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April 30, 2011

Poverty Law Seminar

Can Sustainable Housing Development Play A Substantial Role in Mitigating Poverty: A Case Study of the Ten 50 B Project

Introduction:

The “Going Green” environmental movement is not new. Hardly so. Everyone has seen the 1970s pictures of the elderly couple in suburban America, smiling proudly while displaying their newly installed solar panels. This was the face of the environmental movement in the United States for years. However, times are changing. Many have taken ideas from the environmental movement and metamorphosed them into sustainable development movements.

Sustainable development success stories have come from the most unlikely places: the Bronx of New York City to Bogota, Colombia.¹ Thus, there is no longer the picture of the older, wealthy couple but a picture of the Reed Family.

The Reed Family is now a family of three, expecting a fourth member.² With a new baby on the way, the Reeds’ desperately needed to move to a larger apartment, but could not afford the market value \$2,000 per month rent in San Diego.³ While searching for new apartments, the Reed family stumbled upon the Ten Fifty B project. This new development in downtown San Diego would not only give the Reeds the opportunity to reside in an apartment for fifty percent

¹ Bogota, Colombia has been a leader in the sustainable development movement for years now. The urban redevelopment plan included green spaces, improved public transportation and greater public transportation. *Available at*

http://www.itdp.org/index.php/news/detail/ex_bogota_mayor_wins_environmental_prize/

² *see* 10 News, *Project Allows Downtown Living For Low-Income Families* May 5, 2009

³ *Id*

less than market value, but also the opportunity to live in a dwelling with outstanding indoor and outdoor environmental features.⁴

This will do more than just lower the Reed Family's electricity bills. The typical American spends 90% of their time indoors.⁵ Therefore, the indoor environment where a person lives, works and eats is a substantial factor in their overall health. Thus, if the Reeds are chosen they will not just acquire housing. They will acquire a healthy future. This is the new face of sustainable development.

The Brutland Commission Report defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."⁶ For decades, ideals from this movement have belonged to the wealthy. However, recently the trend has been embraced in an unlikely place: low-income urban areas.

On the local, state and federal level, sustainable redevelopment has been a catalyst to attack a multitude of issues, including mitigating poverty.

The origins of sustainable development movement in low-income urban areas can be viewed as the merging of ideas inherent in grassroots community economic development projects and environmental justice movements. The community economic development (CED) movement emerged as a reaction to the frustration of traditional economic development often ignoring urban residents and leaving the residents worse off than before.⁷ Thus, the CED movement arose as a mechanism for urban residents to create development projects to advantage

⁴ *Id*

⁵ Environmental Protection Agency, *Indoor Air Quality*, January 6, 2003. available at: <http://www.epa.gov/iaq>

⁶ see Amy K Glasmeier and Tracy L. Farrigan, *Rethinking Sustainable Development: Poverty, Sustainability and the Culture of Dispair*, 590 *Annals* 131 (2003)

⁷ Sheila R. Foster and Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 *Cal. L. Rev.* (1999)

those inside the community.⁸ Analogous to the CED movement, the environmental justice movement arose in marginalized communities as a tool to protect the environment of where people lived, worked and played.⁹ Thus, sustainable development in low-income areas can be seen as a fusion of the environmental justice and CED movements. The purpose being to create communities that are prosperous because “people work together to produce a high quality of life that they want to sustain and constantly improve.”¹⁰

The overall mission of sustainable development project is based on the theory that there are three struggles that our society faces: economic, environmental and social equity.¹¹

Sustainable development movement has at the core the belief that “from moment to moment, year to year, and place to place, the quality of our lives is based on a blend of environmental, economic and social equity categories. The environment, in particular, is no discrete thing we can separate from everything else we care about. Pollution hurts the environment, but also hurts our health.”¹² John Dernbach theorizes that development efforts that take all three aspects into consideration provide a basis “for greater human freedom, opportunity and quality of life”¹³

The definition of sustainable development is subjective. There is no rigid percentage that each category must meet in order to be defined as “sustainable.”¹⁴ However, there is a key belief in the sustainable development projects. The belief is that the reason for centuries we have been

⁸ *Id.*

⁹ *see Id.* Environmental justice movement has arisen from the disproportionate impact of environmental hazards on minorities. Environmental justice movements focus on removing adverse environmental challenges from poor neighborhoods.

¹⁰ *See* John C. Dernbach, *An Agenda for Sustainable Communities*, 4 *Env't'l & Energy L. and Pol'y J.* 170 (2009)

¹¹ John C. Dernbach and Scott Bernstein, *Pursuing Sustainable Communities: Looking Back, Looking Forward*, 35 *Urb. Law.* 495 (2003)

¹² *Id.*

¹³ *Id.*

¹⁴ “Building for Sustainability: Six Scenarios for the David and Lucille Packard Foundation Los Altos Project,” October 2002. Available at <<http://www.packard.org/pdf/2002Report.pdf>>

unable to create real change in eliminating poverty or stopping environmental degradation is that our society has mistakenly viewed the three facets, as illustrated by Dernbach, to be mutually exclusive.¹⁵ Society has tried to attack these problems in isolation while ignoring how they are all linked. Dernbach has found that traditional economic development model has not only resulted in growing environmental degradation, but has created an increasing gap between the rich and the poor.¹⁶

The truth in the above statement is best illustrated with the Tennessee Valley Authority (TVA) and strip mining in the 1970s. The TVA was created in 1933 to counteract the effects of the depression in the Tennessee Valley.¹⁷ The TVA's mission was to "administer a unified program for the development of Tennessee's drainage area through use and conservation of the natural resources of the region."¹⁸ In the beginning decades, TVA encouraged economic development by fostering manufacturing, agricultural and forestry development through supplying inexpensive power.¹⁹ Much of this inexpensive power came from TVA producing electricity and being the largest purchaser of strip-mined coal.²⁰ However, by the 1970s, TVA's practices came under attack by many environmental groups for the substantial harm strip-mining was posed on the environment.²¹ By 1971, "approximately 10,500 miles of Appalachian streams were contaminated by acids, sediments and metals draining from exposed coal beds."²² The United States was not only faced with a \$250 million dollar price tag to fix the damage done to

¹⁵ See Dernbach supra at 499

¹⁶ *Id*

¹⁷ see *A Short History of TVA* at <<http://www.tvacom/aboutva/history.htm>>

¹⁸ see *TVA in Middle* available at <<http://www.sciencemag.org/content/150/3693/194.citation>>

¹⁹ *Id*

²⁰ *Id*

²¹ see *Environment: The Price of Strip Mining*, Time Magazine (1971) available at <<http://www.time.com/time/magazine/article/0,9171,904921,00.html>>

²² *Id*

the mountains, but harm was done to Appalachia residents in TVA's attempt to spur economic development in the region.²³

With the success of each project, lawmakers have begun to look at sustainable development in order to create an overall improvement of the well-being of the poor. This paper will analyze whether sustainable affordable housing development can be used as a tool to improve the footing of many of those who are living in poverty.

First, this paper will focus on the environmental and housing challenges faced by those who live in poverty. Included in the discussion are challenges that are faced disproportionately by the poor and the effect on their overall well-being. Secondly, the paper illustrates how sustainable development effectively addresses current environmental and housing challenges as well as ensuring sound long-term conditions. Implementing development plans that are equitable, that address environmental challenges and promote economic growth ensures the success of these projects. Third, is a case study on the Ten Fifty B development in San Diego, CA that illustrates all three aspects of the sustainable development movement. Fourth, I will analyze the potential of similar Ten Fifty B being replicated across the country. Lastly, the paper concludes with policy recommendations to ensure the success of sustainable affordable housing.

