

THE COMMUNITY LAND TRUST AS A HIGHWAY ENVIRONMENTAL IMPACT MITIGATION TOOL

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ABSTRACT: *The proposed Newtown Pike Extension in Lexington, Kentucky, has the potential to cause significant displacement of low-income residents. Following Executive Order 12898, federal agencies have been required to consider environmental justice impacts of their policies and activities. Highway planners in Lexington have crafted a mitigation strategy that includes a community land trust, which is intended to provide permanent protection for the low-income community to be affected by the highway extension. Although the community land trust may be an attractive option for maintaining housing affordability and community cohesion, the idea must overcome some significant hurdles if it is going to be useful as an environmental impact mitigation tool. One problem is selling the idea of communal land ownership to African American and low-income households. Part of the challenge is to design a method for sharing capital gains that gives an adequate return to home buyers while maintaining affordability. Another difficulty concerns renters who are eligible for only limited relocation subsidies that in many cases will not be enough to cover the cost of new rental housing.*

The Lexington Community Land Trust (LCLT), in Lexington, Kentucky, has been proposed as part of the environmental impact mitigation plan for the Newtown Pike Extension. Since President Clinton signed Executive Order 12898 in 1994, federal agencies have been required to evaluate and mitigate the impacts of federally funded projects on low-income and minority populations. The Newtown Pike Extension appears to be the first highway project that incorporates a community land trust as a mitigation tool.

Newtown Pike runs south from Interstate Highways 64 and 75 toward the center of Lexington and the University of Kentucky campus (see Figure 1). Currently, it stops short of both downtown Lexington and the university. The proposed extension will connect the existing highway with the university and ease congestion downtown. It will traverse some of the lowest income neighborhoods in Lexington, which will be opened up to significant development pressure.

One of the affected neighborhoods, Southend Park, will be particularly affected by the highway extension (see Figure 2). This neighborhood has very low incomes and generally substandard housing conditions. Southend Park consists of 25 acres and is roughly one-third of a mile from north to south and about one-tenth of a mile from west to east. It is bordered to the east by a disused railroad right of way that will become part of the new roadway. To the west, the neighborhood is

