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The Rise of White-Segregated Subsidized Housing

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EXECUTIVE SUMMARY

Subsidized housing in Minneapolis and Saint Paul is segregated, and this segregation takes two forms – one well-known, and the other virtually unknown.

At this point it is widely recognized that most Minneapolis and Saint Paul subsidized housing is concentrated in racially diverse or segregated neighborhoods, with few subsidized or otherwise-affordable units in affluent, predominately white areas. Because subsidized units are very likely to be occupied by families of color, this pattern increases the region's overall degree of segregation.

But what has been overlooked until today, at least publicly, is that a small but important minority of subsidized projects are located in integrated or even-predominately white areas. Unlike typical subsidized housing, however, the residents of these buildings are primarily *white* – in many instances, at a higher percentage than even the surrounding neighborhood. These buildings thus reinforce white residential enclaves within the urban landscape, and intensify segregation even further.

What's more, occupancy is not the only thing distinguishing these buildings from the average subsidized housing project. They are often visually spectacular, offering superior amenities – underground parking, yoga and exercise studios, rooftop clubrooms – and soaring architecture. Very often, these white-segregated subsidized projects are created by converting historic buildings into housing, with the help of federal low-income housing tax credits, historic tax credits, and other sources of public funding. Frequently, these places are designated artist housing, and – using a special exemption obtained from Congress by Minnesota developers in 2008 – screen applicants on the basis of their artistic portfolio or commitment to an artistic craft.

These places cost far more to create than traditional subsidized housing, and include what are likely the most expensive subsidized housing developments in Minnesota history, both in terms of overall cost and per unit cost. These include four prominent historic conversions, all managed by the same Minneapolis-based developer – the Carleton Place Lofts ($430,000 per unit), the Schmidt Artist Lofts ($470,000 per unit), the upcoming Fort Snelling housing conversion ($525,000 per unit), and the A-Mill Artist lofts ($665,000 per unit). The combined development cost of these four projects alone exceeds $460 million. For reference, this is significantly more than the public contribution to most of the region's sports stadiums; it is $40 million less than the public contribution to the controversial downtown football stadium.

These four buildings contained a total of 870 units of subsidized housing, most of which is either studio apartments or single-bedroom. For the same expense, using 2014 median home prices, approximately 1,590 houses could have been purchased in the affluent western suburb of Minnetonka.

In short, Minneapolis and Saint Paul are currently operating what is, in effect, a dual subsidized housing system. In this system, the majority of units are available in lower-cost, utilitarian developments located in racially segregated or diverse neighborhoods. These units are mostly occupied by families of color. But an important subset of units are located in predominately white neighborhoods, in attractive, expensive buildings. These units, which frequently are subject to special screening requirements, are mostly occupied by white tenants.

As a matter of policy, these buildings are troubling: they capture resources intended for the region's most disadvantaged, lowest-income families, and repurpose those resources towards the creation of greater segregation – which in turn causes even more harm to those same families.

Legally, they may well run afoul of the Fair Housing Act and other civil rights law. Recent developments have established that the Fair Housing Act forbids public or private entities from discriminating in the provision of housing by taking actions that create a disparate impact on protected classes of people, including racial classes. Moreover, recipients of HUD funding, such as the state and local entities which contribute to the development of these buildings, have an affirmative obligation to reduce segregation and promote integration in housing.

The following report explains this dual system: its characteristics, how it came to be, how it represents a growing national trend in subsidized housing development, and its relationship with civil rights law.

A vast array of research has shown that the Twin Cities have the nation's largest racial disparities in poverty rates, homeownership, employment, and educational attainment; they have the nation's fourth-largest disparities in per capita income. Racial gaps in Minnesota arise from systemic, institutionalized discrimination that prevent families of color from accessing the state's considerable economic and educational resources. The segregation of the region's nonwhite population into low-opportunity urban and suburban neighborhoods, and the ongoing existence of high-opportunity white enclaves, enables and perpetuates systemic discrimination. Only by undoing these segregated living patterns can existing disparities be reversed.

Instead, however, subsidized housing in the Twin Cities currently *sustains* segregation. It does this in part by operating a divided system in which the most desirable housing units are reserved for white families. Until leaders and policymakers are ready to confront these policies, there is little hope that all the region's residents will be able to share fully in its prosperity.

The Rise of White-Segregated Subsidized Housing

In March of 2016, U.S. Secretary of Housing and Urban Development Julián Castro came to Minneapolis to talk about fair housing. Castro's visit, framed around a public discussion of the agency's upcoming Prosperity Playbook, was prompted in part by ongoing concerns about Twin Cities segregation – including a HUD fair housing complaint against Minneapolis and Saint Paul which alleges that the cities have unlawfully segregated their subsidized housing. In a well-attended gathering, the secretary listened to mayors, policymakers, and housing activists as they shared their opinions on how to address one of the Twin Cities' most intractable, most harmful social issues.

The discussions were held in the A-Mill Artist Lofts, a new and monumental subsidized housing development on the edge of the Mississippi. A landmark project for Minneapolis, the A-Mill no doubt seemed a natural forum to plan the fight against segregation and discrimination in Twin Cities housing.

But unbeknownst to the secretary or many of the attendees, this choice of setting was terribly ironic. The A-Mill, as it happens, is not ordinary affordable housing. Instead, it is the region's – and perhaps even the nation's – most potent example of how unmonitored, privately-dominated, profit-driven subsidized housing development can create profound segregation, rewarding or penalizing families along racial and economic lines.

Five minutes in the A-Mill will yield no shortage of clues that it is different from most subsidized housing. Although cities have come a long way since the day of cookie-cutter high-rise apartment blocks, most modern affordable projects are still more concerned with providing functional lodging than breaking new architectural ground. By contrast, everything about the A-Mill is visually striking. Glass panes and concrete floors contribute an industrial, modern aesthetic to the entryways and the lobby. The rental units sport fifteen foot-ceilings with trendy industrial styling, fashioned out of the innards of the old flour mill. In many units, large windows overlook the Minneapolis city center.

The building's amenities are no less impressive. They include a fitness center, a yoga studio, complimentary wi-fi, in-unit laundry, full kitchens with dishwaters, and underground parking. The A-Mill also houses a range of artistic facilities and services, including separate studios for paint, pottery, photography, dance, music, and a performance space. The project is powered by an integrated hydroelectric plant that extends into the nearby Mississippi, taking full advantage of its riverfront location.

This is all topped off – literally – with an expansive resident lounge, which boasts designer furniture, restaurant-style booths, a large bar, televisions, and a sound system. The lounge opens onto a spectacular rooftop patio, perched over the Mississippi, directly across from downtown. The building's website describes the patio as offering the "best view in Minneapolis," and it's hard to disagree.

The A-Mill is the largest and most visible structure in St. Anthony Main, one of Minneapolis's most sought-after stretches of real estate. It is flanked on the east by the Mill and Main Luxury

Apartments, in which single-bedroom units rent for as much as $2,550 a month and tenants are required to earn thrice their rent monthly in order to even apply. It is flanked on the west by the Phoenix on the River condominium complex (tagline: “Luxury has a new neighborhood”), where, at the time of this writing, a one-bedroom unit is on the market for $3,975,000.

At the A-Mill, monthly rent for a one-bedroom apartment is $962.

Low rents aside, the A-Mill is the most expensive subsidized housing project in the history of Minnesota. It includes 251 units – primarily single-bedroom apartments – developed at an average price of more than $665,000 apiece.

Yet despite the project’s exorbitant cost, and despite the fact that subsidized housing is traditionally controversial among neighbors, the A-Mill has been met with a positive reception. During the project’s two-year development period, local press closely followed construction progress. At the March HUD forum, the Minneapolis mayor lauded the project as a prime example of the city’s commitment to affordable housing. The Minneapolis & St. Paul Home Tour recently featured the building. Remarkably, the press or public never seriously critiqued the project, even as the cost ballooned from an estimated $112 million to $138 million, and then again to $151 million, finally topping out at an unprecedented $170 million.

Most subsidized housing is of limited appeal to those who aren’t hard-pressed to find housing elsewhere. It is frequently located in low-opportunity neighborhoods; it is spartan in design; it offers only the barest amenities. The primary appeal of such places is cheap, restricted rent – not creature comforts or a spot in a trendy, otherwise unaffordable neighborhood.

The A-Mill is different – a luxury complex by another name. Those lucky enough to score an A-Mill unit have won the housing lottery, scoring a luxury apartment for a subsidized unit’s price.

But there’s a catch. At the A-Mill, the people who win that lottery are overwhelmingly white.

In data provided to the state, only 14 percent of reported A-Mill households were families of color. None were headed by an individual over 62, and less than one in five had children. Less than one in twenty received any form of rent assistance – which is perhaps less surprising when one considers that average incomes in the building are $10,000 higher than the annual average for Minneapolis subsidized housing.

By contrast, most of the rest of Minneapolis’s subsidized housing is located in high-poverty neighborhoods that are segregated or diverse. Most the people living in this housing are black; only 20 percent are white. Many have children and a substantial fraction are elderly. The majority are reliant on rent assistance. At the A-Mill Artist Lofts, these families seem nowhere to be found.

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The A-Mill is so far unique in scope, but it is hardly alone. Instead, it is the flagship project for a new style of subsidized development that is becoming increasingly common in Minnesota and around the nation. These places are diverse but share a number of key characteristics. They’re usually built around historic properties. They’re often restricted to particular occupations or professions, such as artists. They're found in high-priced neighborhoods and are themselves costly to develop. And they're mostly white.

Many of these places – including the A-Mill – are designated "artist housing," and require potential residents to pass through a special screening process that proves their commitment to art. The screening process would disqualify them from federal subsidy, but for a special "artist preference" exemption that Minneapolis developers helped pass through Congress in 2008.

Minnesota has seen perhaps two dozen properties developed in this vein over the past decade and a half, with the pace and size of new proposals accelerating. Minnesota-based companies and nonprofits have developed dozens of similar projects nationally. Although this style of development still constitutes a small share of subsidized housing, it has demonstrated considerable political appeal for cities and citizens alike.

That appeal is rooted in the fact that, in every way but one, projects like the A-Mill Artist Lofts are hard to distinguish from the luxury condos and rentals that have heralded the return of money to American cities. The A-Mill and its contemporaries can be seamlessly integrated into the kind of hip urban neighborhoods where young corporate workers buy craft cocktails at $12 apiece, and where art studios outnumber convenience stores four to one. In form, these places mimic converted industrial lofts that would otherwise rent for thousands of dollars a month. They offer top-of-the-line amenities targeted at the young and active, with plentiful space for yoga, art, and exercise. Their common areas seem designed with album launch parties in mind. And the residents themselves are in many ways indistinguishable from their upwardly mobile peers: they are mostly white, mostly childless, non-disabled, and virtually never reliant on any form of rent assistance.

But while luxury development is undeniably conducted as a profit-making venture, this new style of housing ostensibly promotes the public good. That's why they're funded almost entirely out of public sources, like tax credits or low-interest government loans. As a result, as with most subsidized housing, rents in these buildings are capped, and residents are subject to income restrictions. (Though perhaps not for long: while many subsidized building owners agree to maintain affordability restrictions for at least 30 years, the owners of these places have frequently preserved the option to seek a release from those restrictions after only 15 years. In such cases, the owners would find themselves in possession of what is, for all intents and purposes, a publicly-subsidized luxury apartment building, often on prime real estate.)

For decades, subsidized housing policy in Minneapolis and Saint Paul has contributed to racial and economic segregation. But historically, it has done so by concentrating units, which are predominately occupied by families which are very poor and black, in areas that are themselves very poor and segregated. Meanwhile, the predominately white areas, where the greatest economic and educational resources are available, have seen little or no subsidized housing development, restricting access to these high-opportunity neighborhoods.

The segregation and concentration of subsidized housing reflects broader trends that continue to impact the region. Out of the nation's predominately white metropolitan regions, the Twin Cities area is now the nation's most starkly segregated, with severe impacts in both neighborhoods and schools. (See the following subsection, Growing Segregation in the Twin Cities, for a summary of previous research on these trends and their impacts.)

But the A-Mill and similar projects represent a new kind of segregation in the region – not just as a result of where subsidized housing is located, but *within* the subsidized housing system. It divides the publicly funded rental units in Minneapolis and Saint Paul into a racial hierarchy, where the most expensive projects, with the most desirable locations, are effectively held aside for white people. Meanwhile, more traditional subsidized units are generally located in one of the two cities' expanding hubs of racial and economic segregation, where research suggests that occupants will find few avenues to employment, educational advancement, or other means of breaking the cycle of poverty.

The following report analyzes this new trend in Twin Cities subsidized housing. It focuses on the increasingly common development of high-cost and pseudo-luxury subsidized projects.

These places exist because they serve a constellation of political and pragmatic interests, while their unusual demographics help them neatly avoid hot-button questions of racial and economic integration. Because no preexisting term exists for such places, we have selected the name "Politically Opportune Subsidized Housing," or POSH, because it simultaneously conveys their appeal to developers and local politicians, their comparative luxury, and their origins as a product of unusual political incentives. The following report lays the groundwork for better understanding of this phenomenon, by:

- Describing the shared features that characterize POSH projects.
- Demonstrating how the demographics of POSH residents differ from residents of more traditional subsidized housing residents.
- Explaining ways in which POSH projects may be narrowing their tenant pool and screening out many traditional subsidized housing residents.
- Examining the legal, political, and financial incentives that have made POSH development possible and appealing.
- Discussing the accelerating national spread of POSH projects.
- Analyzing whether POSH development violates fair housing law.

As the following pages will demonstrate, POSH projects can advance historic preservation, make funding more plentiful, provide economic development, and support well-regarded groups like artists or teachers. They allow developers to cleverly repurpose affordable housing tax credits and other funding into unique projects that serve interests far beyond those of low-income families.

But the apparent cost of this choice is sustaining and worsening segregation. In the Twin Cities, POSH projects have made winners of developers, cities, politicians, and neighborhoods. It has harmed only one group: very low income families of color. These families have seen hundreds of millions of dollars of public subsidy, intended to provide stable, integrated housing for their benefit, diverted instead into the production of rent-restricted luxury lodging for a favored class of residents. Instead of helping the struggling urban poor escape poverty and segregation, the region's most celebrated housing projects instead appear aimed at helping white, moderate-income "creatives" live comfortably in Minneapolis and Saint Paul's most exclusive urban quarters.

Are these the Twin Cities policymakers want to build?

Growing Segregation in the Twin Cities

Segregation is a root cause of the many extraordinary racial disparities that plague the Twin Cities region. Although the area was once home to the nation's most effective housing integration program and strong school integration rules, both have come under systematic attack from political elites and private interests. The result has been several decades of increasing racial isolation.[i]

Minnesotans of color have become increasingly concentrated in racially and economically segregated neighborhoods.

- Between 1970 and 1990, the percentage of black Twin Cities residents living in census tracts where the majority of the population was also nonwhite dropped by more than ten percent, even as the black population increased. However, between 1990 and 2010, this percentage began increasing again, from 34 to 42.
- In 1970, 5 percent of American Indian residents, 4 percent of Hispanic residents, and 1 percent of Asian residents lived in majority-nonwhite census tracts. By 2010, these figures were 32 percent, 31 percent, and 30 percent, respectively.
- In 2000, 13 percent of low-income black Twin Cities residents lived in high-poverty census tracts. By 2012, that figure had increased to 19 percent. For comparison, in 2000, less than 2 percent of black Portland residents and less than 4 percent of black Seattle residents lived in high-poverty areas – and in both cities, that percentage declined slightly over the following 12 years. This occurred despite all three cities experiencing only small, nearly identical increases in racial diversity and poverty.

Educational segregation can interact with residential segregation to create a downwards feedback loop: racially isolated schools can trigger white flight from neighborhoods, which in turn accelerates the resegregation of those same schools. This process is well underway in the Twin Cities, with school segregation increasing even more rapidly than residential segregation. This increase cannot be explained by the region's changing demographics.

- Between 2000 and 2012, the number of schools in the Twin Cities that are more than 90 percent nonwhite increased from 37 to 117. In Portland over the same period, the number increased from 0 to 2; in Seattle, from 14 to 30.
- Today, 59 percent of children of color in the Minneapolis Public School District and 65 percent of children of color in the Saint Paul Public School District attend a school that is more than 80 percent nonwhite segregated.
- In the Minneapolis school district, the percentage of children attending schools more than 80 percent nonwhite segregated has increased slightly since 2001, despite the district becoming over seven percent whiter.