Acute Impact of Environmental Challenges on the Poor

The poor in the United States face numerous unique challenges including substandard housing and acute exposure to adverse environmental impacts. Across the United States, there is a scarcity of affordable housing.²⁴ In 1996 the Department of Housing and Urban Development

²³ *Id*

²⁴ *see* Affordable Housing. HUD defines "affordable housing" to be when a person uses less than thirty percent of their income for rent or in their home. Approximately 17 million American households spend over fifty percent of their income on housing and are considered "cost burdened". Available at <<http://www.hud.gov/offices/cpd/affordablehousing/>>

(HUD) found that there 15 million families who were eligible for housing assistance. However, only three million were actually able to receive housing assistance.²⁵ Thus, many low-income renters must pay market value for their housing. This leaves the renter with limited options for quality housing. Many are left to live in substandard housing.

Granted, there are regulations such as the warrant of habitability that guarantee a quality of housing that a landlord must maintain.²⁶ However, this is not an effective tool for many low-income tenants. Many poor renters will 1) likely be unaware of their rights as tenants and 2) if they are aware, may not know proper recourse to take.²⁷ Also, there exists an element of necessity that could inhibit a tenant from taking action even if they are aware of their rights and knew the proper course to take. Many tenants cannot afford to move or they may confront a potential increase in rent. Thus, many of low economic means are left living in substandard housing and the poor environment that comes with it.

Respiratory diseases are a common health concern that has a clear source in the poor environmental conditions that exist in substandard housing.²⁸ Asthma is the most common of

²⁵ Affordable Housing *available at* <http://www.hud.gov/offices/cpd/affordablehousing/>

²⁶ *see* Cal.Civ.Code §1942. Warranty of habitability allows for a tenant to leave rented housing once dilapidations have occurred. Under California Civil Code, and many other state statutes, landlords have a duty of care to maintain habitable conditions. If after reasonable notice the dilapidations continue, then the tenant may be able to leave the premises. After leaving, the tenant would be protected from any cause of action from the landlord. The landlord still has the right to defend against the breach of warranty of habitability claim. Also, the tenant may have a tort cause of action against their landlord for damages.

²⁷ *see* 7 Cal.Real. Est. §19:120 (3ed) Constructive eviction is the act of landlords allowing living conditions that are so substandard that it is as if the person is being evicted through the inaction or action of their landlord. A tenant will be able to leave without legal obligations. However, this remedy is often impractical since the tenant will be unable to relocate to another household for a reasonable rent.

²⁸ *see* Bloom B and Cohen RA. *Summary Health Statistics for U.S. Adults: National Health Interview Survey*, Vital Health Stat. National Center for Health Statistics (2007)

these respiratory diseases and presently affects 20 million Americans.²⁹ Thirty percent of the risk factors for asthma originate in the living environment of the persons afflicted.³⁰ Such environmental “triggers” in living quarters include poor ventilation, water leaks and pest infestation.³¹ All of these “triggers” are indicative of the poor air quality in substandard housing. For instance, poor ventilation causes the high humidity in homes.³² High humidity in turn causes the growth of mold, a “trigger” for asthma.³³ Many of these triggers exist in older homes where the poor are more likely to reside. Thus, the poor are disproportionality exposed to the “triggers” of respiratory illnesses because of the environment in which they are segmented to live.

It should also be noted that Leukemia, a childhood cancer, has been found by some researchers to have a link with certain chemical triggers.³⁴ These same chemicals are more likely to be found in substandard housing.³⁵ Although these links may be seen as attenuated, they illustrate the potential detriment that can be suffered by the poor due to their living environment.

Effects of Substandard Housing on the Community

The health effects of substandard housing do not solely come from the indoor environment where a person lives, but also from outdoor environmental degradation. Low-income multifamily housing is historically high density in nature. Thus, the community as a whole suffers from adverse environmental implications. In high-density urban areas, a common

²⁹ *Id*

³⁰ *Id*

³¹ *Id*

³² *Id*

³³ *Id*

³⁴ *see* Tammi Gouviea Vigeat, *Toxic Chemicals and Childhood Cancer: A Review of the Evidence*, available at

<<http://www.sustainableproduction.org/downloads/Child%20Canc%20.pdf>>

³⁵ *Id*

characteristic is a lack of “green spaces” and the heat island effect. Both result in reduced outdoor air quality.³⁶

“Green spaces” is land in an urban area, which can be used for the pleasure of residents of the area for such things as playing or gardening.³⁷ The deprivation of land in a community that is saturated in substandard housing serves as a multilayered effect on the well-being of residents. Inhabitants of the community are deprived of the environmental benefit that comes from having greenery in a neighborhood including a lack of air quality.

The deprivation of “green spaces” reaches beyond the traditional environmental implications and into the overall health of residents. Grocery stores are not found in urban low-income areas. Without green spaces, inhabitants are unable to raise their own produce. Produce that is found at the local convenience store often have a high mark up that many residents cannot afford.³⁸ High priced fruits and vegetables and low priced processed foods lead many low-income residents unable to achieve a healthy diet.³⁹ Thus, communities that are successful in implementing “green spaces” in public housing “may improve the psychological well-being of individuals, promoting community self-image and fostering community pride.”⁴⁰

The heat island effect has a drastic environmental impact on high-density urban areas. Historically, roof construction is done with dark surfaces. These dark surfaces attract an abundance of sunlight and increase temperature within the building, creating “heat islands” and

³⁶ see Alexandra Dapolito Dunn, *Siting Green Infrastructure: Legal and Policy Solutions to Alleviate Urban Poverty and Promote Healthy Communities*, 37 B.C. Env'tl. Aff. L. Rev. 41 (2010)

³⁷ *Id* at 53

³⁸ *Id* at 52

³⁹ *Id*

⁴⁰ see Natasha Kassulke, *A Green Workforce*, Wis. Nat. Resources Mag. (2005)

substantial environmental consequences.⁴¹ The heat island effect raises temperatures.⁴² In Los Angeles, since 1950 “increased absorption of sunlight by dark buildings, roads and loss of tree coverage played a large role in increasing the average temperature in Los Angeles by 1 degree Celsius every 15 years.”⁴³ These high temperatures are a main cause of the increase of smog and the associated ozone.⁴⁴

There is also a high monetary cost for the poor. In Los Angeles, the total medical costs for poor air quality is approximately \$10 billion dollars a year.⁴⁵ About 30% of the cost is due to ozone related illnesses.⁴⁶ Lastly, the heat island effect creates a high demand for electricity, especially in warm environments.⁴⁷ High demand, in turn, causes an increase in the percentage of a family’s income going toward housing rather than education, groceries or childcare. The low-income’s economic status allows the poor to be particularly susceptible to shifts such as these in monetary obligations.

