

AN EXAMINATION OF THE HISTORY OF AFFORDABLE HOUSING WITH AN
EMPHASIS ON PRESERVATION THROUGH THE COMMUNITY LAND TRUST
MODEL

by

HEATHER MICHELLE BENHAM

(Under the Direction of John C. Waters)

ABSTRACT

This thesis examines the history of affordable housing. From this history it derives a list of possible solutions to the affordable housing crisis, and then focuses on the best possible solution, the community land trust model. Community land trusts are examined through their history, successes, weaknesses, and possibilities.

INDEX WORDS: Community land trusts, Affordable housing, Historic preservation

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CHAPTER 1

INTRODUCTION

This thesis began at the Salvation Army Homeless Shelter in Athens during the Fall semester of 2001. While working there for a class, I met a family that lived in the shelter for over 4 months while they looked for housing. A single mother working full-time was unable to pay more than \$350 a month for housing for herself and her two daughters. The private market had no answers for her, while the public market had a nine-month waiting list. Watching this family struggle while working so hard to get out of the shelter opened my eyes to the lack of affordable housing in Athens. With a little research I began to see that the lack of affordable housing was not limited to Athens, but that it was a problem throughout the country.

From my research I learned about a newer model in the affordable housing arena that combines a number of positive ideologies into its affordable housing program. The model is the community land trust model and the ideologies include a focus on homeownership opportunities, smart growth, a grass roots/community driven base, and an emphasis on historic preservation. My interest in the model led to an internship with a community land trust in the summer of 2002. While working at the land trust, rehabilitating two historic homes into affordable housing, I began to see the realities of the model. The

most glaring weakness that presented itself was a lack of funding and particularly a lack of diverse funding. With this in mind, I have tried to propose several avenues of funding that a community land trust should investigate when developing their affordable housing program.

The information laid out in this thesis is beneficial not only to community land trusts. Any affordable housing program can apply the tools and lessons learned. The tools and models used by community land trusts are flexible in that any affordable housing group could gain long-term affordability by applying them to their activities. Perhaps the best avenue to ending the affordable housing shortage is for all programs to continue with the benefit of incorporating the strongest parts of other programs into their own. With this said, many affordable housing programs would benefit from gleaning the practices of the community land trust model and applying it to their own.

CHAPTER 2

HISTORY OF AFFORDABLE HOUSING IN AMERICA

This chapter examines the lessons of the past to draw conclusions about the possibilities of the future. An understanding of how the affordable housing situation has developed is crucial in understanding why and how we should try to solve it. Many simply believe that only the lazy are unable to find adequate housing, but the history of public policy behind housing in the United States will show otherwise. In the past the government has subsidized home ownership for some, while relegating others to the role of renters.

An Overview

At least 750,000 people are homeless on any given night in America.¹ There is a short supply of affordable housing in the United States. Although the federal government has been trying to provide affordable housing in one capacity or another since the 1930s, they have found very little success. To qualify as “affordable,” housing must cost a family no more than thirty percent of their income, however one in seven families is currently paying more than fifty

¹ Mbulu, Dan Nnamdi. “Affordable Housing: How Effective Are Existing Federal Laws in Addressing the Housing Needs of Lower Income Families?” 8 Am. U.J. Gender Soc. Pol’y & L. 387 (2000). 389.

percent of their income to rent or is living in inadequate quarters.² While there are over a million families on waiting lists to get into public housing or to receive subsidies to afford housing, the government is worsening the situation by demolishing the public housing stock at a much faster rate than it is replenishing it.³ Not only are government public housing units being taken from the market, the supply of private affordable housing is also diminishing.⁴

The number of housing units affordable to extremely low-income households, those making below thirty percent of the median income, has decreased by more than 370,000 units since 1991.⁵ The office of Housing and Urban Development estimates that there are 8.87 million families making below thirty percent of the median income.⁶ They also estimate that of the fifteen million families that are eligible for housing assistance, only three million are receiving it.⁷ Studies by the National Low Income Housing Coalition show that the average wage required to afford housing at fair market rent, while paying no more than thirty percent of the family income to rent, would be \$12.47 an hour.⁸

² Siegesmund, Kristin. "The Looming Subsidized Housing Crisis," 27 Wm. Mitchell L. Rev 1123 (2000). 1125.

³ Amman, John J. "Housing Out the Poor," 19 St. Louis U. Pub. L. Rev. 309 (2000). 310.

⁴ Ibid.

⁵ Amman, 311.

⁶ Ibid.

⁷ Mbulu, 389.

⁸ Amman, 311.

Needing income over twice minimum wage to afford housing, it is easy to see why so many Americans are on waiting lists for public housing. But they should be prepared to wait, the average waiting list for public housing is eleven months.⁹ However, in New York, where a family would have to work 123 hours a week if they were on a minimum wage salary to afford housing, they would be waiting for eight years to get into public housing.¹⁰ As a result of these statistics, much of America is experiencing a dramatic increase in the number of people living in temporary housing, i.e. emergency shelters and transitional housing. In the Detroit metropolitan area from 1987 to 1999, the number of people living in temporary housing more than tripled.¹¹

Currently, the government's attempt to cure the problem of affordable housing is not working. This thesis will examine what the government has tried in the past, what they have done away with, and what options are on the horizon to solve the problem. It will then look specifically at the community land trust model and the programs, both public and private, with which it should consider as a part of or a partner to its program.

⁹ Ibid.

¹⁰ Amman, 311.

¹¹ Siegesmund, 1126.

1900-1930

The first national housing movement was brought about because of concern over immigrant-occupied slums in the larger cities during the early 1900s.¹² The New York Tenement House Law of 1901 was one result from this concern. The law was the work of Lawrence Veiller, the founder of the Tenement House Committee and later the National Housing Association (NHA), who focused his reform measures on specialization and scientific methods so that housing reform was actually dwelling improvements.¹³ The tenement code was different from building codes in that it focused on living conditions rather than the construction of the building.¹⁴ The 1901 law required more windows, better bathroom facilities, fire escapes, and lighting for dark hallways.¹⁵ A common belief held at this time was that "a large part of the present poverty and crime was caused primarily by bad housing."¹⁶ Thanks in part to this belief and the publicity campaign around New York's accomplishments, other urban areas began to follow suite.

¹² Fairbanks, Robert B. "From Better Dwellings to Better Neighborhoods: The Rise and Fall of the First National Housing Movement." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 21.

¹³ Fairbanks, 21.

¹⁴ Fairbanks, 26.

¹⁵ Ibid.

The national momentum led to Veiller's establishment of the National Housing Association in 1910.¹⁷ The NHA was the organization that advocated for change in this area of the law. Their purpose was "to improve housing conditions, both urban and suburban, in every practicable way."¹⁸ One way in which they planned to meet this goal was by aiding "in the enactment and enforcement of laws that [would]: (a) prevent the erection of unfit types of dwellings; (b) encourage the erection of proper ones; (c) secure their proper maintenance and management; (d) bring about a reasonable and practicable improvement of older buildings; (e) secure reasonable, scientific and economic building laws."¹⁹ For the next twenty-five years the NHA served as a public forum for housing concerns. Although the focus shifted over the years from the needs of the poor to what constitutes good housing in general, a shift that was an early indicator of what was to come, the NHA did much to publicize the need for better public housing. In 1936, Vieller disbanded the NHA and turned over its files and library on housing to the entity established by President Franklin Roosevelt, the Central Housing Committee.²⁰

¹⁶ Fairbanks, 29.

