
Urban Revival

The Church and Affordable Housing Development (Part I)

Stephanie M. M. Smith

Much of the writing today surrounding the issues of affordable housing development has centered on the business and legal framework of the real estate deal. Little attention has been paid to the actual organizations that have, in fact, held the vision of reviving urban communities by developing affordable housing, in which these visionary groups have a penchant for revival. They are often faith-based organizations that form a development arm as a Community Housing Development Organization (CHDO) under its 501(c)(3) nonprofit status for the intended purpose of building affordable housing.

This commentary is the first of a two-part series to explore the workings of faith-based organizations in their relation to the secular world of real estate, and the evolving role that the development attorney must play to bridge any impending gaps between the two worlds.

The first part will analyze the ontology of the church and the community at large that it serves. The second part will focus on several African-American church/business models, as they are often on the forefront of affordable housing development in urban areas. It will also examine their successes and failures from a legal perspective, and it will postulate on the church as a formidable business partner in the affordable housing equation and the evolutionary role of the development team.

Business from a Biblical Perspective

A certain amount of tension between business and Christianity seems always to have existed. St. Jerome said that "[a] merchant can seldom if ever please God."¹ St. Augustine, a fifth-century Christian bishop, wrote that "[b]usiness is in itself evil."² A Christian approach to business is not a cookbook of simplistic recipes for resolving complex business problems.³

The Christian world view is, at its very core, reality seen through the eyes of faith.⁴ Some people believe that faith is a mask that covers up a fundamental weakness.⁵ In the affordable housing development context, the nonprofit church group is held out as having little to no bargaining

position in the grand scheme of the real estate deal. In fact, private, state, and local finance groups encourage the nonprofit to joint venture with a for-profit developer, which would then be seen as the "deep pocket" partner. These funding entities are then satiated with the knowledge that the for-profit developer's experience, knowledge, and financial portfolio, coupled with the faith and commitment of the nonprofit group, make for a recipe for success.

Unfortunately, this comfort level is delusional at best if the match is not perfectly ideal. There have been many instances in which the for-profit developer fails to share the joys and pains of predevelopment concerns with its nonprofit partner. Going alone with this "knight in shining armor" mindset, the for-profit can risk being blind to various realities of the politics of a community. If not consulted early in the process, the nonprofit is unable to activate its political clout in "making things happen" if its for-profit partner is moving forward without sensitivity to the concerns with which the nonprofit group would be familiar. It is often necessary to advise the for-profit entities' counsel on how to navigate the local political system(s) for the financial interest of its for-profit client. In other words, faith without works is a dead-in-the-water project.

Is Capitalism Christian?

It is clear that every business decision today under our capitalistic structure is made within a web of influences, some of which represent or try to represent the public interest.⁶ In our system of free communication of ideas, it is not just formal law that influences business decisions, but also the informal pressures of public opinion, media scrutiny, and interest-group pressure.⁷

In the affordable housing context, the importance of political and community support is paramount to getting the project out of the jaws of the planning and development office and into the hands of a general contractor to start breaking ground. The problem, however, lies in the intrinsic zero-sum game that is played out in the capitalistic context. As the attorney, one's duty is to represent the interests of one's client. However, a client who denotes God as the shadow executive director of the nonprofit board can pose certain ethical dilemmas for the representing attorney. One might ask: "Whose values are integral to the decision-making process?" This and similar questions are not to be answered here, but are raised only as contemplative notions that usually do not come into play when representing your secular real estate client. Capitalism has long been held the great evil of the twentieth century. But, for our purposes, is it a 'necessary evil'?

Church as the Corporation

Today's metaphor for the church as corporation is a business. A business develops vision, strategic plans, goals, objectives, and performance measures.⁸

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Twenty years ago, the church generally taught that it should talk and teach as little as possible about money so as to not offend the congregation and, most importantly, God.⁹ Consequently, church groups have been loose around the edges when it comes to developing the corporate-strategic vision, implementing hard-hitting plans, and setting realistic financial goals and priorities.¹⁰

Thus, as churches have tested the waters of economic development, many have encountered rough seas. In order to set sight on smooth sails, religious-based groups must artfully construct and communicate their basic message to financial institutions because those institutions operate out of a modern corporate structure.