Intensifying segregation has both reflected and been reinforced by the region's subsidized housing policy. In the 1970s, an explicit regional "fair share" housing policy resulted in upwards of 70 percent of all new subsidized housing being constructed in affluent suburban regions. But those policies were gradually abandoned, and today, subsidized housing reflects segregated living patterns. The region's subsidized units, which are far more likely to be occupied by families of color than other housing, are highly concentrated in areas and municipalities with a great deal of preexisting segregation.

- In 2011, over 55 percent of the region's subsidized housing was located in census tracts more than 30 percent nonwhite, compared to 22 percent of housing overall.
- The same year, 58 percent of subsidizing housing was located in areas served by predominately nonwhite schools, which only serve 23 percent of the overall student population.
- About 60 percent of subsidized units were located in the two central cities of Minneapolis and Saint Paul alone, which contain the region's greatest concentrations of poverty and most-segregated neighborhoods. Regionally, however, 75 percent of all housing units are found in the suburban areas surrounding the cities.
- Minneapolis's whitest quartile of census tract contains 30 percent of all the city's housing units, but less than 2 percent of the city's subsidized housing units.

In short, for the many low-income Minnesotans who are dependent on public subsidies to find an affordable housing unit, there is little choice about where to live. The concentration of affordable housing means these families are likely to be trapped in one the region's expanding hubs of racial and economic segregation – neighborhoods that, research suggests, offer few avenues for employment, educational advancement, or otherwise breaking the cycle of poverty.

Voluminous social science research has connected segregation with dramatically lower economic, educational, and health outcomes.

Decades of research show that racially and economically segregated communities and schools suffer a number of disadvantages.

- Residence in segregated, high-poverty neighborhoods is highly correlated with low labor market participation, reduced educational attainment, exposure to violence, and poor physical health outcomes.[ii]
- Residents of segregated, high-poverty neighborhoods who relocate to less-segregated, higher-income areas experience improved employment, higher incomes, and superior health outcomes, particularly for children.[iii]
- Many negative effects of segregated neighborhoods can be lifelong or multigenerational, even for residents who later leave: a landmark 2015 Harvard study showed that each successive year a child spends in a segregated or lower-income neighborhood before age 18 reduces the child's future income, level of educational attainment, and odds of graduating college.[iv]

- Highly segregated neighborhoods are associated with severe economic disinvestment and housing market decline.
- Segregated schools exhibit reduced academic achievement and larger achievement gaps between white children and students of color. They produce lower graduation and pass rates and lower college attendance rates. Integrated schools are associated with higher achievement, smaller achievement gaps, and higher adult incomes.[v]
- Students who attended segregated schools are more likely to enter the juvenile justice system as children, and as adults, more likely to enter the criminal justice system.[vi]
- Sociological study has demonstrated that integrated schools reduce interracial prejudice and facilitate more positive interactions between racial groups. Students attending integrated schools report an increased sense of civic engagement, and more stable interracial friendships as adults.[vii]

It is important to note that the harms of segregation do not arise because there is a "correct" demographic mix for a particular neighborhood or school. Instead, it is the existence of segregation itself that enables economic and racial stratification and creates inequality and suffering. More affluent residents – including more affluent residents of color – flee the perceived disparities of segregated neighborhoods and schools, creating ever-greater concentrations of low-income families of color in a handful of places, which run the risk of being overwhelmed by endemic need and near-universal poverty. This in turn strengthens the association between racial and economic segregation and extreme hardship, starting the cycle anew.

It is hardly surprising, then, that with segregation worsening in the Twin Cities, the region is regularly subjected to new research identifying some egregious racial disparity in employment, education, or welfare.

For white families, the Twin Cities region is one of the most prosperous in the nation. A 2014 report found that the region ranked first out of the region's major metros in percentage of population with a high school diploma, in overall employment, and homeownership rates. It had the nation's second-lowest poverty rate and seventh-highest per capita income.[viii]

But few of these benefits have reached families of color – and in particular, black families. That same report found that the Twin Cities have the nation's largest racial disparities in poverty rates, homeownership, and employment; they have the nation's fourth-largest disparities in per capita income. A vast array of other reports have consistently made similar findings.[ix] For example:

- A 2016 analysis found that black families earn average median incomes that are 41 percent of those earned by white families.[x]
- Poverty rates for Hispanic families exceed 20 percent; for black and African American families they exceed 30 percent. These numbers have grown over time. The poverty rate for white families is 5 percent.[xi]

- A 2009 study found that the Twin Cities have the largest gap between white and black unemployment out of the nation's eighteen largest metros, with black jobless rates exceeding white rates by 3.4 times. Seven years later, another report found that the unemployment gap remained the largest in the nation.[xii]
- Black-white racial gaps in important metrics of educational progress – such as math proficiency, post-secondary enrollment, attendance rates, and graduation – can exceed 40 or even 50 percentage points, and are frequently growing wider.[xiii]

In April of 2016, the Twin Cities' regional government released a report that attempted to identify the root causes of these disparities. It examined whether racial economic gaps were a product of non-racial demographic differences – in other words, to explore whether the gaps arose from differing age profiles, immigration rates, or English proficiency among groups.[xiv]

It could not do so, especially with regards to black Twin Cities residents. Instead, the report concluded that "demographic differences cannot explain away our region's disparities in employment, income, and homeownership."[xv] It found that "race – or factors closely associated with race – are indeed at the heart of the region's racial and ethnic disparities," and "systemic discrimination" is a likely culprit.[xvi]

In similar fashion, a 2016 analysis of local schools found that while differing racial poverty rates explain some of the black-white achievement gap, it could not account for the entire gap.[xvii]

Moreover, well-meaning attempts to reduce or eliminate racial inequality through targeted investment have failed dismally. For example, a report by the Council of Black Minnesotans in 2013 found that "despite increased awareness of the disparities among policy makers and civic leaders, there have been no significant reductions in the disparity rates" in "health, criminal justice, jobs and economic opportunities, and education" between 2000 and 2012.[xviii]

In summary, racial gaps in Minnesota arise from systemic, institutionalized discrimination that prevent families of color from accessing the state's considerable economic and educational resources. The segregation of the region's nonwhite population into low-opportunity urban and suburban neighborhoods, and the ongoing existence of high-opportunity white enclaves, enables and perpetuates systemic discrimination.

As a consequence, the only lasting means of reducing the disparities suffered by residents of segregated neighborhoods is reducing segregation itself. Policy proposals that merely attempt to "make up the difference" by investing public resources in such places can only serve as a stopgap: the available resources are simply not sufficient, and the active, dynamic nature of neighborhood and school segregation means that such efforts are swimming against the current, so to speak. Instead, segregated living patterns must be unwoven through public policy, and replaced by fair, balanced, integrated, and sustainable living patterns.

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[i] For a more complete history of growing segregation in the Twin Cities, including a description of the institutions that have enabled its rise, *see* Institute on Metropolitan Opportunity, *Why Are the Twin Cities So Segregated?* (2015), *available at* https://www1.law.umn.edu/uploads/ed/00/ed00c05a000fffeb881655f2e02e9f29/Why-Are-the-Twin-Cities-So-Segregated-2-26-15.pdf.

[ii] *See, e.g.*, Anna Maria Santiago, George C. Galster, et al., *Opportunity Neighborhoods for Latino and African-American Children: Final Report* (2014).
[iii] *See, e.g.*, Raj Chetty, Nathaniel Hendren and Lawrence Katz, *The Effects of Exposure to Better Neighborhoods on Children*, AMERICAN ECONOMIC REVIEW (forthcoming); DAVID N. KINSEY, DOUGLAS MASSEY, ELIZABETH DERICKSON, LEN ALBRIGHT AND REBECCA CASCIANO, CLIMBING MOUNT LAUREL: THE STRUGGLE FOR AFFORDABLE HOUSING AND SOCIAL MOBILITY IN AN AMERICAN SUBURB (2013); LEONARD S. RUBINOWITZ AND JAMES E. ROSENBAUM, CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA (2000).
[iv] Raj Chetty and Nathaniel Hendren, *The Effects of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County Level Estimates* (2015); Raj Chetty, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez, *Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States* (2014).
[v] Geoffrey D. Borman and N. Maritza Dowling, *Schools and Inequality: A Multilevel Analysis of Coleman's Equality of Educational Opportunity Data* (2006); Roslin Arlin Mickelson, *Segregation and the SAT*, 67 OHIO STATE L. JOURNAL 157 (2006); Kathryn Borman et al., *Accountability in a Postdesegregation Era: The Continuing Significance of Racial Segregation in Florida's Schools*, 41 AMERICAN EDUCATIONAL RESEARCH JOURNAL 605 (2004); Roslin Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 NORTH CAROLINA L. REV. 1513 (2003).
[vi] Stephen J. Billings, David J. Deming, Jonah E. Rockoff, *School Segregation Educational Attainment and Crime: Evidence from the End of Busing in Charlotte Mecklenburg*, NBER Working Paper No. 18487 (2013).
[vii] Thomas Pettigrew and Linda Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 751 (2006); Michal Kurlaender and John T. Yun, *Fifty Years After Brown: New Evidence of the Impact of School Racial Composition on Student Outcomes*, 6 INTERNATIONAL JOURNAL OF EDUCATIONAL POLICY, RESEARCH AND PRACTICE 51 (2005); Melanie Killen and Clark McKown, *How Integrative Approaches to Intergroup Attitudes Advance the Field*, 26 JOURNAL OF APPLIED DEVELOPMENTAL PSYCHOLOGY 612 (2005); Jennifer Jellison Holme, Amy Stuart Wells, and Anita Tijerina Revilla, *Learning Through Experience: What Graduates Gained by Attending Desegregated High Schools*, 38 EQUITY AND EXCELLENCE IN EDUCATION 14 (2005); RICHARD KAHLENBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE (2001); Maureen Hallinan and Richard Williams, *The Stability of Students' Interracial Friendships*, 52 AMERICAN SOCIOLOGICAL REVIEW 653 (1987).
[viii] *Prosperity Unbalanced: The Twin Cities Metropolitan Area in 2013*, METROSTATS (September 2014).
[ix] *Id.* at 2.
[x] Christopher Magan, *Why Minnesota's Racial Disparities Have Grown and Why It Matters to Everyone*, PIONEER PRESS (April 29, 2016).
[xi] *Id.*
[xii] Mary Turck, *Minnesota Has Highest Disparity in the U.S. Between African-American and White Unemployment*, ONE NATION NEWS (May 2, 2016).
[xiii] *See, e.g.*, OneMinneapolis, *Community Indicators Report* (2013).
[xiv] Metropolitan Council, *Diving Deeper: Understanding Disparities Between Black and White Residents in the Twin Cities Region*, METROSTATS (April 2016).
[xv] *Id.* at 1.
[xvi] *Id.* at 6.
[xvii] Will Craig, *Poverty Explains Some of the Achievement Gap, But Not All*, CURA REPORTER (Spring 2016).
[xviii] Jonathan M. Rose, *Disparity Analysis: A Review of Disparities Between White Minnesotans and Other Racial Groups* (2013).

I. What Is POSH Development?

Minneapolis and Saint Paul contain a considerable diversity of subsidized housing types. Hiding underneath all the variation, however, is an important trend – a hierarchy of housing sorted by race, income, and family status, with the whiter and wealthier projects easily distinguishable by geographic location and development characteristics.

The great majority of subsidized housing in Minneapolis and Saint Paul consists of units developed at moderate cost in poor neighborhoods, occupied by very low income households that are overwhelmingly families of color. But careful analysis of the data shows that another kind of housing accounts for a small but important subset of subsidized units. This housing is found in up-and-coming neighborhoods, is frequently developed at astonishing cost from historic properties, and is far more likely to be occupied by white, young, childless residents.

As previously stated, this report adopts the term "Politically Opportune Subsidized Housing," or POSH, for these projects. This label is a matter of convenience and is not meant to disguise the fact that this subset of subsidized housing is roughly-defined and contains significant internal variation. POSH is as much a comparative term as it is a precise definition that can be applied mechanically in each and every case. No single characteristic unites all POSH projects without exception.

Nonetheless, POSH projects do tend to have a number of features which set them apart from other subsidized developments, particularly in the central cities. Taken in the aggregate, these shared characteristics paint an unusually clear picture of a qualitatively distinct form of subsidized affordable housing. What follows below is a rough catalogue of the ways POSH units typically diverge from the greater mass of central city subsidized housing.

Conversions

POSH development typically centers around the conversion of existing structures into subsidized housing. Often these structures are vacant former warehouses or factories: the Schmidt Artist Lofts occupy a large brewery complex; the A-Mill Artist Lofts utilize a Pillsbury flour mill that was once the world's largest. In downtown Saint Paul, the Commerce Building, the Northern Warehouse building, and the Crane Ordway warehouse have all been converted to affordable units. Another likely POSH project will convert 26 former barracks and other buildings at historic Fort Snelling along the Mississippi into 190 units of subsidized housing; 52 units of subsidized veteran's housing have previously been produced at the fort. These projects contrast with the majority of new subsidized housing development, which takes the form of newly constructed multifamily apartment buildings.

Historic Buildings

In many cases, buildings slated for POSH development are designated as historic. Indeed, one of the strongest indicators that a given project may be a POSH development is the receipt of state or federal historic tax credits as a funding source. While many types of development can rely on historic tax credits, including commercial and residential projects, only a handful of subsidized housing projects receive such funding.

Post-Industrial Neighborhoods

As a consequence of the above, POSH development tends to be found in a handful of formerly-industrial neighborhoods with a high concentration of empty, potentially historic properties – often, former industrial quarters (See Map 1, below). A large number of POSH buildings in the Twin Cities appear to be located in just three areas, all of which have undergone a transition from eroding industrial zones to residential and commercial districts: in Minneapolis, St. Anthony Main and the Warehouse District, and in Saint Paul, Downtown/Lowertown.

These features speak to a larger reality about POSH projects: they are often proposed as a solution to problem properties, which are expensive to rehabilitate or repurpose, but are historically protected, or otherwise too iconic to demolish without political controversy.[1] This dynamic will be discussed in greater detail in the pages to come; for now, it is sufficient to note that when high-profile landmarks become subsidized housing, the resulting projects are very likely to have at least some POSH features.

Occupationally Restricted Tenancy

At times, POSH projects are oriented towards particular types of tenants. Subsidized housing designated for special populations is not uncommon, and the Twin Cities are home to many publicly-funded units for the long-term homeless, disabled individuals, seniors, individuals recovering from alcoholism or drug abuse, and individuals with HIV/AIDS.

However, unlike these other units, POSH units are rarely directed at families with acute economic or medical needs. Instead, they are more often aimed at occupational groups with a degree of cultural cachet – groups that, in other words, make a project *more* appealing to nearby property owners, not less. In the Twin Cities, approximately 40 percent of the potential POSH units identified – 841 of 1940 – were restricted to artists. Several new projects in the Twin Cities, including a conversion at Fort Snelling, are restricted to veterans. Elsewhere in the nation, there have been POSH projects directed at these and other groups; for example, a number of cities are currently engaged in the construction of publicly-subsidized "teacher housing."[2] In discussions, subsidized housing scholars reported that in some regions, artist and veteran housing are "the new vanilla housing." (Below, the application and impact of these residence requirements will be discussed further.)