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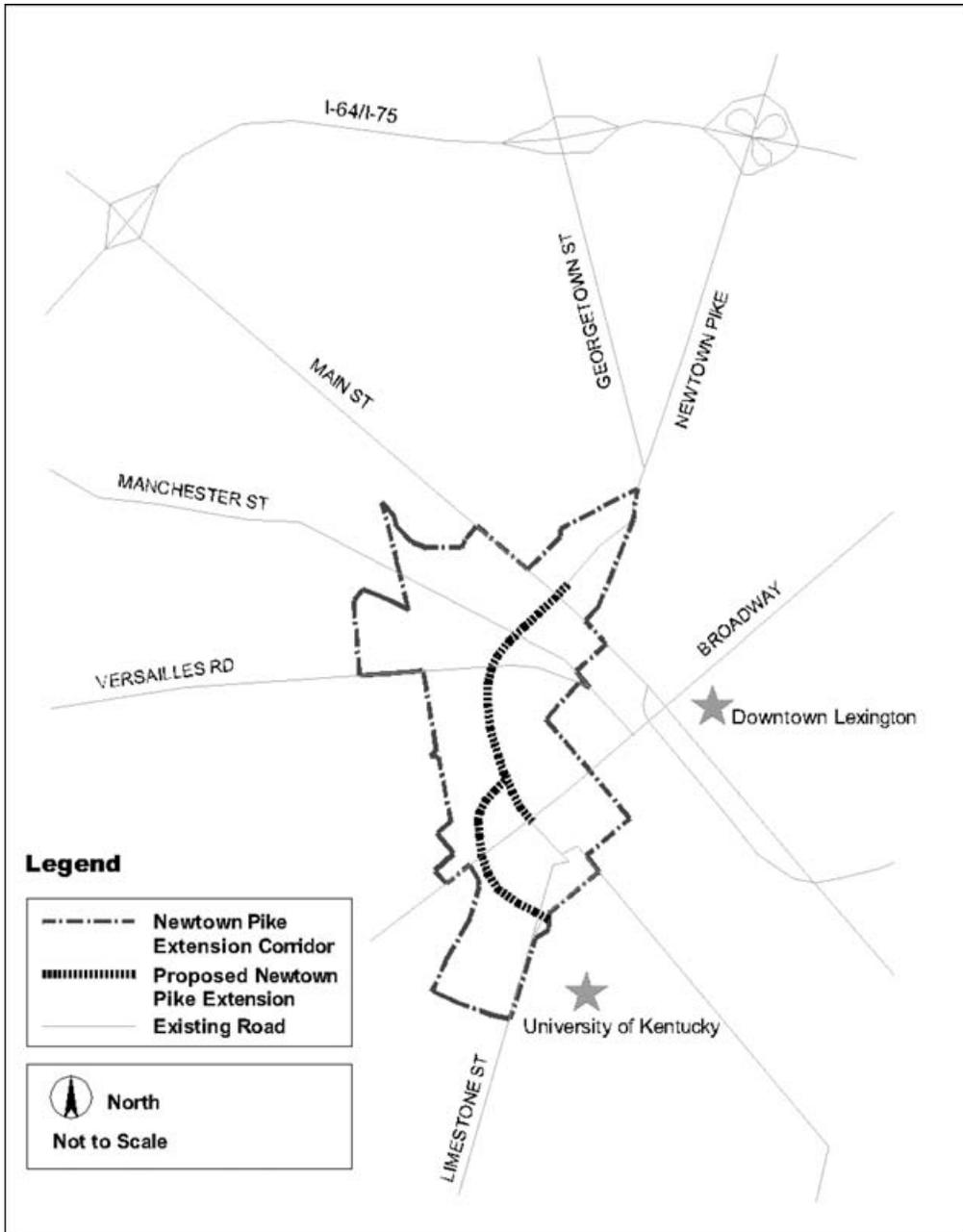


FIGURE 1

Location of Newtown Pike Extension and Corridor

Source: Based in part on Lexington-Fayette Urban County Government (2002), Map 8.

bordered by an active rail line. The northern and southern borders are major streets, with Versailles Road to the north having no direct access to the neighborhood. Although close to the center of Lexington, the neighborhood is now extremely isolated. The Newtown Pike Extension will change this situation dramatically.