The creation of nonprofit corporations under the charitable purpose requirement of Section 501(c)(3) of the Internal Revenue Code (IRC) has helped to redefine the traditional notion of corporation in today's business world. However, in order to persuade the financial institutions to participate in community development, the nonprofits must maintain a business model in order to strive and thrive. In turn, corporations too must be open to fresh perspectives from their nonsecular counterparts.

The affordable housing industry has made significant attempts to strike a balance between financial profits and the interests of the public in the use of federal funding such as the Low Income Housing Tax Credit Program, HOME, and HOPE VI. For nonprofits that may relegate the profit goal to a secondary position, there is a clear challenge to be the leader in balancing the interests of business, the public, and the nonprofit itself.¹¹

In fact, most naysayers would intimate that the church's prospects for success at large-scale affordable housing development are a foolhardy dream at best. In the face of this image, the church still maintains its purported dream, which is to connect genuine economic development to wealth-creating activities and to turn that money over in the community several times, all the while building affordable housing for the community residents to combat urban blight.

The church as the corporation has embraced a can-do theology, creating within its sphere Christian visionaries who are considered the urban missionaries of today and wealth builders of tomorrow.¹²

Building Communities in Urban Blight

The noble and just causes of building affordable housing in the urban communities and serving the spiritual needs of its people go hand in hand. The connection lies in the fact that when a community is economically stabilized, a strong church culture is established and the building of God's kingdom can continue. To some, there may seem to be an impractical interplay between neighborhoods and the loftier goal of spiritual growth. In defense of this commentary's position, however, it is necessary to state that no amount of cleaning or building will make a difference in a community if the residents in that community do not experience a difference within themselves. In other words, if the residents lack hope in their future, their

children's future, and even their neighbor's children's future, a shiny new house will not erase a despondent spirit.

This notion is squarely addressed when the religious nonprofit group formulates its strategy to rebuild a blighted urban community for its continued growth and success.

Beyond "Brick and Mortar"—The Development Attorney's Dilemma

The theological perspective of affordable housing development goes far beyond the "brick and mortar" concept. It is, in essence, an evolutionary shift in creating a meaningful existence for the community at large.

One may ask what impact a theological perspective can or should have on the legal framework of the deal. If the attorney is not aware of all of the competing goals, including those of the faith-based nonprofit, then the attorney will find it hard to navigate a client through the harrowing maze of applying for low-income housing tax credits, for example. The attorney may fail to run successful interference, when necessary, between the nonprofit and for-profit partners in these complex transactions.

Overall, the attorney may not understand the language and culture of the faith-based client without the aid of an interpreter. The importance of counsel understanding the culture is akin to representing a foreign corporation and the need to understand the nuances of that culture to effectively represent the client. In other words, the client will have little to no faith in your ability to represent it and will not be forthcoming in providing imperative business information to move the deal along smoothly. In that scenario, everyone loses—the for-profit developer, the contractor, the investor, and, of course, the community.

Although this topic is rarely broached in law offices, I think our ethical duty as development attorneys is to at least address some of the differences that may exist between representing a traditional business client versus a faith-based business client. When your client looks to you to engage in the closing prayer at the end of its Board meeting, what do you do?

Conclusion

It is enough to conclude at this juncture that many of these notions fall outside the traditional boundaries of the legal framework for development work. However, a more fundamental charge is at stake here, namely, the humanistic element in the equation. Using case studies, the second part of this commentary will explore how the legal community has embraced this humanistic element in efforts that are actually building up communities, one prayer and one brick at a time.

1. RICHARD C. CHEWNING, JOHN W. EBY & SHIRLEY J. ROELS, *BUSINESS THROUGH THE EYES OF FAITH* 4 (1990).

2. *Id.* at 5.

3. *See id.*

4. *See id.*

5. *See id.*
6. *See* THE JUDEO-CHRISTIAN VISION AND THE MODERN CORPORATION 331 (Oliver F. Williams & John W. Houck eds., 1982).
7. *See id.* at 331.
8. *See* Jim Dethmer, *Moving in the Right Circles*, LEADERSHIP 87 (Fall 1992).
9. *See id.* at 88.
10. *See id.*
11. *See* THE JUDEO-CHRISTIAN VISION, *supra* note 6, at 34.
12. *See* Randy Frame, *Helping the Poor Help Themselves*, CHRISTIANITY TODAY, Feb. 3, 1997, at 71.