Architecture and Amenities

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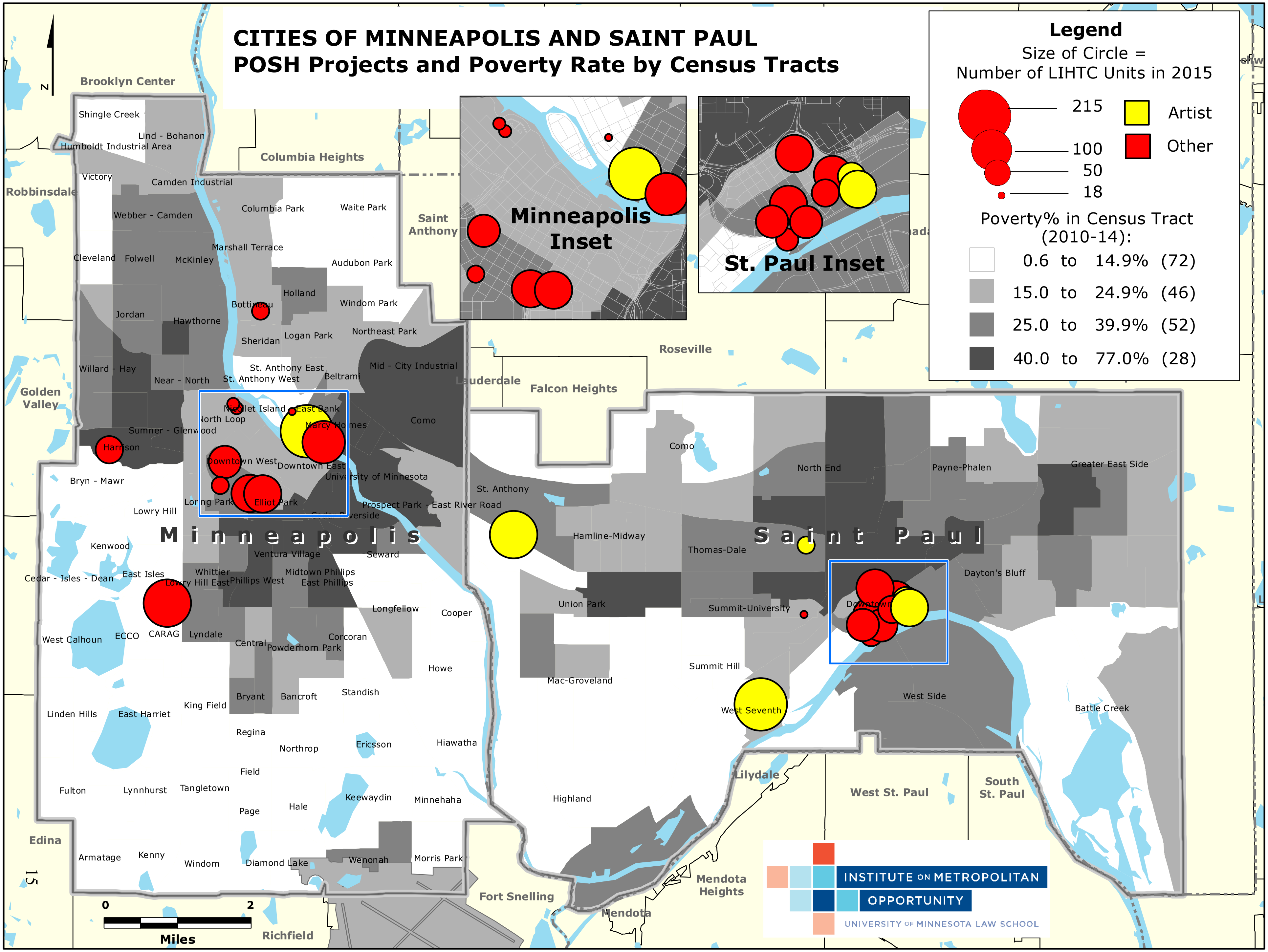
[1] Both the A-Mill Artist Lofts and the ongoing Fort Snelling project illustrate this dynamic. The A-Mill's developer billed the project as "a once-in-a-lifetime opportunity to save his place." Jim Buchta, *$100 Million in Flour Power to Transform Pillsbury A-Mill*, STAR TRIBUNE (March 23, 2012). Similarly, a Minneapolis Parks board commissioner described the Snelling project as "a great opportunity to provide housing and restore these buildings, because otherwise we will lose them." Beatrice Dupuy, *Fort Snelling's Landmark Upper Post to Be Turned Into Affordable Housing*, STAR TRIBUNE (July 23, 2015).
[2] For more on this trend, see Section V below.



Data Sources: HousingLink,Streams; U.S. Census Bureau.

Compared to a typical subsidized housing project, POSH development can be far more architecturally sophisticated and offer far greater aesthetic and practical amenities.

Both on the inside and outside, traditional subsidized housing can be utilitarian, even spare. Not so with POSH projects. As they are frequently located on converted historic properties, these buildings start with an aesthetic advantage. But even beyond that, these projects are often adorned with interesting and creative architectural features more reminiscent of luxury condominiums than publicly-funded housing. Apartments offer ten- or even fourteen-foot ceilings, skylights, floor-to-ceiling windows, and downtown views that would cost thousands of dollars a month in the unrestricted housing market. The buildings themselves have been refurbished, their industrial trappings transformed into dramatic modern architecture.

(See the following subsection, The Visible Difference, for illustrations of buildings.)

The same maximalist thinking sometimes informs the buildings' approach to amenities, particularly in artist housing. Both the A-Mill Lofts and Schmidt Brewery come equipped with impressive rooftop clubrooms, stylishly appointed and brimming with touches like integrated television and sound systems, a large bar, and restaurant-style booths. Attached to the clubrooms are large open-air patios, including a fire pit, grills, and spectacular views of the Mississippi. The buildings also include underground or on-site parking, fitness centers, and extra storage for residents. Artist housing typically incorporates work space for residents, both in-unit and in shared building-wide facilities. The A-Mill project, for instance, includes a performance hall, and separate studios for dance, yoga, painting, pottery, photography, multimedia art, and music. Units come equipped with in-unit washers and dryers, dishwashers, and other appliances, in newly-constructed kitchens.

While affordable housing, like any other housing, can offer a range of amenities, few, if any, traditional subsidized projects can offer such a rich set of aesthetic and practical features.

High Costs

This sort of construction, however, does not come cheap. One final distinguishing feature of POSH development is, often, a sky-high price tag. The 19 separate prospective POSH projects for which the necessary data is available average approximately $347,500 in per-unit total development cost. Approximately half the units in these projects are in specially designated artist housing, which is even more expensive, averaging $458,500 per unit. For comparison, in data compiled for a 2013 housing cost study, the average cost of central city housing development is $266,000 per unit.

Some of the high expense of POSH projects can be explained – if not necessarily justified – by previous research. The Institute on Metropolitan Opportunity's 2015 housing cost model for the Twin Cities showed that subsidized housing projects located in Minneapolis and Saint Paul cost approximately $30,000 and $38,000 more per unit, respectively, than their suburban counterparts.[3] POSH development is located almost exclusively in the two central cities. Moreover, the inclusion of LIHTC as a funding source increased per unit cost by more than $40,000. Many POSH projects do include LIHTC funding. Finally and perhaps most importantly, historic preservation elements increased project cost by more than $65,000 per unit. Not only do POSH projects tend to include historic preservation, a large subset – maybe a majority – of subsidized housing developed from historic properties has POSH-like characteristics.[4]

None of these factors, however, can sufficiently account for the extreme cost of certain POSH projects, especially those deemed "artist loft" projects. The data underlying the previous research into subsidized housing costs included only one project with an inflation-adjusted cost exceeding $400,000 per unit: an 18-unit youth center. And that same research suggested that economies of scale play an important role in reducing costs in subsidized housing development, with every ten additional units in a project reducing per unit expense by over $3,500.

But these predictions are confounded by projects like the Schmidt Artist Lofts, the in-progress Fort Snelling conversion, and especially the A-Mill Artist Lofts. All three rank among the region's largest new subsidized housing developments in decades. But they are also, on both a per-unit basis and in absolute dollar terms, probably the most expensive subsidized housing developments in Minnesota history. Schmidt's total development cost topped $470,000 per unit; the Fort Snelling project is expected to cost $525,000 per unit; the A-Mill required an astonishing $665,000 per unit. Another early artist housing project, the Carleton Place Lofts, provided 169 subsidized units at the still-extraordinary price of $430,000 apiece.

The A-Mill alone cost approximately $170 million to construct, including the equivalent of more than $35 million in affordable housing tax credit proceeds. To put this amount in perspective, Minneapolis's entire allocation of competitively-awarded "9 percent" tax credits, plus its vaunted Affordable Housing Trust Fund, total less than $25 million in funding annually.

The total pricetag on just the four developments listed above, which contain about 870 housing units in total – mostly single-occupancy or single-bedroom units – exceeds $460 million. For reference, this is significantly greater than the public contribution to most of the region's major sports stadiums, and only $40 million less than Minnesota's contribution to the controversial downtown football stadium.

For the same amount, using 2014 median home prices, approximately 1,590 houses could have been purchased in the affluent western suburb of Minnetonka.[5]

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[3] The model is discussed, and its results described in more detail, in Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *High Costs and Segregation in Subsidized Housing Policy*, 25 HOUSING POLICY DEBATE 574, 587 (2015).

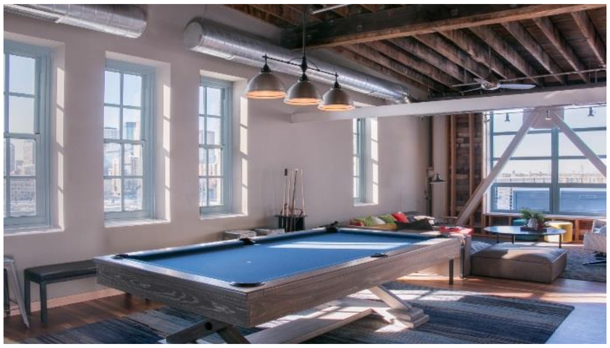
[4] It is currently unclear if POSH development is expensive because historic preservation tends to add so much cost to a project, or if historic preservation adds so much cost because it is strongly associated with politically-favored housing where higher expenses are more readily tolerated. Alternatively, causation may run both ways.

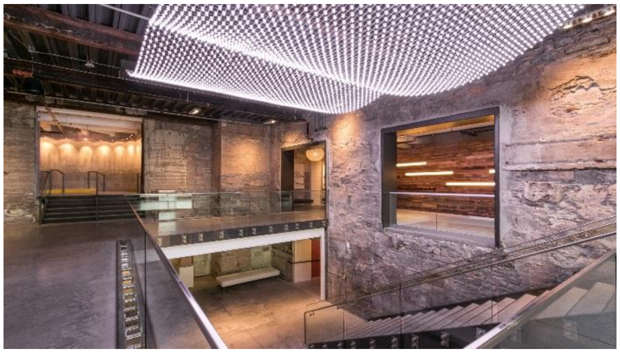
[5] Median home value data collected from the U.S. Census.

The Visible Difference

The most obvious difference between POSH development and more traditional subsidized housing development is simply how the buildings look. The following six projects are all POSH buildings, developed with LIHTC. As previously mentioned, the A-Mill Artist Lofts are 86 percent white. 653 Artists Lofts are 50 percent white; the Buzza Historic Lofts, Carleton Place Lofts, and Schmidt Artist lofts are 81, 88, and 80 percent white, respectively. The Tilsner Artists' Cooperative is 92 percent white.

A-Mill Artist Lofts

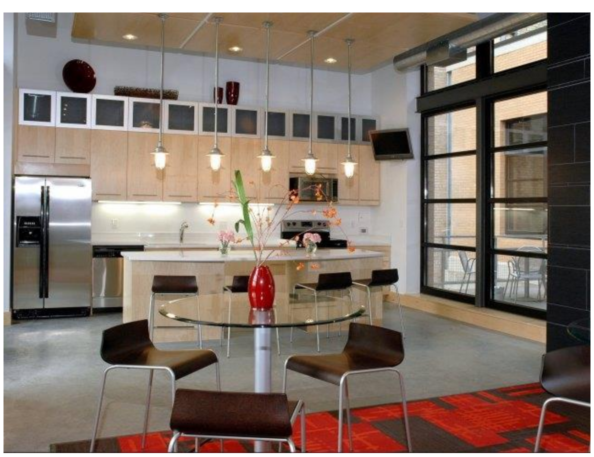





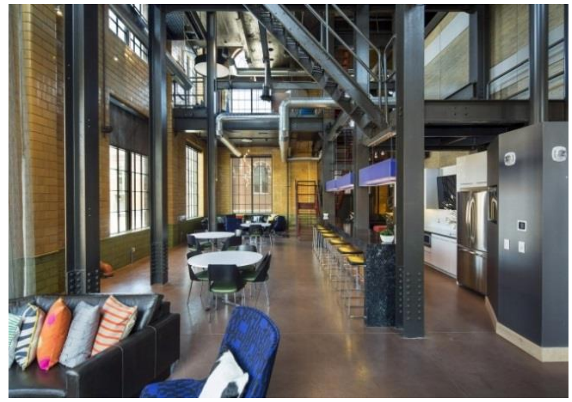
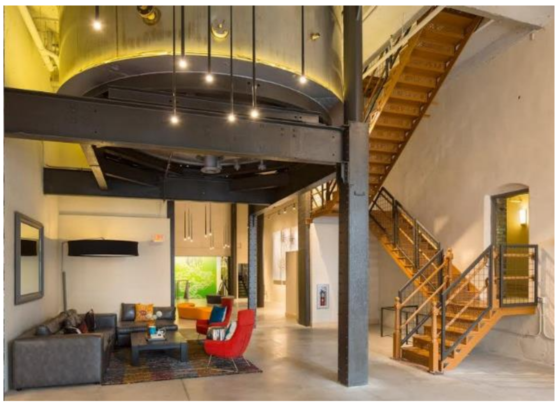
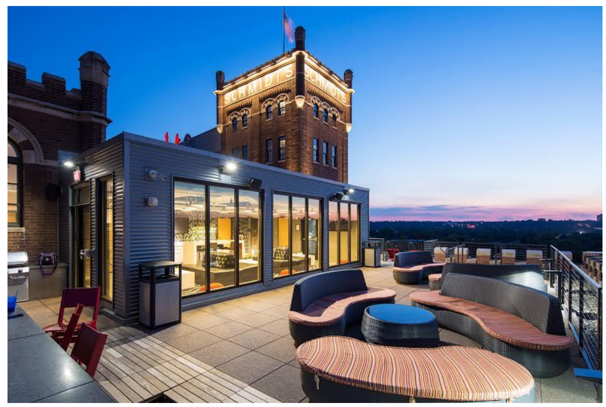
653 Artist Lofts


Buzza Historic Lofts

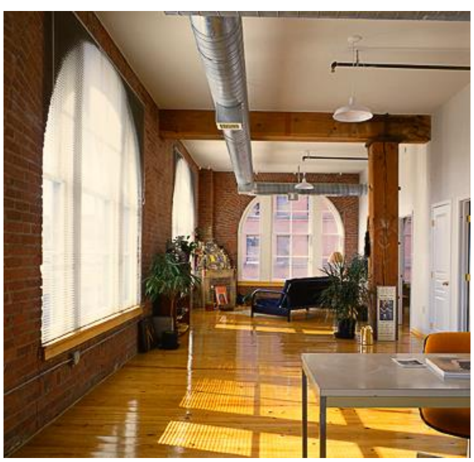

Carleton Place Lofts




Schmidt Artist Lofts

Tilsner Artists' Cooperative




For comparison, images taken from the advertising for traditional subsidized housing, also LIHTC-funded, are included below. The University Dale Apartments are located in the struggling Frogtown area and are 8 percent white. The Jourdain is located in Minneapolis's racially concentrated Ventura Village neighborhood and is 21 percent white. Hiawatha Commons is located in Southeast Minneapolis and is 12 percent white.

University Dale Apartments

The Jourdain

Hiawatha Commons

II. Who Lives in POSH Projects?

The most important difference between POSH development and traditional subsidized development, however, is not any characteristic of the projects themselves. It is, instead, the sort of families that live in these places. Put bluntly, the mix of families in POSH projects looks nothing like the mix of families in most subsidized housing.

The following section examines demographic trends in POSH units using occupancy data provided for Low-Income Housing Tax Credit (LIHTC) projects. (The following Demographic Data Notes subsection has more detailed information about the dataset used.)

Subsidized housing in Minneapolis and Saint Paul is overwhelmingly occupied by families of color, and over 70 percent of residents in LIHTC units are nonwhite. A large majority of LIHTC occupants, about 60 percent, receive rent assistance, primarily in the form of Section 8 Housing Choice Vouchers. A substantial minority of LIHTC families, approximately 35 percent, have children. And a small but appreciable fraction of LIHTC residents are seniors or nearly so, with 16 percent older than 62. The average annual income in Minneapolis and Saint Paul LIHTC units is $18,446 – 115 percent of the federal poverty line for a family of two and 90 percent of the poverty line for a family of three.

But in POSH buildings, defined as artist housing and projects converted into housing with historic tax credits, resident demographics are starkly different.[6] In these places, more than 65 percent of residents are white. Only 26 percent of households receive rent assistance. Few households – 13 percent – include children. And less than five percent of households are headed by someone over 62. Average income in POSH buildings is also noticeably higher, at $24,893 annually.