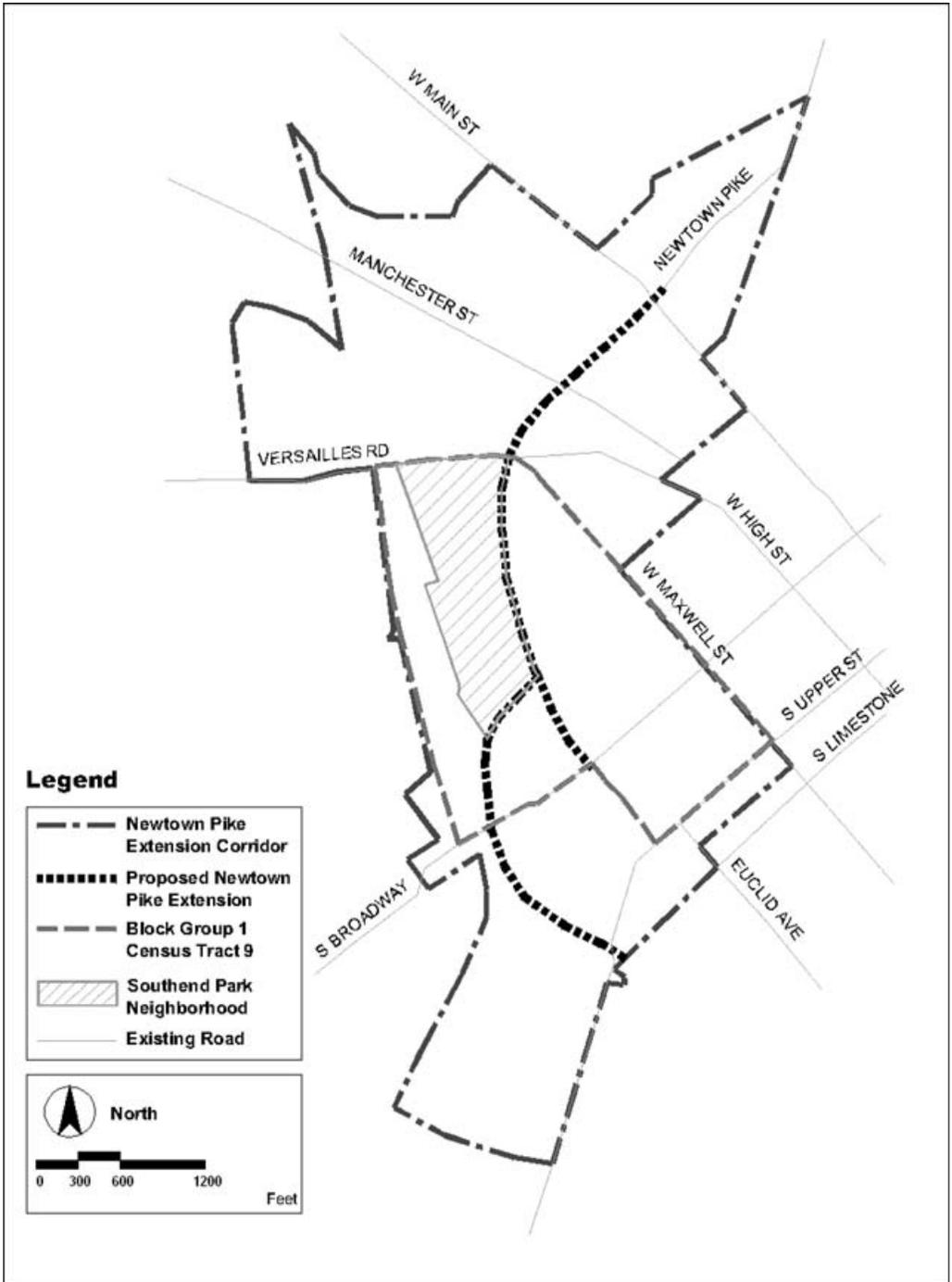


FIGURE 2

Location of Southend Park Neighborhood and Block Group 1

Source: Based in part on Lexington-Fayette Urban County Government (2002), Map 1.

In response to this, the highway planners are proposing to completely redevelop Southend Park. A community land trust will be established for the neighborhood so that housing affordability can be maintained. Housing in the rebuilt Southend Park will be available to residents displaced from homes in that neighborhood as well as former residents and low-income residents of other neighborhoods in the Newtown Pike Extension Corridor. Given the nature of the environmental justice issues and the large cost involved in redeveloping the neighborhood, the highway planners were concerned to find a tool for maintaining affordability in perpetuity or, at least, for as long as possible. The community land trust concept surfaced as a viable means to that end.

Community land trusts maintain affordability by effectively removing land from market pressures. Land is held in trust by a board consisting in part of residents of the housing on trust-owned land and in part by other community representatives committed to supporting the public purposes underpinning the trust. Housing built on trust land may be owned or rented by the occupants. In the case of owner-occupied housing, there are strict limits on the amount of capital gains that owners can earn on resale, thus keeping prices low for subsequent buyers. Rental housing can be cross-subsidized by income from other activities of the trust, such as rents earned from commercial uses on trust property. More typically, low-income rental tenants receive assistance through the federal housing voucher (Section 8) program.

Lexington's proposed community land trust raises a number of questions and issues that have relevance for community land trusts generally and, in particular, for the potential for community land trusts as tools for mitigating environmental injustices. The question that the Lexington experiment raises most directly is whether the LCLT should be viewed as a model for highway impact mitigation elsewhere. Given that the environmental impact assessment for the Newtown Pike Extension focuses so much attention on the effects of the proposed highway extension on low-income neighborhoods, and that the community land trust is apparently a solution to the environmental justice problem that the highway will create, will other similar projects also need to consider community land trusts as means for maintaining affordable housing?

