \$20 million in Supplemmented Allocations could have been approved under Section 8 of the Housing Act of 1937.²⁵ This amount has increased to \$30 million in Federal fiscal year 1978.²⁶

Community Development Block Grant - Special Discretionary Funds. Section 107(a) of Title I establishes a Special Discretionary fund to two percent of total appropriations under Title I in fiscal years 1975-77 set aside for use by the Secretary of HUD to make grants for (1) new communities, (2) states and units of local government which join in carrying out housing and community development programs that are areawide in scope, (3) U.S. Territories, (4) Innovative Community Development Projects, (5) emergency disaster needs, and (6) to states and local units of government having a need because of inequities in the block grant funding system. Of significance

is the potential use of funds to units of local government which join in carrying out housing and community development programs that are areawide in scope.

The Department of Housing and Urban Development has established regulations which apply to the Special Discretionary Grant fund. Communities interested in obtaining Special Discretionary funds submit an application to HUD. The regulations establish policies and procedures for the review of applications for approval and awarding of grants for areawide programs of the Housing and Community Development Act.²⁷

Applications for Special Discretionary Funds are accepted from units of local government which are participating jurisdictions in Areawide Housing Opportunity Plans and which receive Supplemental Housing Allocations. The program regulations specify that funds may be used for eligible activities as established for the Community Development Block Grant Program but stipulate that these activities "clearly and directly further implementation of AHOPs and address AHOP objectives".²⁸

In addition to program eligible activities specifically mentions the use of funds for "outreach activities". These activities are designed to facilitate movement of low and moderate income and minority families to housing outside areas of concentration, particularly inter-jurisdictional moves when necessary to meet AHOP objectives.²⁹ The activities may include such items as: fair housing counseling; area-wide relocation services; the provision of housing opportunity information to lower income households; escort, child care, and transportation

services; affirmative marketing agreements with private developers; training and education programs to realtors; and finally revisions to exclusionary laws. Outreach activities, as noted above, are included in consideration of priorities for Supplemental Housing Allocations.

Upon approval of AHOPs and the selection of areas selected for Supplemental Housing Allocations, the amounts of CDBG Special Discretionary Funds available to participating jurisdictions are established. Funds available to various AHOP areas are proportional to the amount of Supplement Housing Allocations for various areas.³⁰ For Federal fiscal year 1977, \$1.5 million was made available under this Section.³¹ The amount of funds available increased significantly in fiscal year 1978 to a level of \$16.8 million nationwide.³²

As in the Supplemental Housing Allocations program, Areawide Planning Organizations are given a substantial role in administration and allocation of funds. APOs coordinate the allocation of Special Discretionary CDBG funds within the plan area in an effort to assure that funds will be used to most effectively implement AHOPs. This coordinative function includes the identification of priority activities, ranking of applications from participating jurisdictions according to these priorities, and the submission of the highest ranking application to the Department of Housing and Urban Development for funding. In this respect, the role of APOs has been strengthened to insure consistency of CDBG activities with AHOPs and to respond to local and regional priorities.³³

Special Allocations under the Comprehensive Planning Assistance Program.

In addition to the Supplemental Housing Allocation and CDBG Special

Discretionary Grant inducements funds to assist Areawide Planning Organizations in AHOP implementation have been made available through the Section 701 Comprehensive Planning Assistance Program.

Because of the shift in emphasis toward regional or areawide planning, the use of Section 701 Comprehensive Planning Assistance funds for the support of APOs in implementing AHOPs appears to be conclusively established. Section 401(h) of the Housing and Community Development Act of 1974, amending Section 701(a) of the Housing Act of 1954 provides obvious legislative support to regional agencies for AHOP implementation. The amendment is as follows:

"In addition to the planning grants authorized by subsection (a), the Secretary is further authorized to make grants to organizations composed of public officials representative of the political jurisdictions within the metropolitan area, region, or district involved for the purpose of assisting such organizations to undertake studies, collect data, develop metropolitan, regional, and district plans and programs, and engage in other activities, including implementation of such plans, as the Secretary finds necessary or desirable for the solution of the metropolitan, regional, or district problems in such areas, regions, or districts. To the maximum extent feasible, all grants under this subsection shall be for activities relating to all the developmental aspects of the total metropolitan area, region, or district including, but not limited to land use, transportation, housing, economic development, natural resources development, community facilities, and the general improvement of living environments."³⁴