The table below further subdivides LIHTC housing in Minneapolis and Saint Paul, showing demographic summary statistics for artist housing and historic conversions. (Senior housing is also displayed separately, as demographics of subsidized housing residents vary substantially by age.)

[6] There are other likely POSH projects that do not meet this strict definition. For example, Minnesota Housing data identifies at least one LIHTC development – the Belmont Apartments in Minneapolis's Lowry Hill Neighborhood – with POSH-like occupancy demographics: 87 percent white, 100 percent childless, 6 percent receiving rental assistance. This building, however, is neither artist housing nor seems to have received historic tax credits. Buildings such as these are excluded from the analysis because it is essential to use a definition of POSH development that is not circular. If projects were analyzed merely on the basis of having unusual demographics, then this report's findings become self-fulfilling: the analyzed projects will inevitably have unusual demographics. As such, a more-objective, demographically-neutral criterion for identifying POSH projects must be used, even if that criterion is slightly over- or under-inclusive.

Table 1: Comparison of Selected Characteristics of Minneapolis and Saint Paul LIHTC Projects

	Total Units	Pct White	Pct Rent Assist	Pct with Children	Pct over 62	Average Income	Average Rent
Artist housing	833	82.4	3.3	18.2	3.3	$ 29,890	$ 989
Historic Tax Credit projects*	1295	57.4	35.5	10.3	5.9	$ 22,159	$ 761
Senior housing	910	53.5	49.3	10.5	64.1	$ 18,590	$ 818
All other LIHTC housing	~10730	19.8	67.1	42.4	13.1	$ 17,140	$ 853
Total	**13768**	**29.6**	**58.8**	**35.5**	**16**	**$ 18,446**	**$ 849**

*Riverside Plaza omitted. Riverside Plaza was in service as a subsidized housing project prior to receiving historic tax credits.
Data: MHFA

The table shows clear divisions in Twin Cities subsidized housing, and even among POSH projects.

Artist housing, which accounts for about six percent of units in Minneapolis and Saint Paul LIHTC buildings, bears not the slightest resemblance to other subsidized housing in the two cities, or even much resemblance to the remainder of POSH projects. Rather than being predominately nonwhite, or even racially diverse, it is predominately *white*, with more than four white households for every household of color. This demographic mix is striking in cities where the vast majority of subsidized housing residents are families of color. Perhaps even more conspicuous is the fact that barely anyone in these places is older or receiving rental assistance – 3 .3 percent in each case. Average incomes in artist housing are also comparatively high: 74 percent greater than those in non-POSH, non-senior housing. Indeed, it is hardly clear that an average annual income of $29,890, at least when earned by a young, childless resident living alone in a studio apartment, represents any degree of urban poverty at all, rather than entry-level wages for recent graduates.

Other potential POSH projects – namely, buildings receiving historic tax credits – fall somewhere on the spectrum between artist housing and "traditional" subsidized housing. About nine percent of the units in central city LIHTC buildings are in such projects. In these places, 57 percent of households are white, about a third receive rental assistance, and 6 percent are older than 62. Average incomes, at $22,159, also fall between artist and traditional housing. One notable feature of these projects is that only ten percent of households include children – a lower number than in senior housing. Combined with the comparatively low average rent, this may suggest many of these projects are dominated by smaller studio or single-room apartments.

Finally, at the far end of the spectrum lies the remainder of non-POSH, non-senior LIHTC housing. This constitutes the vast majority of LIHTC projects, including 78 percent of all units. The defining characteristics of these places are segregation, need, and poverty. Four out of five occupants are nonwhite, over two-thirds receive rental assistance, more than four in ten households include children, and households over 62 account for more than 13 percent of residents. Average incomes, at 17,140, are only marginally above the federal poverty line for a family of two.

In summary, the data shows a great deal of demographic sorting *within* Minneapolis and Saint Paul LIHTC housing. This sorting happens to correlate quite strongly with the POSH features identified in the previous section – historic conversions, high costs, superior aesthetic and practical amenities, occupationally, and location in an up-and-coming neighborhood. It is hard to escape the conclusion that the most desirable, expensive Twin Cities subsidized housing units are also overwhelmingly the most likely to be occupied by white, childless, higher-income families.

Demographic Data Notes

Occupancy data was provided by the Minnesota Housing Finance Agency. A significant quantity of data was suppressed. If any entry in a particular category (race/ethnicity, income assistance, age, or family status) accounted for all but 0, 1, or 2 of reporting households, that entry was labeled "predominant" and all other entries were suppressed. Suppression was thus accounted for by subtracting 2 from the number of reporting households in each category, and assigning that figure to the entry labeled "predominant." As a result, in a number of projects, two reporting households are omitted in the data.

To prevent suppression-related issues from distorting the data, all projects with fewer than ten reporting households have been dropped from the final data set. This omits 79 of the 19985 households reporting data.

Occupancy data for one project was reported twice, with severely contradictory figures. This project was Concordia Arms, a 125 unit senior housing facility in Maplewood. Due to the impossibility of resolving this contradiction, both entries were dropped.

Non-reporting of data in particular categories creates a more severe issue, particularly with regards to racial/ethnic data.

Racial/ethnic data is not reported for approximately 20 percent of households (the exact number lies between 4020 and 4096). Age data is not reported for approximately 6 percent of households (between 1164 and 1446). Child data is not reported for approximately 2 percent of households (between 290 and 516). Eight projects do not provide average resident income data; some resident income data may be out of date. Finally, because residents do not proactively report that they are not receiving rent assistance, it is impossible to distinguish between residents for whom income assistance data is missing and residents who simply do not receive income assistance.

Although data gaps are troubling and highlight the importance of high-quality data collection by housing agencies, these gaps do not appear to systematically skew the data. However, it is worth noting that extremely high non-reporting rates on racial data (50 percent or above) seem much more common in suburban projects than in the central cities, and that in the central cities, heavily nonwhite projects are somewhat more likely to have non-reporting rates exceeding 20 percent.

One project – the A-Mill Artist Lofts – deserves special mention because of its prominence in this report. At the time data was collected, the A-Mill had only been open briefly. Perhaps because the project was in the process of filling units, only about one-fifth of its total current occupancy reported demographic data. As a consequence, there is an unusual amount of uncertainty about the exact demographics currently represented in the A-Mill building.

However, the reported occupancy figures closely mirror the demographics observed in other artist housing, and in other housing operated by Dominium, the A-Mill's owner. Moreover, they closely resemble the figures available for the Schmidt Brewery, the A-Mill's closest analogue in many respects. For these reasons, it is unlikely that the present demographics of the A-Mill project are far removed from those reported here.

III. POSH Sorting Mechanisms

The dimensions along which POSH tenant sorting occurs – race, family status, age, income, and receipt of public aid – do not seem to be random. Instead, these are dimensions along which discrimination and housing segregation have traditionally occurred. Racial housing segregation, of course, has been a longstanding reality of American society and remains a corrosive force in and around cities. Likewise, discrimination against families with young children (and against unmarried parents) has been widely documented and expressly targeted by fair housing law. At the other end of the age spectrum, senior status is strongly correlated with disability, another common vector for housing discrimination. Finally, landlords often demonstrate an aversion to poorer tenants, particularly those relying on Housing Choice Vouchers and other forms of assistance. (For this precise reason, LIHTC-funded units are required to accept rental assistance from applicants.)

In other words, whatever process is helping to sort tenants in Minneapolis and Saint Paul into particular subsidized housing projects, it is replicating almost exactly the private-market discrimination that has long been the subject of civil rights law, including, most notably, the Fair Housing Act.

With that said, the particular screening mechanisms at work remain an open question, and may well vary between different buildings or landlords. The remainder of this section discusses three of the most likely culprits: artist preference, affordability, and barriers to locating or applying to a unit.

Artist Screening

The most obvious means through which POSH projects screen their residents is through explicit admission requirements – specifically, the art-related admission criteria of artist housing.

These criteria, at least superficially, make broad gestures towards inclusivity. For instance, virtually every artist housing project notes that artistic endeavors will not be evaluated on the basis of quality.[7] Most also list a relatively broad range of fields and work that qualifies as "art" – painting, photography, music, dance, culinary arts, interior design, video game and web design, and architecture. In its projects, Artspace also includes "culturally significant practices" as an apparent catch-all category, including "technicians," tattoo artists, hairdressers, and some "teachers and administrators."[8]

But the particulars of the application process for artist housing create a number of potential barriers of entry for genuinely low-income residents. When applying for an apartment in these buildings, residents must typically submit an application that includes a portfolio or personal statement demonstrating ones' commitment to artistic pursuits. In some cases these supporting

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[7] For an example, see Artspace, *Artspace Artist Selection Process* ("Does the ASC judge the artists' work? No. The ASC interviews applicants and reviews their Artistic Questionnaires to determine their level of participation in, and commitment to, the arts; they do not judge the content or quality of an applicant's artistic work."), *available at* http://www.artspace.org/sites/default/files/public/downloads/place/artist_selection_process_2014.08.20_2.pdf.
[8] *Id.*

materials can be quite lengthy, including multiple essays, a "history" of creative work, long-term career goals, resumés, and references. [9] It is not unreasonable to suspect that a many very-low-income families, more concerned with day-to-day struggles, would have some difficulty meeting these relatively onerous application requirements, and little experience articulating their long-term commitment to arts and long-term artistic objectives. Discussions with legal aid attorneys suggest that, in the past, potential tenants have needed special support to complete artist housing applications and qualify for consideration.

The second common component of artist housing applications is an interview with an artistic screening committee.[10] In general, the committee consists of three to five members and is composed of local artists, including project residents. Screening committees examine potential residents – potentially including all members of a prospective household – for a variety of characteristics. One Artspace report advises committees to seek out residents with "sustained commitment to their craft" and "individuals who are comfortable living in a building that may be noisier, more lively, and more social than other rental properties."[11]

Screening committees raise considerable fair housing concerns because they give project owners and residents a tremendous amount of discretion over who is allowed to live in a project. As a consequence, precautionary committee procedures are sometimes implemented. These include limiting interviews to a predetermined set of questions and followups, forbidding any questioning involving Fair Housing Act protected class status, requiring committee members to assign numerical scores to question answers or household members, and requiring members to articulate any objection to a particular household.[12]

Nonetheless, a process that allows project owners and residents to conduct a hunt for like-minded neighbors may be inherently troubling from a fair housing perspective. Working artists may have trouble seeing how a very-low-income mother of several children could demonstrate a "commitment to craft" rivaling their own. Single parents, the extremely poor, and people suffering from severe housing instability have many fewer opportunities to devote time and effort to artistic endeavors. Likewise, the common assertion that artist housing is "noisier" and "more lively" than traditional housing could easily be taken as an indicator that it is more appropriate for the young and childless. Certainly, it is not hard to imagine young, childless resident committee members interpreting this criteria as a suggestion to find tenants that closely resemble themselves, culturally, economically, and generationally. In short, screening

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[9] For example, the A-Mill and Schmidt Artist Lofts require the following materials: a resumé, references, a portfolio, a history of the applicant's creative work, a description of long-term creative and career goals, and a demonstration of the applicant's desire to engage in a creative community. *See, e.g.,* A-Mill Reservation Info, http://www.a-millartistlofts.com/reserve-info/.

[10] This process is described in detail in Artspace, Artspace Artist Selection Process, *available at* http://www.artspace.org/sites/default/files/public/downloads/place/artist_selection_process_2014.08.20_2.pdf.

[11] Artspace, *The Art of Creative Placemaking: An Artspace Report, Best Practices in Affordable Artist Housing* (2014), *available at* http://www.artspace.org/sites/default/files/public/downloads/news/best_practices_asp_2014.03.04.web_.pdf.

[12] *See, e.g.*, Artspace Jackson Flats Application, *available at* http://www.artspace.org/sites/default/files/public/downloads/place/jacflats_app_7.4.2013.pdf.

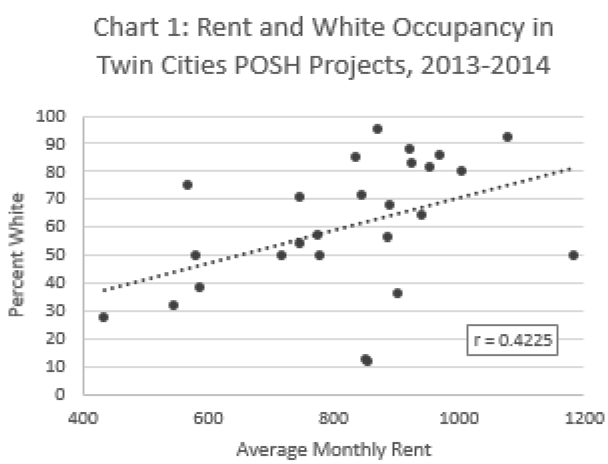
committees seem more like a tool for creating closed, curated communities than open, diverse housing.

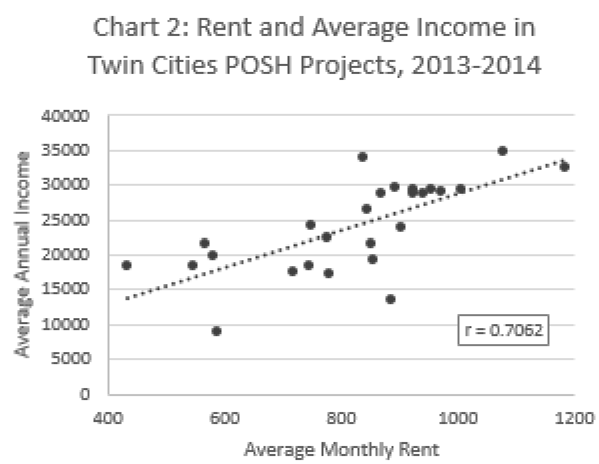
Whether or not a particular screening practice has discriminatory effects is a question that probably must be answered on a project-by-project basis. In the aggregate, however, there is strong evidence that artist screening creates discrimination. As demonstrated by Table 1, artist housing is the whitest, youngest, and highest-income subset of subsidized housing in Minneapolis and Saint Paul, by a wide margin. These gaps are extremely unlikely to have occurred by accident. In an interview, Jay Wilkinson, a supervising attorney at Mid-Minnesota Legal Aid and a longtime Twin Cities fair housing advocate, summed up the occupancy demographics of artist housing succinctly: "You have to try really, really hard to find 80 or 85 percent white people in the poor population of Minneapolis. You have to have a really good sorting system."

Affordability

Of course, artist screening cannot be the sole mechanism through which POSH development screens residents. At bare minimum, this seems to be the case because the remainder of POSH projects – which do not grant artist preference – are nonetheless demographically unlike most Minneapolis and Saint Paul housing.

One obvious factor in project demographic composition is rents. All else equal, higher rents are likely to result in wealthier, whiter tenants, less dependent on rent assistance. This relationship holds true in POSH projects, as seen below.





However, average rents alone are not sufficient to explain the disparities in occupancy between POSH and other units. For starters, while the correlation between average rent and occupant income is quite strong, the correlation between average rent and race is quite a bit weaker. In addition, Table 1 above shows that non-artist housing potential POSH projects actually have *lower* average rents than other forms of subsidized housing. Nonetheless, their residents are whiter, younger, less likely to be on rent assistance, and more likely to be childless.

Several other factors may be at play. One particularly likely culprit is the interaction of POSH rents with the Section 8 Housing Choice Voucher (HCV) program. The HCV program is an essential component of subsidized housing policy, with a majority of Minneapolis and Saint Paul LIHTC occupants likely relying on vouchers to some extent. But the HCV program also limits which units families are eligible for, with income limits and payment standards that act as, in effect, rent caps. While POSH projects that have received public subsidy are required to accept vouchers, does it follow that HCV beneficiaries are then able to afford POSH units?

For the most part, no.

While the various HCV affordability and reimbursement formulas are extremely complex, for the purposes of this report a simplified explanation will serve. The federal Department of Housing and Urban Development determines a Fair Market Rent (FMR) for various communities in the Twin Cities region. Minneapolis, Saint Paul, and Bloomington are a single FMR zone, while various suburbs are in different zones. The local public housing authority (PHA) then determines a “payment standard” by adjusting upwards or downwards from the FMR. Voucherholders are permitted to receive an amount up to that payment standard to reimburse monthly rent. If they rent a unit that costs *more* than the payment standard, additional costs must be paid out of pocket – and cannot exceed more than ten percent of monthly income.[13] Utilities, dependents, and other factors can also affect reimbursement and affordability limits.