The Lexington proposal raises some subsidiary issues. Advocates of community land trusts emphasize the importance of having a strong "community" base for establishing and operating land trusts. Community land trusts are ideally grassroots organizations that have significant support from community residents. In contrast, the LCLT is being created through a top-down approach driven by the highway planners. Although a steering committee, with representation from the neighborhood and various state and local agencies, is developing bylaws and ground lease provisions for the LCLT, the residents of Southend Park are generally suspicious of the redevelopment project. The community land trust is definitely something that is being imposed on them from above rather than something that arose out of the community. How well will the land trust function if residents, particularly homeowners, do not really embrace the concept of communal land ownership?

A related issue is the question of whether homeownership in a community land trust context is a good investment for low-income households. Policies designed to extend homeownership to lower-income groups have in some cases encouraged low-income households to invest their limited resources in what have proven to be bad investments. The limitations on resale gains in a community land trust substantially reduce the value of investments in owner-occupied housing on trust land. African American homeowners in Southend Park are particularly concerned about giving up ownership rights to land. They are all too aware of the "forty acres and a mule" debacle, which will be addressed in more detail below, and are not looking forward to what in some respects looks similar to what happened to their forebears at the end of the Civil War.

The adequacy of subsidies for very low-income renters is also an issue. Although transportation projects can inject substantial resources into the redevelopment of affected neighborhoods, there are strict limits on the duration of relocation benefits available to displaced renters. Given cutbacks in the federal Section 8 rental subsidy program and the likelihood that many renters in Southend Park may not be eligible for Section 8 funding for various reasons, it is not clear how the LCLT will be able to provide long-term affordability to all of the displaced renters who would prefer to remain in the neighborhood.

Before addressing these issues, it will be useful to explain the community land trust concept and, in particular, how such trusts are designed to maintain permanently affordable housing. Following that, the Newtown Pike Extension project and the progress to date in establishing the LCLT will be discussed. Three subsequent sections of this paper will address the issues raised above about the appropriateness of the community land trust as a means for achieving environmental justice in highway or other transportation projects, the suitability of limited equity ownership for low-income and minority households, and the adequacy of funding for very low-income renters. Finally, we consider the larger question of whether the Lexington experiment can be considered a model for mitigating environmental impacts elsewhere.

Throughout this study, the emphasis is on lessons that can be learned from the LCLT experience that may be relevant to other CLTs and, in particular, to CLTs that might be developed in response to transportation environmental impacts. Given that the LCLT is still in the planning stage, many of the conclusions from this study must be tentative, and there is much more to be learned from the Lexington experiment.

COMMUNITY LAND TRUSTS AS TOOLS FOR PROTECTING PUBLIC INVESTMENTS IN AFFORDABLE HOUSING

Third Sector Approaches to Long-Term Housing Affordability

The community land trust is one of several tools for providing housing for low- and moderate-income households and maintaining the affordability of that housing for subsequent occupants. Other tools, which are not mutually exclusive, include deed restrictions to maintain affordability, limited-equity condominiums and cooperatives, mutual housing associations, and nonprofit rental housing (Davis, 1994a). This array of approaches to providing affordable housing comprises a “third sector” in housing provision that goes beyond the usual private and public sector approaches to housing provision by combining private ownership of land and housing with techniques for maintaining affordability (Davis, 1994c).

Generally, these third sector approaches operate by extracting property from the market—that is, by “decommodifying” housing, to use Achtenberg and Marcuse’s (1986) term. This is accomplished in the case of owner-occupied housing by limiting the owners’ equity interests in the property and restricting the gains that can be earned on resale. In the context of a CLT, homeowners own the buildings they occupy, but not the land. In the basic CLT model, gains on resale can be earned only from increases in the value of the buildings, and those gains are usually limited to a fraction of the increase in market value. At the same time, buyers must meet income restrictions. In the case of rental housing, ownership by mutual housing associations or other nonprofit organizations is a means to minimize incentives for individuals to extract profits from increases in property values. Thus rents reflect historic costs rather than current market conditions, and rents remain affordable to low- or moderate-income tenants over time.

