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WISCONSIN INSTITUTE FOR LAW & LIBERTY

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PRICED OUT OF HOUSE AND HOME

How Laws and Regulation Add to Housing Prices in Wisconsin

Photo by Caroline Gunderson

Executive Summary

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Over the past few years, the inflated cost of purchasing and building a home has been the subject of much discussion. Many Americans found themselves in bidding wars for homes, only to be priced out by higher bidders. Some of this is a function of market forces—inflation, the increased cost of building supplies, etc.—but much of it is also due to an extensive government regime which adds to costs and limits supply.

In this report, WILL explores the role of government in skyrocketing housing prices in Wisconsin. We find that government, especially at the local level, stymies construction and prices many Wisconsin families out of the American dream. The key findings of this report include:

- **The regulatory hoops before new construction can begin are extensive.** A survey of Wisconsin builders found that

the average development takes 14 months to even begin construction. Much of this is due to a tangled web of regulations where development can be stopped at every turn.

- **Growth-limiting policies price out home buyers.** Measures such as minimum lot size artificially constrain the housing market. Builders in Wisconsin sometimes want to build smaller, more affordable homes but are prohibited from doing so by local governments.
- **Hyper-local control obstructs affordable housing and the exercise of property rights.** National research shows that most people are supportive of the development of affordable housing, so long as it is not in their backyard. The more opportunities for community input on a particular project, the less likely it is that the project will reach completion.
- **"Pro-environment" policies often worsen sprawl and pollution.** Requirements that extensive green space be required in a development sound good on paper, but limit the density of new developments. This increases urban sprawl as people must move further and further out to find an affordable home.
- **Government adds approximately $88,500 to the average cost of each new-built home in the Midwest.** Based on national data on the cost of regulation, and regional data on the cost of new homes, this figure represents more than a quarter of the cost of the average new home.

At both the state and local level, there are a number of policy solutions that can work to reduce the burden government places on new construction:

- **More "by-right" zoning**. "By-right" zoning leads to the creation of community-wide standards on what sort of building can and cannot be allowed. It limits the ability for hyper-localism to stymy new development of projects outside of those standards.
- **Decrease or eliminate minimum lot sizes & minimum setbacks.** These policies limit supply, hike prices, and encourage urban sprawl. We should allow the market to decide how big lots must be to meet consumer demand.
- **Encourage "missing middle" housing.** It's become typical to only allow the building of low-density housing, often standalone single-family housing, even though denser and more affordable types of homes like duplexes used to be a prominent form of housing in Wisconsin. These types of housing that fill in the "middle" between rented apartments and large single-family houses allow for greater density while also potentially providing another source of income (from renters) for the working-class home owner.
- **Create transparency in the process for approvals and rejections.** The level of subjectivity and opacity in the municipal evaluations of individual development proposals leads to unpredictability—and often the appearance of incompetence or impropriety. Setting clear standards on areas such as green-space requirements and fees to which the developer will be subject will work to streamline the process.

Photo by RODNAE Productions

Introduction

Last summer, rising housing costs became a major topic of conversation across the country. Many Americans found themselves priced out of the chance to purchase a new home as would-be home owners bid against each other, rapidly increasing costs. One study estimated that the average American can't afford to buy an average-priced home in 74% of the country.[1]

The high cost of homes has reduced the enthusiasm of potential buyers to even enter the market. A 2022 Gallup poll found that fewer Americans believe now is a good time to buy a home than at the height of the Great Recession.[2] And this isn't just a short-term problem: another survey found that an all-time-low percentage of Americans think they will ever own a home.[3] In a nation where homeownership is the primary means of wealth creation for lower- and middle-class families, more and more people being crowded out of the housing market has the potential to obstruct upward mobility in the long term.[4]

Many factors bring about the rapidly rising cost of housing, including record inflation.[5] But much of the rise in cost comes from a constricted supply. Recent research by the American Enterprise Institute indicates that "total housing inventory is at historically low levels and the supply-demand imbalance is driving prices up."[6] A 2021 study puts a number to this disconnect, estimating that America needs 5.5 million more homes to have sufficient supply.[7] This disconnect between supply and demand is a key driver of increasing prices.

Housing supply is tight due to a variety of factors. Anything that negatively affects the supply of raw construction materials threatens to drive up costs of new building, assuming it doesn't stall construction altogether.[8] Many of these factors are beyond the control of policymakers. But even housing-specific policies end up contributing to the problem. For instance, previous research by WILL and others found that governmental policy at the federal level limiting foreclosures and evictions further reduced the supply of new housing on the market.[9] With this report, we explore how, by creating a complex and burdensome regulatory framework for builders, governments restrict the supply of homes.

In Wisconsin the story is no different. Despite strong incentives to facilitate more construction, many local governments have enacted policies that severely limit the supply of housing at all levels of affordability. Such regulations may seem innocuous, or even positive for aesthetic considerations, but the downstream consequences of such policies prevent many from achieving the American Dream. This is an abysmal outcome. It is in everyone's interest that more people succeed in establishing a stable home and family in Wisconsin, and home ownership is inextricably linked to this goal.

And crucially, the solutions offered by policymakers far too often involve greater government intervention in the housing market: deploying the government to share risk, provide targeted "low-cost capital," subsidize or safeguard mortgages, etc.[10] But, as is often the case, government is the cause of the problem rather than the solution. The path to allow housing suppliers to meet demand and for people to find viable housing lies in removing the heavy hand of government.

Through conversations with developers and government officials, as well as our own research on local building regulations in Wisconsin and around the country, this report sets out to identify both the causes and solutions to the high cost of home ownership in Wisconsin.

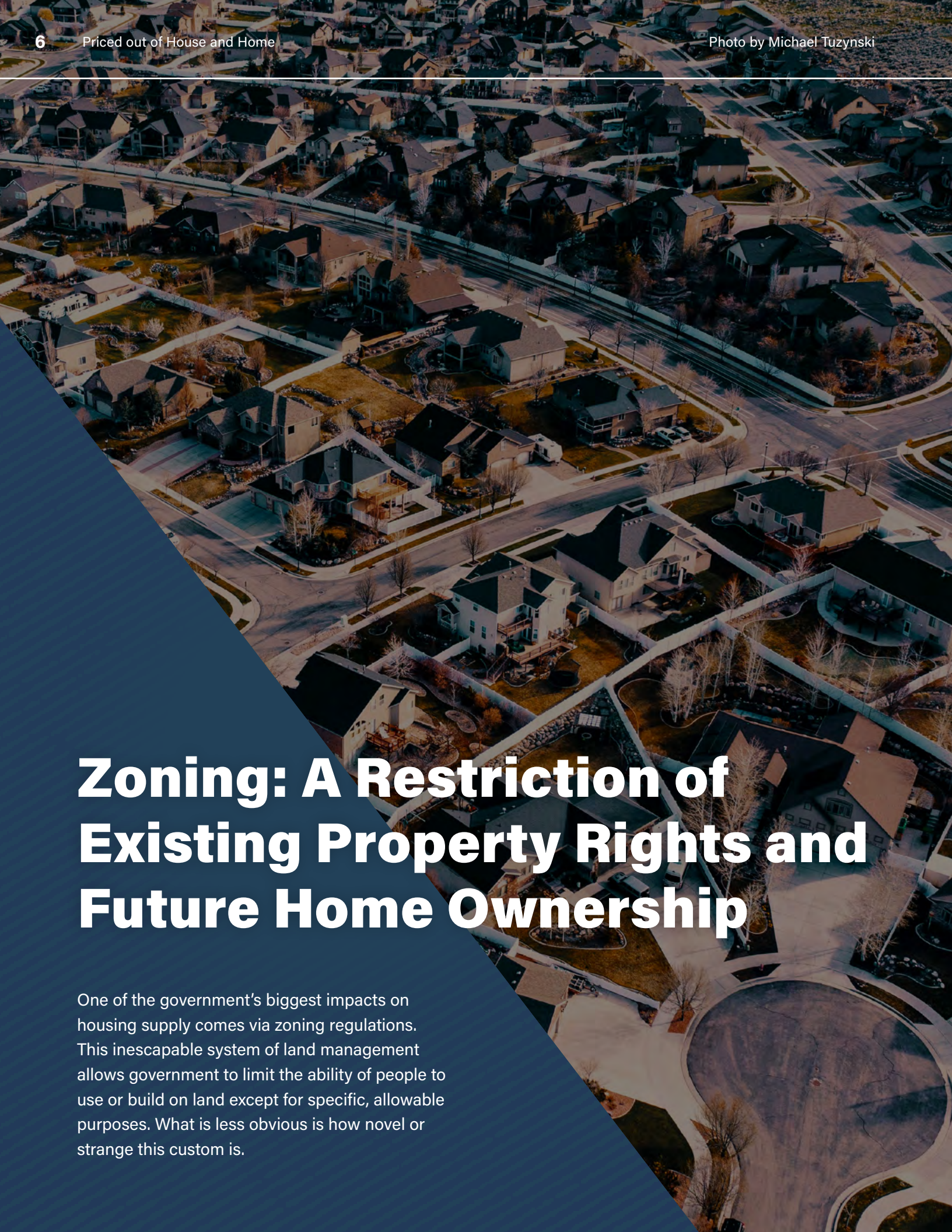


Photo by Michael Tuzynski

Zoning: A Restriction of Existing Property Rights and Future Home Ownership

One of the government's biggest impacts on housing supply comes via zoning regulations. This inescapable system of land management allows government to limit the ability of people to use or build on land except for specific, allowable purposes. What is less obvious is how novel or strange this custom is.