¹⁷ Fairbanks, 32.

¹⁸ Ibid.

¹⁹ Fairbanks, 33.

²⁰ Fairbanks, 39.

1930-1950

By the time the NHA disbanded, the National Industrial Recovery Act that established the Public Works Administration (PWA) had been passed, as well as the National Housing Act of 1934, which created the Federal Housing Act (FHA). The work of the NHA coupled with the Depression pushed the government into the arena of public housing.

Legislation passed in the 1930s directed at housing reflected the two-tiered housing policy that the government was formulating. The top tier consisted of mortgage insurance and other governmental subsidies providing low-cost capital to producers and consumers of market supplied housing. The bottom tier was composed of the Wagner Act, which was also known as the United States Housing Act that was signed into law in 1937.²¹ The act was initially intended to ensure progress in terms of slum clearance, providing housing for the poor, and promoting industrial recovery. Vocal opposition, composed of the National Association of Real Estate Boards, the U.S. Building and Loan League, and the National Retail Lumber Dealers Association, protested the concept of the government entering into the housing market.²² If the government created housing that appealed to a large portion of society then

²¹ Radford, Gail. "The Federal Government and Housing Program During the Great Depression." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 117.

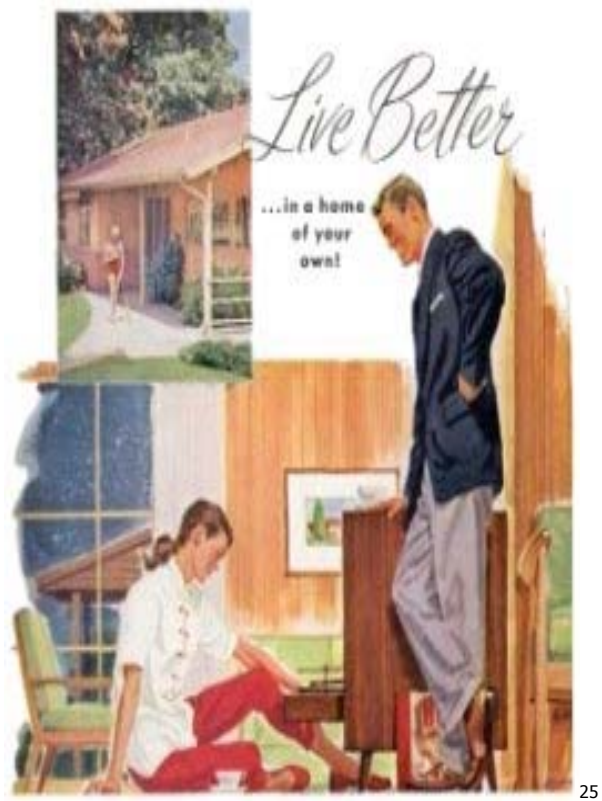
²² Radford, 109.

they would be facing new competition. The housing industry was successful in their opposition and changes were made to the Act that limited its scope only to the poor. Thus the Act made certain that those with other means would not be interested in government housing options. Not only did the housing industry limit the scope of the public housing program, they were able to ensure a boom to their industry. Coming out of the Depression, real estate investors were far more influential than modern housing activists; as a result the programs that helped the private home market received more support monetarily than those programs focused on public housing.²³ The result of this has been long lasting, especially to racial minorities. Because the upper-tiered programs were racially discriminatory, minorities were forced to remain tenants and lose out on the equity that was being gained by white home-owners.

During World War II the need for housing grew and the government continued to help only in ways that would not upset the private market, which was to the detriment of the lower classes. More workers migrated to urban areas to work in the defense industries, and therefore more housing was needed in the cities.²⁴ Since it was wartime, the government was able to build housing for defense workers with little opposition. To placate potential opposition, the

²³ Radford, 117.

²⁴ Szylvian, Kristin M. "The Federal Housing Program During World War II." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 121.



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FIGURE 1

HOME-OWNERSHIP OPPORTUNITIES FOR WHITE FAMILIES WERE BEING
SUBSIDIZED BY THE GOVERNMENT

²⁵ Source: www.columbia.edu/.../call-it-home/html/chapter6.2.html

government built temporary housing that was meant to be torn down at the end of the war. Of the over 700,000 structures that were built as defense worker housing, 87% had been destroyed by 1955.²⁶

1950-1970

After the war the severe housing shortage led to the 1949 housing law. Title II of the law established a national housing policy for a “decent home in a decent environment for every American.”²⁷ To get to this goal, Congress set aside \$1.5 billion to help local governments clear and redevelop city slums. However, in keeping with their two-tiered policy, they dwarfed this figure by appropriating \$13 billion in federal mortgage guarantees.²⁸ It was in large part the structure of this law, and the corresponding funding, that allowed public housing to survive the charges of communism that were being thrown at it in the early 1950s.

Public housing was able to continue as a public policy because of its pairing with urban renewal. The platform gained more momentum when it was

²⁶ Szylvian, 132.

²⁷ Biles, Roger. “Public Housing and the Postwar Urban Renaissance, 1949-1973.” From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 139.

²⁸ Biles, 140.



FIGURE 2

TEXAS' FIRST PUBLIC HOUSING PROJECT BUILT IN 1933

²⁹ source: <http://www.texashousing.org/txlihis/phdebate/past3.html>



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FIGURE 3

GOVERNMENT HOUSING PROJECT FROM LATE 1940S IN HANFORD,
WASHINGTON

³⁰ source: <http://www.hanford.gov/doe/culres/photos/601-NEG.JPG>.



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FIGURE 4

PRUITT-IGOE HOUSING PROJECT IN ST. LOUIS TYPIFIED GOVERNMENT'S CONTRIBUTION TO AFFORDABLE HOUSING SHORTAGE FOR LOW-INCOME DURING THE 1950S AND 1960S IN THE NAME OF URBAN REVITALIZATION

³¹ Source: www.theo.tu-cottbus.de/.../971/schlueter/schlueter_t.html.



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FIGURE 5

16 YEARS LATER THE DEMOLITION OF PRUITT-IGOE IN 1972

³² source: www.laputan.org/mud/

used as a place to house families left without anywhere to live because their homes had been demolished to expand a hospital, university, downtown mall, or more and more often a highway, all in the name of urban renewal.³³ What came to replace the slums were the projects. Far fewer in number than what they replaced and lacking much of the character needed to form a community, most of these projects would come to be seen as slums in less than twenty years. By 1972, Saint Louis was already demolishing the Pruitt-Igoe housing project that had been built in 1956.³⁴ While the urban renewal program was linked to public housing, it was the urban renewal that was winning out. From 1949 until 1968, 425,000 urban housing units were demolished while only 125,000 were built to replace them. Most of what had been torn down was lower income housing, while most of the replacements were luxury apartments.³⁵

The Racial Component

Both tiers of the policy on housing perpetuated racial divisions. The upper tier of low-interest mortgages and other governmental subsidies to homeowners discriminated against African-Americans, while the lower tier targeted areas that were predominately African-American to demolish housing, churches,

³³ Ibid.

³⁴ Hoffman, Alexander von. "Why They Built Pruitt-Igoe." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 180.

³⁵ Biles, 153.

and businesses in the name of urban renewal. Between 1945 and 1959, African-Americans received fewer than two percent of all the federally insured home loans.³⁶ Although Shelley v. Kraemer rendered racially restrictive covenants unenforceable in 1949, the FHA continued to issue mortgage insurance to properties bound by these covenants.