Regulations governing the Section 701 Comprehensive Planning Assistance Program were recently amended to include a Subpart F - Grants to Areawide Planning Organizations in support of Areawide Housing Opportunity Plans.³⁵ The Regulations specify activities eligible for assistance which include activities which are otherwise eligible and which directly further the implementation of the AHOP and address AHOP program objectives. Specific eligible activities include outreach

programs, as included in eligible activities of participating jurisdictions for Special Discretionary CDBG funds and also the development of "programs or activities designed to facilitate the construction, rehabilitation, acquisition, or renting of housing for low and moderate income and minority persons outside of areas of concentration.³⁶ These activities include the facilitation of the establishment of housing authorities, locating sites for new construction, and assistance in securing supporting facilities and services.

The regulations specify that grants under this Subpart are to be proportional to Supplement Housing Allocations made to the AHOP plan area except that HUD reserved the right to limit grants to a maximum of \$150,000 and a minimum of \$25,000.³⁷ During Federal fiscal year 1978, \$800,000 has been reserved for APOs with AHOPs.³⁸ This amount is almost double the \$475,000 under this section during the previous year.

In summary, in addition to the housing element required of area-wide planning agencies received Section 701 Comprehensive Planning Assistance which to some degree encourages the development of metropolitan fair share housing allocation plans, additional incentives are provided to encourage metropolitan fair share housing planning and implementation for low and minority households. These include Supplemental Housing Allocations, the CDBG Special Discretionary Program for areawide programs, and Special Allocations through the Section 701 Comprehensive Planning Assistance Program. Emphasis upon development and implementation of metropolitan fair share plans has increased over the two years of AHOP existence as indicated by the following table:

<u>Assistance</u>	<u>1st year Allocation</u>	<u>2nd year Allocation</u>
Supplemental Housing Allocations	\$20 million	\$30 million
CDBG Special Discretionary to participating jurisdictions	\$1.5 million	\$16.8 million
Special Allocations to APOs from Section 701	\$435,000	\$800,000

THE STATUS OF FAIR SHARE HOUSING PLANNING

As of 1975, approximately forty governmental and quasi-public bodies had either proposed or adopted regional housing allocation plans.³⁹ These plans or strategies have been adopted by states, including Massachusetts; Counties, including Dade County Florida; and regional agencies comprised of groups of counties, including the Miami Valley Regional Planning Commission and the Metropolitan Council of the Twin Cities area. The greatest number of fair share plans are adopted by regional multi-county agencies.⁴⁰

Fair share housing plans were actually developed and adopted prior to the passage of legislation and adoption of regulations which have since encouraged the development of such plans. HUD has both pressured areas into the development of these strategies through the threat of loss of funding and encouraged plan formulation through the awarding of supplemental or special planning, housing, and block grant funding. HUD used the housing element requirement to force the southeastern Wisconsin Regional Planning Commission (SEWRPC) to formulate a fair share plan. In this instance HUD threatened to withhold a portion of the SEWRPC Section 701 Comprehensive Planning funds.⁴¹ Bonus funds were awarded the Miami Valley Regional Planning Commission as an incentive for plan development.

Most allocation plans focus upon housing for low and moderate income families, those of incomes below the median income for a particular area.⁴² Most plans include an allocation of only housing units which are to be subsidized or assisted by government action.

Some Fair Share Plans allocate a total low income housing based on need. Generally, the fair share plans that allocate assisted units are preferred because of implementation potential.⁴³

In most instances, plans project low and moderate income need by first defining income limits. Gross housing need is determined from these limits. Then an estimate of the existing supply of low and moderate income housing units are developed. This estimate usually considers cost and deterioration factors. To determine the number of units to allocate, supply is subtracted from total need.

There are numerous means of low and moderate income housing unit allocation which usually consider allocation according to equal share, the lack of low and moderate income housing opportunities in the locality, the subarea share of the regional population, low and moderate income housing need, the distribution of existing assisted housing, and the suitability of the units of government or subarea to accept assisted housing in terms of adequate vacant lands, and services and facilities to support such development.

Implementation generally depends the willingness and cooperation of local participating units of government to realize the plan. The Department of Housing and Urban Development offers incentives in terms of housing unit allocations as well as supplemental grants to local units through the Community Development Block Grant Program and Special Allocations of Section 701 Comprehensive Planning Assistance funds to the Areawide Planning Organization. In some instances the plan is implemented directly by the areawide agency or jurisdiction adopting the plan. This is true for some State fair share plans and some

councils of government. The Metropolitan Council of the Twin Cities has implementing power through the establishment as a Housing and Redevelopment Authority. To the extent covered in the literature reviewed in the preparation of this paper, in no case has a regional agency been given preemptive zoning power.