Advocates argue that CLTs offer a better means for maintaining affordability than other third sector methods.¹ This is due primarily to a governance structure that reduces the ability of the CLT to revert to market prices. The standard CLT board structure includes one-third occupants

or other leaseholders, one-third community representatives who are members of the CLT but not leaseholders, and one-third public representatives who may be public officials or employees of nonprofit organizations involved in setting up the CLT (Institute for Community Economics, 2002). This governance structure means that only one-third of the board members have any financial incentive to dissolve the CLT to reap windfall gains by selling their properties at market rates. Two-thirds of the members are fully committed to maintaining long-term affordability.

In contrast to CLTs, the other third-sector techniques may provide less certainty about long-term affordability. Deed restrictions require third-party enforcement, which is likely to be haphazard, and they become more difficult to enforce over time. Limited-equity condominiums and cooperatives tend to be controlled entirely by their residents, who may choose to eliminate limited-equity provisions. In some cases, federal and state programs to fund cooperatives have mandated that affordability be maintained, but only for specified periods of time. For example, New York's "Mitchell-Lama Act" provided property tax exemptions and reduced interest rate loans for cooperative developments and led to the production of about 60,000 units in the 1950s and 1960s (Sazama, 2000). Resale values were limited to the original purchase price plus the unit's portion of the paid-off mortgage, but these limitations applied for only 20 years. Similarly, the Federal Housing Administration provided below-market interest rate loans for the development of cooperatives during the 1960s and 1970s and required that affordability be maintained, but only for the term of the HUD-subsidized mortgage, usually 40 years.

If market values increase significantly, residents of limited-equity condominiums and cooperatives have very strong incentives to remove restrictions on resale values. Because these residents usually have the legal right to change bylaws, there is often little or no effective means for enforcing long-term affordability. Davis (1994a, p. 87) notes that, "Many cooperative housing corporations that were limited equity cooperatives when founded are market-rate cooperatives today."

Like limited equity cooperatives, mutual housing associations and other forms of nonprofit rental housing offer no guarantees of long-term affordability. Such organizations can choose to cash out properties in high-value locations as a means for generating capital. Krinsky and Hovde (1996) note that MHAs could (and sometimes do) operate like CLTs in order to perpetuate affordability, but that they are more likely to resemble limited equity cooperatives.

Of the various third-sector models, it seems that CLTs offer the greatest potential to preserve long-term affordability. However, the number of CLT units developed to date is relatively small compared to the other models, so the practical utility of the CLT model remains to be demonstrated in a conclusive way.

Georgist Antecedents and Analogies with Public Leasehold Systems

Soifer (1990) points out the intellectual links between the ideas of the 19th century reformer Henry George and those of advocates of CLTs (see George, 1975). George argued that land is not produced as a result of any individual human effort, and that the investment returns to land should therefore accrue to the community rather than to individual landowners. Krinsky and Hovde (1996, p. 11) note "The CLT concept is based on the notion that much property value is created not by the individual property owner, but by society at large . . ." Moreover (p. 12): "The CLT model proposes that individual owners should not be able to reap private profits from this socially created value and that this 'social equity' should be preserved and controlled by the community, for the benefit of the community as a whole."

George considered public ownership of land as a means for value recapture, but he concluded that a tax on land would be more feasible. He referred to this tax on land as a "single" tax because he advocated elimination of other taxes, such as taxes on labor, and believed that a tax on land value would be sufficient to fully fund the activities of government. In practice, the single

tax concept has not been implemented anywhere in its pure form, but some communities have applied Georgist ideas in a limited way. Pittsburgh, for example, has taxed land more heavily than buildings in the belief that taxes on land are less of a disincentive to development than are taxes on buildings (Bourassa, 1987). Other communities, in some cases influenced by Georgist ideas, have adopted public ownership of land with leasehold as the main or only form of land tenure. These include several small enclaves in the United States, as well as places such as Hong Kong, Singapore, Canberra (Australia), Israel, The Netherlands, Sweden, and Finland (Bourassa & Hong, 2003).