Zoning law appears to most Americans today to be an unquestionable status quo. Nevertheless, it is relatively new in legal history—prior to the 1920's, it was not even clear that zoning laws were constitutional. Not until the landmark Supreme Court case of *Euclid v. Ambler* (1926) settled the question was zoning considered a legitimate use of government's "police power."[11]

Zoning is relevant to our discussion here because it concerns the supply of housing. Specifically, it reduces supply, and basic economics dictates that a smaller supply, all else being equal, results in higher prices. Zoning is a scheme of restrictions and prohibitions that amount to removing vast portions of land in American cities from the possibility of housing use. Worse still, zoning mandates specific uses that restrict supply further: zoning residential land as "stand-alone single occupancy" restricts the number of families that could inhabit a given acreage. Below, we examine the ways in which zoning restrictions are used by communities to artificially restrict the supply of housing, and discuss ways in which we can fix this problem moving forward.

ZONING RESTRICTIONS IN PRACTICE

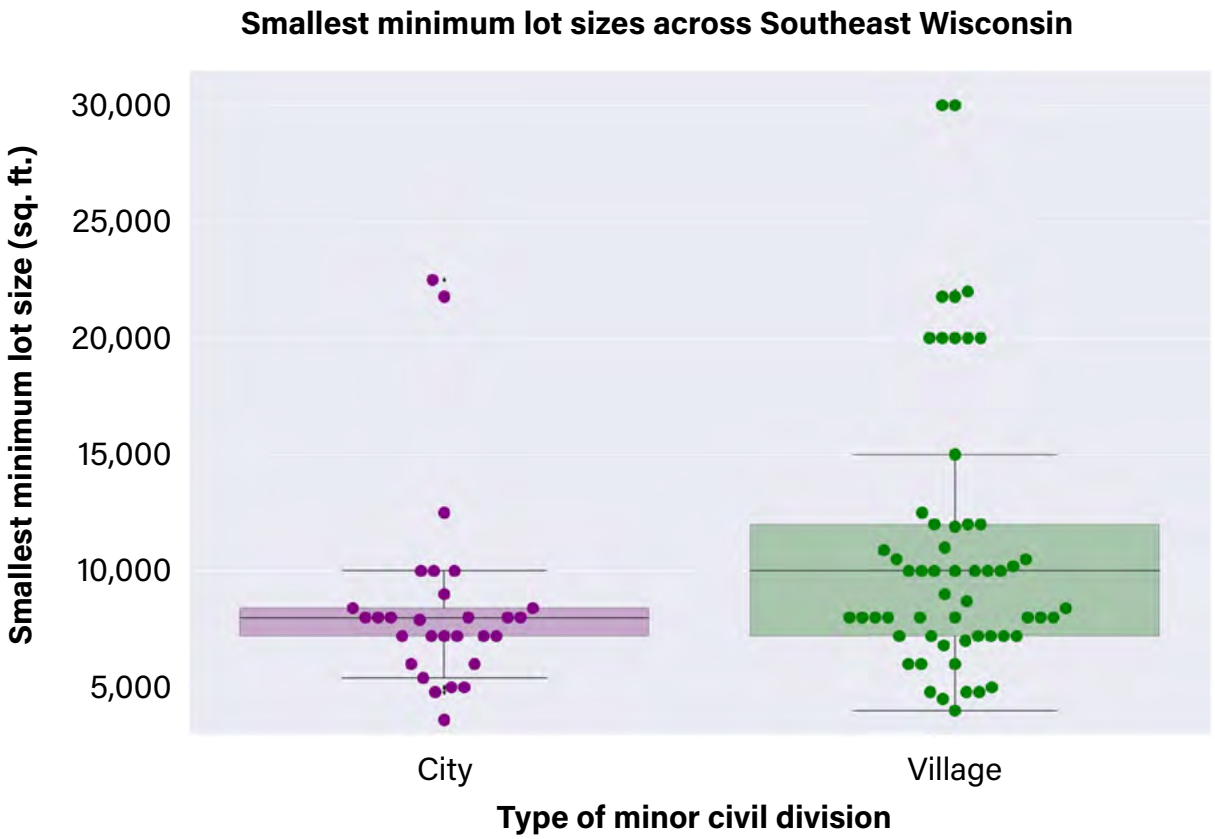
MINIMUM LOT SIZES

As discussed above, one of the key factors in increasing the cost of homes is a lack of supply, and requirements that homes be built only on lots of a certain size—no smaller—can further limit supply. All of these considerations, of course, are about the barest type of impact that lot sizes have on housing supply. Even communities that don't adhere strictly to zoning but allow "planned unit developments," which are designed to be more flexible than zoning, still often include sweeping restrictions like minimum lot sizes. These restrictions, and the concomitant decrease in legal density, lead to all sorts of spillover consequences like urban sprawl and increased commuting times—which are exactly what many communities are facing across Wisconsin.

Zooming in on one recent example, a developer who proposed a project in Muskego (Waukesha County) was forced to alter their plans for a subdivision fairly extensively in response to concerns from the city about the size of lots.[12] Under the original proposal the developer planned to develop 45 single-family lots that would have been at least 10,000 square feet (approximately .25 acres). The city changed the minimum to 20,000 square feet, which resulted in only 30 lots (in addition to a loss of amenities). With one indirect restriction, the municipality shrank the number of families who could find a home from this development by one-third. From a property value standpoint, by the way, the original proposal was slated to be assessed at between $20 and $25 million. With the change, the projected assessed value is slated to be $16 to $18 million, $4 to $7 million less than originally proposed.

Consider densely-populated southeastern Wisconsin, where zoning and minimum lot sizes are ubiquitous. The Southeastern Wisconsin Regional Planning Commission (SEWRPC) compiled the smallest lot sizes permissible in each city and village's most permissible type

Figure 1. Smallest Minimum Lot Sizes in Southeastern Wisconsin



of zoning as you can see above. (The typical municipality has several different types of zoning for different areas, hence the seemingly redundant language of "smallest minimum" below.) Each purple dot represents an individual city, while each green dot represents an individual village. The shaded boxes represent the middle 50% of the smallest minimums.

Two extreme outlier villages are excluded for ease of readability.* Note that the vertical axis does not begin at 0, but at 3,000 sq. ft (with the first horizontal white line marking 5,000).

The city with the smallest minimum lot size is Milwaukee, which permits lots in some parts of town as small as 3,600 sq. ft. The city with the largest minimum is Brookfield, that allows no residential lot anywhere in the city to be smaller than 22,500 sq. ft. Note, also, the pattern where several minimum lot sizes have several dots line up in a row, representing cities or villages with identical smallest minimums. Several of these sizes are not even round numbers: 4,800 or 7,200, for instance.† This suggests that zoning, rather than allowing municipalities to tailor land use to needs specific to their municipalities in an

* Namely, the villages of Chenequa and River Hills have minimum lot sizes of 87,120 and 43,569 square feet.

† These numbers are close, but still not equal, to "neat" fractions when expressed in acres.

informed and homegrown manner, has a lot more to do with cookie-cutter laws that undermine that entire rationale.

All of these lot sizes constrict supply, which raises costs. Some of these thresholds are more egregious offenses than others (e.g. Brookfield), but all serve to limit the ability of the free market to use land to respond to the needs and economic realities of would-be homebuyers.

That's a point worth reiterating: it is a mistake to look at existing housing and conclude that this is what people or "the market" want because it is what has come into existence. The market is not "free" and the state of housing supply is not really a case of people "revealing preferences" (as it is sometimes argued[13]) nearly so much as it is revealing what government finds permissible—whatever their rationale, however arbitrary their standards, however significant the restriction of other people's property rights by people shouldering none of those costs.