The number of variables at play here means that determining whether a given housing project is *technically* eligible for voucher use is a fraught and often pointless exercise. Notably, however, some POSH project units (for instance, studio apartments in the Schmidt Artist Lofts) appear to have set rents high enough that voucherholders would be entirely foreclosed from renting in these places, even in the most optimistic scenario.

In other cases, it is possible to construct a purely theoretical voucher recipient who could manage to receive a few dollars of HCV reimbursement each month while renting a unit in a POSH project. But while not mathematically impossible, such a scenario is extremely unlikely. This hypothetical resident would need to fall at the upper end of voucher income limits, have few or no dependents, and reliably dedicate at least several hundred additional dollars of his or her monthly income to rent.

More realistically, very few voucherholders could afford a spot in a number of the largest POSH projects. These projects are dominated by studio and one-bedroom apartments, and in almost every case, those apartments rent for well above the Minneapolis and Saint Paul PHA payment standards.

[13] Using this formulation, the *theoretical* maximum rent (including certain utilities, whether paid by the landlord or out of pocket) that can be paid by a voucher holder is 10 percent of the recipient’s monthly adjusted income plus the local PHA’s payment standard. Importantly, adjusted income is reduced when a voucher recipient has dependents; therefore, if two voucher recipients have the same gross income but differing numbers of dependents, the effective “rent cap” will be lower for the recipient with dependents. While higher-income voucher recipients have higher rent caps, their vouchers will reimburse smaller amounts of rent. (Indeed, for voucher recipients at the extreme high end of eligibility, renting a unit with a monthly rent at the high end of what the program allows, the monthly reimbursement can zero out altogether, obviating the voucher.)

Table 2, below, demonstrates the gap between central city payment standards and several notable POSH projects.[14] If the lowest-priced unit currently listed for a building is above the appropriate city's payment standard, the gap is listed in red. This gap must be paid out-of-pocket by the voucher recipient, in addition to the preexisting minimum payment determined by the reimbursement formula. In these cases, rents are probably unattainable for voucherholders. If the gap exceeds more than 10 percent of the voucherholder's monthly income, he or she is completely barred from renting in the project.

Table 2: Comparison of Local PHA Payment Standards with Rents at Major POSH Projects, by Unit Size (2016)

	Studio	1BR	2BR	3BR	4BR
Minneapolis Payment Standard	$679	$836	$1,045	$1,375	$1,573
A-Mill Artist Lofts (255 units)	-$219	-$126	$68	$45	$87
Buzza Historic Lofts (136 units)	-	-$126	-$106	-	-
City Place Lofts (55 units)	-$161	-$113	-$86	-	-
Saint Paul Payment Standard	$651	$805	$1,015	$1,350	$1,585
Tilsner Artist Lofts (69 units)	-$159	-$110	-$71	$98	-
Schmidt Artist Lofts (260 units)	-$238	-$140	$65	-$250	-
Carleton Artist Lofts (169 units)	-	-$140	-$107	-	-
Renaissance Box (70 units)	$1	$123	$88	-	-

The data in Table 2 also demonstrates that the cost mismatch problem is typically more acute for smaller units. But because smaller units also tend to have lower rents, projects with high concentrations of small units may prove both particularly unaffordable and have relatively low overall average rents. (This could help explain the apparent average rent discrepancy in Table 1.)

And most voucher users simply do not have much – or any – income. While voucher eligibility is set at 50 percent of AMI (in 2016, an income of $34,650 for a family of two), 75 percent of recipients must be extremely low income, or earning 30 percent of AMI. In the Twin Cities in 2016, this means that 75 percent of new voucher recipients are earning less than $20,600 annually for a family of two – and many are earning much, much less.

Legal aid attorneys, working on a daily basis with families trying to put vouchers to use, confirm what seems intuitively true: that the enormous gap between local payment standards and POSH rents make POSH units effectively inaccessible to HCV beneficiaries. Lael Robertson, a supervising attorney at Mid-Minnesota Legal Aid, was unequivocal: "There is no way a voucherholder can afford these places. The vast majority can't qualify. The numbers don't add up."

Barriers to Finding and Applying for Units

In addition to explicit screening requirements and affordability problems, a number of more subtle factors may result in racial and economic sorting of residents Individuals working in or

[14] Central city payment standards obtained from HousingLink.

with the housing industry are frequently able to home in on seemingly minor policies or practices that have a major effect on who will live in a given subsidized project.

One such policy is the use of preacceptance deposits and fee. The A-Mill and Schmidt Artist Lofts both require a $45 application fee, and a $300 “reservation fee” to “hold a unit off the market while an application is processed.”[15] Legal aid attorneys noted that such a fee would act as a formidable – perhaps insurmountable – barrier to very-low-income families. While the reservation fee is applied towards the tenant’s security deposit after acceptance (and returned if an application is denied), very few very-low-income applicants have $300 in liquid cash to apply towards such a fee. In traditional subsidized housing, these residents pay their security deposit, and sometimes their first month’s rent, through a county-based emergency assistance grant that is provided once per year. However, in order to be eligible for this grant, tenants must produce a “shelter verification form” that confirms that a unit has been obtained. By requiring the reservation fee *prior* to review of the application, the A-Mill and Schmidt projects have created a complete bar against the use of emergency assistance to pay the fee.

Dominium, the company managing the A-Mill and Schmidt projects, also manages dozens of other Minnesota properties and appears to require reservation fees only sporadically.[16] While a number of Dominium’s suburban and newer central city projects require a fee (or payment of the security deposit prior to acceptance), several projects appear to have no such requirement. Projects with no apparent fee include Section 8 projects located on Maryland and Western Avenues in Saint Paul, one of the poorest and most segregated areas in the Twin Cities, as well as senior housing in Minneapolis’s racially diverse Ventura Village neighborhood.

The choice of where and how to advertise a project also serves as a relatively invisible means of gaming the applicant pool. Residents and housing do not find each other through magic. Subsidized housing residents instead find housing through a variety of sources, including Craigslist, local newspapers, and community publications (for instance, Insight News in North Minneapolis or the Spanish-language publication Vida y Sabor). Subtle details in the marketing – such as the race of the people displayed in the ads or on a project’s website – can send signals to prospective residents and alter the applicant pools.

Unfortunately, it can be exceptionally difficult to determine the scope of POSH buildings’ marketing schemes – especially since most of these buildings are full most of the time, and thus are not engaged in active advertising. However, at time of writing, no mention of the region’s multiple artist loft projects could be located in back issues of Vida y Sabor or Insight News. Only a single artist housing project – the Tilsner Lofts of Saint Paul – was advertising on Craigslist.

The Carleton Artist Lofts application includes a “How did you hear about us?” question with a variety of choices – presumably publications where the building had previously advertised. This list includes several internet rental sites – e.g., Craigslist and rent.com – a number of social

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[15] *See* A-Mill Artist Lofts FAQ, http://www.a-millartistlofts.com/faq/; Schmidt Artist Lofts FAQ, http://www.schmidtartistlofts.com/faq/.
[16] Application procedures for Minneapolis and Saint Paul buildings were reviewed at http://www.dominiumapartments.com/apartment-search.html?region=MN.

media sources such as Twitter, and a fairly comprehensive list of current and defunct Twin Cities alt-weeklys and magazines, such as City Pages, Vita.mn, and the LGBT-oriented Lavender. Notably absent are neighborhood and community papers.[17]

Many POSH projects maintain websites which advertise their buildings and allow prospective residents to apply for units. Almost universally, these websites focus on the luxuriousness of the buildings, with large photographs of expensively-appointed apartments and historic exteriors. Where applicable, the sites also advertise the buildings' location in bustling entertainment or dining districts. The website for the Buzza Lofts building in Uptown touts the building's "[w]alk-in closets, just in case you decide to go on a boutique shopping spree."[18]

What is conspicuously absent from most sites, however, is a clear indication that the units being offered are subsidized and income-restricted. For a digital passerby to discover this fact, he or she would have to dive into the Frequently Asked Questions or look at individual unit information. But without preexisting knowledge of the projects' affordability, there is little to prevent a prospective low-income tenant from simply assuming that a POSH project is far out of his or her price range. One subsidized housing scholar noted that the failure to clearly advertise that a project is affordable and rent-restricted could "raise red flags" from a fair housing perspective. (See the following subsection, The Importance of Advertising, for a visual demonstration of how marketing can be used to steer tenants.)

Another complicating factor is the fact that some POSH projects – such as the Schmidt and A-Mill Artist Lofts – allow applicants to reserve spots prior to completion. Units in these buildings are uncommonly appealing, allowing residents to live in trendy neighborhoods with excellent amenities for low, restricted rents. As a consequence, some POSH projects appear to fill long before construction is finished. Discussions with residents and applicants suggest that word-of-mouth among young artists was instrumental in attracting these early applications. Of course, for families with more immediate and pressing housing needs, a reservation in a project that will not be completed for many months is of little use.

Schmidt and A-Mill developer Dominium responded to inquiries about the marketing of its units by pointing out that "affirmative marketing plans" designed to attract underrepresented groups had been created for both projects. In both cases those plans were submitted to the state and approved. Artspace was unable to respond to similar inquiries by time of publication.

Without detailed data, it is impossible to say the extent to which these factors account for the observed demographic trends in POSH projects. But there is an undeniable qualitative difference in the advertising and rental procedures for POSH buildings and other subsidized housing. Consider, for example, Minneapolis's thoroughly traditional Franklin Portland Gateway subsidized housing project, which is located in a lower-income, largely-nonwhite area. These units are rented through a website that clearly discloses that the units are affordable and rent-

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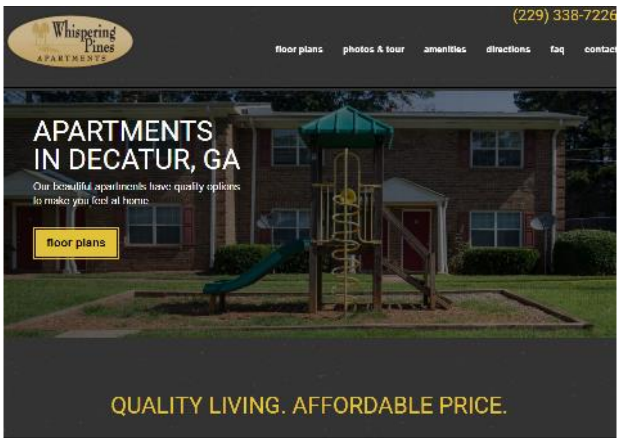
[17] Carleton Place Lofts Application, http://www.carletonartistlofts.com/contact/apply/.
[18] Apartment Features, Buzza Lofts of Uptown, http://www.buzzaloftsofuptown.com/Apartments/module/website_documents/website_document[id]/48503/.

restricted.[19] Descriptions focus heavily on the availability of supportive units or children's play space, and emphasize the project's connection to communities of color. It is a simple matter to find advertising for these units in a variety of sources, such as Vida y Sabor. It would be difficult to guess that these units are funded by the exact same affordable housing subsidies that were used to build the soaring, lavish A-Mill Artist Lofts, and in the eyes of the public funding agencies, are intended for the same low-income population.

[19] *See, e.g.*, The Jourdain, Aeon, http://www.aeonmn.org/properties/jourdain/.

The Importance of Advertising

Developers can use advertising to send signals to potential tenants about whether they would or would not be appropriate for a particular subsidized housing project. For an example of this practice at work, compare the following screenshots, all of which were taken from the front page of websites for individual affordable housing complexes operated by Dominium, a for-profit subsidized housing developer based in Minneapolis that styles itself as "the country's 5th largest owner of affordable housing." The first two screen captures are from the websites for family-oriented housing. The second two are from POSH buildings located in downtown Saint Louis, historic conversions that bill themselves as "stylish" and "the finest in fashionable urban living."



Whispering Pines
Decatur, Georgia

1601 Colorado
Denver, Colorado

Arcade Apartments
Saint Louis, Missouri

Downtowner Apartments
Saint Louis, Missouri

IV. POSH Development: History and Causes

Although the earliest POSH developments are several decades old, the pace and scale of such development, at least in the Twin Cities, is accelerating. This is partly because the complex financial and legal backdrop that underlies subsidized housing construction has become more favorable to POSH projects over time. Most notably, developers have obtained a special legal exemption that facilitates the construction of artist housing with federal dollars. In addition, developers seem to have grown increasingly aware that POSH-style construction allows them to creatively maximize available financial resources.

The Artist Housing Exemption

In Minneapolis and Saint Paul, POSH development was largely pioneered by Artspace, a local nonprofit initially dedicated to advocating for artist space. By the end of the 1980s, the organization had transitioned into the direct development of artist space and housing. Its first such project was Northern Warehouse in Saint Paul, developed in 1990 and still in operation today. In the following 17 years, it developed an additional 13 housing projects, scattered across the United States.[20]

All but one of these projects made use of the single largest source of subsidized housing funding in the United States: the Low Income Housing Tax Credit (LIHTC). Tax credits are provided by the federal government to states, which then allocate funding to individual projects, mostly on a competitive basis.

A number of requirements attach to any project funded with tax credits. These include income and rent restrictions for residents, and an obligation that a landlord accept Section 8 Housing Choice Vouchers (although not, as we have seen, an obligation that rents be set at rates affordable for voucherholders). A final requirement, arising out of the legislative history of the tax credit statute, is that a unit be utilized "for use by the general public."[21] The IRS, which administers the LIHTC program, determined at the program's outset that this requirement would be met if tenant restrictions "would not violate any HUD policy governing non-discrimination."[22] However, it would be violated if "residential rental units are restricted to a class of residents that would violate HUD housing policy," such as being "provided solely for members of a social organization or by an employer for its employees."[23]

In 2007, the IRS clarified this requirement, and in doing so, suggested that occupationally-oriented housing – which was increasing in popularity, not just in the form of artist housing, but also, housing for teachers, firefighters, first responders, and veterans – would not be considered available for "general public use."[24] Soon afterwards, it initiated an audit of one Artspace artist

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[20] *Artist Preference in Affordable Housing*, Artspace, http://www.artspace.org/ideas-insights/artist-preference-affordable-housing.
[21] IRS Notice 89-6, 1989-2 IRB 16.
[22] *Id.*
[23] *Id.*
[24] *Artist Preference in Affordable Housing*, Artspace, http://www.artspace.org/ideas-insights/artist-preference-affordable-housing. The original change that prompted this response was to the guidance issued for IRS Form 8823,

housing project.[25] If artist housing was deemed to be impermissible under statute, the IRS could potentially recapture the millions in tax credits in use by the organization.

These actions triggered massive alarm among certain segments of the affordable housing industry. Artspace and other affected entities responded by banding together and seeking a political exemption the "general public use" rule. They also called on major and influential allies: several national financial entities that focus on subsidized housing construction.

These included the National Equity Fund, which "syndicates" tax credits for private investors so that they may be more readily applied to housing projects, and the Local Initiatives Support Corporation (LISC), which acts as a financial intermediary for the construction of subsidized housing.[26] LISC in particular was and is well-connected with the for-profit financial sector; its Board of Directors is chaired by Robert E. Rubin, the former U.S. Treasury secretary who has also served as co-chair of Goldman Sachs. Rubin is infamous for his role in the deregulation of the financial industry, and the resultant creation of complex financial instruments and associated growth and decline in subprime mortgages, culminating in the financial crash and recession of 2008.

Ironically, it is the subprime crisis and impending recession which opened the door for the exemption Artspace desired. In mid-2008, Congress set to work on the Housing and Economic Recovery Act (HERA), which sought to contain the damage of the housing collapse. Senator Max Baucus, Chairman of the Finance Committee and well-known for his close affiliation with banks and the financial sector, inserted a provision into the bill specifying that LIHTC's "general public use" requirement does not apply to "occupancy restrictions or preferences that favor tenants . . . with special needs . . . [or] who are involved in artistic or literary activities."[27]

This amendment did not escape notice, although most of the opposition arose from conservatives in Congress. In debate on HERA, Senator Jim DeMint of South Carolina specifically attacked Artspace on the Senate floor, criticizing the organization's links to the broader housing financial industry:

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and appears to have been lost. However, contemporaneous sources describe the controversy over occupational preferences:

> [The Affordable Housing Tax Credit Coalition] wants the IRS to remove statements in the Form 8823 guide for reporting tax credit program violations that extend the regulatory restrictions to units designated for, or subject to a preference for, a single occupational group.
>
> The Coalition contends that occupational or similar preferences promoting social policies don't violate fair housing laws or other exceptions in the IRS regulation and thus comply with the general public use rule.

