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To Greater Boston

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THE POLITICS OF REHABILITATION

For people who love the traditional look and feel of cities, preservation of existing buildings offers a common-sense way to revitalize neighborhoods that experienced decline from the 1960s to 1980s. But fixing even the sturdiest structures poses difficult challenges. Rehabilitation projects require coordination of many government agencies, creative coalitions in the community, and the use of public incentives to engage private developers and businesses.

BY LARISA ORTIZ

Blighted and vacant properties are more than a nuisance or an eyesore. Abandoned buildings and lots offer physical evidence of shrinking tax roles and urban poverty. Rebuilding the urban fabric has long been part of this nation's public policy debate. Beginning with the Federal Housing Act of 1949, which established the urban renewal program, the public sector has maintained a vital role in spurring investment in marginal communities. The federal government is not alone. At both the state and municipal levels, assisting in the development of these communities remains a priority for cities across the nation.

The reuse of older buildings offers an important strategy for sustainable growth and the prevention of unnecessary "sprawl" of development away from the urban core. Older buildings are usually located in areas with established infrastructure, including water and sewerage system, streets and roads, and public transit facilities. The failure to reuse these capital investments means that billions of dollars in public and private infrastructure are underutilized.

Even when these "sunk" costs and the ensuing savings are reflected in a developers' financial calculations, the added costs of environmental remediation, building rehabilitation, land assembly, and permitting often make rehab financially unfeasible. A survey conducted by the Council for Urban Economic Development found it was so difficult to preserve important structures without government subsidies that public-sector funding was required to close the funding gap in over three-quarters of the rehabilitated properties surveyed.¹ When it comes to adaptive reuse and building rehabilitation, government entities at every level play an even more significant role, both in Boston and across the country.

Concerned citizens and public officials are recognizing the link between rehabilitation of existing buildings and smart growth. Over the past decade, the National Trust for Historic Preservation has increasingly become involved in supporting public policy that limits suburban growth as a

means to support historic preservation. In 1993, the Trust entered the smart-growth debate by placing the entire state of Vermont on its annual list of “most endangered places.” Preservationists, beleaguered by large-scale retailers whose stores were drawing downtown consumers away, along with Vermont’s traditional small-town way of life, realized that sprawl was threatening their hard-won victories revitalizing the state’s towns and cities. In the end, local officials were able to negotiate a compromise with Wal-Mart. The retailer agreed to use vacant retail space in Rutland and Bennington to site its big-box retail outlets.² In return for this concession, Wal-Mart opened a large store on the outskirts of Williston.

As Historic preservation and urban revitalization go hand in hand. Together they are increasingly considered a viable strategy for reducing sprawl. Cities across the nation are using supporting increased funding and development of their urban areas. Denver’s 1986 Downtown Area Plan, which helped spur the successful redevelopment of the historic warehouse district, is one such example:

Unless all our growth is to be absorbed at a cost of losing the open space, wildlife, and vistas Coloradoans cherish, we need a core city so attractive that a substantial number of the region’s people want to live, work, and play there, rather than at the ever-moving fringe.³

The plan, although directed at Lower Downtown, clearly speaks to the benefits that all Coloradoans will share as a result of the urban neighborhoods revival.

Financial institutions are also recognizing the value in investing in urban areas. Fannie Mae’s American Communities Fund (ACF) reflects this growing trend. The ACF is a \$3-billion fund dedicated to “high-impact real estate investments that will have a substantial, catalytic effect on the vitality of America’s neighborhoods.” states:

Rehabbing housing has become the major catalyst for turning around underserved neighborhoods. Rehabilitation is seen as extremely valuable in keeping neighborhood character intact. It also becomes very expensive to do infill after you knock down existing housing. We can’t keep throwing away stuff. We have to fix it and make it consistent with some of the urban strategies that are going on. People want to keep the character in their neighborhoods.⁴

The Access Alliance, a consortium of partners that includes the Bank of America, the National Association of Housing Redevelopment Officials (NAHRO), the Enterprise Foundation and the Local Initiatives Support Corporation (LISC), also provides funding aimed at building rehabilitation, primarily as a way to provide affordable housing.⁵ The fund makes available \$200 million in combined loan and equity capital for such purposes. In addition, the Alliance will serve as a conduit for housing and community development agencies hoping to gain access to both training and technical assistance.

PRESERVATION ISSUES IN BOSTON

Advocates of both smart-growth and historic preservation recognize that any effective change in public policy must be regional in scope. While urban areas can attempt to tackle the revitalization

portion of the equation, they cannot successfully respond to urban sprawl without collaboration and support from their suburban counterparts. Mayors around the country are using this argument as a regional rallying cry: support us or lose your pristine open space to development. A thorough policy analysis must include a close investigation of the institutional barriers at all levels of government, from municipal to state to federal.