We saw this reality at work in our interviews with developers. One developer commented, "What we've found . . . is that most of the municipalities that we work with in southeast Wisconsin, their zoning code is either completely out of date with what the market has actually driven, and [with] what we need to do to have something economically viable. They're . . . just out of touch." A glance at the smallest minimum lot sizes these municipalities permit seems to corroborate that.

Because of the varied nature of laws from one municipality to another, the biggest takeaway is probably this: minimum lot sizes restrict the size of lots and thus the number of homes on the market. Builders are probably hampered from truly denser housing both from zoning, but also from community opposition (or fear of it) that could obstruct an entire development out of existence and sink their investment.

SETBACKS AND MINIMUM WIDTH REQUIREMENTS

Minimum lot sizes are just one way that municipalities use zoning rules to restrict property rights and control density. Setback requirements dictate how closely structures can be built off the property line or another feature such as a road or shoreland. Municipalities often have varying setbacks for front, back, and side yards, with varying standards for each type of zone. Oftentimes, setback requirements will differ for the primary structure versus a secondary structure like a detached garage, shed, or accessory dwelling unit. Some communities like Milwaukee may have side yard setbacks as low as 6 feet,[14] while others such as Brookfield require 50 feet.[15]

Communities will also dictate minimum widths of single-family lots. The wider the lot, the more expensive it will be. In our interviews with developers, several indicated that for each linear foot of lot frontage required, it can cost the developer between $1,200 and $1,500 to pay for installing roads, sidewalks, curbs, water, and sewers. So in a community like Brookfield, where the minimum lot width is 130 feet, the infrastructure can cost $156,000 to $195,000 per lot before the cost of the land is even accounted for. That means that a prospective homeowner could easily pay upwards of $250,000 before a shovel is put in the ground, making the lot alone close to the median priced home in the state.

PARKING MINIMUMS

Parking minimums require a certain number of parking spaces be allotted for new construction. This issue, unlike the single-family regulations discussed above, mostly pertains to multifamily developments. The need to construct parking areas or to purchase space in existing parking structures can add substantially to building costs. It's estimated that an average surface parking spot can cost between $5,000 and $10,000, while spaces in parking garages can run between $25,000 and $50,000.[16] Consequently, these costs are passed down to tenants through increased rent.

Such requirements might have been more defensible in another era, where "car culture" was a defining feature of the United States. But particularly for younger people who are more likely to choose urban living, the desire for cars has declined substantially. The percentage of 18-year-olds with driver's licenses has declined from 80% in 1983 to 61% in 2018. This trend continues in older groups as well, with the number of 20-24 year-olds with a license declining from about 92% to about 80% in 2018.[17] Some recently constructed apartment buildings in Milwaukee have even converted excess parking into retail space due to lack of demand.[18] As the share of people without cars increases, governmental requirements for parking ought to reflect this societal shift. Furthermore, developers inherently have a better understanding than local governments of what the market will handle. If they are willing to take a risk and develop a building with less parking than is needed, then they will consequently have less interest from potential tenants.

In recent years, some Wisconsin communities have taken steps to reduce minimum parking standards: the Village of Shorewood recently approved an ordinance to reduce required off-street parking from 1.75 spaces per unit to one at multifamily developments.[19] Yet, far too often, regulations remain stuck in the past. Currently in Milwaukee, the largest apartments are required to have two spaces for every three residents, while smaller apartments require a one-to-one ratio.[20] Wisconsin municipalities would do well to model the policies that have been tried, with great success, in high-growth parts of the South: Fayetteville, AR, did away with all parking minimums in 2015, a move that facilitated entrepreneurial opportunities and growth.[21] (The Census Bureau estimates that Fayetteville has enjoyed steady population growth over the past decade going from 74,000 in 2010, to 82,000 in 2015, and 94,000 in 2020[22]) Earlier this year, Lexington, KY, followed suit by eliminating their own (egregious[23]) parking minimum ordinances.[24]

BROAD OPPOSITION TO DENSITY

All of these forms of restrictions are in place, at least in part, because substantially denser housing typically motivates more community opposition. One city's zoning administrator commented that affordable housing doesn't get built because the "General public feel it will bring crime and drugs in." Another city planner opined that the "community is thoroughly against it. The perception by the public is that affordable housing will bring crime and lower property values in their neighborhoods." Others cited generic "neighborhood opposition" and "NIMBYism" and "stigma." And we stress that this is a statewide problem: municipal

actors highlighted these difficulties not just in Milwaukee and Dane County, but in places like St. Croix and Waupaca County too.

Individuals opposing new developments also voice objections themselves. At a common council meeting in one Wisconsin city this year, one resident opined against a proposed project, "The more I thought about it, the city really has nothing to gain from this project. Because of the impacts it would have on the city as a whole." He went on to mourn the idea that "the city [would] allow such a dense project like this to go ahead, instead of the usual, nice neighborhood with the bigger home on a bigger lot." An aldermanic candidate spoke at that same meeting, saying "It's a strain on our resources, on our environmental resources . . . and it puts a strain on our public resources," and then characterized the proposal as "for the convenience of the developers and not for our community."[25] (For context, the initial proposal was for fewer than 200 homes. By the time the meeting in question happened, what was on the table was 130 homes.) Of course, all of these objections have in common the desire to wield political power to restrict the property rights of others—all in the direction of decreasing supply and pricing people out of the housing market.

It is important to understand from the beginning the enormous power that government policy has wielded in shaping the housing landscape. Even long-standing cities have been upended and redesigned according to car-centric models that incentivize sprawl and reward uneconomical uses of land. All of this serves to make housing scarcer; worse, it results in people taking this mindset for granted and being quick to conclude that there just isn't enough land. That's just not true. Wisconsin's entire population (about 5.9 million[26]) could fit into just three of New York City's boroughs (Brooklyn, Queens, and the Bronx) and have plenty of vacancies leftover.[27] The choices behind land use, therefore, are critical.

Sprawl is often driven by governmental policy. Low-density regulations result in fewer homes—especially fewer affordable ones, since the ones that are permitted to be built are characteristically larger and therefore more expensive. And the governmental policy dictating this isn't just a legacy from a bygone era, it's ongoing. As one developer noted, "Most comments from elected officials revolve around lower density but more affordability, which is an impossibility." Another opined that, "it is nearly impossible to get the density needed to break-even in any community." Sometimes that

contradiction is voiced by government actors themselves—the full quote from the aldermanic candidate referenced above is "I'm glad there's developers that want to develop [the city] and *I would love for more people to move here* (emphasis added) and enjoy our school system. But it's for the convenience of the developers and not for our community."

Finally, for perspective, it's worth acknowledging that some developers' ideal scenario may not actually be full liberty to build anything either. One village's community development director reported that, "Most developers still want to just build 1/4 acre lots as if it was 2004. We have to beg them to even think about small lots, townhomes, ADUs, cottage courts, etc. Developers ask for incentives for most projects, which the community cannot always provide." So it's possible that some developers are happy with an established business model selling tried-and-true products at familiar price points, and are mostly interested in just changing that at the margins.

Ultimately, though, from a public policy standpoint, the important takeaway is this: all of these restrictions, with whatever rationale they are made, are infringements on the property rights of others that constrict the supply of housing—a result that especially hurts younger and poorer aspiring home owners.

"MISSING MIDDLE" HOUSING

Housing analysts have observed America's chronic lack of supply of modestly sized homes for people in, or aspiring to be in, the middle class and dubbed it "the missing middle." This is largely driven by what is discussed above: local governments prohibiting the construction of reasonably sized (and therefore reasonably priced) homes. Again, as one developer diagnosed, "We cannot build a home for a normal family anymore." Reforms are necessary to correct this shortage and to legalize affordable types of housing.

DUPLEXES, TRIPLEXES, ETC.

Milwaukee is famous for duplexes. Census data highlighted by the Washington Post in 2014 and by one of the authors of this study in 2022 indicate that Milwaukee is the major American city with the highest proportion of duplex living, at 20.6%.[28] Those homes are "primarily associated with the working-class neighborhoods built between 1890 and 1930," which "served the housing needs of Milwaukee's skilled industrial workers and their families particularly well," notes the University of Wisconsin's Encyclopedia of Milwaukee.[29] Note the timeframe. Those decades are right before the widespread proliferation of zoning which impeded the creation of homes like these.

Before Wisconsin turned its back on them, duplexes gave working-class people the opportunity to live in modestly-sized spaces within their means in a more domestic setting than apartment buildings provide, allowed people of moderate means the ability to earn passive income by renting out space, and allowed the market broadly to expand the supply of available housing units.