With the decision of Brown v. Board of Education in 1954, the government's treatment of the races within the housing policy was re-examined. The agency released a statement calling for "all multifamily residential projects and related facilities developed through federal subsidies, insurance, or other such powers to be rented or sold to families without regard to race, religion, national origin, or political affiliation."³⁷ It was not until 1961 that President John Kennedy issued Executive Order 11063, finally outlawing segregation in all federally built and subsidized housing.³⁸

In 1965, President Lyndon Johnson created the Department of Housing and Urban Development (HUD) to aggressively pursue the privatization of public

³⁶ Hanchett, "The Other 'Subsidized Housing': Federal Aid to Suburbanization, 1940s-1960s." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 166.

³⁷ Hirsch, Arnold. "Choosing Segregation: Federal Housing Policy Between *Shelley* and *Brown*." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 218.

³⁸ Biles, 140.

housing begun during Kennedy's administration.³⁹ Under Kennedy, the public housing focus had been shifted from low-income families to elderly people. To involve the private market in the process, the Housing and Home Finance Agency introduced below-market interest rates to developers who built housing for low to moderate income families.⁴⁰ Johnson also moved forward in the area by appointing Robert Weaver, an African-American, to head the agency. In part because of the new voice in the system, HUD did a study of the impact of the new highways in New Jersey. They found that minorities made up eighty-five percent of the families displaced by the construction, and to house the residents of the 3,000 low-income units that were destroyed the government had built 100 low-income units.⁴¹ These same type of statistics were occurring in cities across America throughout the 1950s and 1960s.⁴²

As the government began to acknowledge the problems it had created by destroying large pockets of low-income urban housing, it began to push to build more public housing to fill the void. It did this with limitations. The Brooke Amendment to the Wagner Act ensured that government building programs would not develop a wide appeal. The amendment put a \$5,000 cap on what

³⁹ Ibid.

⁴⁰ Biles, 140.

⁴¹ Mohl, Raymond A. "Planned Destruction: The Interstates and Central City Housing." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 239.

⁴² Ibid.

could be spent to build each unit of housing.⁴³ The result was housing that was built often was poorly designed and underfunded. The housing generally took the form of high-rise structures that served to isolate the low-income community from the surrounding community.⁴⁴ The problem was that as cities continued to spread out new job sources were being built in the suburbs, but housing projects remained in the urban downtown away from the work. This situation made it more difficult for the poor to acquire the jobs needed to improve their living situations.⁴⁵ These high-rises isolated in urban city-centers were the projects that became the image of public housing.

The Modern Era of Public Housing

Carter came into office in 1976 pushing for the private market to take over the public housing arena. First the administration, led by Patricia Harris who was Carter's pick Secretary of Housing and Urban Development, implemented the programs that had been put into place but not used during Ford's time in office. To help urban communities become more economically stable Harris used HUD to facilitate programs like Section 8, Community Development Block Grants, below-market interest rates on mortgage loans, and

⁴³ Radford, 111.

⁴⁴ FitzPatrick, Michael S. "A Disaster in Every Generation: An Analysis of HOPE VI: HUD's Newest Big Budget Development Plan." 7 *Geo. J. Poverty Law & Pol'y* 421 (2000). 431.

⁴⁵ Schill, Michael H. "Distressed Public Housing: Where Do We Go From Here?"

tax incentives to encourage business investment, to increase the stock of safe housing, and to create jobs.⁴⁶ The Section 8 program, introduced in 1970, played a large role in shifting the responsibility for low-income housing to the private market.⁴⁷ The program has private owners contract with HUD to make some or all the rental units affordable. This is done by the owner agreeing to charge Fair Market Rate rents, typically set at the 40th percentile of area rents. The tenant will pay a monthly rent equal to 30% of their income and the government will pay what is needed to supplement with an additional amount to equal the Fair Market Rate.⁴⁸ The government administers its portion of the rent directly to the property owner.⁴⁹

The program has two types of subsidies. One is given to private developers who were building new or rehabilitating existing private housing if they agreed to set aside a portion of it for lower-income residents, and the other is a subsidy in the form of tenant-based vouchers.⁵⁰ Families can apply for the Section 8 program and if they are qualified they receive a voucher that will

60 U. Chi. L. Rev. 497 (1993). 514.

⁴⁶ Bauman, John F. "Jimmy Carter, Patricia Roberts Harris, and Housing Policy in the Age of Limits." From Tenements to the Taylor Homes. Ed. Bauman, John F., Roger Biles, and Kristin M. Szylvian. University Park, PA: Pennsylvania State University Press, 2000. 253.

⁴⁷ Ibid.

⁴⁸ Siegesmund, 1129.

⁴⁹ Mbulu, 398.

⁵⁰ FitzPatrick, 431.

subsidize their rent.⁵¹ For the private owners of rental property, the government originally entered into fifteen year contracts, but recently has limited the contracts to three and five year contracts, and currently is only entering into one year contracts.⁵²

During Carter's Administration over 300,000 Section 8 vouchers were being issued annually.⁵³ The Community Block Development Grants, government grants, and generous tax breaks to those opening new neighborhood businesses, refurbishing older homes, and cleaning up urban neighborhoods all helped urban revitalization. However, as a result the families that it was meant to help often could no longer afford to live in the gentrified area that had long been their neighborhood.⁵⁴

The Section 8 vouchers that were coming to be the main source of relief for those needing affordable housing saw dramatic cutbacks when Reagan came into office. It was not until 1992, that Congress issued a report of the failures of the public housing system. The result of this report was the Urban Revitalization Demonstration project, which came to be known as the HOPE Program.⁵⁵ The

⁵¹ FitzPatrick, 432.

⁵² Krzewinski, Lisa M. "Book Review: Section 8's Failure to Integrate: The Interaction of Class-Based and Racial Discrimination: As Long As They Don't Move Next Door. By Stephen Grant Meyer." 21 B.C. Third World L.J. 315 (2001). 317.

⁵³ Salsich, 44.

⁵⁴ Bauman, 251.

⁵⁵ FitzPatrick, 435.

goal of HOPE was to rehabilitate the worst public housing facilities and transform it into mixed-income housing, but much like the urban revitalization of the 1960s, many low income units were destroyed only to be replaced by a few.⁵⁶ The purpose behind this was to attract private financiers and creating developments with heterogeneous residents from different economic groups.⁵⁷ Some of the residences are available for ownership while others are low-income subsidized units. The hope was that the program would create stable communities and help residents to become self-sufficient so that they can eventually leave subsidized housing.⁵⁸ However, the HOPE Program suffered from many of the same problems that have long plagued public housing. The largest problem was that the lower density that the government is encouraging is not helping with the severe shortage of affordable housing. In the program's first year of operation, 1992, of the 5,000 units of affordable housing that were razed only half of the residents were able to return to the replacement developments.⁵⁹ Similar results in the following years led to criticisms and of a shift in policy in the White House, which resulted in the HOPE Program being cut

⁵⁶ FitzPatrick, 423.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ http://www.housingresearch.org/hrf/hrf_News.nsf/ea83fb17e8038680852569d0000d00b6/5103c04e4f5a07cf852569d00010e8a1?OpenDocument

in January 2003. This action and the continued reduction in the Section 8 voucher program are evidence of the government's reluctance to serve as a provider of affordable housing.