This paper will consider how public policy influences building rehabilitation at the local, regional and national levels. First, I will consider federal guidelines that determine funding eligibility for remediation through the Environmental Protection Agency, and preservation through the National Historic Preservation Tax Credit. Second, I will consider the role that state government can play in reducing the risks and costs associated with bringing buildings up to building and life safety codes. Finally, I will consider the role that local government plays in encouraging building reuse and the effectiveness of tax incentives as a way to attract developers to projects that include substantial rehab.

As a Rappaport Public Policy Fellow in the summer of 2002 with the Boston Redevelopment Authority (BRA), I had the opportunity to work on a number of projects involving City-owned buildings in need of rehabilitation. The project that most clearly highlights some of the barriers to adaptive reuse was three church-owned buildings in danger of demolition in the Mission Hill neighborhood of Boston. The buildings are located behind a well-known Catholic Basilica, known as Mission Church, and have been abandoned, on and off, for over 30 years. The site includes a historic convent, school and performance hall. The buildings are located across from a recently constructed HOPE IV housing development, now a community with filled with two-story, pastel-colored townhouses. All of the church buildings are in varying states of decay, with the hall in the worst condition. The buildings are filled with asbestos, lead, toxic pigeon droppings, and interior balconies in danger of collapse. The convent and the school have been maintained to a greater degree, and the school was recently home to Boston Latin School while a new facility was under reconstruction.

The scenario at Mission Hill is a classic one. The developer and the community are clearly at odds. The Catholic Church has entered into a purchase-and-sale agreement with the developer for the land and buildings. After the developer established site control, he proposed demolition in order to construct a larger apartment building on the site. When the community got word of the plans, they demanded a participatory role in the process. The Mayor responded by creating a Citizen's Advisory Committee (CAC), composed of local residents, City Council representatives and BRA staff. Together these groups have explored development options that allow for the restoration of the buildings.

It was this experience working on the Mission Church buildings that provided a framework for understanding the many difficulties associated with saving beautiful historic buildings that the community clearly considered a valuable asset.

THE PLAYERS

As the case of Mission Church demonstrates, even projects involving private owners and private sector developers can require a high level of community participation and input from both government agencies and political players. This section considers those players and their role in the development process.

Land owner/developer: The developer is the “conductor” of the development process. Successful rehabilitation projects often require great tenacity and experience on the part of the developer, who is charged with the coordination of a complex and risky process that often makes other less seasoned developers steer clear.

Financial Institutions: Banks provide the capital that developers use to make projects a reality. Their lending practices can either expedite or stall rehab. Unfortunately, lending institutions tend to shy away from rehab project. *Mortgage Banking*, an industry magazine, explains: “Fewer lenders are willing to finance rehab projects, compared with new construction, because of the greater uncertainty and risks-especially environmental liability, such as hidden asbestos or a buried fuel tanks...Lenders, therefore, may demand higher fees and interest rates on rehab deals than for new construction, as well as more guarantees and more paperwork (for market studies to architectural drawings) and/or more stringent loan terms.”⁶

While many lenders have historically resisted investing in marginal neighborhoods, some lenders, including Fannie Mae and Bank of America, have stepped forward to provide financing when others have not.

State and Federal government: The state and federal policy either includes or excludes older buildings as eligible for public funding sources. And as environmental regulations become more stringent, state and federal entities are becoming increasingly involved in regulating new development. These policies can shape regional growth patterns.

Local government: Even in the most basic of transactions, local government is always a partner in the development process. In Boston, the BRA administers project reviews for both small and large projects; most development projects are subject to design review and a public participation process. Boston is also one of the few cities that has legislated a set-aside of affordable units through inclusionary zoning. These requirements mean that the BRA plays a very substantive role in any development project in its jurisdiction.

The Community: Ask local officials: few urban development issues can inspire people to activism like the threatened demolition of significant older buildings. Consider Jacqueline Kennedy Onassis and her much publicized fight to save Grand Central Station in New York. Together with concerned citizens and the Municipal Arts Society at the helm, they waged a 10-year battle that ended in the U.S. Supreme Court. In the end, the Court ruled on behalf of the preservationists and Grand Central was spared the wrecking ball. While the Mission Church buildings do not have a wealthy celebrity constituency, the topic of their demolition has also elicited great passion and concern from neighboring residents.

PUBLIC POLICY CHALLENGES

The Mission Hill example shows the numerous policy challenges that arise at federal, state, and local levels. Numerous policies exist to encourage preservation and adaptive reuse, but obstacles and restrictive eligibility make it difficult to qualify for public aid.

