THINKING REGIONALLY ABOUT AFFORDABLE HOUSING AND NEIGHBORHOOD DEVELOPMENT*

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I. INTRODUCTION

As the millennium approaches, affordable housing initiatives are being affected by several strong, and often conflicting, currents of social change and public policy. The drive to balance the budget has triggered a major decline in direct federal assistance for affordable housing, a sweeping devolution of federal programs to state and local governments, and serious proposals "to expose [public housing authorities] to the discipline of the market."[1] With the discipline of the market comes renewed emphasis on (1) asset management focusing attention on long term financial and physical concerns,[2] (2) loan restructuring and subsidy reductions to seek comparability between subsidized and unsubsidized developments,[3] and (3) greater reliance on the tax structure to fund affordable housing activities through tax deductions and credits.[4]

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1. Roberto G. Quercia & George C. Galster, *The Challenges Facing Public Housing Authorities in a Brave New World,* 8 HOUSING POL'Y DEBATE 535, 535, 545–48 (1997) (reviewing pending legislative proposals to reform public housing).

2. *See* Rachel G. Bratt et al., *The Status of Nonprofit-Owned Affordable Housing*, 64 J. AM. PLAN. ASS'N 39, 47–48 (1998).

3. *See, e.g.*, Charles L. Edson, *President Signs Most Significant Housing Legislation Passed Since 1990,* 7 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 140, 140–45 (1998) (summarizing the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA)).

4. *See, e.g.*, Peter Dreier, *The New Politics of Housing: How to Rebuild the Con-*

While market advocates are re-asserting themselves in the affordable housing policy debate, traditional notions of community are being challenged by the increasing prevalence of exurban development[5] and the burgeoning popularity of gated communities.[6] The urban sprawl/urban choice debate has formed a complex local land use backdrop for affordable housing efforts, reemphasizing the old questions whether such efforts should be scattered throughout sub-

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stituency for a Progressive Federal Housing Policy, 63 J. AM. PLAN. ASS'N 5, 18 (1997) (providing for a sweeping proposal to recast the residential mortgage interest tax deduction into a housing tax credit patterned after the earned income tax credit). The use of the tax structure to help make housing affordable has long favored middle and upper income households. For example, while the total tax expenditure for credit-enhanced affordable rental housing developments assisted by the low income housing tax credit (LIHTC) is expected to be about $12 billion for the five year period 1999–2003, the 1997 legislation creating a capital gains exclusion of up to $500,000 on the sale of owner-occupied residences was expected to cost the Treasury more than $10 billion per year, bringing the total tax expenditures supporting owner-occupied housing to $90 billion per year. *See Housing Tax Credit Will Cost $11.995 Billion over 1999–2003, Says Tax Expenditure Report*, 25 [Current Developments] Hous. & Dev. Rep. (BNA) 620 (Feb. 9, 1998). In addition to the LIHTC, five-year estimates for other tax expenditures supporting rental housing include: interest exclusion on housing bonds, $2.610 billion; rehabilitation tax credit, $875 million; $25,000 real estate exception to passive loss rules, $16.395 billion; accelerated depreciation on buildings, $11.620 billion; tax incentives for empowerment zones and enterprise communities, $2.950 billion. *See id*. The home ownership tax expenditure estimates for the same period include mortgage interest deduction, $298.690 billion, state and local property tax deduction, $100.480 billion, and the capital gains tax exclusion, $51.620 billion. *See id*. The use of the tax structure to help make housing affordable long has favored middle and upper income households. For example, while supporters of the LIHTC push for an increase in tax credit authorization from $1.25 to $1.75 per capita to raise the total tax expenditure for credit-enhanced affordable housing developments to $12 billion for 1999–2003, the 1997 legislation creating a capital gains exclusion of up to $500,000 on the sale of owner-occupied residences was expected to cost the Treasury more than $10 billion per year, bringing the total tax expenditures for owner-occupied housing to $90 billion per year. *See id*.

5. In an increasing number of metropolitan areas, a debate has been joined about whether urban expansion is undesirable "sprawl" or reasonable "choice." For example, in the St. Louis metropolitan area, the East-West Gateway Coordinating Council reported that the amount of developed land in the region increased 10 times beyond the increase in population during the four decades between 1950 and 1990 — nearly a 355% increase in developed land, but only a 35% increase in population. *See* East-West Gateway Coordinating Council, *Transportation Redefined*: *A Plan for the Regions Future* 89–91 (1994), *reprinted in The State of The Region*, GATEWAYS (East-West Gateway Coordinating Council, St. Louis, Mo.), Mar. 1997. Thus, St. Louis ranks fifth in the rate of sprawled, low-density development among thirty-five metropolitan areas. *See id*.

6. *See generally* EDWARD J. BLAKELY & MARY GAIL SNYDER, FORTRESS AMERICA: GATED COMMUNITIES IN THE UNITED STATES (1997); EVAN MCKENZIE, PRIVATOPIA (1994) (discussing the popularity of gated communities and common interest developments, and the challenges they pose to traditional notions of democracy and local government).

urbia or concentrated in the urban core. Related to this issue are questions concerning the impact, if any, of the common interest development (CID) phenomenon[7] and the often-undisciplined use of the popular public financing technique, tax increment financing (TIF).[8] The affordable housing/sustainable neighborhood problem plaguing cities and inner-ring suburbs contains elements similar to those of the open space/gateway communities problem occupying municipalities in environmentally-sensitive areas such as the front range of the Rocky Mountains: fragile environment, limited resources, desire to preserve a way of life and a sense of place.[9]

New forms of housing, called supportive housing, are being utilized in a number of cities.[10] Supportive housing combines social services with housing through a partnership structure.[11] Long running efforts to integrate urban schools and reduce the dependency of low income persons on the public welfare system, coupled with some spectacular failures of isolated urban housing developments[12] have led to a general recognition that affordable housing cannot be devel-

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7. For a discussion of CIDs, see MCKENZIE, *supra* note 6, at 7, 23–26, 126–27, 192–97.

8. *See infra* notes 59–72 and accompanying text.

9. Utah Governor Michael Leavitt made this point in his keynote address to the Seventh Annual Rocky Mountain Land Use Institute at the University of Denver College of Law, March 12, 1998 (on file with author).

10. The Corporation for Supportive Housing (CSH) is a national nonprofit intermediary established in 1991. *See* Roger A. Clay, Jr., Vice President, CSH, Speech to Professional Housing Resources, Inc., in St. Louis, Mo. (Jan. 28, 1998) (on file with author). CSH works with local coalitions seeking to improve housing opportunities and delivery of services to persons with disabilities. *See id*. CSH uses a two-part definition of supportive housing: "but for the services a person cannot stay housed, but for the housing that person cannot receive the necessary services." *Id*.

11. *See, e.g.*, Stewart B. McKinney Homeless Assistance Act, Pub. L. No. 100-77, §§ 421–428, 101 Stat. 482, 498–504 (1987) (codified as amended at 42 U.S.C. §§ 11381–11389 (1994)) (implementing the Supportive Housing Program). A broader definition of supportive housing includes programs that provide housing and social services to low income families who are not self sufficient. *See, e.g.*, Diana Meyer, *Warren Village, Inc., Wins First Place MetLife Supportive Housing Award*, BUILDING BLOCKS (The Enterprise Found., Columbia, Md.), Summer 1998, at 9–12 (describing supportive housing that includes "transitional family support services, affordable housing, and quality child care" to help single-parent families achieve self sufficiency).