Finally, the primary means of implementation lies with the A-95 Clearinghouse Review powers of regional agencies approved to act in this capacity. The 1968 Intergovernmental Cooperation Act extended review powers of regional agencies to all federal categorical grant programs.⁴⁴ This Act institutionalized the regional planning orientation.⁴⁵ The Department of Housing and Urban Development in considering these comments weighs the comments of regional agencies having adopted fair share plans heavily.

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TWO CASE STUDIES

The Dayton Plan

One of the first and most successful fair share plans was developed by the Miami Valley Regional Planning Commission (MVRPC) in late 1970. The plan area for the MVRPC includes a five county area surrounding the City of Dayton, Ohio including Darke, Preble, Miami, Montgomery, and Greene Counties. Approximately 900,000 persons resided in this area in 1970, of which 243,000 lived within the City of Dayton. Eleven percent of the Region's population and thirty percent of Dayton's population was Black. The fair share plan, called the Dayton Plan, allocated 14,000 units of low and moderate income housing to be developed over a four year period among defined planning units in the five county region. The plan was based on a computation of low and moderate income housing need by county and then allocating shares of assisted housing among the planning units.

The plan was initiated locally because of the identification of two housing problems identified in housing studies prepared in conjunction with a Section 701 Comprehensive Planning Program. These problems included: (1) a shortage of sound housing units for low and moderate income households, and (2) the availability of housing in very restricted geographic areas. In developing the plan the philosophy of the MVRPC was expressed by the Chairman in stating "What is needed in terms of a housing plan is a way of taking the housing need and spreading it throughout the region. There should be housing opportunity for everyone everywhere".⁴⁶

After a determination of housing need by county based upon numbers of new units which would be required to eliminate delapidation and overcrowding and assure a healthy vacancy rate, an analysis of population, housing and facilities was conducted in an effort to determine an allocation scheme. Eventually a method was selected and the region divided into planning units. These planning units were then assigned numbers of low and moderate income assisted housing units based on a formula which considered:

1. equal share;
2. proportionate share of the county's households;
3. proportionate share of the county's lower income households;
4. the inverse of no. 3,
5. a share based upon the assessed valuation per pupil of the school districts covering the planning units; and
6. a share based on the relative overcrowding of the school districts involved.⁴⁷

Two potent techniques were originally proposed to implement the plan upon consensus and adoption. These included (1) use of the A-95 Review by MVRPC to assure development according to the plan and (2) a preemptive power over zoning to be given to local housing authorities. This second implementation technique was removed from the plan for political reasons prior to adoption.⁴⁸

The plan from its inception was controversial and opposition wide spread. During the period of time in which it was under consideration two counties and ten municipalities threatened to pull out of the MVRPC.⁴⁹ The Staff of the MVRPC conducted a massive public information campaign and gained the support of numerous local groups. Finally, it appears as though at least some of the communities began to accept the plan as a possible means of obtaining housing for their local low and moderate income households rather than lower income Dayton households.⁵⁰

The development of the plan was financed through the Section 701 Comprehensive Planning Assistance Program at a cost of \$50,000.

Prior to 1970, 3200 units of assisted housing were located in the region. Of these, ninety-five percent of the units were located within the City of Dayton.⁵¹ As of December, 1977, 12000 units were either built or committed. The effects of the plan are evident, of the 9000 additional units constructed or committed over seventy percent were located outside of the City of Dayton.⁵² Presently approximately fifty percent of all assisted low and moderate housing units are located outside of the City of Dayton.⁵³

The success of the Dayton Plan is probably attributable to three factors. First, the Staff of the MVRPC encouraged and provided a great deal of information to the public and units of local government. Second, the literature indicates the A-95 Review power to be quite effective.⁵⁴ And finally, Supplemental Housing Allocations and Special Allocations through the Section 701 Program probably contributed significantly⁵⁵