Tax Credit Coalition Asks IRS to Allow Use of Occupational Preferences, Unofficial Forms 8609, 36 No. CD-13 HDR CURRENT DEVELOPMENTS 12 (2008).

[25] *Artist Preference in Affordable Housing*, Artspace, http://www.artspace.org/ideas-insights/artist-preference-affordable-housing.

[26] *Id.*

[27] Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2884.

> There are a lot of problems with this bill, but it doesn't matter. Here it is. It is almost 700 pages. Not one Senator has read it. There are lots of little goodies stuck in there. There is one we found, an earmark on page 616 that overturns an IRS ruling where low-income housing--which is supposed to be for the general public and not discriminate--that they can discriminate for social organizations such as art colonies. Then we find an organization, Artspace, that develops low-income housing and gives it to these artistic colonies, one of their board members happens to be the executive director of the Fannie Mae foundation.[28]

But several Democratic senators spoke in favor of the amendment. Oregon's Maria Cantwell argued that "the IRS action has threatened a number of innovative housing developments . . . that are being used as part of a larger redevelopment strategy to rebuild neighborhoods."[29] She also noted the impact of the action on developers themselves: "The IRS's recent position has not only threatened future development of such housing but could . . . potentially bring[] financial ruin to the nonprofit housing providers which have developed and operate this housing."[30]

Three days later, HERA was signed into law. In the subsequent eight years, Artspace underwent explosive growth – expanding from a portfolio of 14 artist housing projects to a total of 44 in operation or development, spread from major cities like Seattle, Washington to smaller towns like Gastonia, North Carolina. But while the artist exemption may well be a boon to artists, those benefits appear to be falling unevenly on subsidized housing residents more generally: in the Twin Cities, the three Artspace projects for which demographic data is available are 78 percent white, with only nine percent of residents receiving rent assistance.

And as much as nonprofits like Artspace have benefited from the artist housing exemption, the statutory change appears to have emboldened for-profit developers even more. In the Twin Cities, the two largest artist loft projects – Schmidt Lofts and A-Mill Lofts – were both initiated after the exemption's enactment. These were both planned and completed by Dominium, a very large national for-profit affordable housing developer. These two projects alone have cost upwards of $280 million and represent artist housing and POSH development on a previously unimagined scale. With legal obstacles cleared, only time will tell what opportunities developers will find in the future.

Economic and Political Incentives for POSH Development

While developers fought to ensure that specialized artist housing would be allowed by the IRS, conditions were forming within major cities which would make POSH development more appealing to residents and policymakers. Competing pressures to revitalize, integrate, preserve, protect, and repurpose urban neighborhoods were placing politicians and funders in a bind – one which could be solved, in part, by emphasizing and supporting POSH projects.

As cities recover from their economic nadir of previous decades, revitalization of underpopulated and underused neighborhoods has become an important policy priority. But this creates a

[28] 154 CONG. REC. S16555 (2008).
[29] 154 CONG. REC. S16694 (2008).
[30] *Id.*

problem: public financial support for economic redevelopment and revitalization has been long declining. Today, the majority of resources for economic development takes the form of subsidized housing funding.

Such funding is frequently not sufficient. While community development corporations and other organizations sometimes tout the economic benefits of subsidized housing development, there is scant evidence that subsidized housing alone can reverse the trajectory of a distressed neighborhood.[31] In fact, in sufficiently large quantities, subsidized housing may further depress a neighborhood economically. A number of problems can arise when large numbers of individuals with few financial resources are concentrated in a small area: local businesses may find it difficult to stay afloat; discrimination, redlining, and private disinvestment can suction capital out of the neighborhood; increasing segregation in nearby schools can drive down home values and cause middle-class flight. In other words, funding subsidized housing in a segregated, impoverished area is at times akin to trying to douse a fire with gasoline. (Importantly, more integrated balanced neighborhoods, with moderate amounts of subsidized housing, see none of the ill effects described above.)

Another problem accompanies subsidized housing development: massive political resistance. Affluent, higher-income neighborhoods rarely accept subsidized units lying down. A developer seeking to produce subsidized units in an affluent area can expect to face community meetings, city council committees, planning and zoning board shenanigans, and maybe even protests or lawsuits. Even though there is no evidence that affordable housing has negative effects on wealthy or middle-class neighborhoods, homeowners to this day associate subsidized housing with crime, chaos, and worst of all, declining property values.

In the past, political resistance has made certain types of neighborhoods into, effectively, exclusion zones for subsidized housing. By contrast, in impoverished neighborhoods where residents are struggling to make ends meet, and where the omnipresent fear of rising housing costs have made a gentrification seem like a constant looming threat, new subsidized units are not opposed – they are embraced. In the Twin Cities, high-poverty neighborhoods are also home to a tangled web of CDCs and social service organizations with expertise in planning, funding, and carrying out affordable construction.[32]

But cities also face some pressure to avoid concentrating subsidized housing in poor areas. In the previous half-decade, civil rights advocates have become increasingly vocal – and produced increasingly sound empirical research – demonstrating the negative effects of concentrated poverty and segregation on families and children. Recent federal court decisions have helped

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[31] For lengthier discussions of the revitalizing effects of subsidized housing, *see* Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *High Costs and Segregation in Subsidized Housing Policy*, 25 HOUSING POLICY DEBATE 574, 587 (2015); Edward Goetz, *Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman*, 25 HOUSING POLICY DEBATE 608 (2015); Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *Response to Poverty-Pimping CDCs: The Search for Dispersal's Next Bogeyman*, 25 HOUSING POLICY DEBATE 619 (2015); Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *Taking A Holistic View of Housing Policy*, 26 HOUSING POLICY DEBATE 284 (2016).

[32] *See* Myron Orfield, Will Stancil, Thomas Luce, and Eric Myott, *High Costs and Segregation in Subsidized Housing Policy*, 25 HOUSING POLICY DEBATE 574, 587 (2015).

reinvigorate the anti-segregation provisions of the Fair Housing Act, and under the Obama administration, HUD has become more aggressive in enforcing its own civil rights rules – particularly the obligation that recipients of federal funding "affirmatively further" fair housing by working to reduce segregation.[33]

And of course, the siting of new subsidized housing is not the only difficult land use puzzle facing municipalities. In built-out cities like Minneapolis and Saint Paul, there is also the question of what to do with preexisting properties. Demolishing older buildings – particularly in affluent or middle-class areas – can inflame nearby residents, creating controversy and opposition. (Minneapolis recently underwent a years-long battle over the proposed demolition of a single house in a residential area, culminating in a national campaign against council members.) The difficulties that accompany redevelopment are amplified when the properties in question are found to be historic, limiting the sort of alterations that can be made and ensuring that the cost of any conversion will skyrocket. Because of these factors, even important historic sites can become true financial albatrosses for cities. The Pillsbury A-Mill – one the oldest, largest, and most notable buildings from Minneapolis's very early history, and an icon of the city's role as a Mississippi industrial powerhouse – was stuck in bureaucratic limbo for years, as politicians and developers puzzled over how to best preserve the historic structure.[34]

POSH construction solves many of these economic and political problems simultaneously.

Siting a POSH project is far easier than siting a traditional affordable housing project. Neighbors more readily accept an influx of whiter, younger, wealthier, and generally childless residents than an influx of the genuine urban poor or families of color. In occupationally-screened housing, the residents' professions can sometimes help developers characterize subsidized housing as a boon to a community, rather than an economic drain. For example, a concentration

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[33] Legal developments in fair housing will be discussed further in Section VI.

[34] Reporting about the A-Mill early in its development ably demonstrates this dynamic:

> Since the building is a registered historical landmark, the developers can only renovate the interior of the building.
>
> "It's going to need an awful lot of work to turn it into affordable housing," [project manager Debbie] Crowther said.
>
> There have been past attempts to redevelop the A Mill, Crowther said — the latest by developer Schafer Richardson. But that project failed due to a lack of funds.
>
> But [senior development associate] Metz said Dominium is confident it will be able to develop the mill. Because of the high renovation costs, Dominium wouldn't be able to secure grant funding if the company wanted to turn the mill into market-rate housing or condos — thus the project became about affordable housing.
>
> "We're really excited about saving the A Mill," Metz said. "It's finally going to be saved after 10 years of being vacant."

Aaron Dubois, *Pillsbury A Mill to Be Converted to Affordable Housing*, TWIN CITIES DAILY PLANET (April 20, 2012).

of artists can create the impression of a bohemian urban enclave, rather than a cluster of poverty. This is turns staves away potential political opposition and eases the path to project completion. One subsidized housing scholar described POSH development as “an explicit attempt to calm the nerves” of wealthy, white neighbors about the prospect of nearby affordable development.

The relative political acceptability of POSH projects also enables them to be considered for historic structures which ordinarily would raise skepticism as affordable housing sites. Returning to the A-Mill, it is difficult to imagine that Minneapolis would not face grassroots political opposition if it had chosen to convert a monumental historic building into rent-restricted units for traditional subsidized housing occupants – i.e., extremely low-income, largely black families, who are heavily dependent on additional public subsidies such as Section 8 vouchers. The perceived cultural benefits of artist housing, however, and the unspoken political benefits of serving a predominately-white pool of residents, opened the way for the A-Mill conversion.

In other words, because POSH projects are sometimes seen as more than “just” subsidized housing, they can endure the heightened costs and scrutiny that accompany major historic preservation.

Because the buildings and residents alike are more attractive politically, cities can sometimes use POSH projects to sneak subsidized housing into neighborhoods where it is otherwise unwelcome and unlikely. This is on occasion frankly acknowledged by developers. Prior to the A-Mill’s construction, Artspace’s vice president of consulting weighed in quite frankly on why artist housing was chosen for the site:

> [Vice president Elizabeth] Holmes said creating artist housing and a place for them to do their craft can make low-income housing more palatable to the neighborhood.
>
> "It's harder to put low-income housing next to high-end unless it's focuses on the creative market," she said.[35]

Subsidized development near high-end housing can have political and legal benefits for policymakers, because it allows cities to push back against fair housing concerns over the concentration of subsidized units. Minneapolis has periodically celebrated the creation of affordable units in wealthier or more attractive neighborhoods, like North Loop or Saint Anthony Main, as a step towards much-needed housing integration.[36] Unnoted and perhaps unnoticed is the reality that these units are generally POSH units, serving a class of people that more closely resemble the neighborhoods’ preexisting residents than the occupants of traditional subsidized housing.

And there are other benefits for cities. Compared to traditional subsidized housing, POSH construction is much more likely to create genuine economic benefits and therefore noticeable

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[35] Jim Buchta, *$100 Million in Flour Power to Transform Pillsbury A-Mill*, STAR TRIBUNE (March 23, 2012).
[36] The construction of 44 studio, one-, and two-bedroom units in Minneapolis’s North Loop received newspaper coverage on several occasions, with the papers describing affordability as “much-needed” in the neighborhood. Jim Buchta, *Housing Goes Up in North Loop of Mpls. For Less*, STAR TRIBUNE (July 8, 2015); Jim Buchta, *North Loop Neighborhood to Get Much-Needed Low-Income Rental Housing*, STAR TRIBUNE (March 18, 2014).

revitalization. With project costs sometimes extending into the tens or hundreds of millions of dollars, POSH development represents a tremendous infusion of financial resources into a relatively small area. By transforming unused properties, the projects eliminate vacant space that may have acted as a drag on neighborhood economies.

Moreover, after construction is done, the families and individuals moving into POSH buildings are higher-income than traditional subsidized housing residents. Rather than truly impoverished families scraping by day after day, POSH residents seem more likely to be single young adults with a small degree of economic stability and perhaps, in some case, a little bit of disposable income. An attractive conversion, with the right residents, can draw in more monied tenants to nearby building. For example, the proliferation of urban "art districts" demonstrates that artists carry a certain social cachet that often makes a neighborhood seem more desirable to potential homebuyers and business owners.

Finally, a well-funded and aesthetically pleasing rehab of a historic building can act as a spectacular centerpiece to a neighborhood. The Schmidt Brewery and Pillsbury A-Mill are both eye-catching structures that make immediate surroundings more visually interesting and appealing. Rather than becoming a drain on neighborhood businesses, POSH projects are more likely to act as a neutral or even positive economic factor.

POSH developers have developed sophisticated pitches that rely on these incentives. Artspace itself has developed a consulting wing designed to advise cities on how to "revitalize downtown areas and inner city neighborhoods, reanimate historic properties, develop arts districts, and create and preserve affordable space for artists." In 2010, the organization commissioned a report from a second consulting firm analyzing the positive economic and social effects of artist housing. It also produces guides to artist housing development which advise project planners to lean heavily on economic redevelopment as a housing benefit. As a recent guide counseled:

> The most viable housing projects are those that serve both an arts agenda and complementary public goals, such as transit oriented development, economic development and job creation, historic preservation, cultural preservation, and public safety. . . . The site should overlap with local redevelopment agendas, thereby making it competitive support.[37]

Likewise, responding to inquiries about the unusual demographics of its artist housing, A-Mill and Schmidt developer Dominium explained that the buildings were intended to address "multiple agendas," including "development, urban vitality, and historic preservation." The developer's representative asserted that "these strategies make additional housing possible."

Funding Incentives for POSH Development

Another, more arcane factor in POSH development is the complex world of subsidized housing finance. Over time, as resources for subsidized housing have dwindled, developers have become

[37] Artspace, The Art of Creative Placemaking: An Artspace Report, Best Practices in Affordable Artist Housing (2014), available at http://www.artspace.org/sites/default/files/public/downloads/news/best_practices_asp_2014.03.04.web_.pdf.

more reliant on so-called “multifinance” construction, in which a diverse array of federal, state, local, philanthropic, and private funding streams are wrangled into a single project. These multiple funding streams can also create unexpected opportunities or incentives that are difficult to foresee or predict. In some ways, these incentives facilitate or encourage POSH development.

LIHTC remains the nation’s most common source of subsidized housing construction funds. One of the program’s many oddities is that its income restrictions on residents are unusually high – tenants in some units can earn as much as 60 percent of Area Median Income (AMI). In the Twin Cities in 2016, 60 percent of AMI for a family of four is $51,480 annually; for a household of one, it is $36,060. Consequently, LIHTC project owners can theoretically satisfy tenanting restrictions without housing the area’s very poorest families – and given many landlords’ preferences for higher-income tenants, it is not difficult to imagine that some owners would seek to do so. However, in practice, renting only to “the richest of the poor” may require novel explicit or implicit screening mechanisms, given that LIHTC landlords are also subject to rent caps and the obligation to accept Section 8 Housing Choice Vouchers.

Another source of financing is historic tax credits, which are only available for projects that preserve or rehabilitate designated historic properties. Traditionally, these are more commonly used for market-rate residential or commercial redevelopment than subsidized housing, likely because most historic properties are located in areas where subsidized housing is not politically appealing or otherwise seen as feasible. But this largely untapped resource creates an incentive for subsidized developers to design proposals that appeal to a broader range of local policymakers and is less likely to attract stiff political resistance – namely, POSH projects.

And there may be other, more obscure incentives at play as well. For instance, heightened political support for POSH construction may make it easier for these projects to access a wider range of financing sources than traditional subsidized housing. Indeed, this has been at times been described as an explicit feature of POSH projects. Artspace’s guide to developing artist housing notes that “[i]f properly planned, artist housing projects can access philanthropic dollars . . . which are less frequently available to traditional affordable housing projects.”[38] In Minneapolis, the A-Mill project received the close attention of city’s political leadership, far more than a more typical subsidized housing development. This was likely a key factor in holding the project together even as cost estimates spiked. In similar fashion, the upcoming Fort Snelling conversion has been repeatedly associated with Minnesota’s Lieutenant Governor.

Building Ownership as an Incentive

POSH development is a relatively recent trend, making it impossible to know what will become of converted buildings after their affordability restrictions expire. There are several signs, however, that some of these units may be converted to market-rate housing in relatively short order. In such an instance, developers would find themselves in possession of hundreds of attractive or even luxury rental units, on prime real estate in revitalized urban neighborhoods, constructed with $100 million or more of public investment, subject to no rent restrictions. Traditional affordable housing is rarely constructed with the expectation of making a profit off

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[38] *Id.*

the building after subsidies expire; with POSH development, ownership of the underlying property may represent a considerable economic opportunity in the future.