12. The ill-fated Pruitt-Igoe public housing project in St. Louis received a national architectural award when it was opened in the 1950s and international opprobrium when it was demolished by implosion some 20 years later. *See* Robert A. Solomon, *Building a Segregated City: How We All Worked Together*, 16 ST. LOUIS U. PUB. L. REV. 265, 311–12 (1997). For an examination of recent trends in American city developing, using the history of New Haven, Connecticut as a model, see Solomon, *supra*.

oped in isolation, but must be part of a coordinated strategy to create sustainable communities.[13] Religious-based coalitions such as the Denver Interfaith Hospitality Network and community development collaboratives are springing up throughout the country. The National League of Cities reports that cities increasingly are collaborating with community-based organizations.[14]

As federal housing and community development policies are being reshaped to emphasize devolution and privatization, the traditional balkanization of local government is cause for concern. A centralized bureaucracy can hand out money to individual local entities to carry out programs in specific categories such as education, housing, and planning. But when funds are devolved to state and local governments with broader mandates to reform welfare, rebuild neighborhoods, and revitalize cities, the balkanized structure of government in metropolitan areas can work against realization of such goals.[15]

This Article will review affordable housing and community development trends as the twentieth century draws to a close, and will argue that a regional approach offers the best hope for success in recreating sustainable neighborhoods. In order to maximize the investment potential for sustainable neighborhood public-private partnerships, and overcome the exclusion tendency of common interest community development, a four-part regional strategy should be implemented that includes (1) regional land use policies, (2) regional tax-base sharing, (3) regional affordable housing development, and (4) regional governance structure.

II. LAND USE POLICIES AFFECTING AFFORDABLE HOUSING

A. Common Interest Developments and Gated Communities

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13. *See infra* notes 133–46 and accompanying text.

14. *See Partnerships Increase Between Cities, Community Organizations,* 25 [Current Developments] Hous. & Dev. Rep. (BNA) 652–53 (Feb. 23, 1998).

15. Increasingly, local government officials are embracing the notion that "[c]ities aren't cities anymore; cities are metro regions." *Federal Policies Should Promote Integration of Cities into Regional Economies, Brookings Panelists Say*, 26 [Current Developments] Hous. & Dev. Rep. (BNA) 72 (June 15, 1998) (quoting Camille C. Barnett, chief management officer of the City of Washington, D.C.) [hereinafter *Federal Policies*].

Nineteenth century experiments in garden cities in England and private subdivisions in the United States were the forerunner of modern CIDs and their extreme manifestations, residential gated communities.[16] The organizing principle of a CID is that ownership of one part of CID land carries with it the obligation to contribute to the support of another part of the land.[17] Examples include condominiums, co-operatives, planned unit developments, and residential subdivisions governed by private restrictive covenants.

In the last twenty years, CIDs have grown enormously. As many as thirty-two million Americans were estimated to be living in them in 1992.[18] Large-scale CIDs may operate as private mini-governments, providing traditional public services such as street and road maintenance, parks and recreation services, snow removal, water supply and sewage disposal. Residents are "taxed" for these services through mandatory monthly fees and a governing community association usually organized as a private corporation whose members are the unit owners.[19]

Evan McKenzie, in his book *Privatopia,* notes that the privatization aspect of CIDs has been criticized by both the left and the right of the political spectrum.[20] Robert Reich cited CIDs as a manifestation of the "secession of the successful" from the rest of the community.[21] Charles Murray has called the growth of CIDs "a symbol of America's becoming a `caste society.'"[22]

Edward J. Blakely and Mary Gail Snyder, in their book *Fortress America: Gated Communities in the United States*, estimate that eight million Americans now live in gated communities.[23] Large concentrations are found in major metropolitan cities, Chicago, Houston, Los Angeles, Miami, New York, and Phoenix, with the

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16. *See* MCKENZIE, *supra* note 6, at 3–9.

17. *See* UNIF. COMMON INTEREST OWNERSHIP ACT (1994) § 1-103(7), 7 U.L.A. 479 (1997).

18. *See* MCKENZIE, *supra* note 6, at 11.

19. *See generally* MCKENZIE, *supra* note 6; Curtis C. Sproul, *The Many Faces of Community Associations Under California Law*, *in* COMMON INTEREST COMMUNITIES: PRIVATE GOVERNMENTS AND THE PUBLIC INTEREST 45 (Stephen E. Barton & Carol J. Silverman eds., 1994).

20. *See* MCKENZIE, *supra* note 6, at 186–87.

21. *Id*. at 186 (quoting Robert B. Reich, *Secession of the Successful*, N.Y. TIMES, Jan. 20, 1991, § 6 (Magazine), at 16).

22. *Id*. at 187.

23. *See* BLAKELY & SNYDER, *supra* note 6, at 7, 180.

major growth occurring in middle and upper-middle class markets.[24] Both new suburban developments and older inner-city areas are moving in this direction.[25] The author of a study of gated communities in Palm Beach County, Florida, concludes that gated communities are a "self-regulatory institutional design" rather than a form of deregulation, as they often are considered, because of the control they assert over streets, parks, and water and sewer systems.[26]

The growth of CIDs and gated communities has important implications for affordable housing and sustainable neighborhood initiatives. To the extent that affordable housing policy endeavors to provide opportunities for low and moderate income households to live in suburban scattered site environments, policy will have to come to grips with the regulatory structure inherent in CIDs and gated communities. Unit owners associations, whether known as Homeowners Associations, Property Owners Associations, or Residential Community Association Boards, are responsible for administering complex private regulatory regimes reflected in the reciprocal covenants, easements, and servitudes that developers of CIDs and gated communities attach to land titles prior to sale of individual lots or units.[27] Property owners are members by virtue of their ownership, but are also subject to regulation of land use (e.g., type of landscaping permitted) and life style (e.g., whether or not pets are permitted), and are required to contribute to the support of private streets and other common areas.[28]

Montgomery County, Maryland, a local government with significant experience in administering a scattered site affordable housing land use policy,[29] has implemented a resident orientation pro

24. *See id*. at 6.

25. *See id*. at 7–11.

26. Steven Puro, Gated Communities: A New Kind of Community? 20–21 (Sept. 3, 1998) (unpublished manuscript presented at the 1998 Meeting of the American Political Science Association, Boston, Mass., Sept. 3–6, 1998) (on file with author).

27. 7 THOMPSON ON REAL PROPERTY § 62.14, at 520–22 (David A. Thomas ed., Thomas ed. 1994 & Supp. 1996).

28. *See generally* WAYNE S. HYATT, CONDOMINIUMS AND HOME OWNER ASSOCIATIONS: A GUIDE TO THE DEVELOPMENT PROCESS § 7, at 136–242 (1985 & Supp. 1995).

29. Since 1974, 12.5 to 15% of the houses in new subdivisions of 50 or more units must be what are known as moderately-priced dwelling units. *See* Vance Hyndman & Delia McCormick, *Scattered Site Housing Program Requires Intensive Tenant Orientation*, AFFORDABLE HOUSING FIN., May–June 1997, at 36, 36. Of these, at least 40% must be made available to not-for-profit entities for use by low and moderate income families. *See* Montgomery County Moderately Priced Housing Law, MONTGOMERY COUNTY, MD., CODE

gram to help new low and moderate income residents cope with the responsibilities imposed by the regulatory structures of CIDs and gated communities in the county.[30]

B. Inclusionary Land Use Strategies

On the land use side, there is much about the common interest development movement to commend. Social housing techniques such as mutual housing associations and community land trusts make effective use of the common interest development concept. The tendency for exclusion is what raises questions about CIDs, particularly when they accomplish the exclusion through local public land use regulations. Supportive housing, which integrates social services with housing, has particular difficulties with exclusionary land use policies and practices. The nature of the residents — persons with some type of disability or who are not self sufficient — and the addition of services to the housing raise more complex land use questions. For example, is supportive housing really a commercial use because of the services offered with the housing instead of a residential use?

Inclusionary policies such as presumptions in favor of affordable housing proposals in all communities exercising the state zoning power,[31] and limiting public capital improvement expenditures to the urban service portions of metropolitan areas[32] can help restore balance to the residential land allocation process. Several states have adopted fair share or inclusionary strategies to foster affordable housing development. The leading proponents of such strategies are California, Connecticut, Massachusetts, New Jersey, and Oregon.[33] Their policies include state and local requirements that municipalities accept a certain number or percentage of units afford-

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§§ 25A-5(b)(3), 25A-8(b)(1) (1997).

30. Hyndman & McCormick, *supra* note 29, at 36, 38–39.

31. *See, e.g.*, Massachusetts Anti-Snob Zoning Act, MASS. ANN. LAWS ch. 40B, §§ 20–23 (Law. Co-op. 1993).

32. *See, e.g.*, OR. REV. STAT. ANN. §§ 197.805–.860 (Butterworth 1991 & Supp. 1998); "Smart Growth" and Neighborhood Conservation Act, ch. 759, 1997 Md. Laws 4335.