In some cases, the leasehold system is used to control the cost of housing in a manner somewhat analogous to CLTs. In Sweden, land has been provided at below-market rents to encourage the development of affordable housing (Mattsson, 2003), and Hong Kong has allocated sites at low or no cost for the development of public housing (Hong, 2003). Although highly unlikely to ever exist on a large scale in urban areas in the United States, in other places where public leasehold is the main form of land tenure housing affordability can be achieved and maintained in much the same way as through CLTs. One threat in these cases is pressure from leaseholders to acquire freehold rights to land (usually at a discount) and from municipalities to free up capital in land. Such pressures have been experienced, for example, in Sweden (Mattsson, 2003).

The Experience with Community Land Trusts in the United States

The experience to date with CLTs has been limited. The first CLT was founded in rural Georgia in 1968 to provide agricultural land for use by black farmers.² By the late 1980s, there were about 65 CLTs in the United States with 1,000 housing units (Soifer, 1990). By 1995, there were 84 CLTs with 4,000 units (Krinsky & Hovde, 1996). As of mid-2005, the Institute for Community Economics estimated that there were 160 active CLTs with about 6,000 housing units.³ The number of CLTs has grown slowly, and the number of units provided makes a miniscule contribution to the supply of affordable housing in the United States.

Little or no analysis has been done to date on the reasons for the success or failure of the CLT model.⁴ A major problem may be the limitations on wealth accumulation, particularly for minority families and in a context where numerous other programs support access to homeownership with little or no restrictions on owners' equity interests. This issue, which will be discussed below in more detail, may account for the small number of CLTs created to date. And, of those created, we do not know how many have failed, how many are limping along with a low rate of production, and how many could be considered successful, at-scale, producers of significant numbers of affordable housing units.

Lack of commitment to restricted equity forms of ownership, combined with internal conflicts and inadequate funding and staff, may account for the limited success of CLTs to date. Krinsky and Hovde (1996) give the example of the United Hands CLT in the Kensington neighborhood of Philadelphia, a neighborhood that has been subject to considerable disinvestment. The CLT was incorporated in 1988 but was on its last leg by 1994. Racial tensions between Latinos and African Americans were one problem. Community and public representatives on the board lost interest and stopped participating. Some residents stopped paying mortgages and the CLT used operating funds as a stopgap until those funds ran out in 1994. Staff were laid off as funds disappeared and interest in the CLT model dissipated.

In contrast, the Burlington Community Land Trust (BCLT) has been relatively successful in providing affordable housing in the Burlington, Vermont, area. The BCLT had a broad base of support when it was founded in 1984 with support from the municipal government (Davis, 1994b; Soifer, 1990). In spite of difficulties with properties that turned out to be uneconomical to redevelop, BCLT continues to grow and still receives support from the city. As of early 2006,

it had 755 housing units, including 375 rental apartments and 380 shared appreciation or limited equity single-family homes and condominiums.⁵

In summary, there is relatively little published information about the experiences of land trusts in the United States. We do know that they provide only a small amount of affordable housing today relative to other third sector and public and private modes of delivery. Relatively few seem to operate “to scale” and some have struggled with poor management and lack of commitment on the part of lessees and board members. Why there are so few truly successful land trusts and whether the concept offers significant potential for growth are questions that remain to be explored.