Heard from HUD

Mixed-Finance Section 202 and Section 811 Housing

Ruth Sparrow

On December 1, 2003, HUD issued an interim rule effective December 31, 2003, providing for mixed-finance and for-profit participation in the development and operation of Section 202 and Section 811 supportive housing for the elderly and persons with disabilities.¹ The interim rule implements changes made to these programs by the American Homeownership and Economic Opportunity Act of 2000 (the Act).² The intent of the mixed-finance program is to leverage the expertise of the private developer community and private capital in order to increase the development of attractive and affordable housing for the elderly and persons with disabilities. The interim rule is structured to allow the use of low-income housing tax credits (LIHTC) with Section 202 and 811 assistance, subject to resolution of certain issues discussed below. Existing Section 202 and 811 regulations apply to the mixed-finance program to the extent not revised by the interim rule.

Under Sections 202 and 811, HUD provides capital advances and rental assistance for supportive housing for very low-income elderly and disabled persons, subject to a forty-year use restriction. The Act provides for the ownership of Section 202 and Section 811 housing by for-profit limited partnerships with a single-purpose nonprofit organization as the sole general partner.

Single-Purpose Nonprofit Organization

The single-purpose nonprofit organization is formed by the sponsor,³ a nonprofit entity, that has received a fund reservation under Section 202 or 811. The single-purpose nonprofit is required to be tax-exempt under either Section 501(c)(3) or (4) of the Internal Revenue Code (IRC) for Section 202 projects and must be tax-exempt under Section 501(c)(3) with respect to Section 811 projects.⁴ It has been more difficult recently to obtain Section 501(c)(3) tax exemptions for general partners of tax credit partnerships. The Treasury Department is anticipated to issue guidance in 2004 that should facilitate the process. Until such guidance is issued, it is important to take

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found that the leading cause of both hunger and homelessness was the high cost of housing or the lack of affordable housing.

V. Mayors' Housing Push Will Continue

With the close of the 108th Congress at hand, any new housing programs this session are unlikely. The Sanders National Housing Trust Fund bill continues to gather support, but there is no movement in Congress on the legislation at this time. Senator Jack Reed (D-RI) is working on a housing production program that could get some action, but certainly not before the 109th Congress.

Until then, activity will continue in the area where mayors have fared best: fighting proposals that would be detrimental to housing and community development. Public housing is being constantly challenged with respect to operating subsidies and capital funding. Proponents of Section 8 housing choice vouchers must beat back another unfortunate administration proposal again this year that underfunds the program and that would ultimately cut off those who most need assistance. The mayors' CDBG program is also under attack. A Senate budget resolution would cut \$2.4 billion out of the function in which the CDBG program is funded. The cut appears to be aimed directly at CDBGs.

The mayors will be up to the challenge of fighting these threats as they have in the past. There is little doubt that the U.S. Conference of Mayors will continue to press for more housing production in the United States until affordable housing for all of those who need it is available.

1. A complete copy of the report is posted on the website of the U.S. Conference of Mayors at www.usmayors.org/uscm/us_mayor_newspaper/documents/06_03_02/housing_agenda.asp (last visited Mar. 7, 2004).

2. Press Release, Fannie Mae Foundation, Lack of Affordable Homes Rivals Health Care as a Problem for Working Americans (June 16, 2002), available at www.fanniemaefoundation.org/news/pr/2002spr/020616.shtml (last visited Mar. 7, 2004).

3. The latest survey on hunger and homelessness from the U.S. Conference of Mayors can be found at Press Release, U.S. Conference of Mayors, Hunger, Homelessness Still on the Rise in Major U.S. Cities; 25-City Survey Finds Unemployment, Lack of Affordable Housing Account for Increased Needs (Dec. 18, 2003), available at www.usmayors.org/uscm/news/press_releases/documents/hunger_121803.asp (last visited Mar. 7, 2004).

Urban Revival

The Church and Affordable Housing Development (Part II)

Stephanie M. M. Smith

This is the second part in a two-part series to analyze the Christian church's role in affordable housing. The first part analyzed the ontology of the church and the community-at-large that it serves.