33. For an excellent summary of these state policies, see Charles E. Connerly & Marc Smith, *Developing a Fair Share Housing Policy for Florida*, 12 J. LAND USE & ENVTL. L. 63, 72–95 (1996).

able for low and moderate income families,[34] a presumption in favor of affordable housing developments that are consistent with local needs,[35] a program to encourage municipalities to negotiate among themselves regional fair share allocations of affordable housing,[36] and minimum zoning density standards to reduce the incidence of large-lot zoning in urban growth areas.[37]

Santa Fe, New Mexico, is an example of a community with an inclusionary land use strategy. Affordable housing is increasingly difficult to find because land costs are now averaging approximately $33,000 per acre in the Santa Fe area.[38] The Santa Fe Affordable Housing Roundtable was established as a consortium of housing providers and government agencies and is chaired and staffed by members of the Sante Fe United Way.[39] One of the main programs being supported by the Affordable Housing Roundtable is the Santa Fe Community Housing Trust which is a § 501(c)(3) not-for-profit corporation organized as a community land trust.[40] The Santa Fe Community Housing Trust originally contracted with Santa Fe to manage and/or lease city-owned lots that were dedicated to afford-

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34. *See id*. at 78–81 & n.127; *see also, e.g.*, CAL. GOV'T CODE § 65583(a) (West 1997); N.J. STAT. ANN. §§ 52:27D-301 to -329 (West 1986 & Supp. 1998) (implementing the *Mount Laurel* jurisprudence: Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390 (N.J. 1983); Southern Burlington County NAACP v. Township of Mount Laurel, 336 A.2d 713 (N.J. 1975)). For a discussion of the *Mount Laurel* jurisprudence, see Martha Lamar et al., Mount Laurel *at Work: Affordable Housing in New Jersey, 1983–1988*, 41 RUTGERS L. REV. 1197 (1989); John M. Payne, *Housing Rights and Remedies: A "Legislative" History of* Mount Laurel II, 14 SETON HALL L. REV. 889 (1984); Peter W. Salsich, Jr., *Displacement and Urban Reinvestment: A* Mount Laurel *Perspective*, 53 U. CIN. L. REV. 333 (1984).

35. *See* Connerly & Smith, *supra* note 33, at 85–86; *see also* MASS. ANN. LAWS ch. 40B, §§ 20–23. Communities may be excused if 10% or more of their housing units are affordable by low and moderate income households. *See* MASS. ANN. LAWS ch. 40B, § 20.

36. *See* Connerly & Smith, *supra* note 33, at 89; *see also* Act approved June 6, 1988, Pub. Act No. 88-334, 1988 Conn. Acts 937 (Reg. Sess.).

37. *See* Connerly & Smith, *supra* note 33, at 92–93; *see also* OR. REV. STAT. ANN. §§ 197.005–.860 (Butterworth 1991 & Supp. 1998); OR. ADMIN. R. 660-007-0000 to 660-007-0060 (1997). The Oregon Metropolitan Housing Rule established minimum "densities of six, eight, or ten units per net buildable acre" within the Portland metropolitan area. Connerly & Smith, *supra* note 33, at 93–94; *see also* OR. ADMIN. R. 660-007-0035.

38. *See* Interview with James Duncan, Housing Planner, Community Development Division, City of Sante Fe, N.M. (Mar. 5, 1997); *see also Santa Fe Tackles Affordability Crisis*, FIELDWORKS, Jul.–Aug. 1997, at 3, 3.

39. Interview with James Duncan, *supra* note 38; *see also Santa Fe Tackles Affordability Crisis*, *supra* note 38, at 3.

40. Interview with James Duncan, *supra* note 38.

able housing.[41] New Mexico's anti-donation law prohibits gifts of city-owned land, but permits the City to lease property for public purposes.[42] Under this arrangement, a ninety-nine year ground lease is entered into with the City as ground lessor and the Santa Fe Community Housing Trust as ground lessee.[43] The Santa Fe Community Housing Trust then builds and sells single-family houses subject to the ground lease.[44] Recently, the Santa Fe Community Housing Trust purchased a tract of land in the Tierra Contenta Development (an 800 acre, twenty-one tract, mixed-income and multi-family development at the southwest edge of the city).[45] The Community Housing Trust is developing forty single-family homes for the local Habitat for Humanity affiliate which also will be sold subject to the ninety-nine year ground leases.[46] The Santa Fe Community Housing Trust also manages a condominium, built originally as a resort.[47] The Trust has sold units to low-income families subject to soft second mortgages, but it effectively prevents owners from reaping windfall profits from appreciation, while at the same time permitting some equity build up, based on the original purchase price and the value of improvements made by owners.[48]

C. Smart Growth Legislation

In addition to having a specific focus on affordable housing, states are paying increasing attention to the problem of urban sprawl and its effects on inner-city neighborhoods. Oregon took the lead in the 1970s with a comprehensive growth management statute that features urban growth boundaries.[49] In recent years, a number of other states have enacted "smart growth" legislation that focuses attention on the costs of urban sprawl and establishes policies designed to encourage rehabilitation of built up areas before additional

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41. *See id*.
42. *See id*.
43. *See id*.
44. *See id*.
45. *See id*; *see also Santa Fe Tackles Affordability Crisis*, *supra* note 38, at 3.
46. Interview with James Duncan, *supra* note 38.
47. *See id*.
48. *See id*.
49. *See* Connerly & Smith, *supra* note 33, at 93; *see also* OR. REV. STAT. §§ 197.805–.860 (Butterworth 1991 & Supp. 1998).

outward growth takes place.[50] Maryland's statute, dubbed "the smart growth law," restricts the use of state funds for a wide range of public infrastructure projects to "[l]ocally designated growth area[s]" defined by counties as "suitable for development."[51] Priority funding areas within locally designated growth areas may be designated if average density is at least two units per acre and the area is served by a public or community sewer system.[52] After October 1, 1998, no state funds may be used for growth-related projects not located within a priority funding area.[53] The Metro Vision 2020 proposal advanced by the Denver Regional Council of Governments, with its goal to limit the developed area to 700 square miles, is an example.[54]

In some communities, churches and religious congregations are teaming up with neighborhood organizations to press for such legislation.[55] These efforts are based on moral and religious beliefs that current patterns of land use development are unjust and "signs of poor stewardship."[56] The Smart Growth Alliance in St. Louis has been organized by religious and environmental groups. A major player is Metropolitan Congregations United for St. Louis, a coalition of sixty-two religious organizations.[57] In December 1997, a new national organization, American Metropolitan Equities Network (AMEN), met in St. Louis to plan strategy.[58]

D. Indiscriminate Use of Tax Increment Financing

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50. *See, e.g.*, "Smart Growth" and Neighborhood Conservation Act, ch. 759, 1997 Md. Laws 4335.

51. MD. CODE ANN., STATE FIN. & PROC. § 5-7B-01 (Michie Supp. 1998).

52. *See id*. § 5-7B-03.

53. *See id*. § 5-7B-04(a).

54. *See, e.g.*, Ed Quillen, *Even Those Who Attack "Social Engineering" Really Advocate It*, DENV. POST, Sept. 9, 1997, at B9 (discussing the Metro Vision 2020 Plan proposed by the Denver Regional Council of Governments).

55. *See, e.g.*, Marianna Riley, *Church Groups Continue Attack on Urban Sprawl*, ST. LOUIS POST-DISPATCH, Sept. 29, 1997, at B3.

56. *Id*.

57. *See id*.

58. *See* Patricia Rice, *Churches in Rust Belt Unite to Fight Urban Sprawl*, ST. LOUIS POST-DISPATCH, Dec. 4, 1997, at C10 (discussing the American Metropolitan Equities Network).