Sustainable Affordable Housing: A Multilateral Attack on Both Issues

Community leaders, State Legislatures and Congress have recognized 1) the importance of affordable housing and 2) environmental impacts on the poor and 3) the role of the government in addressing both issues. As stated in *Gering v. Kelly*, “the forces not within the control of the poor contribute to their poverty...public assistance, then is not mere charity, but a means to ‘promote the general welfare and secure the Blessings of Liberty to ourselves and our

⁴¹ see Greg Kats, *The Cost and Financial Benefits of Green Buildings: A Report to California’s Sustainable Building Task Force* (2003)

⁴² see A.H. Rosenfeld et al., *Cool Communities: Strategies for heat island mitigation and smog reduction*, *Energy and Buildings*, 28, 1998

⁴³ see Kats *supra* at 77

⁴⁴ Kats *supra* at 78

⁴⁵ *Id*

⁴⁶ see J.V. Hall, *Valuing the health benefits of clean air* *Science* 255 (1992)

⁴⁷ Kats *supra*

posterity”.⁴⁸ Thus, on all three levels of government, there have been steps taken to address both issues in the form of the sustainable development movement.

Sustainable Housing Development v. New Affordable Housing

Before proceeding, it is imperative to answer the question “Why sustainable housing? Wouldn’t traditional affordable housing be sufficient?” On its face, sustainable affordable housing would not be any more effective in addressing these environmental challenges than other affordable housing plans. There is limited truth to this statement. For instance, a traditional affordable housing unit could solve the environmental “triggers” that cause respiratory illness. New affordable housing would install new ventilations systems into apartments. However, there are three advantages to sustainable housing development. First, sustainable development construction is more cost-effective. Second, sustainable housing is as least as effective as affordable housing units in addressing indoor environmental concerns and more effective in addressing outdoor environmental conditions. Lastly, sustainable housing is more effective in addressing present and future environmental concerns.

First, it is less expensive to develop sustainable housing than it is to develop traditional housing developments. Sustainable construction focuses on reusing other parts of housing and recycled materials.⁴⁹ This results in lower overall costs. Green development also lessens the amount of necessary bills for low-income families.⁵⁰ Energy efficient appliances use less water and energy than standard appliances. Also, the use of alternative energy often found in green developments lead to lower energy bills.⁵¹ A recent Atlanta study found that energy efficient

⁴⁸ *Goldberg v. Kelly* 397 U.S. 254 (1970)

⁴⁹ *see Kats supra* at 75

⁵⁰ *Id*

⁵¹ *Id* at 26. This is where the majority of savings are found in “green” development. Kras estimates that there could be as much as a 50% reduction of utility bills during peak times.

homes saved over \$400 a year.⁵² Thus, more money would be available for other expenses such as groceries and education.

Secondly, sustainable development is effective in addressing outdoor as well as indoor environmental concerns. Although traditional affordable housing is arguably at least as effective in addressing indoor environmental conditions, there is no focus on well-being outside of the apartment. In contrast, a sustainable housing development plan is conscious of the impact of outdoor environmental factors on health. Sustainable housing development plans often highlight photovoltaic panels that eliminate the “heat island” effect.⁵³ “Green spaces” are often incorporated to allow residents to play outside and grow their own gardens.⁵⁴ Thus, green housing is more effective in addressing both outdoor environmental concerns than other affordable housing plans.

Lastly, sustainable housing is prospective. The traditional legislative process is usually reactionary in nature. Therefore, once lawmakers have identified an issue, there may still be months, even years of delay until a problem can be properly addressed. For example, before the EPA issued regulations that banned the use of lead paint in residential homes, people first had to get sick. Then, the proper research was conducted to find out the cause. Lastly, there had to be sufficient public concern to move the EPA to enact a regulation on the issue.

In the development of sustainable housing, developers identify which environmental amenities should be implemented to not only address present environmental, but also to ensure the overall well-being of the residents in the future. For example, the incorporation of “green

⁵² see U.S. Department of Energy, *Energy Efficiency Pays: Systems approach cuts home energy waste and saves money available at*

<http://apps1.eere.energy.gov/buildings/publications/pdfs/building_america/26290.pdf>

⁵³ *Id*

⁵⁴ see Dunn *supra* at 53

areas” not only addresses present environmental air quality concerns, but also treats the potential future impact of a lack of “green spaces” in urban areas including reduced air quality and raising temperatures.

Therefore, sustainable housing development is an effective tool for not only providing for affordable housing, but improve the overall well-being of the low-income presently and in the future. An example of this movement can be found in the Ten 50 B project in San Diego, California.

The Legal Framework that made Ten 50 B Possible

The Ten 50 B project commenced in 2007. However, its success was highly dependent on redevelopment and housing law passed by the California Legislature decades earlier. First, this section will focus on the legislative sources that assisted in establishing the organizations that were major players in the success of the Ten 50 B project. These organizations are Centre City Development Corporation, Affirmed Housing Group and the San Diego Housing Commission.

The analysis will concentrate on the legislation that made these organizations possible. Then the section will turn to inclusionary zoning legislation that has become central to the development of affordable housing in San Diego.

Centre City Development Group: San Diego’s Redevelopment Force

In 1975, downtown San Diego was plagued with urban blight.⁵⁵ Then San Diego mayor, Pete Wilson, used California Redevelopment Law to transform the city. The California Health and Safety Code, the source of California Redevelopment Law was first enacted in the 1940s. In the statute, California Legislature first recognized in §3300 that there “exist in many communities blighted areas that constitute physical and economic liabilities/requiring

⁵⁵ see Redevelopment Today. Available at <<http://www.ccdc.com/about-us/sd-redevelopment/redevelopment-defined.html>>

redevelopment in the interest of the health, safety and general welfare of the people in communities.”⁵⁶ The Legislature specifically addressed the effects of poor housing in §33070(a) by stating that “hazardous, congested and insanitary housing debilitated occupants’ health to the point of imparting motivation and achievement.”⁵⁷

The legislature’s solution to these concerns of blight and substandard housing were found in §33071, which was enacted the California Redevelopment Law.⁵⁸ A primary goal of the Redevelopment law was to increase the supply of low and moderate-income housing in order “to improve an environment for the social, economic, and psychological growth and well-being of all citizens.”⁵⁹ The Redevelopment law’s recognition in the 1950s that housing and environment were essential to the overall well being of Californians, put California at the forefront of the movement that later termed the sustainable development movement.

California’s Redevelopment Law gave Mayor Wilson the tools to begin a plan to redevelop downtown San Diego. The Redevelopment law targeted areas that fell within the statute’s definition of blight.⁶⁰ Blight was defined as an area that was 1) predominately urbanized and 2) met such conditions as serious building, abnormal building vacancies and that the area suffered from serious physical economic deterioration that it cannot be reasonably expected to be reversed without redevelopment efforts.⁶¹ Mayor Wilson recognized that downtown San Diego clearly met the standards of blight with unsafe buildings, vacant lots, public safety and crime issues.⁶²

⁵⁶ Cal HLTH & S §33070

⁵⁷ Cal HLTH & S §33070(a)

⁵⁸ Cal HLTH & S §33071

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Cal. REAL. PROP. §828

⁶² *see* Redevelopment Today

Thus, the Redevelopment Law empowered Mayor Wilson to create agencies to foster redevelopment in downtown San Diego. One of the agencies was the San Diego Redevelopment Agency. Mayor Wilson created the San Diego Redevelopment Agency believing that redevelopment of San Diego would be most effective through an organization independent of the City Council.⁶³ The San Diego Redevelopment Agency had three divisions. The pertinent division for this paper is the Centre City Development Corporation (CCDC).