The Twin Cities Metropolitan Council Fair Share Plan

The Twin Cities Metropolitan Council was formed in 1967. The Council has a unique organization and powers which facilitate the implementation of plans which are developed. The Council is appointed by the Governor and has taxing authority. This arrangement makes the Council much less susceptible to political pressure and uncertainties in funding and membership that plague other more typical regional bodies.⁵⁶ In addition to the A-95 Clearinghouse common to regional planning organizations the Council also reviews local and county comprehensive plans and, should an objection arise, the Council can delay

adoption for ninety days. In addition to these powers, the Council in 1974 was granted authority by the State to act as a Housing and Redevelopment Authority. This action also has almost direct implementation capabilities. The Council is somewhat limited, in that it does not have preemptive zoning authority. The efforts in metropolitan housing planning and areawide strategies have served to be the forerunner to the HUD Section 701 Comprehensive Planning Housing Element.⁵⁷

The Twin Cities Metropolitan Council is made up of the twin cities of Minneapolis and St. Paul and 187 other units of government including seven counties: Anoka, Himepin, Carver, Scott, Dakota, Ramsey, and Washington Counties. The total population of this area includes over 2,000,000 persons.

An Interim Housing Allocation Proposal was adopted in 1971 as the first fair share plan.

X The objective of the plan, which was later amended in 1973 and 1976, was to both broaden the housing opportunities for low and moderate income households to live in suburban areas and to reduce the concentrations of subsidized housing in the central cities. This initial fair share plan, therefore, indicated priority areas for assisted housing stressing the need to expand low and moderate income housing opportunities in the Twin Cities suburban areas.⁵⁸ Originally, the plan established these priority areas for the location of housing based upon proximity to employment, shopping, and other services.

In 1973, a more elaborate strategy was adopted as part of a Comprehensive Development Guide. This action provided allocation on a quantitative basis. In addition to the two Twin Cities, seven subsections

were defined. Six of these were urban in nature while the seventh was rural. Units were then allocated to these subsectors primarily in the Twin Cities and six urban subsectors. Three percent of the units were allocated to the rural subsectors where adequate supportive services were determined not to exist.

Allocations were based on a proportionate formula which considered the following:

1. share of present population
2. share of expected new residential growth
3. share of present jobs
4. share of expected new jobs.⁵⁹

In 1976, the plan was again amended. This amendment included the development of numerical goals for individual units of government rather than subsectors. The formula for allocation was also modified to facilitate the consideration of general growth and development of areas, the communities' need for low and moderate income housing, and the existing supply of subsidized housing.⁶⁰ The allocation process was also modified to establish a requirement that sixty percent of the units allocated be allocated for family units and forty percent for elderly units.

In 1971, the seven county area had a total of 18,736 assisted housing units. Of these, 16,488 units or eighty-eight percent were located in the Twin Cities of Minneapolis and St. Paul, while 2,248, or twelve percent were located in suburban or rural areas. Most of these units were developed for elderly households. In the period between 1971 and 1974, a period covered by the Interim Housing Allocation Proposal, 7,229 assisted units were constructed. Of these, 4,255 were constructed in Minneapolis and St. Paul and 2,974 were

constructed in other areas, primarily suburbs. Activity in accordance with the fair share plan reduced the share of assisted units in Minneapolis and St. Paul from eighty-eight percent to eighty percent, increasing the suburban share from twelve to twenty percent.⁶¹ By 1976, 8000 units or 27 percent of the total number of subsidized units were located in suburban areas. Fifty-four percent of these served families.⁶²

The success of the Metropolitan Council of the Twin Cities area is attributable to the following:

1. The Council is less susceptible to political manipulation because of the gubernatorial appointment mechanism.
2. The Council has taxing authority resulting in financial stability and is less prone to loss of revenues because of local units pulling out of the Council.
3. Designation as a Housing and Redevelopment Authority enables the Council to engage in its own plan-implementation.
4. The Metropolitan Council made substantial use of the A-95 Clearinghouse Review power by developing a "priority funding strategy for housing performance."⁶³ This action provides communities "priority status" for application approval of sewer, park and recreation, and other programs when they have achieved performance in the provision of low and moderate income housing.
5. The Council has the cooperation of suburban areas because of its public information efforts and its A-95 Review powers.
6. The effort was assisted by the Department of Housing and Urban Development through the award of 1,300 units of Section 8 Housing Assistance Payment Program Supplemental Allocation, \$100,000 in additional funds through the Section 701 Special Allocations program, and \$250,000 in Community Development Block Grant Discretionary funds for areawide projects.⁶⁴

IMPLICATIONS OF FAIR SHARE HOUSING PLANNING

The purpose of a fair share housing allocation plan is to allocate assisted housing units among participating jurisdictions according to a plan prepared by an Areawide Planning Organization. Previously adopted housing acts, especially the Housing and Community Development Acts of 1974 and 1977 establish the means for use of Special and Supplemental Allocations according to, and in conjunction with the development of these plans. The regulations established for the development of these plans are specific as to the requirements of the contents of such plans and the approval of them.