TIF has swept the country in the past decade. Invented in California in the 1950s by resourceful land development lawyers,[59] TIF is a mechanism for capturing growth in local taxes raised from a redevelopment project and using those funds to help finance a public portion of the project.[60] TIF districts can be created for areas that are "blighted" as defined by often-generous statutory definitions.[61] Municipalities then may acquire property in the district, including by condemnation, and demolish it to pave the way for private redevelopment projects which will be partially funded by revenue bonds backed by expected increases in tax revenues reaped as a result of the redevelopment.[62]

As is the case with all innovative land development techniques, care must be taken in implementing TIF projects. A case in the Chicago metropolitan area is instructive. After three years of litigation, a consent decree was approved by the U.S. District Court for the Northern District of Illinois, settling a housing discrimination case arising out of the use of TIF to demolish multifamily residential structures in predominately Hispanic neighborhoods of the Village of Addison.[63] The neighborhoods in question, Green Oaks and Michael Lane, contained about one-quarter of the Village's rental housing.[64] The buildings demolished or scheduled for demolition were thirty-five year old, low-rise structures containing 827 units.[65] Vacancy rates were between 2% and 4%, comparable to the Village's 2.7% average vacancy rate.[66] Rents averaged $568 per month; "affordable housing by DuPage County standards."[67]

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59. *See* Christina G. Dudley, Comment, *Tax Increment Financing for Redevelopment in Missouri: Beauty and the Beast*, 54 UMKC L. REV. 77, 77–78 (1985).

60. *See, e.g.*, COLO. REV. STAT. ANN. § 31-25-107(9) (West Supp. 1998), *upheld in* Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); Tax Increment Allocation Redevelopment Act, 65 ILL. COMP. STAT. ANN. 5/11-74.4-1 to .4-11 (West 1993 & Supp. 1998).

61. *See, e.g.*, MO. ANN. STAT. § 99.805(1) (West Supp. 1999) (including "defective or inadequate street layout" and "improper subdivision or obsolete platting" within its definition of blighted areas).

62. *See* 65 ILL. COMP. STAT. ANN. 5/11-74.4-3(a), .4-4(c), .4-4(d). *See generally* Hispanics United v. Village of Addison, 988 F. Supp. 1130, 1137 (N.D. Ill. 1997) (discussing the Tax Increment Allocation Redevelopment Act).

63. *See Hispanics United*, 988 F. Supp. at 1135, 1171.

64. *See id*. at 1137.

65. *See id*.

66. *See id*.

67. *Id.*

After finding that "the facts presented could have shown discriminatory effect . . . [and] some evidence of discriminatory intent" under the *Arlington Heights* standard,[68] the district court approved a consent decree banning housing discrimination by the Village of Addison, revising the redevelopment plan for the Green Oaks and Michael Lane neighborhoods to preserve more than 75% of existing housing, permitting limited and phased demolition for new public parks and new affordable housing, and prohibiting the use of TIF in the affected neighborhoods except in accordance with the revised plan.[69] Former owners of buildings acquired under the TIF program are to receive an additional 12% of the purchase prices.[70] Three organizational plaintiffs will share $60,000, $100,000 will be made available to satisfy individual claims, and $30,000 will be set aside to fund programs "to increase knowledge of the requirements of nondiscrimination in housing."[71] The plan approved in the consent decree has been described as "a watershed resolution to a housing discrimination claim" because of the fact that the Village agreed to spend between twenty and twenty-five million dollars, most of it in development costs, in settlement of the suit.[72]

III. AFFORDABLE HOUSING AND NEIGHBORHOOD REVITALIZATION

In 1978, Richard Baron, president of McCormack Baron & Associates Inc., of St. Louis, a major developer of inner-city affordable housing projects throughout the country, wrote a law review article where he advocated support for community organizations seeking to revitalize their neighborhoods.[73] In his article, Baron made the following observations.

> A successful intervention program for distressed low and

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68. *Id.* at 1157–58 (citing Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 266–68 (1977)).

69. *See Hispanics United*, 988 F. Supp. at 1164, 1171.

70. *See id*.

71. *Id*. at 1148–49.

72. Pam Belluck, *Landmark Settlement Ends Hispanic Housing Bias Suit,* N.Y. TIMES, Aug. 8, 1997, at A1.

73. *See* Richard D. Baron, *Community Organizations: Antidote for Neighborhood Succession and Focus for Neighborhood Improvement,* 21 ST. LOUIS U. L.J. 634, 634 (1978).

> moderate-income neighborhoods, therefore, must consider the program areas of housing and community development, employment, education, security, and related social services as integral reinforcing elements of a long-term program designed to attack deficiencies in the "bundle" of essential neighborhood resources and to revive household confidence and commitment to a viable neighborhood. This "bundle" of concerns which collectively accounts for the neighborhood succession process must form the basis for a new policy focus which should be directed to specific neighborhoods, and to the interrelated problems of housing stock condition, security, quality of education in the neighborhood schools, municipal and social services, and employment.[74]

His theories are bearing fruit in the HOPE VI program,[75] through which the Department of Housing and Urban Development (HUD) has awarded more than $2.5 billion to fifty-nine local public housing authorities for the "demolition and replacement of severely distressed or obsolete public housing."[76] The key element of HOPE VI is the use of public housing capital funds to leverage private investment to create mixed income communities on former public housing sites.[77] The George L. Vaughn Residences at Murphy Park, St. Louis, Missouri,[78] provide an excellent example of the use of the HOPE VI program to create new, mixed income communities on the sites of failed public housing developments, although the development actually was funded under a predecessor program, the Urban Revitalization Demonstration Program.[79]

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74. *Id*. at 639.

75. *See* Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993, Pub. L. No. 102-389, 106 Stat. 1579 (1992); *see also* 42 U.S.C.A. § 1437*l* historical & statutory notes (West 1994 & Supp. 1998). *See generally* McCormack Baron & Associates, Inc., Urban Revitalization Demonstration: Mixed-Income Housing Initiative (Jan. 10, 1994) (on file with author).

76. Paul K. Casey, *Real HOPE at HUD,* 7 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 18, 19 (1997).

77. *See id.* at 20–21 (discussing HUD's interim "mixed finance" rule); *see also* 24 C.F.R. § 941.600–.616 (1998).

78. The description of Murphy Park is taken from a fact sheet distributed by McCormack Baron & Associates, *supra* note 75.

79. The Urban Revitalization Demonstration Program was authorized in Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993, Pub. L. No. 102-389, 106 Stat. 1579 (1992), which was signed on October 6, 1992. *See* Gordon Cavanaugh, *Ending Severely Distressed Public Housing — A Congressional Initiative, A HUD Challenge*, 3 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 13, 13–14 (1993).

Rising from the rubble of the 656 unit George L. Vaughn Family Apartment high-rises constructed in 1957, the George L. Vaughn Residences at Murphy Park is a 400 unit development of mixed-income housing, where 222 units will be operated as public housing.[80] The first phase, which was completed in 1997, consists of 160 units, on 12.8 acres, 93 of which are public housing.[81] Two, three, and four bedroom townhouses are attached in a variety of building types consisting of two to five units each.[82] Five and six bedroom public housing units have been designed as detached homes (only one unit per building).[83] An on-site leasing, management, and maintenance building houses a day care facility and offices for the Vaughn Tenant Association.[84] An outdoor pool and deck for use by residents of the new development was constructed as part of Phase I.[85] Tot lots and other recreational opportunities will be provided on-site or in various new parks being created with the assistance of the City of St. Louis.[86]

Phase I of Murphy Park was financed through a complex network of public and private resources.[87] Only 13% of the $17.2 million project was financed through a traditional first mortgage loan, made possible by the Missouri Housing Development Corporation (MHDC), a state agency, and insured by the federal government through the § 221(d)(4) mortgage insurance program.[88] The key leverage was approximately $9 million of public housing development funds received by the St. Louis Housing Authority through a special set-aside under the Housing and Community Development Act of 1992,[89] the forerunner of HOPE VI. Equity investments of $2.5 million were obtained from corporate investors participating in the LIHTC.[90] In return, twenty-five units were dedicated to families meeting the low income standards (50-60% of area median income)

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80. Interview with Richard D. Baron, President of McCormack Baron & Associates, Inc., in St. Louis, Mo. (Jan. 16, 1998).
81. *See id*.
82. *See id*.
83. *See id*.
84. *See id*.
85. *See id*.
86. Interview with Richard D. Baron, *supra* note 80.
87. *See id*.
88. *See id*.; *see also* 42 U.S.C.A. § 1383 (West Supp. 1998).
89. Pub. L. No. 102-550, 106 Stat. 3672.
90. Interview with Richard D. Baron, *supra* note 80.