This commentary will highlight the mission of the church from dawn until now; examine successes and failures of some African-American church/business models from a legal perspective; and postulate on the church as a formidable business partner in the affordable housing equation and the evolutionary role of the development team.

The Mission

From the time of the earliest Christian communities, the church has always shown a preference for the poor, the needy, and the outcast of society in its social and charitable works.¹ In recent years, the growing presence of the homeless has galvanized the church to take action. The church has formulated this idea on the premise that "the needs of the homeless [are] within the spirit of the 'works of mercy' on the basis of which we will be judged by Christ, the Lord."² This social doctrine has long been rooted in the traditions of Christian socialization and has evolved to meet the economic and social needs of the community. In fact, organized religion has played a part in community development from the outset of the 1960s as a strategy in the war on poverty.³

During the latter part of the twentieth century, the needs of the community had expanded to include providing affordable housing to the homeless and the working poor. These groups were overfilling the homeless shelters. Thus, the church had convinced herself that by following the path of social justice and by overcoming various egoisms, substantial progress could be made in solving the housing crisis.⁴ Thus, the church relied upon time-tested biblical scriptures to identify and access the housing needs of the community-at-large, which has helped to shape the affordable housing context as it is known today.

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The Nehemiah Model

Then said I unto them, Ye see the distress that we are in, how Jerusalem lieth waste, and the gates thereof are burned with fire: come, and let us build up the wall of Jerusalem, that we be no more a reproach. [omit] And they said, Let us rise up and build. So they strengthened their hands for this good work.—NEHEMIAH 2:17–18.

The church has framed community-based housing development on the prophet Nehemiah's response to the call for community development as told in the Old Testament book bearing his name. It provides an excellent example of a compassionate faith leader's historic call for community development.

The Nehemiah model for Christian missions provides a comprehensive approach to world evangelism based upon a holistic ministry to human needs.

The model integrates the physical with the spiritual, the idealistic with the realistic, and the individual with the communal. The model confronts human hurts (felt needs) and advocates pragmatic solutions (real needs). The model places considerable demands upon the missionary, as an agent of change, to relate to the total situation: economic, social, political, and religious. It also places considerable demands upon the local people: to address local problems, mobilize local resources, seek local solutions, and modify local customs.⁵

According to the Nehemiah model, Christian mission becomes an endeavor in "community development" to assist and encourage local communities to solve their own problems and to care for other people.⁶ The Christian message becomes an endeavor in "cultural revitalization" to infuse specific Christian beliefs into local community belief systems to inspire the people with a new purpose for living.⁷

A comprehensive framework for a faith-based community development project is illustrated through six key principles:

1. Assessment of the Need;
2. Personalization of the Need;
3. Dependence Upon God for Help to Meet the Need;
4. Presentation of the Plan to Meet the Need;
5. Acquisition of the Resources to Meet the Need; and
6. Action Sufficient to Meet the Need.⁸

The first five principles are to ensure from a theoretical perspective successful housing development if followed accordingly. The last principle is to ensure from a practical perspective that the church will move on the "call" to actually build the development team to fortify the housing development process.

The Development Process

A church can play many important roles in the development process. Many churches that begin by playing an advocacy/facilitator role, through

involvement and experience may eventually set up a nonprofit corporation and become a developer. However, becoming a developer may not be the best option for every organization because the process involves high risk and generally requires a lot of expertise, time, and resources.

The different roles that a church can play through its outreach ministry are as varied as the projects they select:

- Advocate
- Sponsor
- Land developer
- Joint venture partner
- Single-family developer
- Multifamily developer
- Investor
- Lender
- Project manager
- Home buyer counselor
- Property manager

Problems do arise, however, when the church decides to overlap its roles without adequate expertise or the manpower in place to implement responsibilities and duties under the roles selected. This in turn could lead to inevitable foreclosure of the project before the church even signs its first contractual agreement.

Thus, the church can and should choose different roles for different projects on a case-by-case basis and the level of expertise that the church can actually achieve. These considerations include:

- Capital requirements;
- Risks involved;
- Expertise and specialized skills needed;
- Time to complete projects;
- Impact on the community; and
- Amount of control of the project and process.