CHAPTER 3

A VARIETY OF PROGRAMS TO ALLEVIATE THE SHORTAGE OF AFFORDABLE HOUSING

As the system continues to struggle, what are programs available to provide affordable housing? Individual Development Accounts, Community Development Corporations, and Low-Income Housing Tax Credits have all been suggested as possible solutions to the shortage of affordable housing. Currently, the most effective programs are grass roots organizations that best understand the local issues like culture and transportation, often struggle for funding despite the proven effectiveness of their work. Both Habitat for Humanity and Community Land Trusts fall into this category. The innovative formula used by Community Land Trusts along with their attention to the importance of infill, and therefore often historic housing, gives them the potential for unbridled success if they are able to secure the needed funding. However, as the government has stepped out of the role of provider in the realm of affordable housing it has not shifted its money to the grassroots organizations, but rather to quasi-governmental agencies who determine how the money is to be divided. The following will examine the relationship between government run programs and the grassroots organizations that seek out funding from the government.

Section 8 Program

The Section 8 program, while funded by the government, is becoming a minor player in the search for affordable housing. From 1999 to 2004, two-thirds of all project-based Section 8 contracts will expire.⁶⁰ Many owners are choosing not to renew their contracts because they are able to get more for the rentals on the fair market.⁶¹ Since the contracts are only renewed yearly, many Section 8 tenants cannot count on having housing from one year to the next. The estimated cost of renewing Section 8 contracts for the fiscal year 2002 is \$10.5 billion because of this Congress has put a limit on the number of vouchers that are available.⁶²

To remedy the problems with the Section 8 program, the government would need to aid in reliability and to cut down on the program's operating costs. Longer termed contracts are a solution to both of these problems. However to ensure that private housing owners will be interested in participating in the program, the government must ensure that the participants are getting rents comparable to what they would get on the open market. Even with these modifications the program is expensive. As fair market rents rise at a rate faster than income, the government is spending more and more each year to subsidize

⁶⁰ Siegesmund, 1134.

⁶¹ Ibid.

⁶² Mbulu, 400.

the housing.⁶³ In the end it might make more sense for the government to put that money towards its own public housing so that it will continue to remain affordable housing unlike the Section 8 housing that can be turned into non-subsidized housing any time a contract expires. Another bonus to putting the government's money toward its own housing or a subsidy for home-ownership among the low-income would be the permanence of the solution. Each year the government hands over rent money for approximately 1.4 million rental units to private rental agencies rather than allowing the money to build equity for low-income families which would likely assist in stopping this cycle.⁶⁴ Funding for the Section 8 Program varies yearly, but the range is between the \$16.7 billion worth of vouchers funded in 1997 to the \$12.1 billion allotted for vouchers in 2003.⁶⁵ It seems that a solution to the affordable housing shortage could be found in putting the Section 8 program's money towards a more long-term solution.

The HOPE Program

The HOPE program, which was criticized for its poor planning and poorly thought out selection process, could be revived in a way that would address the criticisms that ended it. In order for the program to become more successful it is important that HUD begin to consider using a more thorough planning

⁶³ Siegesmund, 1138.

⁶⁴ <http://www.os.dhhs.gov/ocr/sec8.html>

⁶⁵ <http://www.hud.gov/progdsc/voucher.cfm>

process. When there is a severe housing shortage it will simply not do to tear down large housing units only to replace them with fewer low-density units. The \$513.8 million that was available for HOPE programs in 2000 would be well spent on a better planned program.⁶⁶ The reality of the situation is that HUD needs to get the most housing for its dollar in a way that will promote healthy and responsible living. To find this long-term solution the government should work hand-in-hand with the planning community to develop a model that is more than the current fad or else use the money to fund private efforts in affordable housing.

Individual Development Accounts

Individual Development Accounts (IDAs) stem from the Temporary Assistance for Needy Families (TANF) legislation.⁶⁷ The legislation, called the Assets for Independence Act, gives states the ability to use a portion of their TANF block grants to provide funding for "post-secondary educational expenses, first home purchase, or business capitalization."⁶⁸ The accounts are like 401(k)s, except that IDAs use matching deposits instead of tax breaks and people saving through an IDA are often required to attend economic literacy training through

⁶⁶ <http://www.nahro.org/programs/phousing/hopeVI/index.cfm>

⁶⁷ Salsich, Peter W. "Welfare Reform: Is Self-Sufficiency Feasible Without Affordable Housing?" 2 Mich. L. & Pol'y Rev. 43 (1997). 46.

⁶⁸ Salsich, 64.

the non-profit that is helping them.⁶⁹ This program is promising because it gives individuals the opportunity for asset acquisition which is essential if they are to escape poverty.⁷⁰ Recipients of TANF are automatically eligible for the program and others can apply to qualify by meeting a net worth test.⁷¹ The program, instigated by Professor Michael Sherraden, aims at correcting a major criticism of the government's policy on affordable housing. It hopes to end the penalization of asset acquisition by the poor that occurs while the non-poor are having their assets subsidized by the government to the tune of over \$200 billion annually through home mortgage deductions and preferential capital gains, where homeowners are encouraged to continually move into larger, more expensive homes to avoid being taxed for the home they just sold.⁷²

Currently it is estimated that there are over 400 Individual Development Account Programs nationwide and that over 20,000 low-income individuals are participating in the programs.⁷³ President Bush has been pushing legislation that

⁶⁹ Corporation for Enterprise Development, "Assets for Independence Demonstration Program" available at <http://www.cfed.org/main/indivAssets/policy/FAQafia.htm>

⁷⁰ Salsich, 64.

⁷¹ Corporations for Enterprise Development, "Individual Development Accounts" available at <http://www.cfed.org/main/indivAssets/policy/FAQafia.htm>

⁷² <http://www.cfed.org/main/indivAssets/WhatAre.htm>

⁷³ Zdenek, Robert O. "Building Wealth by Promoting Tax Credits and savings, CDCs Can Move Beyond the Bricks and Mortar of Development and Help Low-Income Families Build Millions of Dollars in Assets." Shelterforce Online. January/February 2003. 5.

would authorize 300,000 IDA tax credits, which would allow \$500 million in 100% tax credits for corporations wishing to provide program and matching funds.⁷⁴ With current success and continued support IDAs will begin to play a strong role in allowing low-income families to save for homeownership.

Low-Income Housing Tax Credit

Another government motivated rental program is the Low-Income Housing Tax Credit (LIHTC) which began in 1986, under the Tax Reform Act as an incentive given by Congress to private investors funding low-income housing.⁷⁵ The program is the product of Reagan's efforts to shift social programs to local and private market.⁷⁶ The LIHTC program provides a federal tax credit to encourage private investors to give funding for the development of housing for low-income households.⁷⁷ Since 1986, over \$300 million in low-income housing tax-credits have been dispensed to developers who in return have created more than 600,000 units of lower-income rental units.⁷⁸

⁷⁴ Ibid.

⁷⁵ Christians, Allison D. "Breaking the Subsidy Cycle: A Proposal for Affordable Housing," 32 Colum. J.L. & Soc. Probs. 131. (Winter, 1999). 142.

⁷⁶ Jolin, Marc. "Good Cause Eviction and the Low Income Housing Tax Credit." 67 U. Chi. L. Rev. 521. (Spring, 2000). 521.

⁷⁷ Hussong, Marni. "Protecting the Tax-Exempt Status of Housing Developers Participating in Low-Income Housing Tax Credit Partnerships." 76 Wash. L. Rev. 243. (January, 2001). 243.

⁷⁸ Christians, 144.