of the tax credit program.[91] The balance of $14.7 million was raised through three layers of debt financing: (1) a $2.2 million loan for the market rate units by the Missouri Housing Development Commission, insured through the § 221(d)(4) mortgage insurance program[92] and secured by a first mortgage on a ninety-nine year ground lease from the St. Louis Housing Authority, the landowner, to Vaughn Associates, L.P., the developer; (2) a $9.1 million loan by the St. Louis Housing Authority of funds obtained from HUD through the public housing development program, secured by second and third mortgages on the ground lease; and (3) a loan of $3.4 million from the Carr Square Tenant Management Corporation, one of the not-for-profit development partners, obtained from private charitable contributions and secured by a third mortgage on the ground lease.[93] MHDC has also provided $500,000 in federal low income housing tax credits and $3.2 million in state affordable housing tax credits to secure the corporate donations.[94] The City of St. Louis has supported the development by providing a twenty-five year real estate tax abatement, $1.65 million in public improvements, and assistance in securing the corporate donations.[95] The St. Louis Housing Authority has utilized approximately $7 million in grant funds to perform lead-based paint, asbestos, and other environmental abatement; demolish the existing structures, and prepare the site for new construction; perform resident relocation; and provide a $2 million community center.[96]

The owner of Phase I is a limited partnership, Vaughn Associates, L.P., including the general partnership entity, Murphy Park Development, L.P., consisting of three private, resident-controlled not-for-profit corporations, Vaughn Tenant Corporation, Carr Square Tenant Corporation, Cochran Gardens Tenant Management Corporation, and a for-profit entity, McCormack Baron & Associates, Inc.[97] The limited partners of Vaughn Associates are the St. Louis Housing Authority and Sun America Housing Fund 261, a

91. *See id.*; *see also* 26 U.S.C.A. § 42 (West Supp. 1998); McCormack Baron & Associates, *supra* note 75.

92. *See* 42 U.S.C.A. § 1383.

93. Interview with Richard D. Baron, *supra* note 80.

94. *See id.*

95. *See id.*

96. *See id.*

97. *See id.*

Nevada limited partnership as equity investor.[98]

A community development corporation, COVRAM, representing residents of Murphy Park and the adjoining low-income housing developments, Carr Square public housing and O'Fallon Place Section 8, has been established to coordinate a neighborhood rebuilding strategy that endeavors to establish a ground-up rather than a top-down planning process.[99] The key elements of the strategy include (1) the new mixed income housing, (2) site-based management of public schools in the neighborhood, (3) a resident-based welfare-to-work program, (4) neighborhood wellness clinics to provide health services, and (5) a neighborhood retail service center featuring a full-service grocery store.[100] Traditional Neighborhood Development (TND) principles are being used,[101] including small blocks, neighborhood street scale, mixed housing and uses.

A major question being tested by Murphy Park, and other similar HOPE VI projects, is whether middle income persons will live in market rate housing next door to public housing residents. The answer appears to be yes. The first phase of Murphy Park was virtually full within a year of its completion.[102] The market rate units were occupied first, followed by the tax credit units.[103] The only remaining vacancies were in the public housing units.[104] This is the converse of what was expected. In Techwood, a McCormack Baron HOPE VI project in Atlanta, families are paying $1500 per month for residences next door to families paying $200 per month.[105] But such developments are controversial to advocates for low income families because advocates fear that the net result will be another wave of low income family removals.[106]

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98. *See id*.

99. Interview with Richard D. Baron, *supra* note 80.

100. *See id*.

101. *See id*. The term "Traditional Neighborhood Development" (TND) describes the Neo-traditional movement cited as an alternative to suburban sprawl. *See, e.g.,* Jessica E. Jay, *The "Malling" of Vermont: Can the "Growth Center" Designation Save The Traditional Village from Suburban Sprawl*?, 21 VT. L. REV. 929, 942–43 (1997).

102. Interview with Richard D. Baron, *supra* note 80.

103. *See id*.

104. *See id*.

105. *See id*.

106. Denver task forces recommending mixed income housing have experienced this. *See, e.g.*, Michelle Dally Johnston & Sheba R. Wheeler, *HUD Grant to Reshape Curtis Park*, DENV. POST, Aug. 19, 1998, at A1 (reporting mixed reaction to HOPE VI grant).

Critics of the current financing patchwork illustrated by Murphy Park lament its complexity and the resulting difficulty that neighborhood-based not-for-profits have in controlling their destinies.[107] They seek a straightforward, uncomplicated, direct cash subsidy that will enable resident-controlled non-profits to finance neighborhood development projects that do not carry the risk of gentrification and/or displacement.[108] But who will provide that subsidy? In the market-driven, balance-the-budget, cut-taxes environment of the late 1990s, it is not likely to be the federal government. And with a development effort focusing on restoring blighted neighborhoods and providing housing for persons on the lower half of the economic ladder, the private market is not likely to respond either. The filtering process is a reflection of that reality.[109] The nonprofit sector, which has entered the vacuum created by the withdrawal of both the public and private sectors, has the interest but not the resources to provide the desired direct subsidy.[110] In the absence of such a subsidy, can neighborhood not-for-profits survive in the complex environment of HOPE VI?

Creativity is simple in concept, but may require a complex structure for implementation. The creative aspect of Murphy Park and the HOPE VI program is the use of leverage — other people's money. The idea is simple but requires a complex structure to protect investors' interests. The legendary commercial real estate developer William Zeckendorf understood this point. His "Hawaiian Technique"[111] revolutionized commercial real estate finance. Using the basic property law concepts of leases and mortgages, he created fractionated shares of a building at 1 Park Avenue in Manhattan

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107. *See, e.g.,* C. Theodore Koebel, *The Tortuous Path of Nonprofit Development*, *in* SHELTER AND SOCIETY 219, 229 (C. Theodore Koebel ed., 1998) (stating that "the system itself is a Rube Goldberg contraption that only an insider could defend and only a masochist could enjoy").

108. *See id.*; *see also* Dreier, *supra* note 4, at 20; Robert B. Whittlesey, *Restructuring the Nonprofit Sector: On Lessons Learned from American and European Experience*, *in* SHELTER AND SOCIETY, *supra* note 107, at 233, 233 (advocating production capital grants).

109. *See* WILLIAM G. GRIGSBY & LOUIS ROSENBURG, URBAN HOUSING POLICY 196–210 (1975).

110. *See* Peter Dreier, *Philanthropy and the Housing Crisis: Dilemmas of Private Charity and Public Policy in the United States*, *in* SHELTER AND SOCIETY, *supra* note 107, at 91, 110–19.

111. For a description of the "Hawaiian Technique," see WILLIAM ZECKENDORF, ZECKENDORF 144–148 (1970).

and sold these shares to various classes of investors.[112] He discovered that people who would buy corporate bonds would buy mortgages on the ground under the building.[113] Corporate debenture buyers would purchase ownership interests in that land.[114] Purchasers of preferred stock could be persuaded to invest in the building and the ground lease, and holders of common stock would buy interests in office subleases.[115]

The resulting financial structure was complex, but responsive to the varying interests of the developer and the investors. So it is with HOPE VI — a complex structure designed to attract, and be responsive to, the interests of neighborhood residents and their advocates, professional real estate developers, and commercial real estate investors.[116] In the public-private partnerships formed to draw down HOPE VI funds from HUD, the developers and investors presumably can and will protect their interests. The key to long term success of HOPE VI will be the ability of the neighborhood partners to do likewise.

While working to establish less complex programs, neighborhood advocates should also endeavor to ensure that the neighborhood partners have the appropriate range of skills and experience to participate effectively in complex commercial real estate transactions.[117] In many communities, intermediaries and collaboratives have been organized to provide technical assistance, planning advice, and institutional support structures for neighborhood not-for-profits.[118] The success of these efforts will depend on their ability to provide their services while respecting the individuality and autonomy of the residents and the neighborhoods they seek to preserve.[119]

112. *See id*.

113. *See id*. at 145–46.

114. *See id*.

115. *See id*. at 146–47.

116. For a discussion of the HOPE VI program, see Jane Ennis Sheehan, *Mixed Finance*: *A Real Estate Lawyer's "Field of Dreams*," 7 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 289 (1998).