The CCDC was created under California Nonprofit Corporation Law to serve on behalf of the San Diego Redevelopment Agency and serve “as a catalyst between public and private partnerships.”⁶⁴ The CCDC is a public, non-profit organization that serves the City of San Diego.⁶⁵ The CCDC is governed solely by the San Diego City Council.⁶⁶ The CCDC is charged with the mission of ending blight in all areas of San Diego. Due to being formed as an agency under the Redevelopment Law, the CCDC has the authority to issue tax allocation bonds and other financing.⁶⁷ The actions taken by the CCDC are subject to the approval/disapproval of the Redevelopment Agency of San Diego.⁶⁸

Over the years, the CCDC has focused on the development of affordable housing. Recently, the CCDC has also recognized the importance of sustainable practices in constructing affordable housing. The CCDC June 2009 guidelines require organizations requesting subsidies from the CCDC to have acquired LEED NC Silver standard or the equivalent for their housing

⁶³ Redevelopment Agency: Overview. Available at <<http://www.sandiego.gov/redevelopment-agency/overview.shtml>>

⁶⁴ About Us. Available at <<http://ccdc.com/about-us.html>>

⁶⁵ Id

⁶⁶ see CCDC Operating Agreement available at <http://www.ccdc.com/images/stories/downloads/about-us/Operating_Agreement_2010.pdf>

⁶⁷ Id

⁶⁸ Id

development.⁶⁹ The LEED NC Silver standard includes such characteristics as the quality of air filters and irrigation systems.⁷⁰ This guideline is of particular importance since the CCDC is the main source of funding for many developers and organizations who develop in San Diego. Through the CCDC requiring that all funded projects to meet certain environmental standards, San Diego is confronting the concerns of the community.

San Diego Housing Commission

The San Diego Housing Commission (SDHC) was established in 1979 and is governed by the San Diego Housing Authority and the City Council government.⁷¹ San Diego Municipal Code §98.0301 is the local legislation that established the SDHC.⁷² The municipal code was made possible through §65580 of the California Housing and Safety Code, which declared that the “availability of housing is of vital statewide importance” and that attainment of such a goal requires the cooperation of both government and the private sector.⁷³

The San Diego Municipal Code gives the SDHC many responsibilities, including providing financial assistance to affordable housing developers. To allow the SDHC to assist developers, California legislatures have equipped housing authorities with a plethora of financial assistance mechanisms including the issuance of revenue bonds. §34312.3(a)(1) of the California Health and Safety Code gives a housing authority the power to issue revenue bonds for the development of multifamily rental housing authority.⁷⁴ §34376 allows the housing

⁶⁹ *see* Redevelopment Today

⁷⁰ *see* LEED Rating System for New Construction. Available at <[http://www.ugbc.org/ShowFile.asp? Document ID=55646](http://www.ugbc.org/ShowFile.asp?DocumentID=55646)>

⁷¹ *see* San Diego Housing Commission, *About Us*, Available at <<http://sdhc.org/About>>

⁷² *see* San Diego Municipal Code Chapter IX, Article 8 §98.29

⁷³ *see* CAL.GOV.CODE §65580

⁷⁴ *see* CAL. HLTH & S §34312.3(a)(1)

authority to issue these revenue bonds on a tax-exempt basis as long as the organization receiving the bond is non-profit organizations exempt from federal income taxation.⁷⁵

Revenue bonds are the primary way in which the SDHC financed the Ten Fifty B apartments.⁷⁶ Also, it is the financing sought by Affirmed Housing in developing their projects. Revenue bonds are “debt obligations for which interest and principal payments are derived from the revenue of the project being financed by the bond issue.”⁷⁷ California Health and Safety Code §34351 explicitly allows the issuance of bonds by the SDHC that are paid from revenues received by the bond holder upon its sale.⁷⁸

Affirmed Housing Group

In the development of Ten 50 B, Affirmed Housing is the only non-governmental entity that played a significant role in development. Affirmed is a private non-profit developer who has developed over 1500 affordable housing units before Ten 50 B in California.⁷⁹ Ten 50 B was spearheaded by Affirmed Housing. Affirmed Housing Group specializes in affordable housing development through tax credit and tax-exempt bond financing.⁸⁰ All of Affirmed Housing development projects have one goal in mind: “to restore distressed communities and out environment with an unimagined quality of life.”⁸¹ Thus, Affirmed Housing Group, a major developer in California is now exclusively dedicated to only developing sustainable housing across the United States.

⁷⁵ CAL. HLTH & S §34376

⁷⁶ see Jerry Ascierio. *Ten Fifty B Rising*. Affordable House Finance (2009)

⁷⁷ see Revenue Bond. These bonds are a common financing tool used by municipalities. Available at <<http://businessdictionary.com/definition/revenue-bond.html>>

⁷⁸ CAL HLTH & S §3451

⁷⁹ available at <<http://affirmedhousing.com/index.html>>

⁸⁰ Id

⁸¹ Affirmed Housing Group, *Our Green Mission* available at <http://affirmedhousing.com/corporate_profile/mission_statement.html>

Inclusionary Zoning

Gentrification is an issue that goes hand in hand with the concept of revitalization. Often when an area is redeveloped, the wealthy are never far away to take advantage of new developments. Often, this leads to substantially higher housing and rental prices, to the detriment of the poor residents. Thus, many states have responded through using inclusionary zoning. In essence, inclusionary zoning redistributes wealth. Inclusionary zoning requires that housing plans require a minimum amount low and moderate-income housing.⁸²

Turning to the Ten 50 B project, in 2003 San Diego adopted a mandatory, citywide housing ordinance concerning rental and ownership housing.⁸³ This ordinance applies to any development that has two or more units and requires a 55-year affordability covenant.⁸⁴ The ordinance requires that ten percent of multifamily housing be affordable.⁸⁵ Affordability is defined by the standards set forth in HUD.⁸⁶

Ten 50 B: The Beginning

In 2007, Ten 50 B project was first constructed to be another high-rise for the wealthy in San Diego.⁸⁷ However, with the economic downturn in 2008, KB Developers abandoned the project.⁸⁸ The project caught the eye of Affirmed Housing Group. The developers in Affirmed believed that Ten 50 B's potential housing capacity, coupled with its location in center city, would make it a great location for affordable housing.⁸⁹ Further, the project went leaps and

⁸² 66 Cal.Jur.3d §199

⁸³ S.D.M.C. Article II, Division 13

⁸⁴ *Id*

⁸⁵ *Id*

⁸⁶ *Id*

⁸⁷ *see* Jeanette Steele, *Luxury Project Becomes More Affordable* S.D. Union-Tribune (2008)

⁸⁸ *Id*

⁸⁹ *Id*

bounds in reaching the minimum affordable housing development that must be created due to San Diego's inclusionary zoning.

After taking over the project, the first task of Affirmed Housing Group was to make minor adjustments to the Ten Fifty B construction plan.⁹⁰ Affirmed reduced the height of each floor by 10 inches to increase the amount of available units.⁹¹ The high-rise development would be 23 stories tall with over 220 housing units.⁹² There would be 68 studio apartments, 57 one bedroom apartments, 34 two bedroom and 70 three bedroom units.⁹³ Included in the plan were open spaces playgrounds, barbeque and picnic areas and green spaces on the roof for gardening.⁹⁴

One hundred percent of housing units were to be available to persons of low and very low income levels under HUD definitions.⁹⁵ HUD established that persons making 80% of the region's Average Median Income (AMI) or below were low-income.⁹⁶ Very low-income is defined as 50% or below the AMI in the region. To qualify to live in Ten 50 B, applicants' income had to be within 25-60% of the Area Median Income (AMI).⁹⁷ In the San Diego region, these levels of income were \$15,800 to \$37,250, respectively, for a three-person household.⁹⁸ Affirmed also proportioned the availability of apartments units by the AMI of the residents. Meaning, a certain amount of units were available for residents with an AMI of 30% and a

⁹⁰ see Lori Wesiberg. *Affordable Housing Goes Downtown*. S.D. Union-Tribune (2010)

⁹¹ *Id*

⁹² *Id*

⁹³ see San Diego Housing Commission Report. (Sept. 10, 2007) (on file with author)

⁹⁴ see Weisburg

⁹⁶ see The Average Median Income (AMI) by HUD is established on an annual basis. HUD divides the country into regions and calculates the average income for those regions.