The Development Process

Even within the mindset of growing metro areas by turning nearby "greenfield" land into new homes, the development process itself is fraught with complexity and governmental obstructions. Depending on the intricacy of a situation, turning a raw, undeveloped piece of land into a subdivision can take many months and sometimes years to come to fruition.

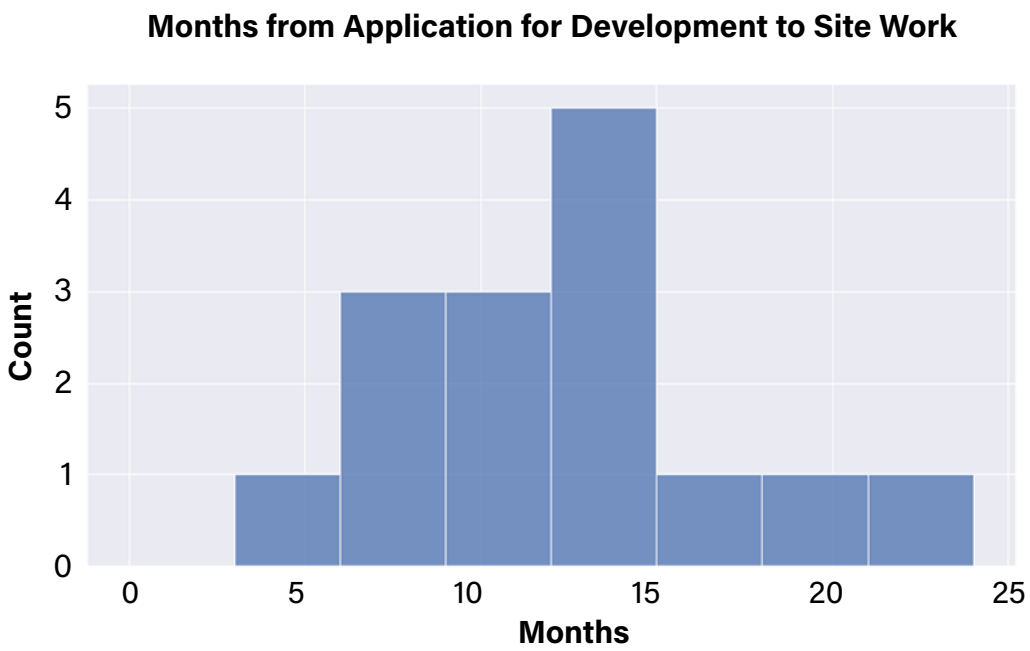
As metro areas grow, the amount of land that would be considered relatively easy to develop becomes more and more scarce. This means developers are left with problems they themselves have to solve, which costs additional time and money.

In a survey given to developers around the state, we asked the question: "For a typical project, approximately how many months does it take between the time you apply for development approval(s) and the time you begin site work?"

We found an average time of 14 months to get through just this leg of the process. Nor is Wisconsin's application timeline a particularly reasonable one. Oakland, CA, a place not exactly known for its relaxed government or efficient construction activity, manages an average of 5 months to approve new projects.[30] And the delays in Wisconsin's approval processes are a significant problem. Many developers we spoke with mentioned time and uncertainty as major obstacles in their ability to build new homes.

Later on, we try to lay out the general idea of a "typical" land development process for subdivisions in Wisconsin created from feedback from home builders, land developers, and related professional organizations. We have attempted to be as thorough as possible, though there are enough variables specific to different jurisdictions or circumstances that the process detailed here should be understood as a rough generalization.

Figure 2. Survey Responses: How Long After Applying Until Development Actually Begins



OUTLINE OF THE DEVELOPMENT PROCESS

When a land developer first identifies a piece of land they are interested in building on, they must go through various steps of due diligence to fully understand the characteristics of the property and the potential regulatory and engineering hoops they may have to jump through. From there, they can make a determination as to whether the project is commercially viable. Below we attempt to sketch out the general stages that make up that process. It should be noted that this process is not linear in nature, and many of the steps across each of the buckets will overlap. As evidenced below, the process of developing a subdivision is a complex one with regulatory hurdles at the federal, state, and local levels.

PHYSICAL DUE DILIGENCE

If Any Step Fails, the Project Dies

1. **Receive title commitment from seller:** A title commitment is the document by which a title insurer discloses to all parties connected with a particular real estate transaction all the liens, defects, burdens, and obligations that affect the property in question.[31]
2. **Hire a surveyor:** This firm will survey the property to confirm the boundaries, topography, easements, and encroachments, to make sure that the property is what it is supposed to be.
3. **Address questions of wetlands:** The state is concerned with wetlands, which, in the words of one developer we spoke with, "is not necessarily what you think—it's more about the type of the type of growth that you see growing there. Wetlands are generally protected because, number one, they might be a habitat for animals, but more often because they provide an opportunity for growth to clean groundwater." If the state rules that a property contains wetlands, extra regulations apply—of course, from a time perspective, it matters just that developers need to wait for the state Department of Natural Resources (whether directly through their employees or from "assured delineators" who are approved to make that assessment) to make that ruling. It's also worth noting that, separately, the Army Corps of Engineers (USACE) takes federal jurisdiction over wetlands, and therefore this is a separate timeline for their making the assessment and deciding whether to take jurisdiction themselves. Determining who has jurisdiction between the USACE and the state Department of Natural Resources (DNR) can result in significant delays and, therefore, expense.
4. **Hire soil engineer:** Soil samples are often needed in order to obtain a stormwater retention permit from a municipality or county. These samples are used to determine how much water the soil on a site can hold and also whether the soil is stable enough to support a home. Relatedly, borings are also required to identify the existence of bedrock and the elevation of seasonal high groundwater levels, since municipalities have (sometimes differing) requirements for the distance that basements must be elevated above the seasonal high.
5. **Hire ecologist and archaeologist:** Ecologists conduct an ecological and archaeological assessment of the property.

This is important since the State and many municipalities have extra rules that will be brought to bear on anything that exists in an "environmental corridor" and frequently include environmental designations in zoning. Also, the presence of historically significant archaeological findings such as Indian Burial Grounds can halt the development of a site.

6. **Endangered species review:** Builders must consult with the state DNR to evaluate the habitat for the possibility of endangered species (whether regulated federally or by the state). If any are identified to potentially inhabit the area, additional consultants may be needed to evaluate any potential impacts on the species' habitat and areas of the site may need to be avoided.
7. **Conduct environmental hazards assessment:** Hire an environmental engineer/scientist to review historical uses of the site as well as perform an on-site inspection for potential environmental hazards or contaminants. If potential contaminants exist, additional studies or remediation may be required.

DUE DILIGENCE PERFORMED WITH MUNICIPAL STAFF

If Any Step Fails, the Project Dies

1. **Preliminary meetings with municipality leaders to share project plans:** This will often be with the community's planner, administrator, engineer, and department of public works. Here developers will gather initial feedback.
2. **Sewer and water capacity:** New developments may have sewer and water access, so it must be confirmed that they will be able to connect to local services and operate within capacity. This can get especially tricky when services are required but not available in close proximity, as tends to happen in rural or near-rural areas. In those cases, the developers may be responsible for the (significant) costs of installing them, or they may try to negotiate connecting to nearby village or city services—which those governments, generally speaking, have no incentive to cooperate with. At a minimum, developers are typically expected to pay the municipal engineer to determine whether the municipality has sufficient capacity in its sewage conveyance system to support the proposed development.
3. **Review access from roadways:** Similar to the above point about water, developments need to connect to the roads. The closest roads could be local (either town or city/village), county, or state, and different considerations come into play with each of those—with the possibility that the regulatory body may not allow access to them.
4. **Parks and park fees:** At these preliminary meetings, municipal staff often takes the opportunity to negotiate that a portion of the land be dedicated (for free) to the parks department if they determine a need in the area.
5. **Planning and zoning:** Staff will review the municipal comprehensive plan (see below) and consider the proposed use of the development at this meeting. If staff agrees with the development, things could move forward, but if they don't agree, the project typically ends at this meeting.