117. The importance of developing this expertise was underscored by HUD's issuance of a Super Notice of Funding Availability (SuperNOFA) for a number of training programs for not-for-profits, neighborhood-based organizations — SuperNOFA FR-4340-N-01, on March 31, 1998. *See* Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs, 63 Fed. Reg. 15490 (1998).

118. *See* Bratt, *supra* note 2, at 40.

119. *See* C. Theodore Koebel, *Responding to the Crisis in Nonprofit Housing*, *in* SHELTER AND SOCIETY, *supra* note 107, at 255, 260–64.

IV. MANAGEMENT IMPERATIVES

Increasing attention is being paid to management issues, particularly with respect to nonprofit community development corporations. In a recent national study of thirty-four developments owned by seventeen nonprofit organizations in six cites, the authors of the study reviewed performances in both "basic property management" (collecting rents, building upkeep, and responding to the social needs of low-income tenants) and "asset management" (conserving a building's long term financial and physical condition).[120] While many of the developments "are providing good quality housing . . . [with competent] day-to-day management of the properties," the study authors believe that the long-term financial condition of the development is "the Achilles heel of the nonprofit housing sector."[121]

An example of successful property and asset management is Mercy Charities Housing California, winner of the 1996 Metropolitan Life Foundation First Place Award for Excellence in Property and Asset Management for its 108-unit family apartment development in The Tenderloin district of San Francisco.[122] Mercy Charities, a subsidiary of Mercy Housing, Inc. of Denver, was cited for achieving (1) cultural diversity among its residents, (2) a high-density but highly livable building design, (3) residents' safety through special sensitivity, (4) good occupancy management by attention to detail, (5) a monitoring of property maintenance from tenant participation, (6) supportive services for adults and children, and (7) resident involvement in the neighborhood.[123]

Welfare to work is focusing attention on the importance of job development — a major part of supportive services — and the need to "locationalize" the housing/employment environment by creating employment opportunities around interests and abilities.[124] Supportive services are expensive and must be included in the affordable

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120. *See* Bratt, *supra* note 2, at 40.

121. *Id.* at 47.

122. *See* Peter Werwath, *San Francisco's Mercy Charities Housing Wins '96 Met Life Award* (visited Feb. 15, 1999) <http://www.enterprisefoundation.org/pubsnews/bb/cc1297_3.asp>.

123. *See id.*

124. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115–24, 2134–42 (current version at 42 U.S.C.A. §§ 603, 608 (West Supp. 1998)); *see also* 42 U.S.C.A. §§ 603(a)(5), 608(b).

housing budget or provided through other resources. For example, the Ecumenical Housing Production Corporation (EHPC), a not-for-profit provider of single family rental units for Section 8 families in the inner-ring suburbs of St. Louis, Missouri, estimates that, in addition to traditional management expenses, it spends $200 per unit per month on supportive services for its resident families.[125] With more than 180 homes under its control, EHPC must raise over $360,000 per year, primarily from charitable contributions, to cover these costs.[126] Another example is the Colorado Coalition for the Homeless' development, the Renaissance at Loretto Heights, in an unincorporated area outside Denver.[127] The seventy-six unit affordable housing development includes a computer training center and child care facilities.[128] One-third of the units are transitional homes for homeless persons, and the balance are for working families making between $10,000 and $30,000 per year.[129]

Affordable housing and neighborhood development corpora-tions are relatively new to the realities of housing development and management. As they gain more experience, they are realizing the importance of being able to protect their assets, deal effectively with their constituencies, and work collaboratively with social services providers.[130]

V. NEIGHBORHOOD SCHOOLS AND HOUSING

It has become increasingly apparent that efforts to alleviate the crisis of urban public school systems must be linked with efforts to provide liveable communities if they are going to have a chance of

125. *See* Peter W. Salsich, Jr., *Welfare Reform: Is Self Sufficiency Feasible Without Affordable Housing?*, 2 MICH. L. & POL'Y REV. 43, 62–63 (1997).

126. *See id*. at 63.

127. *See* Alan Katz, *Face-Lift in Homes for Poor*, DENV. POST, Dec. 19, 1996, at A1; *see also* Patricia Callahan, *Housing Project for Homeless Gets Under Way*, DENV. POST, Nov. 25, 1997, at B7 (discussing the coalition's development in Lakewood, a suburb of Denver).

128. *See* Katz, *supra* note 127, at A1.

129. *See id*.

130. *See* Rachel G. Bratt, *Nonprofit Developers and Managers: The Evolution of Their Role in U.S. Housing Policy*, *in* SHELTER AND SOCIETY, *supra* note 107, at 139, 139–53 ("nonprofit housing has been a `subplot'" of U.S. housing policy); William M. Rohe, *Do Community Development Corporations Live up to Their Billing? A Review and Critique of the Research Findings*, *in* SHELTER AND SOCIETY, *supra* note 107, at 177, 177–96.

success. One of the most important factors leading to a decision about where to live is the quality of the schools that one's children would attend. If the schools are poor, the desirability of housing in the neighborhood declines. Correspondingly, if people are unwilling to live in a particular area, it is unlikely that sufficient tax and personal resources will be available to improve the schools. So, improvement of the two go hand in hand.

A plan for linking efforts to improve schools with efforts to improve housing and neighborhood development might include the following components:

A. A revolving housing/neighborhood school fund established by the state through a state bond issue. The state housing finance agency would administer the fund in cooperation with local community development agencies. Loans and grants would be made available for housing and neighborhood economic development projects that are linked to school improvements. For example, a new school site or the renovation of an existing school would be undertaken based on the development plans for a neighborhood. The people who would live in the redeveloped neighborhood would be guaranteed that their children could attend the school that is being renovated or constructed. Those residents also would have a voice in the management of the local school through an agreement with the school board.[131]

B. A comprehensive plan would be developed for every neighborhood feeding an existing elementary or middle school. The plan would focus on stabilizing the housing stock and supporting retail services. Such a plan would quantify the costs of public safety and public improvements such as lighting, alleys, streets, and parks, while defining the financing costs necessary to upgrade the existing housing stock and new buildings where required.

C. Under this approach, the state's focus would be on support-

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131. For example, Jefferson Elementary School, a neighborhood public school, has been included in the Murphy Park plan. *See* Samuel Autman, *City School Board OKs Developer's Plan*, ST. LOUIS POST-DISPATCH, Apr. 9, 1997, at A13. A public-private partnership raised $2 million to modernize the school building. *See id*. The city school board has given the new principal broader discretion in operating the school, under a new site-based management contract, and will permit more neighborhood children to attend. *See id*.

ing neighborhood housing and economic development efforts. Strategies would be neighborhood-based and would provide a degree of choice among a limited number of schools. For example, magnet schools outside a particular contract zone could function as a safety valve. People could still opt for these magnet schools, which would provide a check on the success of the neighborhood management contract approach.

D. The housing and neighborhood development components would draw on resources of the state, the federal government, and the private sector. Combinations of grants and loans could be made available for homeowners in an area of a contract management school. Decisions with respect to the location of new housing, new schools, new public institutions would be made on a coordinated basis.[132]

E. A transition planning phase is needed to flesh out the details of this plan. State enabling legislation would be needed to clarify the lines of authority and the use of public funds, including establishing a method of accountability for those funds.

VI. PLANNING FOR SUSTAINABLE NEIGHBORHOODS

Recent experiences of inner suburbs with the forces of decline are a clear warning that today's successful neighborhood can be tomorrow's distressed neighborhood. Restoration of distressed neighborhoods and protection of currently successful neighborhoods requires a combination of internal neighborhood effort and external support. Internal effort includes creating a neighborhood organization led by committed residents, motivating other residents to become involved in neighborhood activities, identifying the cultural, financial, physical, and social assets of the neighborhood, and developing a plan for effective use of those assets in meeting plan goals. External support comes from investment of public and private resources, and removal of barriers to that investment.

Public and private resources available for neighborhood investment are significant but also limited. They must be allocated ratio-

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132. A start in this direction has been made with Murphy Park in St. Louis. *See supra* notes 73–106 and accompanying text.

nally to be effective. Public investments can serve as efficient leverage for private investment by providing infrastructure, seed money, venture capital, gap-filling finance, and insurance against default for risky but worthwhile investments, such as affordable housing and new businesses. A planning process with an allocation system based on established priorities and a realistic time frame for completion of specific projects is essential. Equal division of limited federal community development funds has not and will not trigger the necessary public and private investment. Nor will use of a deal-driven process, in which public agencies react to proposals submitted by developers rather than using the funds at their disposal to implement coordinated plans for community development.