⁹⁷ See Wesiburg

⁹⁸ See News Release. San Diego Housing Commission, *San Diego Housing Commission Report*, available at <http://docs.sandiego.gov/councildockets_attach/2007/October/10-09-2007%2520Item%2520334.pdf>

certain amount of units were available for residents with an AMI of 50%. For example, 26% of Ten Fifty B units were available for applicants with an AMI of 30%, while 36% of the units were reserved for residents with an AMI of 35%.⁹⁹ This example also illustrates that the majority of Ten Fifty B apartments were reserved for residents at the very low-income level.

All housing units in Ten 50 B were offered at below market prices with steep discounts. For instance, at the time of Ten Fifty B was being constructed, a one-bedroom apartment in downtown San Diego had a market value rate of \$1400.¹⁰⁰ However, for a person living in a Ten Fifty B housing unit who earned 30% of the AMI in San Diego would pay \$373 a month in rent.¹⁰¹ Overall, the projected savings for all inhabitants Ten 50 B are estimated to be approximately \$2 million dollars a year.¹⁰² Thus, Ten Fifty B project met the “equity” factor in sustainable development through offering San Diego residents affordable housing on more equitable terms than the market commanded.

Ten 50 B’s Environmental Trendsetting

The environmental features of the Ten 50 B project are nothing short of outstanding. The Ten 50 B project is a premier sustainable development project and the first high rise in San Diego to receive Leadership in Energy and Environmental Design (LEED) Silver Certification.¹⁰³

LEED Certification is given by the U.S. Green Building Council (USGBC). The USGBC is a “non-profit community working to make green building available to everyone.”¹⁰⁴ LEED

⁹⁹ *Id*

¹⁰⁰ *Id*

¹⁰¹ *Id*

¹⁰² *Id*

¹⁰³ *see Weisburg supra*

¹⁰⁴ U.S.Green Building Council, *About Us*, available at <<http://usgbc.org/DisplayPage.spx?CMSPageID=124>>

Certification was created by the USGBC as a tool to assist in measuring various green aspects in building construction and design.¹⁰⁵ The LEED Certification consists of seven categories including Sustainable Sites, Energy and Atmosphere, Water Efficiency and Indoor Environment Quality that each has a point value.¹⁰⁶ Categories are given higher points to reflect the potential impacts on the environment.¹⁰⁷

The Ten 50 B project, scoring in the 50-59 point range, was able to achieve the LEED silver certification.¹⁰⁸ Ten 50 B's environmental features included solar photovoltaic panels, ventilation systems, "green spaces" and energy efficient appliances.¹⁰⁹ Ventilation systems will go far in improving air quality. Thus, the acute effects of poor air quality that historically affected the poor and caused respiratory illness will be directly attacked. Solar photovoltaic panels will eliminate the heat island effect in Ten Fifty B as well as lessen utility bills for residents.¹¹⁰ Therefore, residents of Ten Fifty B will be able to improve their overall quality of life inside and outside of Ten Fifty B.

¹⁰⁵ *see ID*. LEED Certification was created in 2001 with four different levels of measurements: LEED Certified, LEED Silver, LEED Gold and LEED Platinum. Also *see* Lees Lo Baugh, *LEED Green Building Initiatives*, 556 PLI/Real 23. "The rating system focuses on design, construction, and operations of a building, adopting a whole building approach".

¹⁰⁶ *See Id*

¹⁰⁷ UGBS, *What LEED Is. Available at* <<http://usgbc.org/DisplayPage.aspx?CMSPageID=1988>>

¹⁰⁸ *see* Eileen D. Millett, *Green Building for Dummies: What is LEED Certification?*, 25 No. 1 Prac. Real Est. Law, 41 (2009), LEED Certifications have different scales for commercial and non-commercial new constructions. Since Ten Fifty B is a new non-commercial construction, the construction had to accumulate at least 30 points to receive LEED Certification At least 50 points to receive LEED Silver Certification Over 60 points to receive LEED Gold Certification.

¹⁰⁹ *see* Weisburg

¹¹⁰ Solar photovoltaic panels are installed to create the photovoltaic (PV) effect. The PV effect "causes an electrical current to flow through a solar cell when exposed to sunlight". This solar cell transforms sunlight to power. This power is then used in the household rather than traditional natural gas or oil usages. U.S. Department of Energy: Energy Efficiency and Renewable Energy

Of particular note is the implementation of a system to collect water run off in order to be used in terrace planting irrigation.¹¹¹ As earlier stated, lack of “green spaces” in urban, low-income areas adversely affects the residents health. Healthy foods that residents have access to are often over priced. Recognizing this issue, Affirmed Housing provided an area for Ten Fifty B residents to plant their own vegetables, leading to an overall improvement of well-being.¹¹²

These environmental features are also linked to the economics of sustainable development. Through the use of energy efficient appliances, solar panels and water efficient low flow toilets, residents of Ten 50 B should see a significant decrease in the amount of money traditionally spent on electricity and heating payments.¹¹³ Further, 90% of Ten Fifty B’s units include views that will allow for natural lighting and will also cause a reduction in utility bills.¹¹⁴ Thus, residents will have extra money to address other necessities such as child or physician care that will also improve the overall well being of residents.

However, with the final cost of the project being approximately \$90 million dollars, the success of Ten Fifty B was contingent on substantial public financing. Thus, it was imperative that Affirmed Housing Group receive substantial financing in order for the project to be a success.

Financing of Ten 50 B

From the outset it should be noted that a substantial amount of financing that came from public entities on the local and state level. Only one funding source for the Ten 50 B project was

¹¹¹ see Ten Ffity B Apartmetns Open in San Diego *available at* http://california.construction.com/california_construction_news/2010

¹¹² *Id*

¹¹³ *see* Kats

¹¹⁴ San Diego Housing Commission, *News Release: Construction Begins on San Diego’s First 100% Affordable High Rise*, June 17, 2008

from a private in nature. Further, only 2.7% of the overall financing for the project came from private funding.¹¹⁵

On October 2007, Affirmed Housing Group received a loan authorized by the Centre City Development Corporation (CCDC) for \$34 million dollars.¹¹⁶ This financing was to go to the permanent financing structure of Ten 50 B.¹¹⁷ Before the loan granted, there first had to approval by the CCDC Board of Directors.¹¹⁸ A part of the CCDC approval process is to ensure that developments meets the CCDC's 2009 "green" guidelines that were established in the 2009 guidelines. Also, San Diego's inclusionary zoning ordinance played an important role in CCDC's approval of the financing. With Ten 50 B providing housing exclusively for those who are low to very low income, the approval of this project went a great distance in reaching the inclusionary zoning requirements.