The low-income housing tax credit (§42 of Internal Revenue Code) allows owners of approved low-income rental properties to claim a tax credit annually over a period of ten years.⁷⁹ Owners of property built under the tax credit are required to lease the housing to low-income tenants for a minimum of fifteen years, retain an ownership in the partnership, and actively participate in the management of the housing project.⁸⁰

Some critics argue that the Low-Income Tax Credit is flawed as a solution to the affordable housing problem because it does not create the opportunity of home ownership. Since rents tend to rise faster than wages, renters have been spending a higher percentage of their income on housing. Homeowners, on the other hand, are finding that as their income increases with inflation they begin to pay a lower percentage of their income to housing. Not only do homeowners wind up paying a lower percentage on housing, they have the benefit of equity from their home.

Another criticism against the LIHTC is that it is not aimed at helping families with very low to extremely low-incomes.⁸¹ As the program is currently set up, participants can qualify for favorable tax treatment by renting out twenty percent of its residential units to families with fifty percent of the area

⁷⁹ Cohen, David Philip. "Improving the Supply of Affordable Housing: The Role of the Low-Income Housing Tax-Credit." 6 J.L. & Pol'y 537. (1998). 541.

⁸⁰ Hussong, 247.

⁸¹ Cohen, 553.

median income or less.⁸² Under this arrangement many LIHTC participants charge rents that are unaffordable to families making under fifty percent of the median income.⁸³

Community Development Corporations

Community Development Corporations (CDCs) are grassroots organizations that are applying a holistic approach to the affordable housing problem.⁸⁴ Based on the idea that an effective housing policy must have programs that help residents foster a sense of pride in their community by helping them with their basic needs, CDCs try to integrate their affordable housing programs with services that go “beyond bricks and mortar.”⁸⁵ However a direct result of their holistic approach can be that the emphasis on affordable housing is often watered down by the number of other programs that they run. If the corporation does choose to focus on affordable housing they can be fairly successful. While these groups are considered grass roots, they have a much more government feel to them based on the almost quasi-governmental programs and services they provide. Much of the funding for a community

⁸² Ibid.

⁸³ Cohen, 563.

⁸⁴ Grogan, Paul S. “Proof Positive: A Community-Based Solution to America’s Affordable Housing Crisis.” 7 *Stan. L. & Pol’y Rev* 159. (Summer, 1996). 159.

⁸⁵ Ibid.

development corporation is often derived from government grants allowing them to carry out programs that the government has begun to shy away from, like small business counseling. The upside to this is that they are well-versed in business investment principles, which contributes to their success if they do take a role in affordable housing.⁸⁶ Another part of their success depends on their ability to appeal to the public; they do this by holding up the values of self-help, community building, local control, and public/private partnership.⁸⁷ However, while the effect of CDCs in the affordable housing market is growing, they still account for less than one percent of the affordable housing production in the United States.⁸⁸ To become a stronger force CDCs will have to come up with more stable funding directed towards affordable housing to allow them to devote attention to affordable housing.

Another type of grassroots organization that is working in a more traditional grassroots sense is Community Land Trusts. They are often in competition with Community Development Corporations for funding from the government, but like the CDCs, Community Land Trusts have the potential for greater success when they diversify their funding to give them greater flexibility and greater potential. The Community Land Trust Model, much like the Habitat for Humanity model, emphasizes home ownership. Habitat for Humanity will not

⁸⁶ Grogan, 163.

⁸⁷ Ibid.

⁸⁸ Grogan, 164.

be discussed here because they are funded through private organizations and religious institutions. However, the Community Land Trust Model will be discussed in greater detail in the following chapter in part because of the importance of considering home ownership as an option in providing desirable affordable housing for communities.

CHAPTER 4

COMMUNITY LAND TRUSTS: AN EXAMINATION

A definition provided by United States Code:

the term “community land trust” means a community housing development organization...(1) that is not sponsored by a for-profit corporation; (2) that is established to carry out activities under paragraph (3); (3) that it: (a) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases; (b) transfers ownership of any structural improvements located on such leased parcels to the lessees; and (c) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity; (4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the by-laws of the organization; and (5) whose board of directors includes a majority of members who are elected by the corporation membership; and is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the by-laws of the organization. [42 U.S.C.A. SECTION 12773 (West 1994)].

Proposed solutions for the affordable housing crisis are being developed by several different types of non-profit agencies. As the government continues to remove itself from the matter, these groups are going to be pioneering this dilemma. One model that is making its mark on the topic is the community land trust model. Community land trusts (CLT) promote home ownership to low-income individuals. The model uses several land use tools in conjunction with its work on affordable housing to increase the stock of permanently affordable housing across the United States.

To make housing affordable the community land trust model divides real property ownership between the title to the house and the title to the land underneath the house.⁸⁹ This division is utilized to give the home owner the title to their home, while the land trust retains the title to the land. The land trust will then lease the land to the home owner with an instrument called a ground lease. The ground lease ensures that the land trust will have a reversionary interest at the end of the lease term.⁹⁰ The lease also contains limitations on the resale price of the property and the uses allowed for the house located on the property. The price limitations are used to make sure that when a homeowner sells their house they will receive a percentage of the market increase along with the equity that they have built in the home. This ensures that the first homeowner to live in a community land trust affordable home will not receive a windfall by purchasing a subsidized home and then selling it for full market value. The goal of the price limitations is to make the home permanently affordable. The community land trust approach is a flexible model that is distinctive from other nonprofit housing organizations in that it looks at the ownerships of land and housing and the way that they are structured and controlled.⁹¹

⁸⁹ Abromowitz, David M. "An Essay on Community Land Trusts." Property and Values: Alternatives to Public and Private Ownership. eds. Charles Geisler and Gail Daneker. Washington, D.C.: Island Press, 2000. 214.

⁹⁰ Ibid.

⁹¹ Institute for Community Economics. The Community Land Trust Legal Manual. 1991. 1-7.

History of Community Land Trusts

The Institute of Community Economics (ICE) which was not only the originator of the community land trust model, but also an avid supporter for over thirty years defines a community land trust “as a private nonprofit corporation created to acquire and hold land for the benefit of a community and provide secure affordable access to land and housing for community residents.”⁹²

Community land trusts are 501(c)(3), nonprofit, organizations that are democratically structured with an open membership and a board of trustees that is elected by the members.⁹³ Generally the board of trustees consists of residents who live on trust owned land, residents of the community at large, and individuals interested in the public interest.⁹⁴ Term limits are often used to ensure that the community maintains control of the land trust and the properties that it owns.⁹⁵ There is an emphasis on balancing the interests of individuals and the interests of the community at large.⁹⁶

“In its basic approach, the CLT model stems from the ancient view of the earth as something naturally given, or God-given, to all people in common—

⁹² Pitcoff, Winton. “Affordable Forever: Land Trusts Keep Housing Within Reach.” Shelterforce Online. (Issue #121, Jan/Feb 2002): 2. Online. Available: <http://www.nhi.org/online/issues/121/LandTrusts.html>

⁹³ The Institute for Community Economics. The Community Land Trust Handbook. Emmaus, Pennsylvania: Rodale Press, 1982. 18.

⁹⁴ Ibid.

⁹⁵ Ibid.

something which, like the air above it, can never be owned in any absolute sense by individuals.”⁹⁷ The concept was developed into the community land trust model by the Institute of Community Economics in the 1960s as a means for local control over land, natural resources, and to promote affordable resident ownership of housing.⁹⁸ In 1972, The Community Land Trust: A Guide to a New Model for Land Tenure in America was published by the Center for Community Economic Development as an introduction for many to the concept of community land trusts.⁹⁹ While the book was almost entirely theoretical, the concept was picked up by organizations all over the country. Today there are over one hundred community land trusts in the United States.¹⁰⁰

The Formula

The community land trust model is centered on the notion that land is a limited resource.¹⁰¹ From this concept, land trusts have divided the bundle of rights associated with a piece of property to promote resident-ownership while

⁹⁶ The Community Land Trust Legal Manual, 1-9.