Neighborhood development requires attention to the relationship of schools, housing, jobs, amenities, and security in highly complex urban environments. Residents must have an effective voice in planning and development decisions. This can be achieved by encouraging the growth of effective neighborhood organizations. But it is not necessary or desirable that each neighborhood organization aspire to become a community development corporation. Effective collaboration through consortia of neighborhood organizations and partnerships with development entities can accomplish far more than uncoordinated, isolated efforts.

A component of neighborhood revitalization that is receiving increasing attention is environmental cleanup. In addition to abandoned industrial sites, many urban neighborhoods contain tracts of land where abandoned filling stations, dry cleaners, automobile repair shops, and other commercial activities left the ground lightly or moderately contaminated with chemical pollutants. The private sector generally has avoided these sites, called brownfields,[133] because of concern about the potentially significant cost of environmental cleanup.[134]

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133. The term brownfields is used to distinguish such sites from non-polluted, readily developable sites (greenfields). *See, e.g.*, Eileen Gauna, *The Environmental Justice Misfit: Public Participation and The Paradigm Paradox,* 17 STAN. ENVTL. L.J. 3 (1998) (discussing the environmental justice movements); Paul Skanton Kibel, *The Urban Nexus: Open Space, Brownfields, and Justice,* B.C. ENVTL. AFF. L. REV. 589, 603–05 (1998). *See generally* Michael B. Gerrard, *Demons and Angels in Hazardous Waste Regulation*: *Are Justice, Efficiency, and Democracy Reconcilable?,* 92 NW. U. L. REV. 706, 723 (1998) (book review discussing 10 recent books on the topic).

134. *See* Margaret Murphy, *Brownfields Sites: Removing Lender Concerns as a Barrier to Redevelopment*, 113 BANKING L.J. 440, 440–41 (1996).

States, with the assistance of the federal government, have established government incentive programs to encourage cleanup of brownfields.[135] These programs have two basic components, state and local tax credits and qualified waiver of environmental cleanup liability in return for restoring brownfields to a level of cleanliness that is more relaxed than the original statutory standards.[136]

Neighborhood activists and environmentalists initially opposed the relaxation of cleanup standards associated with the brownfields program, fearing a continuation of marginalized status for their neighborhoods.[137] As neighborhood nonprofits gained more sophistication, they began to see the potential of the brownfields program as another technique for sustainable neighborhood revitalization. Mark Buchbinder, a Miami attorney and community mediator, cites the Eastward HO! Regional Brownfields Partnership of South Florida as an example of the role that neighborhood nonprofits can play in brownfields remediation and neighborhood revitalization.[138] The Partnership grew out of concern that expanding urban development was threatening the Everglades.[139] A gubernatorial executive order established the Commission on a Sustainable South Florida, which initially focused on ways to protect the environment in the Everglades.[140] According to Buchbinder, consensus building activities led to the realization that environmental efforts alone would be insufficient to save the Everglades.[141] Regional urban issues of land use and economic, human and social services also had to be addressed.

Buchbinder identified five interconnected circles of activities that typically are part of community revitalization initiatives:

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135. *See id*. at 444–45.

136. *See id*. at 444–53; *see also, e.g.*, MINN. STAT. ANN. § 115B.175 (West Supp. 1999); OHIO REV. CODE ANN. §§ 3746.01–.99 (Anderson 1997).

137. This concern is reflected in the environmental justice movement. *See* Gauna, *supra* note 133, at 31–53; Kibel, *supra* note 133, at 605–13; Gerrard, *supra* note 133, at 734–37.

138. *See* Mark Buchbinder, Stakeholder Involvement in Brownsfields, Presentation at the meeting of the ABA Real Property, Probate & Trust Law Committee on Community Relations Aspects of Affordable Housing (Aug. 3, 1998). Mr. Buchbinder is serving as Eastward Ho! Brownfields Stakeholder Involvement facilitator under a contract with the Florida Department of Community Affairs.

139. *See* John M. DeGrove, *Sustainable Communities: The Future Direction for Managing Growth in Florida*, SC10 ALI-ABA 605, 608 (1997), *available in* WESTLAW, Citation No. SC10 ALI-ABA 605.

140. *See id*. at 629.

141. *See* Buchbinder, *supra* note 138.

(1) Affordable Housing; (2) Economic Development; (3) Environment; (4) Social and Health Services; and (5) Human Services[142]

Each one by itself is incapable of solving community problems. Eastward Ho's insight, according to Buchbinder, is the recognition that state and local brownfields initiatives can be used to forge these interlocking activities into a meaningful community revitalization strategy.[143] Neighborhood nonprofits and other community representatives, in partnership with the business and government sectors, can help determine that approaches will be effective in a particular community and can provide new allies crucial to the success of the programs adopted.[144]

The tax credits and other economic development incentives common to brownfields legislation are designed to encourage private sector investment in urban revitalization.[145] But they can create fear in residents that private sector investments will create gentrification.[146]

VII. REGIONAL STRATEGIES

As public resources for housing and community development decline and public policy shifts to a market-driven approach, allocation strategies assume particular importance. Urban development is now regional development, as evidenced by the movement of jobs to exurban areas, the growing demand for reasonably affordable transportation to those jobs, and the growth of regional housing markets.[147] In such an environment, affordable housing and neighborhood revitalization efforts have a better chance of success if they are placed in a regional context. For example, officials of the Upper Manhattan (Harlem) Empowerment Zone Development Corporation

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142. *See id*.

143. *See id*.; *see also* Debbie M. Orshefsky, *Florida's Current Efforts to Redevelop Its Urban Core*, SC10 ALI-ABA 345, 349–50 (1997), *available in* WESTLAW, Citation No. SC10 ALI-ABA 345.

144. *See* DeGrove, *supra* note 139, at 608–09; Orshefsky, *supra* note 143, at 347–48 (describing the Eastward Ho! initiative).

145. Act effective July 1, 1997, ch. 97-277, 1997 Fla. Laws 5067 (codified as amended in scattered sections of FLA. STAT. chs. 288, 376, 403).

146. *See* Kibel, *supra* note 133, at 608–09.

147. *See, e.g.,* Gregory K. Ingram, *Patterns of Metropolitan Development: What Have We Learned?*, 35 URB. STUD. 1019, 1019–35 (1998) (noting a common pattern of population, employment, and location decentralization of urban areas in both industrial and developing countries with market-oriented economies).

report that they were able to adopt a much more aggressive development strategy when they viewed the Harlem neighborhood from a regional perspective.[148]

A regional strategy is necessary because of the complexity of the process of neighborhood growth and decline, the external forces over which neighborhoods have little or no control, the intense competition that exists for public and private investment, the expansion of metropolitan areas and the lack of success of uncoordinated local efforts. A recent report of the American Assembly emphasized the importance of a regional approach to encouraging capital investment in urban neighborhoods.[149]

> In many metropolitan areas, community capitalism is most powerful when it is framed within a regional strategy. In these areas, the region is the economic engine and the interests of regional competitiveness must override jurisdictional boundaries. We must encourage, support, and celebrate risk-taking and business success throughout the region, with special emphasis on historically underdeveloped, minority-owned enterprises.[150]

A similar approach should be taken to preserving and restoring livable, sustainable neighborhoods. A long-term strategy would seek to establish a true regional planning and allocation system that includes the following:

A. *regional land use policies* designed to encourage redevelopment of the urban core and remove regulatory barriers to affordable housing development near jobs in suburban areas;

B. *regional tax-base sharing* that allocates a percentage of revenue growth from earnings, property, and sales taxes to communities with low tax bases but substantial needs;

C. *regional affordable housing development* fostered by removal of barriers to development in suburbs and implementation of regional tax sharing; and

D. *a regional governance structure* capable of coordinating regional services, land use policies, and tax sharing.

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148. *See Federal Policies*, *supra* note 15, at 72.