A critical component of legislation establishing programs is the accompanying appropriations legislation. While funding levels for Supplemental Housing allocation, CDBG Special Discretionary allocations for areawide projects, and Special Allocations to Areawide Planning Agencies through the Section 701 Comprehensive Planning Assistance Program increased during the past two years, funding levels are not high in terms relative to the programs under which these funds are available. Funding under the Special Discretionary CDBG Program amounts to two percent of the total program allocation by statute, for example. For this reason, it appears that the congressional intent in establishing these inducements was to provide a goal of allocating assisted housing units within metropolitan areas and an incentive to do so, but not to make the process of AHOP preparation mandatory.

Under the Section 701 Program, preparation of a housing element

is required which tends to lead regional planning agencies toward the preparation of fair share plans. The housing element stops short of this requirement but definitely nudges the APO fund recipient in this direction.

HUD regulations for these programs and the authority wielded by HUD seems to indicate some discriminatory powers available to apply pressure toward AHOP development. This is apparent in the case noted of the Southeastern Wisconsin Regional Planning Commission in which an allocation plan was developed because of HUD pressure to withhold Section 701 Planning Funds because of an inadequate housing element.

In short, while the goal of housing in areas where few opportunities for low and moderate income exists is established, the accomplishment of the goal is realistically tempered through the use of financial inducements and slight regulatory pressure to be applied in flagrant situations.

HUD is also willing to provide inducements in areas where cooperation in such a program between the APO and participating jurisdictions are evident or where the APO has implementation powers. This is the case, as noted above, for the Miami Valley Regional Planning Commission and the Metropolitan Council of the Twin Cities Area.

HUD has, however, denied CDBG funds to localities in suburban areas because of Housing Assistance Plan deficiencies. Housing Assistance Plans are required as a part of the CDBG Application. Generally, the basis for denial of funds is that these communities refused to establish accurate determinations of housing need because of their reluctance to include low and moderate income households which could be expected to

reside within the locality as a result of anticipated employment. Since allocation of housing is based upon goals in the Housing Assistance Plan derived from need estimates, this omission substantially reduced assisted housing allocations for these localities indicating their reluctance to accept such housing even at the expense of loss of CDBG funds.

The legislation and program regulations establish the APO as the agency to prepare the Areawide Housing Opportunity Plan. This is logical in the sense that housing problems, especially those of lack of housing opportunities for low and moderate income households among jurisdictions, are regional problems and require regional solutions. Also, APOs are in an excellent position to analyze regional data and prepare regional plans. Some practical difficulties exist with this approach however. First, while the region may be appropriate for analyzing the regional housing problem and preparing a plan, the APO has not traditionally had implementation powers. Second, the implementation power of the regional agencies, or APO, is limited to the A-95 Clearinghouse Review and HUD, Carla Hills stated in May, 1975, regarding preparation of regional housing allocation plans, "If you can do this, I can promise you that HUD can and will make very good use of your A-95 comments on the submissions of your constituent communities".⁶⁵ This must be taken as an indication that HUD intends to strengthen the significance of A-95 in its program approval process. This action places great political pressures upon regional agencies.

And finally, many regional agencies are not fully established and are viewed as an undesirable fourth level of government. Placing

the responsibilities of AHOP and housing element preparation in Areawide Planning Organizations threatens the existence of those agencies because of their weak financial base and voluntary membership composition. It places these agencies between HUD and the local units of government which are affected by the housing element.

Ironically, it may be that the lack of direct implementation powers may account for the successful adoption of housing allocation and acceptance by localities. Reasons given for the adoption of the Dayton Plan, for example, included speculation that the plan appealed to the conscience of the participant communities, that the communities wanted to save face in the region, and that perhaps the plan presented an assurance against a deluge of low income housing.⁶⁶

The regional agency which is most likely to be successful in preparing and adopting a fair share plan and obtaining the support of member communities is one that poses no significant threat to its local communities. Fair share plans are more likely to be developed in areas having traditional regional cooperation, where the fiscal system is less dependent upon the property tax, and where there are no major concentrations of minorities. Liaison with outside groups, technical competence, and a sound educational program are critical components to plan adoption.