THE NEWTOWN PIKE EXTENSION AND THE LEXINGTON COMMUNITY LAND TRUST

The Newtown Pike Extension

The Newtown Pike Extension was first proposed as early as the 1930s, in a master plan for the City of Lexington.⁶ It was proposed again during the 1960s and 1970s as a limited-access highway that would have caused significant disruption in the community. In particular, it would have obliterated most of the Davis Bottoms neighborhood that is now being planned for redevelopment (Woolpert Consultants, 1981). There was significant opposition from the community and the draft environmental impact statement was not approved. Subsequently, the state transportation department proposed another limited-access highway that would follow the disused rail spur that remains the preferred alignment for the route. The municipal government proposed instead a four-lane “boulevard” with at-grade intersections with the same alignment. This proposal was accepted by the state, but no real progress was made on it until the late 1990s.

Increasing traffic problems during the 1990s led to reconsideration of the Extension project. The main motivation was to allow better access from the north to the University of Kentucky campus. The Lexington-Fayette Urban County Government (LFUCG) initiated a planning process in 1997. A committee of stakeholders was established in 1998, and the project was given priority for funding by the U.S. government in that same year. A preferred corridor for the Extension was chosen by the LFUCG Council in 2000. In 2001, authorization was given to prepare a corridor plan and an environmental impact statement. The *Newtown Pike Extension Corridor Plan* was approved by the LFUCG Planning Commission in 2002 (Lexington-Fayette Urban County Government [LFUCG], 2002).

The *Corridor Plan* identifies the lower or western part of the Davistown neighborhood as a site for redevelopment to mitigate the environmental justice impacts of the Extension. The plan proposes an “urban village” concept, combining a mix of single-family, two-family, and multifamily dwellings as well as community service and commercial activities. It also mentions the possible use of a CLT as a neighborhood revitalization tool (p. 65). It proposed that a plan for the urban village be completed in 2003.

The Southend Park Neighborhood

Southend Park is a new name for the lower or western part of Davistown, taken from the name of a public park in the neighborhood. The area has been commonly referred to as Davis Bottoms, reflecting its relatively low elevations.⁷ The area was originally developed in the mid-19th century with homes for African American railroad workers, although the area is currently racially mixed. The *Irishtown-Davistown Neighborhood Redevelopment Plan* (Woolpert Consultants, 1981) notes: “Housing conditions in the Irishtown-Davistown Study Area are among the

worst to be found in Lexington and Fayette County” (p. 7). The income distribution in Davis Bottoms in 1980 was 11.5% low income (defined in this case as equal to or less than 80%, but greater than 50% of the area median) and 88.5% very low income (equal to or less than 50% of the area median). Over 95% of the 94 housing units in Davis Bottoms were classified as having major deficiencies or dilapidated. No units were classified as “sound.”

By the time the *Southend Park Urban Village Plan* was completed in 2003 (EHI Consultants et al., 2003), the number of dwellings had declined to 42, of which only 28 were occupied by a total of 67 persons. Inappropriate land use controls and ongoing uncertainty about the location of the Extension had caused continuing disinvestment and decline. According to a survey of building exteriors undertaken for the *Southend Park Plan*, some 93% of structures were considered unsound or in disrepair and in violation of code. Only 39% of surveyed units in Southend Park and in the path of the Extension were owner-occupied, compared with about 55% in Fayette County as a whole.⁸ In spite of this, residents have significant ties to the neighborhood, with an average length of residency of 31.2 years; over half have relatives in the area and 94% expressed a desire to remain in the neighborhood if it were possible to purchase a home.

Although census data are not ideal for analyzing Southend Park, they do give some indication of how the neighborhood compares with the rest of Lexington and Fayette County. The smallest census unit for which income data are reported is the block group. For the 2000 census, Block Group 1 of Census Tract 9 (see Figure 2) contains all of Southend Park, plus the remainder of Davistown and a small adjacent area to the southeast. Median household income in 1999 for the block group was \$20,078, compared with \$39,813 for Fayette County. Some 58% of households and 72.6% of children were below the poverty level.⁹ Although rents tend to be lower in the area than in Fayette County as a whole, the lower incomes mean that housing affordability problems are more severe. Specifically, median gross rent (i.e., including utilities) as a percentage of household income is 41.8% in the block group compared with 25.4% in Fayette County. Median owner-occupied home values (estimated by owners) were \$82,700 in the block group, compared with \$110,800 for Fayette County. The block group median undoubtedly overstates values in Southend Park; the average assessed value for property taxation purposes across all dwellings in the neighborhood is only \$20,000 (EHI Consultants et al., 2003). Most of the owners do not have mortgages, however.