Affordable housing constructed with LIHTC is typically subject to 30 years of rent restrictions: a 15-year "compliance period" in which affordability is monitored by the IRS, and a 15-year "extended use period" in which affordability is required but monitoring is no longer conducted. In order to obtain tax credits, owners must agree to maintain income and rent restrictions across the full 30 years.[39]

However, federal law provides for a system under which owners can seek "regulatory relief" from those restrictions during the second 15-year period. This system requires owners to request a "qualified contract" for purchase of the building from the tax credit allocating agency.[40] That agency must then attempt to locate a buyer of the building who will maintain affordable rents. If it is unable to do so after a year, the restrictions expire and the building can convert to market-rate.[41]

The specifics of the qualified contract process vary from state to state, and seeking a qualified contract is easier in some jurisdictions than in others. In Minnesota, owners are only allowed to seek a qualified contract one time – afterwards, requests will be denied by the state housing agency.[42] The state also has a clear process for setting a development's price, and sets marketing standards to ensure a good-faith effort to locate a buyer is undertaken. The process may be started in the 14th year of a project's operation, completed at the beginning of the 15th, and the restrictions expire over the course of the following three.[43] As a consequence, the project can be fully released from rent and income restrictions by the 18th year of operation.

But the Minnesota Housing Finance Agency also discourages developers from seeking to end rent restrictions. Its Qualified Contract Process Guide notes that "[i]t is hoped that many owners would choose to continue the development under the existing restrictions throughout the extended use period," and "will to continue to serve the people for whom the program was intended."[44] Indeed, seeking a qualified contract is, as the guide says, "a difficult process that requires substantial time and energy on the part of the owner, the Management Company, and Minnesota Housing."[45]

Minnesota Housing points out that, given these complications, "[m]any owners have chosen to waive the right to request a qualified contract and have committed to 30 years or more of operation as low-income housing."[46] This waiver is included in the restrictive covenant that accompanies tax credit properties and requires owners to maintain affordability restrictions. A

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[39] HUD has produced a lengthy report on the lifecycle of LIHTC-funded affordable housing. U.S. Department of Housing and Urban Development, *What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond?*, *available at* https://www.huduser.gov/portal//publications/pdf/what_happens_lihtc_v2.pdf.
[40] *Id.* at xii-xiii.
[41] *Id.*
[42] Minnesota Housing Finance Agency, *Housing Tax Credit Program Qualified Contract Process Guide* 4
[43] *Id.*
[44] *Id.* at 2.
[45] *Id.*
[46] *Id.* at 4.

review of the covenant for several traditional tax credit projects, such as buildings in the Franklin-Portland Gateway project, reveals that these owners have indeed waived their right to terminate affordability in the extended use period.

Not so, however, with the region's most prominent POSH developments. A review of the restrictive covenants for the Schmidt and A-Mill Artist Lofts, a number of major Artspace buildings, and Dominium's Buzza Lofts revealed that none of these projects waived the ability to seek early termination of affordability restrictions. In discussions, affordable housing development experts expressed concern that the failure to waive the qualified contract process placed long-term affordability in these projects "at risk." Notably, one HUD report on expiring tax credits stated that while "[m]ost older LIHTC properties are not at risk of becoming unaffordable, the notable exceptions [are] properties with for-profit owners in favorable market locations."[47]

Moreover, the owners of these buildings have greater-than-normal incentive to convert their properties to market-rate units. Typically, there is limited upside for owners in eliminating the rent restrictions in tax credit housing. As will be discussed below, many LIHC charge rents that *exceed* the average rent in their neighborhood. In addition, subsidized housing sometimes suffers from upkeep issues, is not especially physically appealing, and is located in low-demand, relatively low-income neighborhoods. For all these reasons, there is little to be gained from undertaking the lengthy process of converting a project to market-rate housing. When HUD examined tax credit projects, it found that "many owners reported that it simply was not worth the effort to try to leave the tax credit program through the [qualified contract] process, because they could not increase rents outside the program or could increase them only marginally."[48] In fact, after subsidies expire, many developers simply seek another round subsidies to rehab the existing units and maintain affordability.

POSH developments, however, are located in desirable neighborhoods, are well-amenitized, and could fetch handsome rents on the private market. Even if the process is arduous, converting these units to market-rate units would allow developers to charge significantly higher rents; the opportunity cost of maintaining them as affordable housing is considerable.

In addition, there is unlikely to be any real risk or uncertainty generated by the qualified contract process. While the state housing agency is obligated to seek out potential buyers, the number of entities that could afford to purchase massive housing projects, frequently on expensive real estate, is limited – and it is hard to see what would be gained by such a purchase, since the buyer would be obligated to maintain the building as affordable housing.

Of course, it is impossible to know for certain whether POSH owners will opt to terminate affordability early. Also, at times, additional affordability requirements can attach to loans or other sources of public funding – without reviewing the accompanying documents, not all of which are publicly available at a single source, one cannot say for certain precisely what

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[47] U.S. Department of Housing and Urban Development, *What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond?* at xviii.
[48] *Id.* at xiv.

restrictions bind a particular property. But the possibility of obtaining, in 15 years, a publicly-funded landmark property in an economically booming central city district must be understood as a potentially powerful incentive for developers to promote and undertake POSH development.

V. POSH Development on a National Scale

The Twin Cities, which are home to an unusually dense affordable housing industry, appear to be at the vanguard of POSH development. But in recent years – especially after Artspace, LISC, and others successfully scored an exemption to the LIHTC general public use requirement – POSH projects have started popping up in other regions. After all, Minneapolis and Saint Paul are not the only cities experiencing an influx of young white residents, nor are they the only places with empty former commercial or industrial space in need of conversion or reuse. Interestingly, at least two of the major national POSH developers are Minnesota-based.

Dominium, the for-profit developer that created the A-Mill and Schmidt Artist Lofts in the Twin Cities, is a Minneapolis-based company that describes itself as the United States' fifth largest owner of affordable housing. It is responsible for at least four POSH projects in downtown Saint Louis. All four are located in historic buildings and in close proximity to each other, including a $25 million conversion of the Metropolitan Building into 72 units, and a $23 million conversion of the Leather Trade building into 86 units. Most notable, however, is a $118 million conversion of the towering Arcade Building into 202 units of artist housing, alongside an additional 80 units of market-rate luxury housing. This project perfectly encapsulates the way in which "artist lofts" can be used to render subsidized housing inoffensive or even attractive to higher-income neighbors. The building is 18 stories high, with floors 4 through 14 dedicated to the "artist housing program." It advertises itself as "luxury apartments" and the website touts the artistic community as a key amenity for wealthier renters:

> As a resident you will be encircled with inspired artwork created by those who live in the community and you will enjoy access to more than 11,000 square feet of shared studio spaces. Artwork will be installed throughout the building's common areas and marble-lined hallways along with artist lounge and galleries located on various floors.[49]

Although the per-unit costs in Saint Louis run considerably lower than in Minneapolis, the Arcade project still tops $415,000 per unit.

Artspace, as previously mentioned, has expanded its activities nationally. It currently operates in 45 states, adopting its Minnesota model to build artist preference housing in cities big and small. Not infrequently, its housing projects run into the tens of millions of dollars. In New Orleans, Artspace is converting a historic former middle school in the Treme neighborhood – closed after Katrina and afterwards briefly occupied by a charter school from the KIPP chain – into 79 units of artist housing, with a total cost of $37.4 million and a per-unit cost of $470,000. In New York City, the organization converted another former public school, closed in the 1990s, to 89 units of artist housing. This conversion cost a total of $52 million – $580,000 per unit – and despite consisting of affordable units, attracted accusations of spurring gentrification.[50] These two projects are just the tip of the iceberg: in a 2015 year-end report, Artspace brags about creating

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[49] Arcade Apartments, http://www.arcade-apartments.com/.

[50] Zoe Rosenberg, *Critics Take on P.S. 109's Affordable Housing for Artists*, CURBED NEW YORK (Feb. 6, 2015), http://ny.curbed.com/2015/2/6/9994570/critics-take-on-p-s-109s-affordable-housing-for-artists.

1,374 live-work artist housing units with about $490 million in real-estate investment – suggesting total development costs of more than $355,000 per unit.[51]

But national POSH development is not just limited to artist housing. Elsewhere in the country, aging and abandoned urban industrial properties are being converted into "teacher preference" housing, which often resemble other POSH projects in form and function. Newark in 2015, under the guidance of then-mayor Cory Booker, constructed a $149 million Teacher's Village, which included 213 units of housing and three charter schools. In Baltimore, two historic industrial properties were converted to teacher's housing: Miller's Court, which used $21 million to produce 40 units of housing, and Union Mill, which generated 56 units of housing from $20 million. Although neither project is traditional subsidized housing, both offer rent reductions for teachers. In other cases, teacher housing has received subsidies, including LIHTC; in these instances, it must rely on Artspace's 2008 exemption to the "general public use" requirement.

Like artist housing, teacher housing appears to be gaining steam nationally. One recent investigation identified cities from Philadelphia to San Francisco that had built or initiated teacher housing projects, generally with substantial public and philanthropic support – both of a financial and political nature.[52]

Also like artist housing, teacher housing sometimes seems less like a means of providing an important basic need to the very poorest families, and more like a publicly-subsidized perk for a favored subset of the population. The recent investigation described the experience of living in teacher housing thusly:

> In a way, these Teachers Villages function as sort of a camp experience. You may be making a two-year commitment to live and work in an unfamiliar city, one that perhaps you, or your family, worry is unsafe. You know that you're going to be working hard, long days—and so living in close quarters with people going through similar experiences might be quite comforting. All in all, it appears to be a pretty good deal—you'll be afforded lots of amenities and discounts, you'll live in a place you know is secure, and you'll have the chance to develop friendships with other "like-minded" individuals.[53]

As with POSH development more broadly, the primary objective of teacher housing often seems to be something beyond providing housing units to disadvantaged or needy populations; they are sometimes promoted by groups not involved in traditional housing policy. For example, the two Baltimore projects received support from Teach for America, and one official from that organization described them as "a recruiting tool."[54] Other supporters have touted the supposed economically revitalizing effects of these developments.

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[51] Artspace, *Artspace 2015 Year-End Review*, http://www.artspace.org/ideas-insights/artspace-publications/artspace-2015-year-end-review.
[52] Rachel Cohen, *Can Affordable Housing Help Retain Teachers?*, THE AMERICAN PROSPECT (Nov. 18, 2015).
[53] *Id.*
[54] Jon Hurdle, *With an Old Factory, Philadelphia Is Hoping to Draw New Teachers*, NEW YORK TIMES (May 4, 2013).

But almost inevitably, signs of socioeconomic sorting have crept into the discussion. In an interview with a journalist, one of the developers of the Baltimore projects hinted at this dynamic: “I think the challenge was that teachers, often new to Baltimore, and new to the classroom, weren’t living with like-minded people, and so might be making bad decisions on where to live.”[55]

Doubtlessly, the passage of time will bring even-more-creative methods of POSH-style development. At present, there are few signs that the pace of new POSH projects will abate, either locally or nationally. But as the following section shows, it may soon find itself in conflict with freshly reinvigorated civil rights protections.

[55] Rachel Cohen, *Can Affordable Housing Help Retain Teachers?*, THE AMERICAN PROSPECT (Nov. 18, 2015).

V. POSH Development and Civil Rights Law

The Fair Housing Act (FHA) forbids housing discrimination, including the perpetuation of segregation, and requires recipients of federal funds to promote housing integration by "affirmatively furthering fair housing."[56] These requirements have been defined in over 40 years of legal precedent, but were notably reinforced in 2015 by two major legal developments: the decision of the U.S. Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, and HUD's long-awaited release of its Affirmatively Furthering Fair Housing Rule.[57] Today, the requirement that private housing providers and government agencies prevent and unwind segregation – particularly segregation by race – is better-established than at any previous point.

POSH development appears to run afoul of both the FHA's prohibition against discrimination and segregation, and its affirmative duty to promote fair housing.

Perpetuation of Segregation Under the Fair Housing Act

Under § 3604(a) of the FHA, it is unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate after the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin."[58] The expansive language of this provision—in particular, "otherwise make unavailable or deny" – has been held to create a broad prohibition against a wide array of discriminatory housing practices, including racial steering, discriminatory or exclusionary zoning, redlining, discriminatory appraisals, and other policies with discriminatory consequences. This section applies universally, to public and private entities alike.

Section 3604(a) is dramatically strengthened by two key legal principles: disparate impact liability and the so-called "perpetuation of segregation" cause of action.

First, § 3604(a) has been read to establish a disparate impact theory of liability, forbidding actions that are discriminatory *in effect* regardless of whether they were undertaken with any intent to discriminate. The practical scope of this theory, however, has historically been limited by the fact that the U.S. Supreme Court had never conclusively endorsed this interpretation of the FHA. In July of 2015, that changed: the Court decided in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* that "[r]ecognition of disparate-impact claims is consistent with the FHA's central purpose," noting that these claims are an important and central component of the law's anti-segregation aims.[59]

Second, courts have long recognized that § 3604(a), and the FHA more broadly, is intended to do more than simply forbid discrimination in housing. Instead, it was developed in response to a 1967 report by the presidential Kerner Commission, which determined urban poverty and unrest

[56] 42 U.S.C. § 3608(d); 42 U.S.C. § 3608(e)(5).
[57] Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. ___ (2015).
[58] 42 U.S.C. § 3604(a).
[59] Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. ___ (2015).

were the direct consequences of racial segregation.[60] The Commission's report famously concluded that "[o]ur Nation is moving toward two societies, one black, one white – separate and unequal."[61] Similarly, during the congressional debate over the FHA, Senator Walter Mondale, the bill's primary sponsor, stated that its purpose was the creation of "truly integrated and balanced living patterns."[62]

Because of this unique history, courts have held that actions violate the FHA when they create, increase, reinforce, or perpetuate segregation of a protected group. In 2013, HUD formalized this legal theory by incorporating it into a newly-promulgated Disparate Impact Rule.[63] The "perpetuation of segregation" theory is unique to the FHA, and explicitly derived from the intent of its drafters that the law reverse residential segregation and actively promote integration.

Affirmatively Furthering Fair Housing

FHA and other federal law forbids housing discrimination and the perpetuation of segregation, regardless of the identity of the discriminatory party. But it places special obligations on HUD, the federal government, and local and state governments receiving funding from HUD.

These entities must not only avoid perpetuating segregation, but are also subject to an affirmative duty to reduce segregation and increase integration.

The exact scope of that duty has grown clearer over time. In landmark cases such as *Shannon v. HUD*, federal courts found that cities violate the FHA if they build federally subsidized housing in areas which are at risk of resegregation.[64] Relatedly, in order to fulfill their "affirmatively furthering" obligations, cities are obligated to conduct sufficient analysis to ensure that they are not creating racial segregation with their housing policies.[65] Failures to conduct such analysis, especially of the impact of housing policy on race or racial segregation, continue to be a major source of legal action over fair housing. In a recent case in New York, a federal court found that Westchester County, an affluent suburb of New York City, had committed fraud by certifying to HUD it had fulfilled civil rights requirements while taking no action to study or address segregation.[66] This finding subjected the county to financial penalties and endangered its ability to receive future HUD funding.

Beyond merely conducting analysis, however, the obligation to affirmatively further fair housing requires cities and states receiving federal funding to proactively work to integrate their housing. For example, writing for the First Circuit Court of Appeals, Justice Breyer reaffirmed a holding

[60] NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968).
[61] *Id.* at 1.
[62] 114 CONG. REC. 3422.
[63] 24 CFR 100.500(a).
[64] Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970).
[65] NAACP v. Secretary of HUD, 817 F.2d 149, 156 (1st Cir. 1987).
[66] United States ex rel. Anti-Discrimination Center v. Westchester County, 668 F.Supp.2d 548 (2009).

that HUD had violated the FHA when it failed to "use its immense leverage . . . to provide desegregated housing . . . to give minority families a true choice of location."[67]

As with the FHA's disparate impact cause of action, these obligations were strengthened in 2015. Weeks after the Supreme Court's disparate impact case, HUD released its long-awaited Affirmatively Furthering Fair Housing (AFFH) Rule.[68] The new rule standardizes the AFFH obligations, and institutes a set of metrics through which communities can measure their progress in fair housing. It prevents local governments from dodging enforcement by taking advantage of ambiguous federal requirements. Finally, the rule explicitly states that cities and states cannot fulfill their AFFH obligations merely by pursuing low-income development in segregated neighborhoods; such activity must be balanced by policies that create housing opportunity in white, exclusionary areas and promote racial integration.[69] In doing so, the rule pushes back against the tendency of communities to claim that "revitalizing" affordable development in low-income neighborhoods fulfills their civil rights obligations, despite the fact that this practice tended to increase segregation, not reduce it.