FOOTNOTES

- ¹ David Listokin, Fair Share Housing Allocation, p. 1.
- ² Ibid., p. 4.
- ³ Ibid., p. 6.
- ⁴ Ibid., p. 7.
- ⁵ Ibid., p. 109.
- ⁶ Donald G. Hagman, Urban Planning and Land Development Control Law, p. 496.
- ⁷ Listokin, op.cit., p. 12.
- ⁸ Ibid., p. 21.
- ⁹ Ibid., p. 21.
- ¹⁰ 93rd Congress, 2nd Session, House of Representatives, "Housing and Community Development Act of 1974 - Conference Report", p. 60.
- ¹¹ Ibid., p. 61.
- ¹² Office of the Federal Register, "The Federal Register, What It Is and How to Use It", p. 1.
- ¹³ Federal Register, Vol. 40, No. 164, Friday, August 22, 1975, p. 26861.
- ¹⁴ 93rd Congress, 2nd Session, House of Representatives, op.cit., p. 2.
- ¹⁵ Federal Register, Vol. 43, No. 10, Monday, January 16, 1978, p. 2358.
- ¹⁶ Ibid., p. 2358.
- ¹⁷ Ibid., p. 2363.
- ¹⁸ Ibid., p. 2365.
- ¹⁹ Ibid., p. 2364.
- ²⁰ Ibid., p. 2358.
- ²¹ 93rd Congress, 2nd Session, House of Representatives, op.cit., p. 48.
- ²² 24 CFR 891
- ²³ Federal Register, Vol. 43, No. 10, op.cit., p. 2369

- 24 Ibid., p. 2364.
- 25 Federal Register, Vol. 41, No. 22, Wednesday, June 23, 1976, p. 25985.
- 26 Federal Register, Vol. 43, No. 10, op.cit., p. 2370.
- 27 24 CFR 570.404.
- 28 Federal Register, Vol. 43, No. 149, Wednesday, August 2, 1978, p. 34056.
- 29 Ibid., p. 34057.
- 30 Ibid., p. 34057.
- 31 Federal Register, Vol. 41, No. 189, Tuesday, September 28, 1976, p. 42692.
- 32 Federal Register, Vol. 43, No. 10, op.cit., p. 2370.
- 33 Federal Register, Vol. 43, No. 189, op.cit., p. 34056.
- 34 93rd Congress, 2nd Session, House of Representatives, op.cit., p. 62.
- 35 Federal Register, Vol. 43, No. 144, op.cit., p. 34057.
- 36 Ibid., p. 34058.
- 37 Ibid., p. 34058.
- 38 Federal Register, Vol. 43, No. 10, op.cit., p. 2370.
- 39 Listokin, op.cit., p. xvi.
- 40 Ibid., p. 28.
- 41 Ibid., p. 6.
- 42 Ibid., p. 42.
- 43 Ibid., p. 42.
- 44 Ibid., p. 8.
- 45 Ibid., p. 11.
- 46 Dale F. Bertsch and Ann M. Shafor, "A Regional Housing Plan: The Miami Valley Regional Planning Commission Experience", Planner's Notebook, Vol. 1, No. 1, p. 2.
- 47 Ibid., p. 2.
- 48 Listokin, op.cit., p. 120.

- 49 Ibid., p. 121.
- 50 Ibid., p. 121.
- 51 Stuart Meck, "Planning Focus: The Miami Valley Region", Practicing Planner, December, 1977, p. 37.
- 52 Ibid., p. 37.
- 53 Listokin, op.cit., p. 125.
- 54 Meck, op.cit., p. 37.
- 55 Listokin, op.cit., p. 133.
- 56 Ibid., p. 107.
- 57 Ibid., p. 108.
- 58 Metropolitan Council of the Twin Cities Area, "Interim Housing Allocation Proposal", p. 1.
- 59 Listokin, op.cit., p. 109.
- 60 Metropolitan Council of the Twin Cities Area, "A Fair Share Plan: Subsidized Housing Allocation in the Twin Cities Metropolitan Area", p. 2.
- 61 Listokin, op.cit., p. 110.
- 62 Metropolitan Council of the Twin Cities Area, "A Fair Share Plan: Subsidized Housing Allocation in the Twin Cities Metropolitan Area", p. 4.
- 63 Listokin, op.cit., p. 109.
- 64 Metropolitan Council of the Twin Cities Area, "A Fair Share Plan: Subsidized Housing Allocation in the Twin Cities Metropolitan Area", p. 3.
- 65 Listokin, op.cit., p. 155.
- 66 Bertsch, op.cit., p. 5.

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