THE COMPREHENSIVE PLAN AND ZONING CONSIDERATIONS

1. **The comprehensive plan:** Wisconsin municipalities are required by state law to craft and adopt a "comprehensive plan" every 10 years to project and account for expected growth in the future, namely, formulating "overall objectives, policies, goals and programs of the local governmental unit to guide the future development and redevelopment of the local governmental unit over a 20-year planning period" (state statute 66.1001 (2)). This project typically requires hundreds of thousands of dollars of investment and goes into extreme detail; West Allis's comprehensive plan, for example, is 219 pages. Planned development must accord with the comprehensive plan (building out, for example, expected density)—and even then, it's reported that at this stage some municipalities may reject planned developments that are completely in line with the comprehensive plan anyway. Typically, a developer's first step for actually planning the development is to put together a concept plan that is in line with the comprehensive plan. In the event the developer proposes a use that is not consistent with the comprehensive plan, the developer must attempt to process a comprehensive plan amendment. The process typically takes 4-6 months and involves several public meetings and a public hearing where the public is invited to weigh in on the impacts to the community.
2. In addition to having a plan consistent with the comprehensive plan, a developer needs to consider the zoning required in order to support the intended use. In all respects, the zoning carries more weight than the comprehensive plan because zoning carries statutory rights. If a property is zoned for a certain use, a public body is legally compelled to approve projects that meet the zoning requirements provided all other conditions exist to support the development (e.g. sewer capacity, access, soil conditions). Re-zonings require the same meetings as comprehensive plan amendments and are sometimes, but not always, done in conjunction with the comprehensive plan amendment. In order to re-zone a property, a developer is often required to prove that they can meet the conditions precedent for the zoning.
3. In the event a municipality doesn't have a zoning category that meets the developers' proposal, many municipalities operate with something referred to as "planned unit developments" (PUDs).* These allow developments that are not bound by the one-size-fits-all strictures of typical zoning. They are often billed as being "flexible," though the municipality's involvement in the process and approval of every specification and detail can be a double-edged sword in practice, where developers' ideas are only approved in exchange for concessions. For instance, a city might require a builder to upgrade to more expensive materials because the city would like improved aesthetics, which they don't have to pay

* There are some variations of this term, like "planned development" or "planned development districts," but for our purposes they all generally mean the same thing, and this is the most common version.

for, in exchange for some exemption from straight zoning that the developer wants.

4. All amendments and approvals typically start with a site plan, which typically shows specific dimensions and measurements for the development, but is still pretty surface-level and can be just a few pages. The next more-detailed plan is the preliminary plat; finally, a civil plan will include construction-type drawings that also addresses detailed questions about handling sewer and water. These are typically developed throughout the course of pre-planning, though with PUDs in particular, the municipality may request the more-detailed version of plans earlier in the process.

THE PUBLIC APPROVAL PROCESS

1. In order to initiate comprehensive plan amendments, zoning amendments, and plat approvals, plans are brought to the municipality's planning commission for a preliminary meeting—this is before any vote is taken.

    a. They may call for further meetings with the community, the county, or the state over road access, parks, or other issues. Most typically, there are one if not multiple community meetings where citizens are welcome to speak and voice concerns.

    b. The developer may revise the plans as a result of any of this until the developer feels they have a reasonable chance of getting approvals.

    c. Typically, the planning commission will eventually vote to either recommend approval or denial of each project. This recommendation is made to the city council or equivalent, who may or may not agree with the recommendation. One developer elaborated on this stage, "The good municipalities give you specific feedback, talk about problems, give you a chance to make changes and go back. The bad municipalities don't say anything."

2. In instances where either the comprehensive plan or zoning is being amended, there is typically a public hearing that is called in order to hear any concerns by the public. There is a strict set of rules that governs the notification and timing of the hearing so that members have fair notice of these amendments.

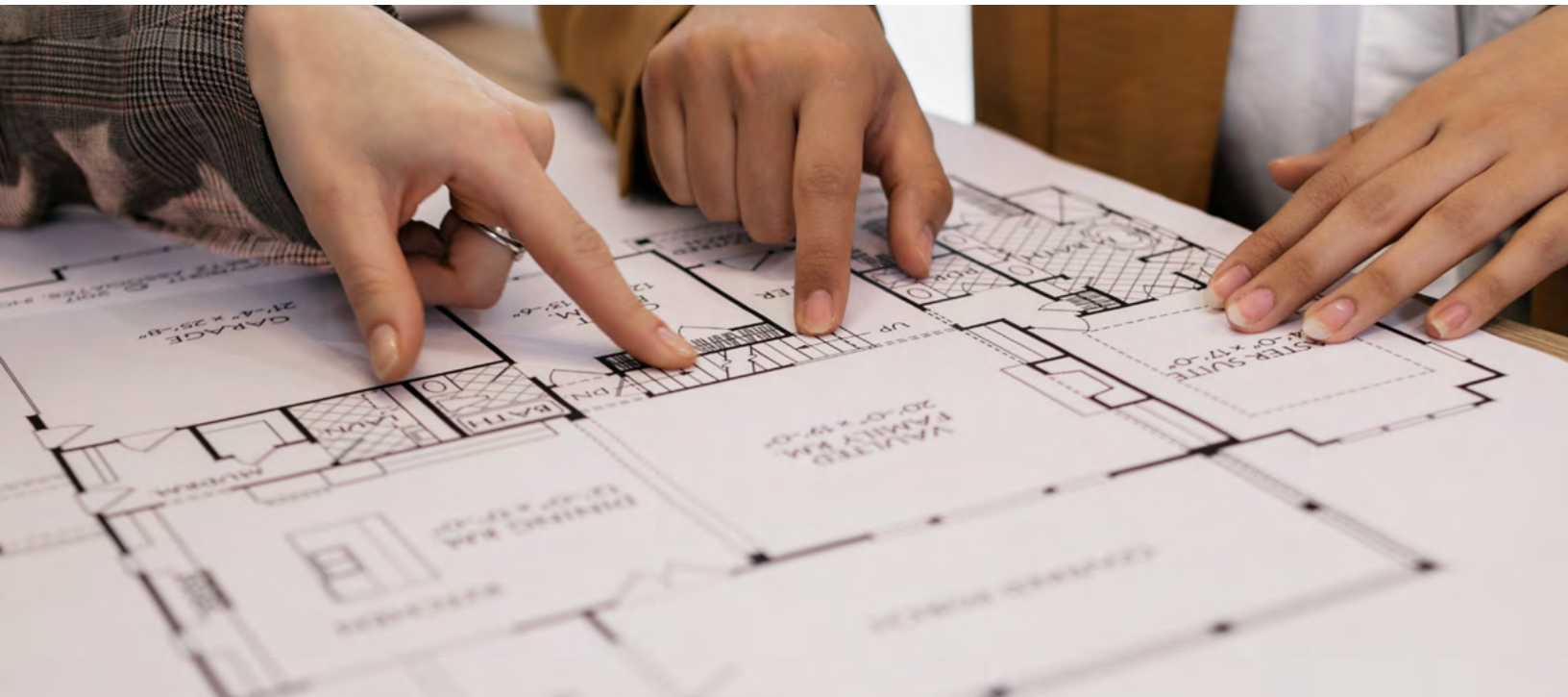
3. After the recommendation is made by the plan commission and, if necessary, a public hearing is conducted, the requests eventually make their way to the city council (or equivalent) for final, binding action.

    a. It is worth noting from a "time is money" standpoint is that these meetings typically require plans to be submitted well in advance of the actual vote, often to the tune of 45 days in advance.

    b. To be clear, this is not a complete green light: even after the planning commission approves a submittal, there may still be more public meetings where other people voice disagreement and leverage concessions (often resulting in scaled-back plans and fewer units on the piece of land in question).

PROJECT COORDINATION AND MANAGEMENT

1. Alongside the preliminary planning, the developers are making financial calculations since they need to be confident they can turn a profit from a development that is allowed to materialize. They start by crafting preliminary pro formas for financial viability, looking at projected expenses for the land, fees, and construction against hoped-for price points. Then, the developers conduct preliminary communications with contractors as development specs become clearer—the developers take those financial estimates and update the pro forma.
2. The developers must secure all permits from the municipality or the county concerning utilities, road connections, sewer, water, etc.
3. If a loan is necessary to purchase the parcel of land, the developer will work with an appraiser, lender, and attorney to secure that.
4. If the preliminary plat is approved and the projected finances are still in the black, then they close on the property. The developers finalize all necessary infrastructure plans in detail and, if applicable, seek any remaining necessary permits regarding grading, storm water, utility connections, wetland fills (if necessary), etc.
5. The developers then negotiate and review the development agreement. This can be an involved step since state statutes concerning development activities, surety, and warranties are interpreted differently across municipalities. This can lead to additional negotiations with municipal attorneys, elected officials, staff, and engineers.
6. If a construction loan will be necessary for the development, the developers discuss with the appraiser and lender for whatever financial assurance might be required by the development agreement.



7. Finally, the development agreement, infrastructure plans, and final plat are brought for final approval.
8. Any Declarations of Protective Covenants are established at this step; Homeowners Association and Architectural Review Committees are also created if applicable.
9. Before actual construction begins, pre-construction marketing of the planned lots commences to generate market interest and to line up buyers ready to purchase and move in as soon as the homes are ready. At this point in the process, some developers begin closing on pre-sales.