FEDERAL FUNDING FOR BROWNFIELDS AND HISTORIC PRESERVATION

Brownfields: One of the most pressing challenges facing older buildings is the need for environmental remediation. Older buildings, regardless of former use, are often contaminated. The Mission Church buildings were no exception. Contaminants included lead paint and asbestos in the drywall,

to pigeon droppings resulting from abandonment and failure to adequately secure the building. Remediation was estimated at half a million dollars.

Knowing that EPA funding was available for the remediation of contaminated sites, I investigated whether the buildings were eligible for such funding. But funding is limited to former commercial and industrial spaces. When used for residential development projects, funding can only be used to clean up the land *after* the building has been demolished. According to Noah Luskin, the BRA's senior project manager for brownfields redevelopment, developers frequently call to inquire about funding for asbestos and lead abatement, particularly for older, non-industrial buildings. To his knowledge, there is no public funding for this kind of cleanup.⁷

Ironically, the need for public funding for brownfields cleanup is one of the few issues that political players across the spectrum agree on. Many concur with Charles Bartsch and Elizabeth Collaton: "When dealing with brownfield situations, it is not uncommon for the costs of site testing, remediation, and redevelopment to exceed the property's value -- making reuse virtually impossible to justify without some kind of compensating incentives."⁸ However, little has been done to include significant historic buildings in the eligibility criteria for clean-up, despite the growing evidence that older buildings serve as successful catalysts in the rejuvenation of distressed neighborhoods.

President George W. Bush has stated that brownfield policy is a critical part of smart growth policies. The EPA also touts brownfields development as part of an overall smart growth strategy. According to an EPA statement: "The use of smart growth principles in brownfield redevelopments can increase the net benefits associated with reusing sites already serviced by infrastructure, reduce demand for land for development on the urban fringe, and improve the air and water quality of the regions in which they are applied."

The failure to distinguish between old industrial sites and older contaminated buildings begs the question: If Brownfield funding is intended to curb sprawl, then why is federal funding currently limited to former industrial and manufacturing sites?

The problems stems, in part, from the origins of federal funding guidelines for brownfields cleanups. When the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), better known as "Superfund," was passed, the primary concern of Congress was cleaning up the most contaminated sites, so funding was limited to industrial and manufacturing land and buildings. Superfund guidelines prohibit the grantee from using the funds for the removal of asbestos, lead paint, or petroleum products -- the major impediments for reuse of old buildings.

A 2001 congressional hearing underscored the frustrations of brownfield developers. According to the hearing notes:

Both EPA and recipients of brownfield assistance expressed concern regarding the restrictions and requirements placed on the use of such monies by CERCLA... Nearly all [cleanup grant] recipients and several EPA officials we spoke with stressed that the Brownfields program should not be tied to CERCLA. They told us that the provisions of CERCLA...are overly restrictive and present barriers to effective cleanup of Brownfield sites.⁹

These provisions have prevented redevelopers from competing for funding intended to support projects that realize the same Smart-Growth principles that are espoused by funding guidelines.

The ability to compete for the limited pool of available funding is the next important step in turning Brownfield legislation into a truly comprehensive and effective strategy intended to slow

down urban sprawl. Funding that includes buildings like the Mission Church buildings would help jump start the revival of a long distressed neighborhood in a way that thoroughly supports Smart Growth strategies.

Historic Rehabilitation Tax Credit: The Historic Preservation Tax Credit, administered by the National Park Service, is another important funding source for rehabilitation. The program currently provides a one-time tax credit equal to 20 percent of qualified rehab costs, including hard construction costs and interest on construction-related debt and real estate taxes. Since FY 1994, the number of Tax Credit projects has increased from 500 projects to 1,276 projects in FY 2001.¹⁰

Despite the relative success of the program in its current form, some argue that it was more successful before the tax credit was altered in 1986. Non-historic structures over 50 years old were limited to a 10 percent tax credit, compared to the previous 20 percent credit. Finally, tax credits were limited to active investors, rather than passive investors who could use the credit to reduce their general tax burden. These changes were the result of a 1984 investigation by the Government Accounting Office (GAO) that revealed abuses in the tax credit program.¹¹ Changes to the program severely curtailed preservation efforts. Only recently, and during booming economic times, has there been an increase in tax credit projects. Notwithstanding these changes to the program, the tax credit has proved a valuable resource.

However, the credit is not without its problems. Some building owners reject designation on the National Register of Historic Places, a requirement for funding eligibility. The case of the Mission Church buildings is one such example. While no one disputes the historic and cultural value of the buildings, they are currently not listed on the Register, nor does the church want them to be. According to Norman Tyler, professor of historic preservation at Eastern Michigan University: “[R]eligious organizations have long argued they should not be subject to the same requirements as other property owners...Churches sometimes argue they serve a community and religious purpose and need to retain the right to change their property and buildings to best address that need.”¹² The Catholic Church in Boston is no different. The Boston Archdiocese has long resisted placing the buildings on the Register, opting to maintain full control over the buildings and their uses. The result is that under current ownership, the buildings are not eligible to receive tax credits.