⁹⁷ The Community Land Trust Handbook, 28.

⁹⁸ Institute for Community Economics. (2003, March). Institute for Community Economics: Community Land Trusts. Online. Available: <http://www.iceclt.org/clt/>

⁹⁹ The Community Land Trust Handbook, vii.

¹⁰⁰ Pitcoff, 3.

¹⁰¹ The Community Land Trust Legal Manual, 1-8.

preserving long-term affordability.¹⁰² The general chain of events occurs something like this: a land trust will either purchase or receive as a donation a house or vacant lot, they will then rehabilitate the house or build a new home on the land (this stage is often aided by government subsidies through a variety of programs that will be described at a later point), then the land trust will divide the property rights by selling the home while retaining certain rights in the property. Thus, the buyer receives a residence, equity, and a legacy for his or her children because the home can be passed on to their heirs.¹⁰³

When a land trust sells one of its properties, the homeowners will enter into a ground lease. The lease will give the land trust a permanent interest in the land, while the homeowner will have the title to, and ownership of, the buildings on the land. The homeowner will be in a leasing agreement with the land trust for the property upon which his or her house sits. The lease periods are typically ninety-nine years with an option to renew which is advantageous for the homeowner because it keeps the property taxes down.¹⁰⁴ The leases often contain limitations on the land requiring the property to continue to be used for affordable housing. They also are used to limit the amount of appreciation that the seller will gain from the property, to ensure that the property will be sold to

¹⁰² Ibid, 1-9.

¹⁰³ Ibid, 1-10.

¹⁰⁴ Hecht, Bennett L. Developing Affordable Housing: A Practical Guide for Nonprofit Organizations. 2d. New York: John Wiley & Sons, Inc., 1999. 132.

low-income individuals in the future, and to give the community land trust the right of first refusal to purchase the home when it is being sold.

There are different formulas used to determine the resale price of the property. Itemized formulas allow for resale prices to fluctuate according to improvements made on the property and general inflation.¹⁰⁵ Appraisal-based formulas give the owner a right to an agreed upon percentage of the appreciated value of the property according to market appraisals.¹⁰⁶ Indexed formulas set resale prices proportionally to an index like median income. The index should reflect the increase that can be allowed while still retaining the affordability of the house.¹⁰⁷ The resale formulas are often implemented through the first right of refusal option of the community land trust.¹⁰⁸ The land trust can then buy back the home at the price set by the resale formula, and then turn around and sell it to a new low-income household.

Funding

While the federal government seemingly continues to extract itself from the affordable housing market, it continues to be a major force in shaping the solutions based on which groups it funds. Currently much of the affordable

¹⁰⁵ Community Land Trust Legal Manual, 2-3.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

housing created through community land trusts is funded by Department of Housing and Urban Development (HUD) using federal monies.¹⁰⁹ The most commonly used sources of HUD capital include Community Development Block Grants (CDBG) and HOME funds.

Community Development Block Grants are administered by the federal government through the Department of Housing and Urban Development. The program puts millions of dollars into the hands of state, county, and city governments each year to be used towards “neighborhood revitalization, economic development, and improved community facilities and services.”¹¹⁰ The programs are required to benefit mostly low- to moderate income people. The funds are generally distributed to organizations that further a community’s goals.¹¹¹ Community Land Trusts often apply for CDBG monies under a grant to promote the community’s goal of providing affordable housing.

The HOME Program was created in 1990 by Congress as a measure to ensure affordable housing throughout the country.¹¹² Federal grants are administered to state and local governments in the effort to “increase homeownership and affordable housing opportunities for low- and very low-

¹⁰⁹ Hecht, 87.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Hecht, 89.

income Americans.¹¹³ Like the CDBG monies, the HOME Program gives the local communities a strong say in how the grants are to be used.¹¹⁴ Many communities use their HOME funds to provide critical support to their non-profit housing developers, including community land trusts¹¹⁵.

Although community land trusts are local in nature and often seek to find local funding for their efforts, it is important to realize that the funds provided by the federal government play a large role in shaping the activities of the land trusts. Naturally community land trusts seek out private grants and gifts, and the more of these a land trust can obtain the more successful, it will likely be because government money comes with many strings attached and of course can be tenuous in relationship to a changing economy. However, federal monies play a primary role in fostering the community land trust model of affordable housing.

An important step in strengthening the role of community land trusts in the area of affordable housing is to diversify their funding, which creates more funding stability. Both revolving funds and strategic partnerships provide excellent ways for community land trusts to strengthen their abilities in creating a permanently affordable stock within a community. One type of partnership that has proved successful in the affordable housing field consists of a

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

community land trust and a major university. Currently, most community land trusts are located in university towns for the simple reason that university housing needs exacerbate the shortage of affordable housing in an area. As a result some universities, like Duke, have recognized their role in the creating the problem and work to help fund the land trust in combating the problem. Since 1999, Duke University has contributed approximately \$500,000 a year to the Duke-Durham Neighborhood Partnership Initiative.¹¹⁶ The grants are intended in part to provide affordable housing in the neighborhoods around the university.¹¹⁷

Revolving loan funds have been investigated thoroughly as a tool in preserving homes for affordable housing in a thesis by a student in the University of Georgia's Masters in Historic Preservation Program. Anne Catherine Christian proposed a model revolving loan program that combines historic preservation with affordable housing in a way that would be ideal for community land trusts. Christian cites an important point to be aware of before looking at the format of the fund, to be utilized by an organization or a municipality: "it is essential to determine the housing needs of the community and then consider the state of the local economy, the level of community interest, and the availability of housing stock."¹¹⁸ As she rightly points out, "introducing such a

¹¹⁶ <http://www.dukecomm.duke.edu/news/neighborhood.html>

¹¹⁷ Ibid.

¹¹⁸ Christian, Anne Catherine. Using a Revolving Loan Fund to Acquire, Rehabilitate, and Resell Historic Homes for Affordable Housing. University of Georgia: Athens, Georgia. 1993. 41.

program when the community is reluctant or the financial backing is limited, can lead to both a public relations and a financial disaster.”¹¹⁹ The benefits of using a revolving fund by a community land trust include: that there are a variety of funding sources that the land trust can pursue, that they are tax-exempt allowing individuals, foundations, and corporations to make tax-deductible donations, that the land trust does not have to pay taxes so more of the money is used on affordable housing, and that they have the advantage of not being subject to the same restrictions and operating procedures as public agencies.”¹²⁰ For a more detailed look into how to set up a revolving fund to be used for the rehabilitation of historic properties into affordable housing please see, Using a Revolving Loan Fund to Acquire, Rehabilitate, and Resell Historic Homes for Affordable Housing an unpublished thesis written by Anne Catherine Christian.

Direction of Growth

The fundamental concepts behind land trusts are smart growth in nature. The smart growth movement operates to improve development patterns in order to better communities, their economies, and the environment.¹²¹ Community land trusts push for these same ideals by encouraging infill housing development

¹¹⁹ Ibid.

¹²⁰ Ibid, 44.