BEGIN CONSTRUCTION OF DEVELOPMENT

1. First, the grading is finished and utilities are addressed, including the installation of gas, electricity, and cable or phone lines.
2. The first version of a road is put down for construction vehicles, although a new and more expensive version will be applied for residential use at the end of the project.
3. The developer continuously works with the site contractor, municipality, and municipal inspectors to make sure the construction process and site stabilization process go smoothly. Sometimes required municipal inspectors work at a cost to the developers, which can vary between $500 to $9,000 per lot depending on the municipality.
4. Naturally, the developers try to keep inspection costs down and construction costs in line as the complete the development.

Photo by PhotoMIX Company

Spending Other People's Money

One of the paradoxes at the heart of these regulations is the double insistence that regulations reflect what ordinary citizens want in a home and also that the government needs the laws to force builders to build homes that way.[32]

The key here is in clarifying the question of what people "want" in a home or what homes "need" to have. Resources are always limited, but people have unlimited desires. So, frequently, building codes do reflect things that people would in fact like but do not need—things like larger homes, or nicer and more aesthetically pleasing building materials. All too often, these laundry lists of nice things amount to more than people can actually afford for a finished product. A lot of this disconnect is based on the way that regulations about what homes are allowed to get built are made by different people, whether existing homeowners or local officials, than the people who are interested in and trying to buy homes.

This is one more way in which the argument that "whatever housing exists must be what people want to buy" is incorrect, but the confusion also works the other way, where people who make decisions about other people's land and homes conceptualize everything in terms of what they themselves "want" or "need." For instance, in the common council meeting discussed here, one homeowner objected to the setbacks of a proposed development saying, "If I was a six-foot guy . . . I could stand on my lot line, lay down, and touch my neighbor's house. That's 90 inches. That's, in my mind, ridiculous." Recall that what's under discussion here is a *proposed* development. In other words, although you would never know it from this man's language, he's absolutely not talking about his lot line or his neighbor's house at all. If he wants ample space between his and his neighbor's house, he is free to arrange that by buying a house situated that way, buying more land, whatever—but no one has the right to inflict his own priorities and opinions on that subject on other people buying houses on other land.

The way that local governments often mandate things that are vaguely popular but, in aggregate, amount to unaffordable housing was repeated by many developers in our survey. One said, "Until codes stop improving housing without regard to the cost of the change, affordable housing is not going to happen." Another explained that, "They talk about affordable housing, but complying with all the codes adds a lot of cost, probably 30%. None of these are bad ideas, but not everyone wants or can afford all of the good ideas they mandate. Let the customer make their own decisions." A third offered the bleakest assessment: "There are so many little things that have been added to the cost of building a new home. Some are good and some not so much. They all add up. We cannot build a home for a normal family anymore."

Building is fraught with opportunities for third-party observers with no ownership in the property to insert their opinions, either by requiring unreasonable standards with costs that will be shouldered by other people, or by obstructing development altogether.

Both can be seen at work in a meeting of the Common Council of one Wisconsin city from earlier this year[33] where one individual said, "The more I thought about it, the city really has nothing to gain from this project. Because of the impacts it would have on the city as a whole." For context, the image shows the plan for development that was being discussed (as

Figure 3. Proposed Development, 130 Homes

reported by *Milwaukee Business Journal*[34]). The initial proposal had been for 180 homes. The proposal on the table at the time of this meeting (and depicted in the image) was for just 130.[35]

These homes aren't even affordable by any ordinary metric—the most affordable 76 of the batch were initially valued at around $450,000[36] —and still they generated intense opposition. For instance, another objector said, "An acre of land is 43,560 square feet; a quarter acre is 10,890 square feet. There are 49 lots under 10,000 square feet. I believe this is not representative of what kind of development we need. The developers have stated repeatedly that people want small lots in smaller houses. Well . . . driv[e] a few blocks to the west and look at the three and four subdivisions that were developed in [a neighboring city]. There are all three 1/3 to 2/3 acre lots and big houses. So that's the reality. That's not an opinion." This argument is impressively blinkered—it was literally made in exactly the kind of local government meeting that asserts its own third-party judgments, rather than free individuals, as the arbiter of what houses are allowed to be made in the first place.

The true extent of the power of government and onlookers was encapsulated by one citizen's enthusiastic observation at the meeting: "The thing that's nice, and what I'm amused by, and what I'm recommending, is: we have more meetings on this subject. Because every time we meet on the subject, the number changes—the first meeting 183 homes [were proposed], the second meeting 142 homes, today's meeting 130. I think if I'm following the trend, eight more meetings, and we'll have this down to what I want: 30 or 40 homes." The current system rewards this anti-free market mentality.

One developer we spoke with likened municipal actors (and elected officials in particular) to Dr. Jekyll and Mr. Hyde: paying lip service to affordability and openness publicly, but destroying prospects for new developments with countless tiny excuses that delay projects, increase costs, throttle supply, and price out aspiring homeowners.

One could also look at a recent court case involving a different Wisconsin city. This city attempted to condition approval for a property

Photo by Steffen Coonan

owner to subdivide her own 5-acre plot of land into three different residential lots on her willingness to "dedicate part of her property for a new public through street and pay to construct it."[37] This is the sort of quasi-extortion that developers navigate when dealing with municipalities that control their ability to do nearly anything with their property. And though, in this particular case, the Wisconsin Court of Appeals ruled against the city, it is worth noting that this litigation took more than 4 years to be finally settled—4 years of delays, not to mention legal costs, that not everyone is equipped to shoulder to see justice done and their rights vindicated. Ordinarily, citizens are at the mercy of their cities to either comply even with illegal demands or else to abandon their hopes altogether.

THE PROMISE AND PERIL OF PLANNED UNIT DEVELOPMENTS

Instead of exclusionary zoning, planned unit developments (sometimes referred to as "planned development districts") have been crafted that allow developers to negotiate with municipalities in order to navigate stringent aspects of zoning that might be extra burdensome to specific developments. They are often billed as being "flexible," since builders aren't bound to a whole slate of pre-written rules. But on the other hand, the details of the planned unit development still require supervision and approval with the municipality. So the potential upside is a mollification of zoning's worst excesses in particular scenarios. Zoning, after all, is one-size-fits-all and its rigidity can be expected to be suboptimal when applied to a specific case. But on the other hand, the level of municipalities' involvements can lead to them still requiring expensive changes that are paid for by the builders—and thus by homeowners and renters. One developer talked about being required to vary the floor plans of different buildings in a neighborhood simply for variety's sake, which led to a multiplication of architectural fees since the same plans couldn't just be used for all the buildings, as initially intended. Even apart from their capacity to allow arbitrary expenses like that, some cases are even worse.

The municipality's involvement in the process and approval of every specification and detail can be a double-edged sword in practice, whereby developers' non-zoning ideas are only approved in exchange for concessions elsewhere. For instance, a city might require a builder to upgrade to more expensive materials because the city would like improved aesthetics, which they don't have to pay for, in exchange for some exemption from straight zoning that the developer wants. So, while planned developments offer builders an option to escape some of zonings' excesses, the downside, in practice, is that municipalities can view them as trades where any flexibility on their part must be bought with a favor somewhere else. According to municipal actors, developers themselves respond in kind by treating them as opportunities to plead for special favors.

The Common Council meeting dissected above was over one such development (referring to it with the "planned development district" or "PDD" terminology), and the mentality of squeezing developers dry through the negotiating power is on full display. One developer we spoke with explained, "The other thing they get out of it, it gives them an opportunity to engage in a negotiation: you're getting a PDD which means you're getting some special favor in exchange. They can extort things from you." He then referenced one town chair in particular, "And [the town chair] is like, I don't understand these PDDs. What do I get out of it? Yeah—it's a mentality where this was a negotiation." Municipalities can also prevent developers from using their land as they see fit unless they also do things like set aside land for greenspace, parks or walking trails, or foot the bill for roads, sewer or water infrastructure, etc.

Again, on the other hand, one Village's Community Development Director commented in our survey, "Developers ask for incentives for most projects, which the community cannot always provide." It's not hard to see how it is in both sides' respective self-interest to treat these situations as opportunities where they can extract benefits from the other side. In terms of policy, the result is that the rigidity and inflexibility of zoning is traded for uncertain negotiations where force of personalities and tactics guide the results.

Photo by Oskars Sylwan

Cost of Regulation and Red Tape

All of the issues come at a real cost to developers and homeowners. However, the extent of that cost remained unclear until recently. In order to better quantify this cost, the National Association of Home Builders (NAHB) conducted a survey of land developers and single-family home constructors in 2021.