After the CCDC Board of Directors approved the loan, it was then authorized by the San Diego Development Agency.¹¹⁹ San Diego Development Agency approval was the final step in Affirmed receiving the CCDC loan. The CCDC loan was central to the success of Ten 50 B since substantial financing from the San Diego Housing Commission was contingent on the CCDC loan approval.¹²⁰

Affirmed Housing received additional public financing from the San Diego Housing Commission for two purposes: 1) to finance the site acquisition and construction of the project

¹¹⁵ *see* San Diego Housing Commission Report

¹¹⁶ Anne Townsend, *San Diego Redevelopment Agency Gives Nod to Ten Fifty B*, Housing Bond Report, December, 2007 at 1

¹¹⁷ *see* San Diego Housing Commission Report

¹¹⁸ *see* Operating Agreement

¹¹⁹ *see* San Diego Housing Commission Report

¹²⁰ *Id*

and 2) permanent financing, which would be of a lesser amount.¹²¹ Of the \$47 million dollars of bonds Affirmed requested, \$35 million would be used to finance the construction of the project.¹²² The \$35 million dollar portion of the loan used for construction purposes would be paid off at the conversion of to permanent financing.¹²³ The permanent financing was estimated to be \$9 million dollars.¹²⁴ However, the final amount was contingent on factors such as interest rates and the final project costs.¹²⁵

Before authorizing the issuance of the revenue bonds, City Council held a public hearing pursuant to the requirements of the Tax Equity and Fiscal Responsibility Act (TEFRA).¹²⁶ As required by TEFRA, the public hearing was held in order to adopt two resolutions that would allow for the issuance of the tax-exempt revenue bonds.¹²⁷ TEFRA requires such public hearing in order to get feedback from the community as to whether the bonds should be issued.

According to the minutes and video of the meeting, there was very little, if any public participation, from these hearings.¹²⁸ Thus, it seems as if they may be a mere formality in the present case.

The issuance of revenue bonds were approved for Affirmed Housing at the public hearing and later approved by the San Diego Housing Authority.¹²⁹ These bonds were

¹²¹ *Id*

¹²² *Id*

¹²³ *Id*

¹²⁴ *Id*

¹²⁵ *Id*

¹²⁶ *see* San Diego Housing Commission, *October Meeting Minutes*, available at <

¹²⁷ *see* Connecticut Health and Education Facilities Authority, *What is a TEFRA Hearing?*, available at <<http://www.chefa.com/node/349>>

¹²⁸ *see* Meeting Minutes

¹²⁹ *see* City of San Diego, *October Meeting Minutes*, available at <<http://docs.sandiego.gov/councilminutes/2007/min20071009rm.pdf>>

syndicated by Boston Capital and purchased by US Bank.¹³⁰ From these bonds, Affirmed Housing received \$34.4 million in four percent tax credit equity.¹³¹ Throughout the construction of Ten 50 B, US Bank retained the bonds as collateral.¹³² At time of conversion, the bonds were redeemed and repaid to the SDHC.¹³³ Thus, the debt owed to SDHC went from \$48.5 million to \$8.4 million.¹³⁴

The third source of financing originated from California's Multifamily Housing Program (MHP). Established by Section 7300 of the California Health and Safety Code, the purpose of the program is to assist in the "construction, rehabilitation and preservation of permanent and transitional rental housing for lower-income housing."¹³⁵ MHP accomplishes its goal through providing 55-year long-term loans at an interest rate of 3% to eligible sponsors.¹³⁶ In order to be an eligible sponsor, the sponsor must have experience building affordable housing.¹³⁷ Once an applicant submits an application, the Department uses a ranking system with no public input in determining which developer receives a loan.¹³⁸ The Affirmed Housing Group was able to receive a \$10 million loan for Ten 50 B.¹³⁹

The remaining financing of the Ten 50 B project came from Tax Credit investors, state subsidies and some private funding.¹⁴⁰ Affirmed Housing received \$33.7 million in tax credit

¹³⁰ see Jerry Ascierio, Ten Fifty B Rising, Affordable Housing Finance, April/May 2009

¹³¹ *Id*

¹³² *Id*

¹³³ *Id*

¹³⁴ *Id*

¹³⁵ Cal HLTH & S §7300

¹³⁶ Multifamily Housing Program. Available at <<http://www.hcd.ca.gov/fa/mhp>>

¹³⁷ *Id*

¹³⁸ *Id*

¹³⁹ see SDHC Press Release *supra*

¹⁴⁰ see San Diego Housing Commission Report

financing. The source of the tax credit financing came from a low-income tax credit allocation from the California Debt Allocation Committee.¹⁴¹

The final balance sheet is illustrated below:

CCDC Loan	\$34.4 million
Federal Low-Income Tax Credit	\$33.7 million
SDHC Permanent Financing Project	\$8.3 million
Private Funds	\$2.4 million
Developer Fees	\$300,000 dollars

¹⁴²

Can “Ten 50 B” Developments be successful in mitigation poverty through sustainable housing developments?

3200 applications were received for 229 apartments in Ten 50 B.¹⁴³ Affirmed Housing Group created a green housing development that is not only affordable, but uses environmental features in order to improve the overall well-being of its residents. Thus, all three requirements of sustainable development were met: environment, economic, and equity. Ten 50 B was an economically feasible development through cost-efficient construction and maximizing the amount of housing units that would be available by lowering the ceiling height. Ten 50 B took into account present and potential environmental concerns through acquiring LEED Silver Certification. Ten 50 B is the epitome of equity by limiting the availability of the housing to persons meet the HUD definition of low-income or very low-income. Thus, in terms of

¹⁴¹ *see* Low Income Housing Tax Credit Allocation Programs *available at* <http://www.treasurer.ca.gov/ctcac/qap.pdf> As an incentive for private developers to engage in low-income housing development, the Debt Allocation Committee distributes tax credits to developers who meet a certain criteria. This criteria includes housing plans to serve low-income tenants, serve tenants long-term and in an area nee for redevelopment.

¹⁴² *see* San Diego Housing Commission Report

¹⁴³ Lori Weisburg, *Affordable Housing Goes Downtown*, S.D. Union-Tribune, April 15, 2010,

development and meeting the mission of sustainable development, Ten Fifty B can be deemed a success.

Therefore, the question is if similar projects can be effective across the United States in mitigating poverty in urban areas. The answer to this question is contingent on two factors: First, the likeliness that other communities will enact similar legislation in order to develop sustainable projects. Second, how plausible is it that similar projects could obtain financing comparable to the Ten Fifty B project.

Similar Legislation

First, it seems very likely that other U.S. could use similar legislation in order to create sustainable development projects. Presently, there are 27 cities in the United States that require some form of LEED certification in development plans.¹⁴⁴ For instance, in Dallas, Texas city buildings larger than 10,000 square feet must at least have a LEED silver certification.¹⁴⁵ In December 2003, the city of Atlanta, Georgia implemented Ordinance #03-0-1693 that requires all building projects funded by the city over 5,000 square feet or that cost over \$2 million to implement sufficient “green” features to obtain at least LEED Silver Certification.¹⁴⁶ An additional 87 United States have adopted sustainable development indicators that measure the sustainable practices of the city through using an economic, social, environmental, governance and equity criteria.¹⁴⁷ Although 87 out of hundreds of cities is not nearly all cities in the United States, is indicative of a movement towards sustainable building practices across the country.

¹⁴⁴ see Les Lo Baugh. *LEED Green Building Incentives*. 556 PLI/Real 23 (2008)

¹⁴⁵ *Id* at 31

¹⁴⁶ *Id* at 49

¹⁴⁷ see Buchman *supra* at 510. Sustainable development indicators included economic, environmental, social, governance and equity criteria. Often these indicators were created with intensive public participation.