Owners often shy away from designation out of fear that the costs outweigh the benefits. The credit places a number of restrictions on rehabilitation, and sometimes makes a project financially unfeasible. In the case of the Mission Church buildings, the former convent was originally configured to include a great deal of communal space for the nuns. A historic rehab would have to maintain the integrity of this communal space, i.e. leave it open, thus reducing the net leasable area and subsequently the level of debt service the project can carry. As a result, the use of the credit does not significantly enhance the economics of rehab, even if it was intended to do so.

STATE-LEVEL BUILDING AND LIFE SAFETY CODES

The quest to stop the demolition of the Mission Church buildings was not directly affected by Boston’s building codes, building regulations affect every building in the country. Older buildings, built to antiquated safety standards, often do not comply with new building codes. This does not necessarily mean that the older structures are unsafe, just that newer codes do not offer reasonable standards to insure health and safety standards.

The 1991 Americans with Disabilities Act (ADA), meanwhile, requires that both new and rehabilitated buildings provide accessibility to the physically disabled. As important as the ADA is to

those with disabilities, it is sometimes difficult for older buildings to comply with these requirements without adding excessive costs to already marginal projects. The only way to fix a too narrow hall that does not provide a turn around radius for a wheelchair-bound individual, for example, is to tear down the interior walls. The addition of elevator wells adds another large expense to rehabilitation jobs. While buildings listed on the National Register of Historic Places are exempted from full ADA compliance, the code unfortunately creates a financial and bureaucratic hurdle that makes the rehab of older, non-historic buildings more difficult. The result is that it is often more cost prohibitive to rehab a building than to tear it down and start over.

In instances where rehab is financially feasible, the level of code compliance often depends on a particular building official, making it difficult if not impossible to estimate compliance costs. This inability to predict development costs makes adaptive reuse a risky proposition relative to new construction and leaves banks apprehensive.

New Jersey has created a “rehabilitation subcode” that outlines flexible standards to insure the health and safety of old structures. The new code, developed over two years in conjunction with fire and public safety officials, is intended to rectify the problems related with compliance to new building codes. In the year following the code’s passage, rehabilitation work increased by 42 percent in New Jersey’s 10 largest cities versus only 3.6 percent in 1997. Rehabilitation in Newark rose 59 percent, in Jersey City, 84 percent and in Trenton, 40 percent.¹³

LOCAL TAX INCENTIVES

The distinct history and ownership status of the Mission Church buildings precludes them from important federal funding opportunities. Without the option of federal subsidies or even rehab-friendly building codes, we were left to consider one last option, the use of property-based tax incentives. The Mission Church buildings, in many ways, are a singular example of how tax incentives might save the church while simultaneously expanding the city’s tax base. Religious institutions, like non-profits institutions, are exempt from paying property taxes. As a result, the property has never been taxed by the city. As the CAC considered rehab options, it was gradually looking like any feasible reuse option involved yet another non-profit user for the site, meaning that even in the event of reuse, the buildings would not be placed on the tax rolls and probably never would.

As the BRA considered ways to close the inevitable funding gap, we considered speaking with the tax assessor about extending a property-tax abatement to the Church buildings. Our scenario assumed a ten-year full property tax abatement, after which the city would begin to collect property tax. Using a tax abatement in our financial projects meant that the project came much closer to achieving financial feasibility, making rehabilitation a real option for the current developer for the very first time.

As hopeful as that option sounded, it was quickly discounted. In many cities, tax incentives are politically unpalatable, and Boston is one of those cities. The diversion of resources is a major concern to city officials who count solely on the property tax to fund public services, including police protection, fire protection, public schools and infrastructure investment. As a result, the city tax assessor is understandably reticent to forgo future tax revenue. As Mark Schuster, Professor of Urban Studies and Planning at MIT states “Any tax-based incentive, no matter what the purpose, erodes the tax base and results in fewer resources available to the state and/or costs redistributed in the form of higher taxation.”¹⁴ Particularly in times of a budget crisis, extending tax incentives to a private sector developer was not a politically acceptable solution.

THE CHALLENGE OF PRESERVATION FOR DEVELOPMENT

Individually, these challenges are surmountable. Experienced developers with successful track records usually find financing; financially-feasible rehab is possible without public financing; and compliance with zoning and building codes is a barrier that can be overcome. When combined, however, the vagaries and relative risk of rehabilitation steer developers towards sites that assure profit without the added aggravation. In many cases, these sites are “greenfields,” undeveloped areas on the urban periphery. Without a concerted public policy effort that tackles the institutional barriers at the Federal, State and Local levels simultaneously, urban sprawl will remain a pressing national issue.

ENDNOTES

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