They found that, based on the average cost of a new home in the United States in 2021 ($394,000), governmental regulation adds approximately $93,870 to the price tag. In other words, regulation accounts for nearly one quarter the price of a new home. At the state level, the Georgia Public Policy Foundation[38] replicated the NAHB analysis, and estimated that governmental regulation, in all its forms, was responsible for about 26.9% of the final price of a new, single-family home in the state. This was slightly higher than the percentage found in the national analysis by NAHB.

During the development period, three areas were the most prominent contributors to high regulatory burdens. The first are two areas that deal with government rules about how land can be used. Requirements that some land remain undisturbed, or that certain standards of construction such as setbacks be followed, each added about $10,000 to the cost of construction. The final large burden during the development phase came from the "hard costs of compliance" such as fees and the need to conduct impact studies. This component was found to add more than $11,000 to the average home.

Assuming the regulatory burden is similar in the Midwest to that of the nation as a whole, it is possible to estimate the cost of regulation within the region. According to estimates derived from Census Bureau data,[39] the average price of a new home in the region was $371,309.* Using the NAHB percentage from above, we estimate that government regulation added about $88,500 to the cost of the average new home—representing significantly more than a year's worth of income for the median Wisconsin household.[40] The next section of this paper offers some suggestions on how this regulatory burden can be reduced.

* Inflation adjusted to 2020 Census data using the CPI Inflation Calculator.

Photo by RODNAE Productions

Areas for Reform

QUESTIONS OF STATE AND LOCAL PREEMPTION

There is a robust debate about the scope of local self-government in the United States. An ideal vision has citizens making and enforcing laws for themselves at the most local scope appropriate: school board questions being settled at the level of the school district, city questions being settled by city government, and so on up to the national level.

But the theory isn't as clean-cut in practice, not only because of the vagaries of history but because of the need to protect individual rights. This is why, for example, the national government protects all individuals' rights of speech, of assembly, to keep and bear arms, etc. in our Bill of Rights.* Analogously, it is the responsibility of state government to tie the hands of nefarious local governments from abusing their power and destroying property rights by constricting what may be done with it. Note that many homeowners may be happy with the state of the housing market since it contributes directly to an appreciation of their home value over time and, more broadly, embraces a "small-c conservatism" that prioritized preserving everything exactly as it is.† And we do mean "everything"—Washington, D.C. has bestowed the protected designation of "historic" on gas stations and parking lots.[41] Renters, meanwhile, who may be interested in buying a home, are by definition situated where they have no direct control to loosen zoning restrictions to affect their ability to buy a home. Ultimately, the government is supposed to protect the rights of the minority, and there is no minority more helpless in changing homeownership schemes than those who do not yet own a home.

Circumstances make this urgent for our state. Wisconsin is an aging state, even by the standards of the aging Midwest.[42] There must be ways for younger people to live and work here in a fiscally responsible way. Moreover, on a humane level, it's hard to believe that generations of current homeowners want policies that price their own children out of the market and force them to live in other parts of the country where home ownership is more attainable.

That said, there are a number of reforms and innovations that can defang the worst effects of government interference.

STATE-LEVEL SOLUTIONS FOR WISCONSIN

RECOMMENDATIONS FOR THE DEVELOPMENT PROCESS

The development process is unnecessarily long, fraught with too much uncertainty and

* The exact story of the application of the Bill of Rights' protections to individuals against state and local governments, and the development of the doctrine of "incorporation," would take a long time to detail—but the upshot is a collection of national protections of individual rights.

† Researcher Will Rinehart has dubbed this "vetocracy," discussing the story of a proposal to build 10 new units of housing in San Francisco. Approval for the proposal took 40 years. *https://exformation.substack.com/p/to-unleash-progress-excessive-vetoes*

too many costs. There are a handful of specific reforms that could be put in place to make the process smoother, more transparent, and better for everyone.

RATIONALE FOR REJECTION

Municipalities routinely publish comprehensive plans, as required under state law (see above). Sometimes municipalities then reject proposed developments that are in line with their comprehensive plans—and sometimes they even do so without any stated rationale. In order to facilitate free construction as well as to keep comprehensive plans from being, as one housing policy expert put it, "little more than expensive brainstorming exercises," municipalities should be forbidden from rejecting proposals that align with their comprehensive plans and should also be required to publish the reasons why any proposals are rejected.[43]

GREENSPACE DEFINITION

Another aspect of uncertainty arises from the various ways that different municipalities define "green space." Sometimes land untouched for wetlands purposes counts toward municipalities' "green space" standards; other times it does not. State law should require municipalities to consistently apply one definition of greenspace across the board.

AESTHETIC CRITICISMS AND REQUIREMENTS

Many regulations and requirements related to building have to do with sound construction or safety. These are, *prima facie*, the most justifiable kind of regulation in that their express objectives are genuine priorities in ways that bring with them the risk of externalities and material harm. As discussed, this is much less

Photo by Tom Barrett

true with requirements about density per se—and this is wholly inapplicable when it comes to requirements that are purely aesthetic, subjective, or completely ethereal. The go-to requirement in this category is that new buildings must be "in keeping with the character of the neighborhood." At its worst, this is a gate-keeping excuse to keep poorer people from living nearby. Even at its most innocent, this is an avenue for third parties to use government power* to force costs onto other people. The practical upshot is that purely aesthetic requirements ratchet up the cost of building (especially new homes) at the hands of onlookers who are forcing others to pay for their own aesthetic tastes. Arkansas and Texas have eliminated aesthetic requirements for all but historic district purposes.[44] We recommend that Wisconsin do the same.

CERTAINTY IN THE PROCESS

One Wisconsin state law passed under the Walker administration has been praised by developers as a "keep us honest" law. The law essentially keeps municipalities from playing games that result in developers footing the expense to lay down a brand-new road (on the order of six figures) in a city.† The issue we came across is that the structure of enforcement—surety and suing—is ill-suited due to developers wanting to maintain a healthy ongoing relationship with municipalities. The law should be modified so that it is enforceable by state- and county-level prosecutors who are free from the personal acrimony involved in that decision.

LOCAL SOLUTIONS

REPEALING "MANDATORY MINIMUMS"

As discussed above, minimums for housing that are legislated and enforced by government keep the market from being responsive to buyers' priorities and reliably price people, especially those who are poorer or younger, out of homes. Localities should course-correct on issues such as mandating minimum lot sizes, minimum setbacks, minimum parking requirements, and minimum square footage requirements—all of which throttle supply to be bigger and more expensive. It should also be noted that these measures enjoy broad support: one poll found that only 27% of respondents (registered voters) oppose removing minimum square footage requirements, compared to 45% who supported it (29% were "unsure").[45] That same poll found similar figures for removing minimum lot size requirements and "reducing local zoning regulations," i.e., in general. Given that the earlier referenced NAHB research found these to be some of the biggest culprits in adding to the cost of a new home, governments have a lot of opportunity to improve on these measures by moving away from them, either by ratcheting down the minimums across the board, including more zones without them, or striking them from the books altogether.

* Again, see the extremely typical common council meeting referenced throughout this report to see this kind of objection putting in motion government force that restricts landowners from developing land as they would prefer.

† The statute is § 236.13 and amendments: *https://docs.legis.wisconsin.gov/statutes/statutes/236/ii/13/1*

"MISSING MIDDLE" HOUSING

Municipalities need to move toward a model that doesn't criminalize forms of dense housing. Partly this needs to be done by the reduction of mandatory minimums, as discussed above: requiring that each home takes so much land limits the supply of land and pushes legal types of housing out of reach for many people. But housing units also become more plentiful and attainable with types of housing that aren't stand-alone and single-family. Multifamily types of units, like Milwaukee's famous duplexes, are one example of this. They not only provide people with the option of living in a house of a modest size—they give ordinary people the chance to rent out space and collect passive income.