Additionally, many initiatives exist in the federal government and federal agencies to foster sustainable development in old and new construction. For instance, HUD's M2M Green initiative encourages owners to operate properties using sustainable green building. HUD recognized the importance of the sustainable building by stating the purpose of M2M is to bring awareness to the fact that it costs less money to operate green buildings and green building improves the quality of life for their inhabitants.¹⁴⁸ The United States is also a party to Agenda 21 that was adopted at the 1992 Earth Summit. Agenda 21's purpose is to promote sustainable development across the world.¹⁴⁹ Further, in 2006 19 federal agencies signed the 2006 Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding (MOU).¹⁵⁰ In short, on state, local and federal levels of government there is a trend to promote sustainable development through municipal codes, state legislatures and federal incentive programs.

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Financing

Thus, the question of whether housing developments similar to Ten 50 B can assist in mitigating poverty across United States is contingent on whether comparable programs will be able to find similar financing. First, two unique characteristics that surround the Ten 50 B project should be addressed. One, it was acknowledged by James Silverwood, the president of Affirmed Housing, that one reason Affirmed Housing has been so successful in the recent years is due to the economic downturn.¹⁵¹ In fact, Larry Clemens, the Senior Vice President of San

¹⁴⁸ Department of Housing and Urban Development, *OAHP's M2M Green Initiative*, available at <<http://www.hud.gov/offices/hsg/omhar/paes/greenini.cfm>>

¹⁴⁹ see Bachman

¹⁵⁰ Under the MOU, agencies agreed to try and decrease their greenhouse gas emissions through reducing energy use by three percent each year 556 PLI 2008

¹⁵¹ see Lou Hirsch, *Tough Market Aids Affordable Housing Builders*, S.D. Business Journal, May 10, 2010

Diego Housing Commission, stated that the Commission had been able to acquire property and land for prices that were 20-30% cheaper than they were five years ago.¹⁵² Thus, a hidden factor in the success of Ten 50 B apartments is that it developed for much cheaper than it would have in the past. Secondly, California has historically been able to provide funding for such development projects through a significantly higher tax rate than what is found in most states.¹⁵³ Therefore, such public non-profit groups like the CCDC and the SDHC have access to more funds than other local development agencies.

Although the low price of development and substantial financial assets in California created the “perfect” storm for Ten 50 B development, this is by no means an indicator of the financial feasibility for such sustainable housing developments.

First, sustainable housing developments do not have to be done on as large scale. In fact, Ten Fifty B was the first time San Diego had financed such a large project.¹⁵⁴ Secondly, sustainable building does not have to equal new construction. Although Ten Fifty B is a “greenfield” development,¹⁵⁵ there are also other development plans that introduce environmental initiatives into pre-existing constructions. Governments that may lack the funds to develop new construction could focus on implementing green features into existing developments since it is often cheaper than “greenfield” developments. Lastly, “greenfield” development is cheaper than traditional housing development. Thus, if a local government were

¹⁵² *Id*

¹⁵³ *see* California, *The Facts of California’s Tax Climate*, available at <http://www.taxfoundation.org/taxdata/show/27063.html>. California has the 6th highest tax rate in the country

¹⁵⁴ *see* Weisburg

¹⁵⁵ “Greenfield development” means the development of unencumbered land. Eric Rutkow, *Kelo v. City of New London: Case Comment*, 30 Harv. Envtl. L. Review (2009)

to create affordable housing at all, it would be a better economic decision to develop sustainable construction rather than traditional housing.

Policy Recommendations

As the country begins to embrace the ideas and theories behind sustainable development, there are many different methods in which sustainable housing may be successful. However, there are key elements to successful sustainable housing development that should be a part of any initiative. In a sustainable housing plan, there should be public and private partnerships, regional coordination, intensive public participation, “bottom up” development and success measures.

Mixed Use Zoning

Many scholars believe that mixed-use zoning is essential to any successful sustainable development scheme. Mixed-use zoning promotes a blending of low-income and high-income residential housing units.¹⁵⁶ Mixed income housing units have been the preference of many governments since their emergence in the 1960s. Many scholars like Matthew Sternam believe mixed income housing is more effective in addressing the “equity” in the sustainable development.¹⁵⁷ Reason being, mixed income housing units seek to integrate low-income households into communities that have better established schools and employment opportunities. Further, racial integration occurs through mixed income housing that may be unlikely to occur in 100% low and very-low income development.¹⁵⁸

If mixed-use housing was clearly effective in accomplishing these goals, there would be no question mixed-income housing was essential to sustainable housing development. However,

¹⁵⁶ see Matthew Sternman, *Integrating the Suburbs*, 44 Colum. J.L. & Soc. Probs. 1 (2010)

¹⁵⁷ *Id*

¹⁵⁸ see *Id*. The vast majority of those living in low-income housing developments are minorities

there has been criticism by home economists that mixed-use housing development actually have very little success. Robert Ellickson has found that net social benefits of economic and social integration have found to not be nearly as high as first thought.¹⁵⁹ Further, Robert Ellickson has found that many poor minority households do not want to live in mostly white, wealthy neighborhoods.¹⁶⁰ Thus, it seems as if the jury is still out on the effectiveness of mixed-income housing projects. Before it can deem an essential element of sustainable housing developments, more research should be done in order to determine if it is an effective tool social and economic integration.

“Bottom Up” Development: Local Governance

Although the federal government may be the source of key financial incentives in sustainable development, such a tax-exempt financing, its role should be limited. Presently, a vast majority of sustainable housing development initiatives commence at the local level. Furthermore, it has always been within a state’s power to enact legislation concerning the well-being of its citizens.

As stated in *Medtronic, Inc. v. Lohr*, “these are matters that are primarily and historically of local concern.”¹⁶¹ State and local government are able to pass legislation and react to local communities needs far more effectively than the federal government. Realistically speaking, it would be impractical to expect Congress to develop uniform legislation that would allow for a sustainable development program in California to be just as successful as one in Atlanta, GA. Thus, power should remain with state and local actors to create legislation that allow local governments to develop sustainable projects.

¹⁵⁹ Robert C. Ellickson, *The False Promise of the Mixed Income Housing Project* 57 UCLA L.Rev. 983 (2010)

¹⁶⁰ *see* Id at 1015 When African-Americans were surveyed concerning where they prefer to live, most preferred to live in predominately African-American neighborhoods.

¹⁶¹ *Medtronic v. Lohr* 518 U.S. 470 (1996)

There is a recognized tension here. California has been very successful in developing sustainable programs without reliance on the federal government for funding due to a higher tax rate. However, many local and state governments depend on federal money, but still want the discretion to determine how the money is spent. Understandably, the federal government also wants a voice in how the federal funds since it is their money.

A possible solution can be found in the recent competitive grant process the federal government used in distributing Promise Program money. Local governments and organizations were able to create programs catered to the needs in their community. The federal government was able to have a necessary voice by picking which programs received the funds.¹⁶² If a similar program could be created in disbursing funds for sustainable housing projects, then locally tailored development projects would have the discretion in creating programs to fit the needs of their community.