If the church fails to assemble a development team that is diverse, committed, and able to provide expertise in a wide range of technical disciplines and access to the community and resources, the church will not accomplish its mission.

The Model Examples

In my quest to provide an authentic voice of faith-based development organizations, I spoke with several leaders of African-American faith-based organizations in Detroit, Michigan, that have successfully stayed in the affordable housing game. Detroit is unique in comparison to other major cities as the population consists of approximately 95 percent African-Americans, with over 90 percent of the current housing development slated for very low- to low-moderate income resident households.

Names used in these examples are fictitious and the characters are designed to present an amalgamation of persons.

"They knocked on my door"

Janet Miller is not only a board member of Inter-Faith Building Group, but a long-time resident of the community in which the group has substantially rehabbed homes for the past fifteen years. Janet gave an emotional testament about her experience as a home owner who was about to lose her house to outstanding taxes, unbeknown to her, until the group knocked on her door.

The knock on her door was part of the group's "porch patrol" mission to get a consensus from the neighbors as to how to improve the neighborhood. Janet indicated that rapid deterioration was taking place, and that the community was shifting from home owners to renters. In particular, for-profit groups were offering seniors to buy their homes at little to no market value, and thereafter failing to substantially rehab the homes, thereby creating a blighted area.

The group, a consortium of many churches, decided to take action and form a coalition of sorts to start the process of substantially rehabbing the homes in the neighborhood. Janet's home was one of them, including the efforts to pay down her taxes so that she would not lose her house. Some added benefits, according to Janet, were that she rededicated herself to her faith and became quickly involved in the community development process. Janet has intimated that the group changed her life for the better starting with just a knock on the door.

"Perception Is Everything"

Ed Jones is a housing specialist for the Catholic Alliance, which is an organization dedicated to rebuilding the surrounding community via new construction and substantial rehabilitation of existing homes. The Alliance has been perceived as the nonprofit with a lot of equity built into its organization because it is Catholic. This widespread perception is indigenous to a Catholic organization since it may be considered funded through the Vatican or local archdiocese.

The Alliance has been successful in assembling a development team that mirrors a for-profit organization. Yet it has successfully marketed its organization as one that needs the same financial support in number as does a novice nonprofit. With above-average expertise and well-thought-out considerations for each individual project, Alliance has been able to meet successfully its construction projection of new homes for the past ten years. Due to its success rate, Alliance will enter into the mixed-use arena adding office and retail space, and entertainment arenas in its existing residential base. Alliance is continually brainstorming efforts to build a community to live, work, and play.

The Moral Dilemma

The mainstay behind the philosophy of faith-based organizations, as expected, is to build up the kingdom of God. The question arises as to

whether building up the kingdom of God should be part and parcel of building affordable housing.

The two models presented here are diametrically opposed in the approach to community development. In the first model, Janet Miller found God, if you will, via the "knock on the door." Ms. Miller has indicated that the mission of the group is not only to provide decent and safe affordable housing, but spiritual habitation as well. The group is representative of a minority of faith-based organizations that are vocal and clear about the mission of "spreading the Word," wherever they can possibly do so.

According to Ed Jones, however, the Alliance is loud and clear that one's religious affiliation is not a requirement to be approved as a resident under its affordable housing program. Alliance represents the majority of faith-based organizations that do not want to be looked upon as a proselytizing group lying in wait to catch its prey. In other words, buyers and renters within the development project are not mandated to go to church on Sunday.

Like a Good Neighbor . . .

"The Church must be concerned with being the 'good neighbor if it is to maintain long-standing support from the community,'" stated Dr. David J. Frenchak, president of the Seminary Consortium for Urban Pastoral Education (SCUPE), located in Chicago.⁹ Dr. Frenchak has been educating urban ministry groups since 1975 to collaborate community development efforts with the residents who make up the community.

The Church can no longer act as a go-it-alone institution if it wants to successfully involve the community in urban redevelopment. Thirty or so years ago, the focus of the church was to only service the community, such as feed the poor, cloth the homeless, etc. It has been quoted, "either you can give a man a piece of bread or teach him how to bake bread."