And it's worth noting that even in a world where developers might hesitate to construct entire neighborhoods of new duplexes and make a major gamble on their investment, there is no reason to prevent homeowners from converting their existing property into an upper/lower duplex. This would be an especially apt solution for Wisconsin not only because of duplexes' roots in our state but because of the aforementioned demographics: Wisconsin is an aging state even by midwestern standards, and older folks typically look to downsize to a smaller living space, often one that allows them to avoid stairs.[46]

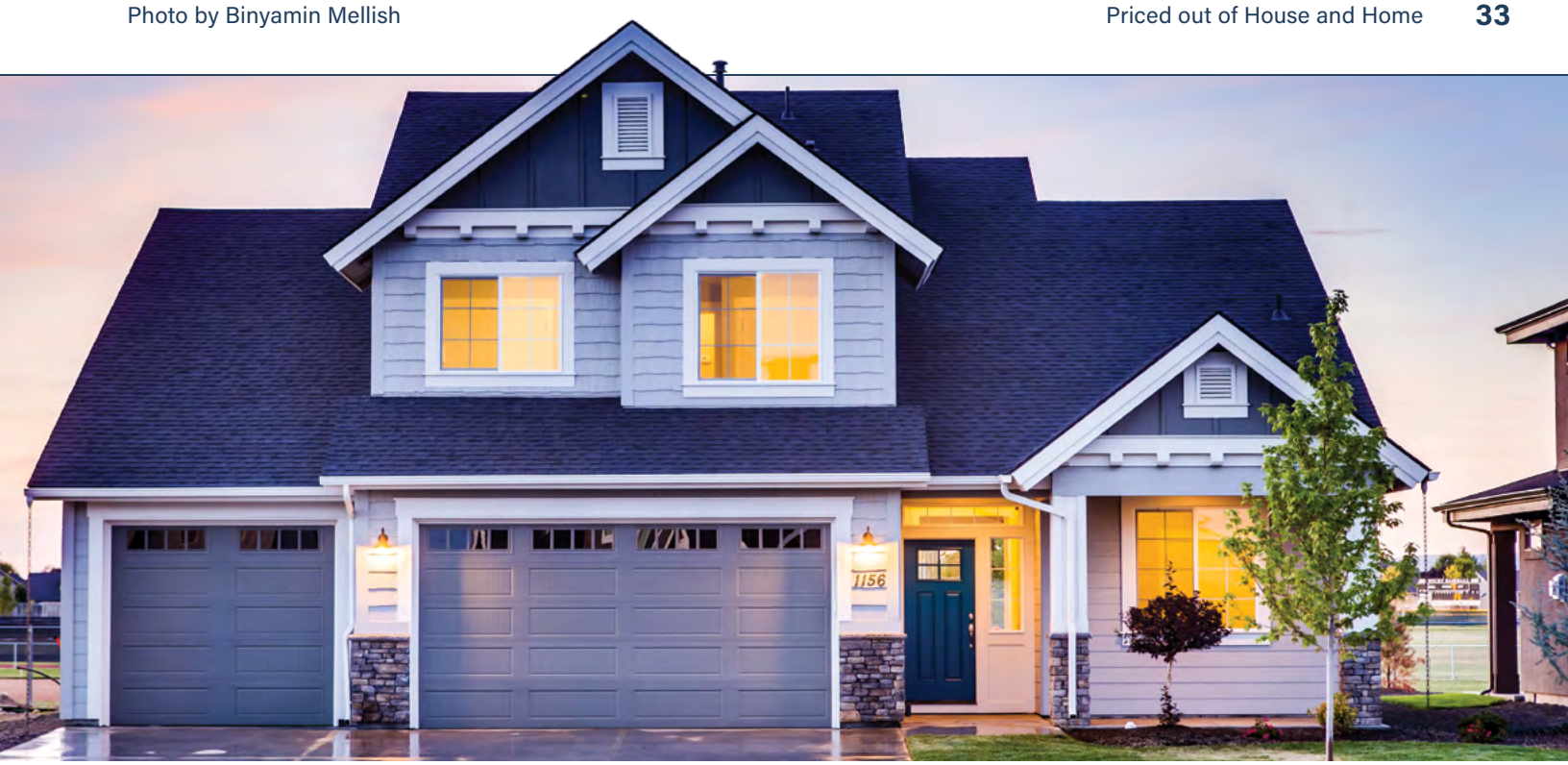
This is an especially timely solution given the crunch on affordable housing. As CNBC reported, "Much of the competition is for lower-priced houses, which means retirees looking to downsize are pitted against first-time homebuyers. 'With smaller-sized homes, there's a lot of competition,' said Jessica Lautz, of the National Association of Realtors."[47] Legalizing these types of homes is an important step in allowing people to own homes, build wealth, put down roots, and invest in communities.

In light of all that, cities and villages should not forbid duplexes or triplexes wholesale. In particular, municipalities should default to allowing the conversion of a single-family detached house into a duplex by the homeowner. Nebraska's LB794 (2020) offers a path forward on this (although that bill was even more expansive in its scope).[48] If people are concerned about houses in their neighborhood becoming mere rentals owned by absentee landlords, the law could specify that municipalities can require owner residency as a prerequisite for converted properties being rented out.[49] Even this requirement would do a lot to restore property rights, specifically giving existing homeowners the option of converting their own homes into more units and leasing them out for passive income, a move that could greatly expand Wisconsin's supply of affordable housing.

To be perfectly clear, this is not at all the same thing as making single-family detached housing illegal. This recommendation would not criminalize any existing structure. No one's house would suddenly be changed against their will. This always seems to be the concern,[50] but it is either a basic misunderstanding of what loosening zoning would do or else a bad-faith appeal to emotion to generate opposition. Existing single-family homes would continue to exist, and market forces would ensure a supply of that type of home in the future that is proportional to demand.

ACCESSORY DWELLING UNITS

A related form of "missing middle housing" is in "accessory dwelling units" or "ADUs." These are



generally defined as living spaces that include their own separate sleeping, cooking, and sanitation facilities on the same lot as a (larger) home.[51] These can be attached to the main house (some units are built over garages) or detached in smaller, stand-alone structures.* Once again, ADUs are doubly friendly, especially for people in and aspiring to the middle class: they expand the available stock of housing for renters, young, and poorer people, while also enabling ordinary homeowners the chance to receive passive income through rent. They also often used as "mother-in-law" suites, allowing older family members to reside with their family, but in their own separate space.

Most forms of zoning prohibit homeowners from adapting their homes or building these structures on their own land. Legalizing them should be a priority—if not for Wisconsin municipalities, then for statewide lawmakers. Wisconsin municipalities should default to zoning options that permit them unless expressly and specifically argued otherwise.

MORE "BY-RIGHT" ZONING

In political polling, it is well known that most Americans hate Congress, but fully support their own Congressman. A similar phenomenon seems to be occurring when it comes to housing density. As summarized by the Manhattan Institute,[52] Americans appear to be generally supportive of the notion of relaxing zoning restrictions that limit construction, even as they are likely to oppose in their own "backyard." The solution here, then, is to short-circuit the hyper-localized influence of neighbors on many zoning projects by allowing more construction to be completed "by right"—or without specific local approval.

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* Some people distinguish between "interior" and "attached" as well as "detached." See *https://www2.minneapolismn.gov/media/content-assets/www2-documents/business/Accessory-Dwelling-Unit-Application.pdf*

Conclusion

Government plays a significant role in the housing market. Governments at different levels, but especially local ones, have a wide arsenal of tools to keep people from exercising their property rights and to keep the market from freely responding to economic realities such as demand. However well-intentioned some of these regulations might be, they are characteristically restrictive of supply.

The worst excesses of these, like standards that exist for purely aesthetic reasons, need to be curbed, if not rooted out. The general zoning mentality of only allowing the building of stand-alone, single-family homes also needs to change: communities should increasingly legalize the sort of gentle density that is needed to fill out housing's "missing middle." If that doesn't involve defaulting to allowing smaller lot sizes, lower square footage mandates, and construction of new multi-family homes, municipalities should at a minimum allow homeowners to add ADUs on their own land or convert their homes into duplexes.

We used to build homes like this—because it is a good idea. Even among people who might wish for a stand-alone, single-family house, plenty will opt for denser living when given the choice in light of the economic constraints of the real world. This is most relevant when considering the younger and poorer aspiring homeowners who are currently priced out of the housing market and confined to the choice of unattainably large homes or renting indefinitely.

For similar reasons, the government needs to refine and standardize the construction process. Overly long approval times tie up capital, which keeps builders from building enough to keep pace with demand. Inconsistent definitions and standards (e.g., "greenspace") obstruct smooth development and should be uniform.

All told, there is tremendous opportunity for government to improve the state of housing affordability in Wisconsin by doing less rather than more. The policy recommendations here would empower individuals to exercise property rights more freely, the market to balance supply and demand with more precision, and Wisconsinites to pursue the American Dream.

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13. One public instance of this argument is here: https://twitter.com/SLCPaladin/status/1546224808450351105. In open-ended responses to our survey, we heard from an official at one village who claimed "Housing development is market driven." We also quote, elsewhere in this report, one Wisconsin city's common council meeting where someone declaims, "The developers have stated repeatedly that people want small lots in smaller houses. Well . . . [drive] like a few blocks to the west and look at the three and four subdivisions that were developed in [nearby city]. There are all three 1/3 to 2/3 acre lots and big houses. So that's the reality. That's not an opinion." But these arguments are wrong for the reasons explained.
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