Public and Private Partnerships

Patricia Crowder believes that “contemporary public-private partnerships have become the cornerstone of local government economic development strategies and inner city development.”¹⁶³ There could not be a better example of the importance of the public sector in sustainable housing than the Ten 50 B Project. Affirmed Housing, a private actor, spearheaded the project while the SDHC, CCDC and the state government were able to provide the necessary financing. The Ten 50 B project would not have been possible without such a partnership. This relationship between the private sector and the public sector is imperative because the public

¹⁶² see Proposed Promise Neighborhoods Priorities: Office of Innovation and Improvement, U.S. Department. (2011)

¹⁶³ see Patricia A. Crowder, “Ain’t No Sunshine”: *Examining Informality and State Open Meetings Act as the Anti-Public Norm in Inner-city Redevelopment Deal Making*, 74 Tenn. L. Rev. 623 (2007)

sector simply cannot do everything, especially on the local level. Sustainable housing projects are at the tallest ebb of the success when there is a successful private and public sector partnership. A private actor can also play a role in financially sponsoring the project or offering pro-bono legal services.

Horizontal Coordination

There should be consistent, uniform policy of sustainable development within a region. Reason being, “many local governments in a region exist in the same watershed, use the same water supplies, or affect each other’s land use policies.”¹⁶⁴ Unfortunately, environmental challenges do not stop at the city limits. Thus if a single city in a region decides to adopt sustainable initiatives and no other city in the region decides to do the same, the overall impact would be low. Therefore, in order for sustainable housing to have its greatest impact, regional coordination is necessary.

The difficulty with this aspect is determining where the line should be drawn.

Environmental issues do not stop at a municipal or state line. Thus, it is hard to discern a boundary. John C. Dernbach believes the answer is coordination between the national, state and local level.¹⁶⁵ Although Dernbach recognizes that sustainable development is broader than environmental law, he primarily seeks stronger enforcement of environmental regulations at all levels of government.¹⁶⁶ However, Dernbach should go a step further and state the local, state and federal laws should also coordinate and enforce principles of equity and economic feasibility in their development plans.

¹⁶⁴ see John C. Dernbach and Scott Bernstein, *Pursuing Sustainable Communities: Looking Back, Looking Forward*. 35 Urb. Law. 495 (Summer 2003)

¹⁶⁵ *Id*

¹⁶⁶ *Id*

At first glance, Dernbach's integrated coordination approach seems at odds with the grassroots characteristics of sustainable development movements. However, grass roots community development and integrated coordination can compliment each other. The "bottom's up" approach will ensure sustainable development efforts address the needs of the community on the local level. While that integrated coordination will guarantee that one community's efforts towards sustainability will not have a zero sum game. This is done by ensuring the proper laws and policies are in place to ensure all communities are engaging in such efforts.

Intensive Public Participation

The role of the public is essential to the successful development of sustainable housing development and cannot be overstated. The rationale for public hearings, similar to those required by TEFRA, is "that public knowledge of the considerations upon which governmental action is based is essential to the democratic process."¹⁶⁷ Further, intensive public participation at every stage of development and implementation, it is ensured "that environmental and social perspectives are brought into decision making processes that may be dominated by economic objectives".¹⁶⁸ Also, intensive public participation adds credibility to the decisions of the local government. It is too often that lawmakers state, "This is what the public wants" without actually speaking to the public. Through intensive public participation, not only can lawmakers be sure that they are getting it right, but that this decision is truly what is necessary in this community.¹⁶⁹

Criticism of the effectiveness of open meeting requirements and required public participation is exemplified in the Ten Fifty B project. SDHC was required to hold a public

¹⁶⁷ *see* Crowder *supra* at 641

¹⁶⁸ *Id* at 643

¹⁶⁹ *Id*

meeting and no one from the affected community was in attendance. Thus, many find the need for public hearings to be generally ineffective because the public is often unaware of the meetings and generally do not show up.¹⁷⁰

However, this does not mean that public participation is not necessary, only that other means should be used in order to obtain critical public input. Local communities need to engage the community.¹⁷¹ Crawford suggests that local and state governments should implement formal procedures in order to guarantee an increase in public participation.¹⁷² Crawford's recommendations include local governments conditioning passages of development plans only after evidence of quantifiable community participation and the use of community advisory committees to make sure that the voice of the community are heard.¹⁷³

In the realm of sustainable housing development, community advisory committees are the best mechanism to receive public input. These committees "should be vested with sufficient power to achieve meaningful community participation in inner-city development."¹⁷⁴ Thus, the committee should include leaders in the local community and others in tuned to the needs of the community.

Measures of Success

In order to ensure success of each sustainable development project, there should be both short-term and long-term goals with measureable success. Dernbach finds the importance of goal making is that it allows for lawmakers and the community to have clear objectives to what is to be accomplished, identify priorities, shows demonstrated commitment to sustainable

¹⁷⁰ *Id* at 641

¹⁷¹ *Id* at 645

¹⁷² *Id*

¹⁷³ *Id*

¹⁷⁴ *Id*

development, clarifies the law, provides benchmarks for progress as well as giving credibility to the project.¹⁷⁵ For purposes of sustainable housing development, clear objectives, demonstrated commitment, credibility and showing a benchmark for progress are the most important. Clear objectives allow for lawmakers and the community to communicate about what the goals are while partaking in sustainable development.¹⁷⁶ Thus, it will give everyone in the community clear goals to work towards for success. It also allows for lawmakers to demonstrate a commitment to sustainable development. Secondly, there is additional credibility that everyone in the community is taking strides to work towards sustainable housing in low-income areas.

Both long-term and short-term goals should include some way to measure the success. The optimal measurement would include a way to measure all three factors of sustainable development: equality, economic and environment. The environmental aspect could be easily measured through LEED ratings to ensure that buildings are being built in an environmentally friendly way. Economic feasibility will similarly be easily measured through customary calculations. However, there is more difficulty in measuring the effectiveness in improving equality and environmental standards over a period of time.

Optimally, such an indicator would include methodology in order to show an improvement in overall well-being in those living in the community. This should be another area in which public input would be essential. Lawmakers could create improvement indicators by asking the public what are the important environmental and equitable concerns in their community. These indicators could then be used as measurements in which lawmakers may gauge the success of their projects.

¹⁷⁵ see John Dernbach, *Targets, Timetables and Effective Implementing Mechanisms*, 27 Wm & Mary Env'tl. L and Pol'y Rev. 79 (2006)

¹⁷⁶ *Id*

Conclusion

For decades, the poor have witnessed development efforts work to their disadvantage. Sustainable development in low-income areas is an opportunity for development to advantage the poor. Granted, sustainable development is a new idea. With all new ideas, there are risks. However, with the success of Ten Fifty B and other sustainable development projects, sustainable affordable housing should no longer be thought of as an option by communities and lawmakers, but as a necessity.

First, sustainable housing developments not only addresses the housing challenges faced by the poor, but environmental challenges, as well. Through sustainable housing addressing both indoor and outdoor environmental concerns at lower costs than traditional affordable housing, there should be no question it should be the favorable development mechanism. Secondly, Ten Fifty development has produced a replicable model for the construction and financing of sustainable housing development. Although Ten Fifty B had access to great funds, this article has discussed lower-costs alternatives to develop projects similar to Ten Fifty B. Lastly, many scholars have set forth elements that are key to a successful sustainable development effort. Through the use of public participation, “bottoms up” governance and integrated coordination, each community will be able to create a sustainable housing development plan that will improve the overall well-being of its residents.

Sustainable housing development not only guarantees safe housing, but ensures a healthy environment in the present and the future. Thus, each community across the US should finance and support sustainable housing developments.

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