The shift now resides in how the church empowers community members to feed and clothe themselves. For a faith-based organization to harness success in any community development efforts, empowerment starts from within. There must have existed present involvement in the community in which it seeks to build, creating trust and profound working relations with the residents who are to be empowered.

Closing Thoughts

In reflecting on my professional experiences in representing and/or collaborating with faith-based organizations to rebuild communities for the past five years, I have had rewards coupled with heartaches in navigating a faith-based organization to steer away from the engulfing waves and head to shore. The major problems encountered have been to maintain sensitivities to the vision set by these groups, and to the communities these organizations seek to serve while teetering that with representing the faith-based client to the world as a serious real estate player.

The attorney in essence is often placed in the position of being the naysayer, constantly providing the realistic framework in which to work to

maintain one's faith-based client's position to the lenders, for-profit developers, and others. There are times board members oppose the no nonsense, nuts and bolts legal approach as being negative, and, I think, in some respects, not-godly. An attorney must present information to the faith-based client in a more deliberate manner to these clients than one would, for example, to a commercial real estate client.

It is not necessary to agree with or convert to some of the implications that have been set forth here in order to successfully represent one's client. But the fabric of a working relationship with a client is trust. Lack of trust prohibits open communication between the attorney and the client, which sets the stage for misrepresenting the client's interests at the forefront.

My goal here is to invite the attorney to understand the paradigm shifts that are presented when one represents a faith-based client in this evolving area of affordable housing development. No longer is the attorney expected to only understand the legal framework of the deal. But the attorney must also be knowledgeable about the politics, the communities, the religious tenets, and ethnic diversities of the clients represented in order to make the deal work effectively.

The last comment made in the first part of the commentary was that faith-based organizations are building communities one brick and one prayer at a time. To expand that notion, these organizations are meeting the task of molding the bricks and mortar to shape the values, ethos, and the nature of human existence in the pulpit and in the street.

The attempt here has been to show real estate development attorneys that our fixed variable status in the affordable housing equation makes for a formula that works. It is all the more important for us to be an integral part of the development team to make sure the legal framework of the deal has not been compromised while assisting in building and sustaining decent, safe affordable housing for families to live and thrive.

1. *What Have You Done to Your Homeless Brother? The Church and the Housing Problem*, Document of the Pontifical Commission "Iustitia Et Pax" On the Occasion of the International Year of Shelter for the Homeless, Vatican City 1 (1987).

2. *Id.* at 3.

3. Elliot Wright, *Partnerships Spark Revitalized Neighborhoods*, 5 PROGRESSIONS 1 (1995).

4. Kenneth Tollefson, *The Nehemiah Model for Christian Missions*, 15 MISIOLOGY 31 (1987).

5. *Id.* at 31.

6. *Id.*

7. College of Biblical Studies—Houston, *Faith-Based Community Development Center, Faith-Based Affordable Housing Development and Finance Resource Guide 2*.

8. *Id.* at 2–4.

9. Telephone interview March 10, 2004.



FROM THE READING ROOM

The Art and Science of Community Economic Development

Robert O. Zdenek

The Community Economic Development Handbook: Strategies and Tools to Revitalize Your Neighborhood by Mihailo Temali
Amherst H. Wilder Foundation (2002) (www.wilder.org)
288 pp. \$35 (paperback)

As a community economic development professional for the past twenty-five years, I have always wanted a "one-stop" guidebook on strategies and tools for community economic development. *The Community Economic Development Handbook* fills an important void for practitioners, technical support providers, and funders. Temali draws upon a vast body of practice and knowledge, including commercial revitalization, micro-enterprise, workforce development, and growing good neighborhood jobs. Valuable charts and quotes from the field are interspersed with data and information sources. In addition to an appendix on Internet research and the local metropolitan economy, the book provides thirty helpful worksheets on such topics as talking to business owners, surveying a commercial district, and assessing neighborhood conditions.

The book's primary audience appears to be newly formed community-based development organizations and established CDCs in the process of expanding from housing to economic development. However, the real crux of the book is picking what Temali calls "a pivot point strategy" to start or expand economic development. According to Temali, selection of a pivot point should be based on an assessment of whether the strategy significantly improves the local economy and whether the organization can succeed by using its current resources and by taking advantage of opportunities on the horizon.

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