149. THE AMERICAN ASSEMBLY, COMMUNITY CAPITALISM: REDISCOVERING THE MARKETS OF AMERICA'S URBAN NEIGHBORHOODS 5 (1997).

150. *Id.*

Regional land use policies must start with a true regional plan that maps the assets of the region and frames a set of regional goals designed to encourage redevelopment of the urban core, foster sustainable neighborhoods, and remove regulatory barriers to affordable housing development near jobs in the suburbs. Inclusionary land use policies such as density bonuses, incentive zoning, presumptive acceptability of affordable housing, and regional override of local zoning decisions have been used effectively to implement regional planning goals.[151]

The value of a regional approach to inclusionary land use policies is twofold: A regional approach provides a decisionmaker with a broader focus and maximizes the "average reciprocity of advantage" experienced by landowners in the region.[152] By spreading affordable housing and social service resources throughout the region, closer links can be forged between jobs and housing, the isolation of low income and minority households can be reduced, and public costs associated with affordable housing and social services can be allocated more evenly with public wealth. As a result, the region as a whole will have a better chance of prospering from the public and private investments in its neighborhoods and its people.

Regional tax-base sharing is an integral part of effective regional strategies, as the experiences of Minneapolis-St. Paul, Minnesota, and Louisville, Kentucky demonstrate.[153] The inability of com

151. Connerly & Smith, *supra* note 33, at 95–100, advocate a fair share regional housing policy for Florida that is a blend of the California, Connecticut, Massachusetts, New Jersey and Oregon approaches reviewed briefly at *supra* notes 33–37 and accompanying text.

152. Justice Holmes used the "average reciprocity of advantage" concept to distinguish comprehensive health and safety regulations from non-comprehensive ones that have oppressive impact on individual landowners in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

153. *See* MINN. STAT. ANN. §§ 473F.01–.13 (West 1994 & Supp. 1999), *upheld in* Village of Burnsville v. Onischuk, 222 N.W.2d 523, 524, 532–33 (Minn. 1974), *and discussed in* MYRON ORFIELD, METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 104–55 (1997); *see also* Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1118–20, 1148 (1996) (citing DAVID RUSK, CITIES WITHOUT SUBURBS 93–94 (1993); H.V. Savitch et al., *The Regional City and Public Partnerships, in* IN THE NATIONAL INTEREST 63, 73 (Ronald Berkman et al. eds, 1992) (noting that a *voluntary* tax base sharing program in Louisville and surrounding Jefferson County had transferred $4.3 million from the county to the city during the first five years of a twelve year agreement beginning in 1986)); Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 662 (1997) (citing the Minneapolis-St. Paul region "as an example of workable, and

munities with low tax bases to solve their own problems has been demonstrated time and time again.[154] The dynamics of growth in metropolitan America has been so explosive in the past fifty years that allocation of state taxing powers through traditional local government entities has created vast mismatches between needs and resources. The resulting cancer that is spreading from urban cores to inner ring suburbs and rural enclaves on the outer rings is threatening the quality of life of entire metropolitan areas. A reallocation of some of the revenue growth from new developments in the wealthy quadrants of metropolitan areas[155] can help fund the public portion of the new development partnerships.[156]

Regional affordable housing development is possible if regional land use policies succeed in breaking down barriers to such development, and regional tax-base sharing provides seed money. A regional approach is necessary to maximize opportunities for individual households to live in stable neighborhoods near job opportunities and to foster more integrated communities.

Housing markets have become regional for middle and upper income households. Housing choices for low and moderate income and minority households in balkanized metropolitan areas tend to be limited to central cities and inner ring suburbs because of the popularity of large lot zoning and other exclusionary land use practices in wealthier suburbs.[157] These same suburbs reap extraordinary tax advantages from the movement of employment centers and regional shopping centers to their localities.[158] Creating an effective regional housing market for low and moderate income and minori-

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working, regional government").

154. *See* ANTHONY DOWNS, NEW VISIONS FOR METROPOLITAN AMERICA 45–94 (1994); John Foster-Bey, *Bridging Communities: Making the Link Between Regional Economies and Local Community Development*, 8 STAN. L. POL'Y REV. 25, 29–30 (1997); Kibel, *supra* note 133, at 596.

155. The story of the Minneapolis-St. Paul experience is told in ORFIELD, *supra* note 153, at 104–55.

156. The Minneapolis Fiscal Disparities Program allocates 40% of the increase in commercial and industrial tax valuation within the seven-county Twin Cities metropolitan area to a regional pool, which then is redistributed based on a legislative formula. *See* MINN. STAT. ANN. § 473F (West 1994 & Supp. 1999).

157. *See* J. Peter Byrne, *Are Suburbs Unconstitutional?*, 85 GEO. L.J. 2265 (1997) (reviewing CHARLES M. HAAR, SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES (1996); DAVID L. KIRP ET AL., OUR TOWN: RACE, HOUSING, AND THE SOUL OF SUBURBIA (1995)).

158. *See* Foster-Bey, *supra* note 154, at 29–30; Kibel, *supra* note 133, at 596.

ties requires a regional approach to land use and tax policies.

A regional governance structure is the last piece of the puzzle. While democratic principles of self-government may support the organization of small units of local government, their proliferation in metropolitan areas threatens to strangle efforts to improve the quality of life of their low and moderate income taxpayers. A compromise between the advocates of regional government and local home rule is a metropolitan entity capable of making land use and taxation decisions that have regional impact, but which leaves decisions of local impact to existing local governments. Examples of various approaches to this compromise can be found in Minneapolis-St. Paul, Minnesota; Louisville, Kentucky; Indianapolis, Indiana; Portland, Oregon; and Toronto, Canada.[159]

VIII. CONCLUSION

Affordable housing and neighborhood redevelopment efforts cannot succeed by themselves. Many interrelated factors such as school choices, employment opportunities, social services accessibility, and public safety affect housing and neighborhood quality. As that reality sinks in, the dimensions of the challenges posed by poor housing and distressed neighborhoods become more clear.

The answers are not likely to be found in narrowly-tailored restructuring of affordable housing mortgages and subsidies.[160] Nor are they likely to be found in delegation of housing and neighborhood development responsibilities to nonprofit organizations, although they are playing an increasingly important role. Theodore Koebel, the editor of a valuable collection of papers discussing non-

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159. *See* Paul Boudreaux, *E Pluribus Unum Urbs: An Explosion of the Potential Benefits Metropolitan Government on Efforts to Assist Poor Persons*, 5 VA. J. SOC. POL'Y & L. 471, 530–31 (1998) (describing Indianapolis as "the only recent example of metro government being imposed by state legislative action alone"); Foster-Bey, *supra* note 154, at 29–30; Nathan W. Harter, *Municipal Consolidation: Notes for the Small-Town Practitioner*, 24 URB. LAW. 761 (1992) (discussing Indianapolis); Kibel, *supra* note 133, at 613–15.

160. *See, e.g.,* Multifamily Assisted Housing Reform and Affordability Act of 1997, Pub. L. No. 105-65, §§ 510–579, 111 Stat. 1384, 1384–1423 (codified as amended at 42 U.S.C.A. § 1437f historical and statutory notes (West Supp. 1998)). The MAHRAA authorizes the bifurcation of FHA-insured mortgages on projects with expiring Section 8 subsidy contracts into performing first mortgages amortizable with market-comparable rents and nonperforming second mortgages with below-market interest rates, possibly as low as one percent. *See id.*

profit housing, *Shelter and Society*, argues that "[n]otions of substituting voluntarism and philanthropy for government funding are naive at best and intentionally deceitful and manipulative at worst."[161] The public and private sectors will need to continue to play significant roles.

Prospects for success in the new public-private partnerships illustrated by Murphy Park[162] will be enhanced if participants are persuaded to think regionally. Not every block of every neighborhood can be restored to its previous life. Market forces must be understood because they play such a key role in our economy. Market imperfections should be addressed,[163] but within the context of market choice. Because urban housing markets have become regional markets, this can best be accomplished through a regional strategy for affordable housing and neighborhood redevelopment.

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161. C. Theodore Koebel, *Nonprofit Housing: Theory, Research, and Policy, in* SHELTER AND SOCIETY, *supra* note 107, at 3, 4.

162. *See supra* notes 76–104 and accompanying text.

163. For an excellent discussion of housing market dynamics, see ROGER MONTGOMERY & DANIEL R. MANDELKER, HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 161–203 (2d ed. 1979).