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[67] NAACP v. Secretary of HUD, 817 F.2d 149, 155 (1st Cir. 1987).

[68] Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).

[69] The new rule was promulgated alongside a lengthy discussion of the interaction of neighborhood revitalization and fair housing law. Given the centrality of this issue to modern-day housing debates, that discussion is worth reproducing in full:

> HUD's rule recognizes the role of place-based strategies, including economic development to improve conditions in high poverty neighborhoods, as well as preservation of the existing affordable housing stock, including HUD-assisted housing, to help respond to the overwhelming need for affordable housing. Examples of such strategies include investments that will improve conditions and thereby reduce disparities in access to opportunity between impacted neighborhoods and the rest of the city or efforts to maintain and preserve the existing affordable rental housing stock, including HUD assisted housing, to address a jurisdiction's fair housing issues. Preservation activities such as the Rental Assistance Demonstration (RAD) or the Choice Neighborhoods Initiative may be a part of such a strategy.
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> There could be issues, however, with strategies that rely solely on investment in areas with high racial or ethnic concentrations of low-income residents to the exclusion of providing access to affordable housing outside of those areas. For example, in areas with a history of segregation, if a program participant has the ability to create opportunities outside of the segregated, low-income areas but declines to do so in favor of place-based strategies, there could be a legitimate claim that HUD and its program participants were acting to preclude a choice of neighborhoods to historically segregated groups, as well as failing to affirmatively further fair housing as required by the Fair Housing Act.
>
> A balanced approach would include, as appropriate, the removal of barriers that prevent people from accessing housing in areas of opportunity, the development of affordable housing in such areas, effective housing mobility programs and/or concerted housing preservation and community revitalization efforts, where any such actions are designed to achieve fair housing outcomes such as reducing disproportionate housing needs, transforming RCAPs/ECAPs by addressing the combined effects of segregation coupled with poverty, increasing integration, and increasing access to opportunity, such as high-performing schools, transportation, and jobs. *Id.* at 42,279.

Applying Fair Housing Law to POSH Development

Preliminary analysis of POSH development suggests that it is problematic under the FHA's anti-segregation and anti-discrimination provisions, and the requirement under federal law to affirmatively further fair housing.

On an individual project basis, the occupancy averages depicted in Table 1 are, at the least, troubling from a civil rights perspective. The production of POSH units, and the implementation of artist preference and other various previously-discussed screening mechanisms, seems to be having an unequal and discriminatory impact on families of color, families with children, and older residents, all of whom are underrepresented in POSH units compared to most subsidized housing, and all of whom are members of protected classes under the FHA. Although policies like artist screening or preservation fees may not be intended as discriminatory, the FHA's disparate impact cause of action renders this fact irrelevant.

But while individual projects may well be in violation of the FHA, POSH development also contributes to a much broader fair housing problem: the creation and perpetuation of segregation by subsidized housing developers, and the cities and agencies that fund and develop these projects.

Perpetuation of segregation is best demonstrated by showing the impact of subsidized housing development on the neighborhoods that surround it. In the case of the POSH projects in the Twin Cities, this has been done by comparing the demographics of POSH units to the demographics of the census tracts where they are situated. For the results of this analysis, see Table 3, below.

Table 3: Comparison of Average Neighborhood and Unit Demographics for Minneapolis and Saint Paul LIHTC Projects

		Percent White			Rent		
	Ave Tract Pov Rate	Tract Average	Unit Average	Ave Unit/Tract Difference	Tract Average	Unit Average	Ave Unit/Tract Difference
Artist housing	27.0	70.9	83.9	13.0	$910	$984	$74
Historic Tax Credit projects*	29.7	71.6	58.9	-12.7	$942	$789	-$153
Senior housing	29.7	45.6	52.4	6.9	$843	$817	-$25
All other LIHTC housing	36.3	45.2	19.1	-26.1	$741	$864	$123
Total	34.7	49.2	29.0	-20.3	$777	$861	$84

*Riverside Plaza omitted. Riverside Plaza was in service as a subsidized housing project prior to receiving historic tax credits.

Data: MHFA

POSH projects are generally built in majority-white areas, while other forms of LIHTC housing are built in majority-nonwhite areas. POSH projects themselves consist of majority-white occupants. Non-senior LIHTC housing, by contrast, is heavily nonwhite. POSH projects are built in areas with considerably lower average poverty rates than non-POSH projects. In short, POSH demographics reflect segregated neighborhood demographics.

If focus is restricted to traditional, non-senior subsidized housing and artist housing, the data support an even more dramatic conclusion.

In the table above, the “Ave Unit/Tract Difference” column depicts the average difference, for each category, between each unit in that category and the census tract that unit is located in. As indicated by this column, artist preference units are, on average, 13 percent more white than the predominately-white census tracts they occupy. The figures for traditional, non-senior housing are reversed: these units are 26 percentage points *less white* than the census tracts they occupy, which are already majority nonwhite.

Or, put even more succinctly: on average, artist housing is making white neighborhoods even whiter, while traditional subsidized housing is making diverse and segregated areas even more segregated. In other words, the distribution of these units – which account for approximately 84 percent of all LIHTC units in the two cities – is helping to worsen segregation *in both directions simultaneously*.

Rather than promoting integration, or even preserving preexisting segregation, subsidized housing in Minneapolis and Saint Paul is creating new and greater segregation.

From a historical perspective, the construction of predominately-white subsidized housing projects that proactively reinforce white segregation represents the startling reappearance of an ugly vestige of the past.

Prior to the civil rights movement, many American cities included internally-segregated subsidized housing systems. Perhaps most famously, the landmark *Gautreaux* litigation in Chicago, which served as the basis of a court-enforced metro-wide integrated public housing program, was a response to precisely such a divided system.[70] In Chicago prior to *Gautreaux*, the vast majority of subsidized housing was located in neighborhoods that were 50 to 100 percent nonwhite, while 90 percent of subsidized housing occupants were also nonwhite.[71] But as federal district judge Richard Austin noted in his original 1969 decision, the city had also constructed four housing projects which were between 93 and 99 percent white.[72] Judge Austin held that “the disparity between the low number of Negro families in these projects and the high number of Negro applicants for all projects indicates that [the Chicago Housing Authority] has imposed a racial quota.”[73] Chicago was hardly alone in this regard; in the wake of *Brown v. Board*, other major northern cities, such as Detroit, were found liable for similar practices.[74]

But after racially-divided housing was made illegal, these dual, segregatory systems largely faded out of existence. While subsidized housing was still used to enforce segregation, this typically occurred in a more subtle fashion, such as blocking the construction of subsidized units in white, affluent areas, and steering those units towards concentrations of poverty instead.

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[70] Gautreaux v. Chicago Housing Authority, 296 F.Supp 907 (N.D. Ill. 1969).
[71] *Id.* at 909.
[72] *Id.*
[73] *Id.*
[74] *See, e.g.* Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955).

In Minneapolis and Saint Paul, however, elements of the older, internally-segregated system seem to have reappeared. Once again, the city's publicly funded housing is divided along racial lines, following and even accentuating racial divisions that exist in the private market.

The closest modern analogue to this practice is the tendency, discussed by a federal district court in the recent *Inclusive Communities Project* litigation, of cities to concentrate senior housing in whiter areas. As pointed out by the court in that case, "the distinction between elderly and non-elderly units is salient because the potential tenants of non-elderly LIHTC units are more likely to be minority than the potential tenants of elderly LIHTC units."[75] In that case, the court ultimately held that siting disproportionately-white senior housing in atypically-white neighborhoods could give rise to a Fair Housing Act violation:

> [The plaintiff] ICP has presented statistical and comparative evidence that may give rise to an inference of discriminatory intent. ICP alleges that [the defendant] TDHCA is more likely to approve LIHTC developments in Caucasian neighborhoods if the likely tenants are Caucasian. ICP highlights the fact that, in Caucasian neighborhoods, elderly LIHTC housing is approved more often than non-elderly LIHTC housing, and elderly residents are more likely to be Caucasian. According to TDHCA data, from 1999 to 2008, TDHCA approved tax credits for 70.2% of the proposed elderly units in 90% or greater Caucasian census tracts. TDHCA approved just 37.4% of proposed non-elderly units in the same tracts.[76]

The similarities to POSH development are clear.

Entities accused of concentrating housing in a segregative fashion typically respond by claiming that concentration serves a separate policy objective of revitalization and economic development.

But the double-edged nature of the housing segregation seen here make this argument inapplicable in Minneapolis and Saint Paul. That's because, while development in whiter, higher-income areas remains rare, it *is* occurring. But when it does, many of the resulting units are being provided to white residents, worsening racial isolation. Units that could be used to decrease the overall degree of segregation are being used to increase it instead.

Nor can the observed patterns be attributed to some sort of individual preference, because private preferences cannot explain why the racial gaps in subsidized housing exceed those between the neighborhoods themselves.

Market factors are also difficult to blame, as the rent data in Table 3 shows. Notably, there is little correlation between absolute average rent, neighborhood rent, and racial and economic demographics of the underlying housing units. Average LIHTC unit rent actually *exceeds* average neighborhood rent in most cases. But this gap is smaller for POSH projects, suggesting that POSH units are collectively more affordable compared to neighboring units than traditional non-senior subsidized housing, which frequently rent for a substantial monthly markup over

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[75] Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, 749 F. Supp. 2d 486, 493 (N.D. Tex. 2010).
[76] *Id.* at 502.

nearby units. (And in the case of historic tax credit projects, LIHTC units are rented at a substantial discount compared to the neighborhood at large *and* traditional LIHTC units, which are nonetheless substantially less white.)

This evidence all points towards POSH development constituting a clear violation of the "perpetuation of segregation" cause of action of § 3604(a) of the FHA. Significantly, while perpetuation of segregation claims have traditionally been brought against public agencies only, there is no legal requirement that this be the case. It is important to remember that, in the Twin Cities, POSH projects are fairly widespread and typically produced by just one of two major organizations (Artspace and Dominium). In this instance, these organizations are engaged in system-wide development activities that are comparable in scope to a government housing agency, and may well be themselves be liable.

Unsurprisingly, the project developers appear to disagree with this assessment. When asked about the legal implications of the unusual demographics of its POSH projects, Dominium leadership, speaking through a representative, professed to be "not concerned" that they constituted any legal issue, even under the reaffirmed disparate impact standard. The company asserted that it was scrupulously fair when choosing residents: "Our screening criteria are applied consistently to all applicants, and any applicant is allowed to open up an appeal process if they are denied." Differing demographics were attributed to building's location and the artist orientation of the projects. Of course, not all heavily white buildings – for instance, the Buzza Lofts in Uptown Minneapolis – are artist lofts, and as Table 3 shows, the artist lofts are themselves, on average whiter than their surrounding neighborhoods. Artspace was unable to reply to several requests for comment before this report's publication.

The Role of the Artist Exemption

One final defense that might be raised by entities engaged in POSH construction – particularly construction of artist housing – is that this housing has been explicitly authorized by Congress. After all, artist housing, as well as preference housing for other special populations, did receive an explicit exemption from the LIHTC "general public use" requirement, as described above.[77]

But the "general public use" requirement is not the Fair Housing Act. There can be little doubt that all POSH development remains bound by the full scope of housing civil rights law.

First, it should be recognized that the Low-Income Housing Tax Credit is not a HUD program, but a tax program administered by the IRS. While HUD is generally tasked with enforcing civil rights in housing, the LIHTC's general public use requirement was governed and enforced by the IRS. The 2008 exemption was prompted by the IRS changing the guidance it provided on what sort of projects validly qualified for tax credits. It was not in any way induced by HUD enforcement action.

Although the operation of artist housing has, in practice, appeared to create segregation and discrimination, it does not follow that Congress intended to allow artist housing producers to segregate and discriminate. Instead, the 2008 statute says nothing about the interaction of the

[77] *See supra* Section IV.

exemption and fair housing law. This is unsurprising, because there is no reason to believe that artist preference housing, or any sort of preference housing, could not be operated in a racially nondiscriminatory manner. It is incumbent upon artist housing owners, just like any other housing manager, to ensure that their activities do not run afoul of the FHA. In some cases, the duty to operate in a nondiscriminatory manner may require proactive policies – such as affirmative marketing – or make other policies, such as panel screening of tenants, inviable. But this does not contradict the 2008 exemption in any way, which remained silent and agnostic on the specific forms that artist preference could take.

In fact, the congressional record contains strong evidence to support that idea that the artist exemption and fair housing law were meant to operate in concert. Senate testimony shows that legislators intended for tax credits to remain subject to anti-discrimination rules, artist preference exemption notwithstanding. Washington Democrat Maria Cantwell, one of two senators who spoke in favor of the amendment, concluded her remarks with the following sentence:

> I thank the chairman for that response and for his work, along with that of the ranking member, on this important issue that would permit housing credit properties to continue to serve special populations *provided that the properties satisfy the nondiscriminatory tenant selection criteria and other requirements of the Low-Income Housing Tax Credit Program*.

Cantwell's language reflects the language in the IRS's existing rule defining "use by the general public," which was enacted in 1994. That rule, which is still in effect, requires that LIHTC units be "rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development" – e.g., the disparate impact rules implementing § 3604(a) of the FHA.[78] In short, Congress's clear intent when creating the artist exemption was to nonetheless maintain the non-discrimination component of the IRS's "general public use" requirement.

Indeed, even artist housing developers seem to have recognized that they are subject – and vulnerable – to civil rights requirements. For instance, Artspace screening policies make frequent mention of fair housing laws. The organization's recently-published advises potential housing developers to "[c]arefully manage the artist selection process," emphasizing that "[t]o ensure compliance with Fair Housing Laws, it is extremely important to develop a transparent, well-documented process for screening applicants."[79]

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[78] 26 C.F.R. 1.42-9 (2015) ("A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD) (24 CFR subtitle A and chapters I through XX). See HUD Handbook 4350.3 (or its successor).").

[79] Artspace, The Art of Creative Placemaking: An Artspace Report, Best Practices in Affordable Artist Housing (2014), available at http://www.artspace.org/sites/default/files/public/downloads/news/best_practices_asp_2014.03.04.web_.pdf.

Conclusion

Subsidized housing is changing. Funding has diminished while need has grown; cities have begun to climb out of the economic doldrums of previous decades; America is becoming more diverse, adding new complexities to the previously binary reality of black-white segregation.

But underneath these changes, the same powerful social and economic currents that drove twentieth century segregation remain at play. Many still regard a neighborhood's racial demographics as a proxy for its overall desirability and affluence. Affluent homeowners are still suspicious of subsidized development, and the influx of low-income families of color it is likely to bring. Technocratic policymakers, who often would rather talk about things like "multifinance development" and "adaptive reuse," are reluctant to admit that discrimination, especially by race, remains perhaps the most powerful force in American housing outcomes.

POSH development looks like something new, and in some ways it is. It takes advantage of recent trends – a new creative class demanding downtown living space, the rapid economic redevelopment of abandoned urban quarters, a desire to preserve, not demolish old buildings. It tries to solve fresh challenges – the requirement to place subsidized housing in affluent areas, the increasing fragmentation of funding, and rising expense of urban development. In many ways, these buildings could not have been built in an earlier era.

But the most salient feature of POSH projects is how they replicate, and even rely, on the very old, very familiar problem of racial segregation. It's the racial dynamics of these projects that make them possible in places where other subsidized housing isn't. After all, there's a reason no one has yet proposed that we spend $160 million on gleaming apartments for poor black mothers.

And POSH development replicates the harms of segregation too, especially resource disparities. In effect, they divert hundreds of millions of dollars away from poor families of color and into whiter, wealthier areas. They take resources intended to help the neediest people in our cities – resources that are already far too scarce – and put them to work for the advancement of development interests and favored professions.

It may be that fair housing law eventually puts a stop to this new development trend, which appears to be on a collision course with HUD and the federal judiciary's ongoing recommitment to housing integration.

But it shouldn't have to. Instead, policymakers, funders, and developers should of their own volition recognize that, whatever benefit can be derived from these new innovations in subsidized housing, it is not worth rebuilding the racial boundaries that have long plagued American cities.