¹²¹ Arigoni, Danielle. “Affordable Housing and Smart Growth: Making the Connection.” National Neighborhood Coalition: Washington, D.C. 2001 www.smartgrowth.org/pdf/epa_ah-sg.pdf.

and by oftentimes serving as a more general land trust that holds conservation easements for the protection of open spaces. Infill development occurs in areas of a community that have existing infrastructure in place. By not paying for new services to be installed further and further from the city core, infill development can save taxpayers millions of dollars a year. The savings continue when transportation services and other needs are not required to expand out from the central city.

Besides building new homes on vacant lots, infill can occur when a community land trust rehabilitates an existing home. This process has the added bonus of being good for the environment in that using old materials saves lumber and also saves room in the landfills. "Existing structures represent energy that has already been expended, materials that have already been mined or harvested, components that have already been manufactured – the embodied energy of past generations."¹²²

The model of rehabilitating historic homes into affordable housing makes sense for a number of reasons, however they are not all quantifiable.¹²³ Some of the more practical reasons include the fact that historic neighborhoods are often centrally located which is important both for bus services and walkability which is important for low-income residents who cannot afford a car. There is

¹²² Escherich, Susan M., Stephen J. Farneth, and Bruce D. Judd. Affordable Housing Through Historic Preservation: Tax Credits and the Secretary of the Interior's Standards for Historic Rehabilitation. Washington, D.C.: National Park Service Cultural Resources, 1992. 9.

¹²³ Ibid, 8.

also the significance of a building in a historic neighborhood which is of great concern to its long-time residents. Realistically many times the properties that will be transformed into affordable housing are currently an eyesore to the neighborhood. Rather than allowing the house to experience demolition by neglect it makes much more sense for the good of the community to have the home rehabilitated and occupied. Another strong point in favor of rehabilitation is the positive overall impact that it tends to have on adjacent properties. Rehabilitation is oftentimes contagious. There are also the intangible effects that rehabilitation has on the community as a whole. "They include our sense of where we, as a people, and as a community, have come from, our ties with our past and the products of work that those before us have accomplished."¹²⁴

Using historic renovations to provide affordable housing has added financial incentives. The federal government's strongest efforts in community redevelopment and smart growth come through the National Park Service's Historic Preservation Tax Incentives Program.¹²⁵ The program directs development, through the provision of tax credits, into "underutilized and abandoned buildings" which helps "recapture social and physical capital invested

¹²⁴ Ibid.

¹²⁵ Smart Growth Online. Smart Growth Network Calendar. Online. Available: www.smartgrowth.org/calendar/evdetails.asp?evid=209.

by past generations in our nation's physical infrastructure."¹²⁶ More than \$25 billion of rehabilitation activity has occurred under the program since its enactment by Congress in 1976.¹²⁷

To finance affordable housing there are three key areas to be addressed: debt, equity, and subsidy.¹²⁸ The equity portion is where the tax credits provided by historic rehabilitation play a major role. Combined with state tax incentives for rehabilitation and affordable housing, the Historic Rehabilitation Tax Credit and the low-income tax credit more equity can be generated because of the larger combined tax benefits.¹²⁹ The rehabilitation tax credit is worth twenty percent of "qualified rehabilitation expenditures" used on a certified historic structure.¹³⁰ A certified historic structure is either a building listed on the National Register of Historic Places, or is a contributing structure to a National Register District, or is designated at a state or local level as historically significant.¹³¹

¹²⁶ Ibid.

¹²⁷ Ceraso, Karen. "Eyesore to Community Asset Historic Preservation Creates Affordable Housing and Livable Neighborhoods." Shelterforce Online. July/August 1999. Available: www.nhi.org/online/issues/106/ceraso.html.

¹²⁸ Delvac, William F., Susan Escherich, and Bridget Hartman. Affordable Housing Through Historic Preservation: A Case Study of Combining the Tax Credits. National Park Service: Washington, D.C., 1995. 5.

¹²⁹ Ibid, 7.

¹³⁰ Ibid.

The credit also requires that the rehabilitation be in accordance with the Secretary of Interior's *Standards for Rehabilitation*.¹³² "The *Standards* provide a cost-effective design approach for the rehabilitation for historic buildings."¹³³ The goal of the *Standards* is to preserve "the character-defining features, spaces and materials."¹³⁴ The *Standards* set forth a decision-making hierarchy to use during the rehabilitation of any historic building.¹³⁵ The first step involves identifying the historic characteristics of the building, and the parts that should be saved so that the building will retain its character.¹³⁶ Then, if the decided upon defining characteristics need work, it is recommended that they be repaired.¹³⁷ If the features are damaged beyond reasonable repair then replacement becomes an option.¹³⁸ The *Standards* acknowledge that alterations are important in maintaining the viability of the structure, but at the same time they emphasize that the alterations should not "radically change, obscure, or destroy character-defining spaces, materials, features, or finishes."¹³⁹

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid, 9.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid,10.

¹³⁹ Ibid.

The application process for the Historic Rehabilitation Tax Credit involves three steps. First, the National Park Service determines whether the property is eligible for the National Register of Historic Places. Then the developer establishes the scope of the project to be done and whether the result would keep the property eligible for the National Register. The last step takes place after construction and requires the group to certify that the work was done in accordance with the plan set out in step two. Many developers are finding the process to be worth their effort as the number of affordable housing projects using the rehabilitation tax credit is on the rise. In 1993, only nineteen percent of the projects utilizing the rehabilitation tax credit were creating low- to moderate-income housing.¹⁴⁰ By 1997, forty-two percent of the projects completed using the tax credit resulted in housing for low- to moderate-income residents and the numbers have continued to rise.¹⁴¹ Community land trusts could benefit from the rehabilitation tax credit by passing the credit on to the buyer with a twenty percent tax credit on the home, and they could also benefit from the credit by using it as an incentive to encourage private developers to partner in the creation of affordable housing. The rehabilitation tax credit is an excellent way to generate equity to be used for the creation of affordable housing.¹⁴²

¹⁴⁰ Ceraso, 1.

¹⁴¹ Ibid.

¹⁴² Delvac, 7.

Another type of boost for rehabilitation has been the use of Smart Codes. Smart Codes are “building and construction codes designed to encourage the renovation and reuse of existing buildings.”¹⁴³ While standard construction codes are designed with new construction in mind, smart codes are geared towards rehabilitation construction. The Smart Codes take into account the “limitations of older structures in meeting certain aspects of new construction standards.”¹⁴⁴ One of the biggest advantages of Smart Codes is that they take a lot of the guesswork out of the rehabilitation process. Developers need not worry about the interpretation of the new construction codes and the chance that the interpretation will cause increased costs and time delays because the Smart Codes are designed with rehabilitation in mind and give quick and easy answers for both the developers and the building inspectors.¹⁴⁵

Eight states currently have Smart Codes in place to support the rehabilitation of older properties.¹⁴⁶ In New Jersey, the first year after they passed the new rehabilitation code (Smart Code) they saw a sixty percent

¹⁴³ “Growing Smart Neighborhoods: Smart Rehab Codes.” Local Initiatives Support Corporation: June 12, 2002. Available: www.liscnet.org/resources/2002/06/neighborhoods_809.shtml?Planning+%26+Land+Use

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ The states are: Massachusetts, New Jersey, Maryland, Minnesota, New York, Rhode Island, Missouri, Kansas, and Delaware. From “Growing Smart Neighborhoods.”

Secretary of the *Interior's Standards for Rehabilitation*

The Standards are as follows:

- 1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*
- 2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*
- 3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*
- 4. Most properties change over time; those changes to a property that have acquired historical significance in their own right shall be retained and preserved.*
- 5. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a property shall be preserved.*
- 6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of the deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities, and where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*
- 7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.*
- 8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.*
- 9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*
- 10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.¹⁴⁷*

TABLE 1

GUIDELINES TO BE FOLLOWED IN ORDER TO QUALIFY FOR A REHABILITATION
TAX CREDIT

¹⁴⁷ Ibid, 8.

increase in the number of rehabilitation projects in their major cities.¹⁴⁸ The success of the New Jersey Smart Code has led it to serve as a model for other jurisdictions interested in supporting rehabilitation efforts.¹⁴⁹ The Department of Housing and Urban Development (HUD) has used the New Jersey code as “the basis for model rehabilitation language, which is now available for other states and localities interested in developing their own rehab code.”¹⁵⁰

Hurdles

While the advantages to rehabilitating historic structures into affordable housing are many, there are some difficulties to overcome. Realistically, many of the blighted and vacant properties that are targets for these types of programs are tied up in legal limbos. Oftentimes in lower income neighborhoods that are facing blight there are properties whose “delinquent taxes exceed the value of the property.”¹⁵¹ To complicate the matter even further, in about half of the cities and counties across the country private investors are able to purchase the tax liens for the unpaid taxes.¹⁵² The difficulty here is in who purchases the

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Alexander, Frank S. “Renewing Public Assets for Community Development.” Local Initiatives Support Corporation: October 1, 2000. Available: www.liscnet.org/resources/2000/11/development_555shtml?Affordable+Housing.
4.

¹⁵² Ibid.

liens. While liens sold within the community might have the effect of revitalizing the properties, liens sold to out-of-town investors often result in property that is next to impossible to revitalize. An important battle to overcome is the tax lien dilemma. Fortunately many cities are now realizing that “restoring properties to the tax rolls will enhance local government tax collection, as well as improve the neighborhoods.”¹⁵³ Atlanta currently has a strong program in place where a state authorized land bank has the power to waive delinquent taxes on properties being developed or redeveloped by community development corporations. The land bank acquires property in a number of ways: either it accepts the property or tax deed as a donation, or it acquires the deeds from the city or county that holds them, or it can request that the tax commissioner convey the deeds to the land bank.¹⁵⁴ The key to success for any jurisdiction interested in the economic development of their tax encumbered properties is a strong coordination between local nonprofits, private stakeholders, and the government’s tax commissioners.¹⁵⁵

Another realistic hurdle to the rehabilitation of historic homes into affordable housing is the effect that it has on the neighborhood. While community revitalization and economic redevelopment are important byproducts

¹⁵³ Mueller, Lisa. “Atlanta Case Study: Model Practices in Tax Foreclosure and Property Disposition.” LISC Online Resource Library: January 11, 2003. Available: www.liscnet.org/resources/2003/01/foreclosure_1066.shtml?Planning+%26+Land+Use

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

of rehabilitation, the location, and architectural gems, of older neighborhoods lend themselves to gentrification.¹⁵⁶ Gentrification is “the process by which higher-income households displace lower-income residents of a neighborhood, changing the essential character and flavor of that neighborhood.”¹⁵⁷ While the process of gentrification brings positive and potentially negative changes to a neighborhood, the hurdle for local government and non-profit organizations is to ensure that the “revitalization is equitable: that its benefits are shared among all community members.”¹⁵⁸ Anticipation of the rent increases and subsequent displacements of local businesses and residents is critical in devising a plan to address the realities of the revitalization of the area.¹⁵⁹ Tools such as tax-deferment programs, home-buying and selling workshops, and landlord/tenant law should all be looked at as ways to minimize the adverse effects of gentrification.¹⁶⁰ Whatever strategies are used, the key is to plan in advance.

¹⁵⁶ Kennedy, Maureen and Paul Leonard. “Gentrification: Practice and Politics.” LISC Center for Home Ownership: July 2001. Available: www.liscnet.org/resources. 1.

¹⁵⁷ Ibid, 2.

¹⁵⁸ Ibid, 1.

¹⁵⁹ Ibid.

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CHAPTER 5

CONCLUSION

Through the process of examining affordable housing several key conclusions materialize. First, the affordable housing shortage is not new and it is not improving, it actually appears to be developing into an even more critical problem. With this in mind, the government should be wary of instigating or supporting any type of program that lessens the number of affordable housing units that currently exist. From the HOPE Program the lesson can be derived that any program that attempts to tear down affordable housing, in the name of providing a new development that will have a percentage of the housing dedicated to being affordable, usually only results in magnifying the current shortage. Urban renewal type programs should be looked at with the same skepticism. It is important to keep in mind, that while the federal government continues to remove itself from providing affordable housing solutions, it has not removed itself from the equation. Federal monies are the drivers in current affordable housing programs. While there is some variety in the existing programs, the community land trust model has much to offer. With its incorporation of the tenets of smart growth, and historic preservation, and an overall community based focus, the community land trust model is a desirable means of creating affordable housing through rehabilitation.

If community land trusts look to creative partnerships and the creation of revolving loan funds, they have the possibility to grow and effect great change in the realm of affordable housing. To do this, they need to think critically and in advance about the best and most realistic path for their community. If successful, there is the possibility of pleasing housing advocates, preservationists, neighborhood organizations, tax commissioners, low-income residents, and smart growth advocates. Other affordable housing programs can also draw on the tools that community land trusts have developed such as ground leases and resale formulas. However, some of the strongest advantages in the community land trust model lie in their interest in rehabilitating existing structures and creating new, appropriate infill when possible. In a time when the strains of public infrastructure have reached an all-time high, it is important to consider the advantages of smart growth when developing any major public policy.

The ideal partnering of forces would involve the federal government allocating the wasted funds of the Section 8 program and the potential funds of a revived HOPE Program to the Community Block Development Grant Programs so that a local government will be able to grant the monies to organizations that are making a difference in their affordable housing situation. Beyond the hope that a community land trust would receive a large portion of this money, the CLT should lobby for a program with the local government allowing tax encumbered

- Local government – to provide CBDG monies and tax encumbered properties for redevelopment
- Local institutions/corporations – businesses with a large work force that falls in the low-income brackets might be interested in contributing funding to support affordable housing that would benefit their employees
- Other grass-roots organizations – to provide necessary support and exposure
- Individual Development Account Programs – will provide the down payments needed by low-income individuals to purchase an affordable home

TABLE 2

RECOMMENDED COLLABORATIONS FOR COMMUNITY LAND TRUSTS

properties to become readily available for the development of affordable housing. This would be to the benefit of the local government because it would both return the property to the tax rolls, thereby creating revenue for the city or county, and would also help with the community's affordable housing shortage. Another partnership that many land trusts should investigate is the partnership with a local university, hospital, or large corporation. Any organization that has an endowment and has a large number of lower income employees might be interested in funding the cause. There, of course, also exists the possibility of partnering with local historic preservation groups, smart growth advocates, and environmentalists. These types of organizations will be crucial in gaining public support, and therefore might well be the most important allies. The existence of a local Individual Development Account Program would be an added bonus so that there would be a number of low-income families with savings ready to use for a down payment on the housing that is created.

The community land trust model has the possibility of creating an incredible impact on deteriorated in-town neighborhoods, the shortage of affordable housing, and the growth patterns of communities. With a strong financial base and strong community support a community land trust can become the hero of the entire community, not just among those that it houses. Partnerships and education of the public on the concept of community land trusts are crucial in developing a strong and successful program.

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