The bulk of the 25 acres in the Southend Park neighborhood continues to be zoned for industrial use, while only 20% is actually used for industry. Residents asked to have inappropriate industrial zoning changed in 1968, but uncertainty about the impact of the Extension led to no action. The 1981 *Irishtown-Davistown Plan* recommended allowing light industry and warehousing to expand and disallowing any additional housing in the southern part of Davis Bottoms. Redevelopment of new housing in the northern, primarily residential part of the neighborhood, was also recommended. Again, nothing happened in response to these recommendations because of the uncertainty regarding the highway.

The *Southend Park Plan* was approved by the LFUCG Planning Commission in November 2003 (EHI Consultants et al., 2003). This plan describes the site as follows (p. 3):

The neighborhood is sparsely populated, with a significant number of substandard housing units, an aging and inadequate infrastructure system of badly deteriorated streets, curbs, sidewalks, sanitary and storm sewers. . . . [A] mix of scattered industrial, commercial, recreational and residential land uses . . . coexist in an incompatible and non-conforming land use pattern, thereby creating a less than desirable neighborhood. . . . Single-family houses are located next to a steelyard and auto repair garages with outdoor storage of materials and vehicles.

The plan proposes a mix of housing types and tenures, including at least 35% subsidized housing and 50% owner-occupied housing. Some 155 housing units would be developed to house

374 persons. Residential uses would occupy seven acres, or 28% of the total land area, parks, and open space nine acres (36%), and institutional and community service uses two acres (8%). The balance would be taken up by commercial uses and streets.

The primary goal of the plan is to allow existing residents to remain in the neighborhood although, as noted below, former residents of Davis Bottoms and residents of other neighborhoods in the highway corridor will also be given priority in allocating the new housing. The *Draft Environmental Impact Statement (DEIS)* identifies increased land values and possible displacement as the greatest threat to residents of Davistown. The Newtown Pike Extension will open up the area to development pressures from both downtown Lexington and the University of Kentucky main campus. This should lead to significant private-sector redevelopment activity in the Southend Park area as well as other parts of Davistown. It is unlikely that existing residents would be able to remain in the neighborhood after the area is redeveloped, due to higher housing costs.

The Lexington Community Land Trust

Like the *Corridor Plan*, the *Southend Park Plan* mentions the CLT model as a possible tool. A team of federal, state, and local officials was established in August 2003, to consider land ownership options for the redeveloped Southend Park. The three options considered were (a) private ownership with deed restrictions, (b) ownership by a community development corporation, and (c) ownership by a community land trust. These three options were evaluated with respect to several required and desired attributes, including the requirements that long-term affordability be protected and that the public's financial investment be protected.

Overall, the CLT model emerged as the option that appeared to best meet the various criteria.¹⁰ Deed restrictions were least likely to satisfy the criteria. For example, neither deed restrictions nor community development corporations provide mechanisms for maintaining long-term affordability because neither can guarantee that resale prices will be affordable indefinitely. In contrast to the two other options, deed restrictions fail to protect the public's investment over the long-term, do not involve the community in land ownership and planning, do not provide a means for community ownership and transfer of properties, and do not provide a means for supplying rental housing. CLTs, on the other hand, are well-suited to provide financial training and social and economic support. The project team settled on the CLT model in February 2004. The CLT proposal is the main focus of the *DEIS*, which was approved in November 2005.

Soon after choosing the CLT model, in March 2004, Lexington's mayor appointed a Steering Committee to develop the concept. The committee consists of neighborhood and community representatives, as well as officials from local and state agencies involved in the highway project.¹¹ Early meetings of the Steering Committee included discussions of the priorities for allocating units in the mitigation area and the geographical scope of the proposed land trust. Priorities for housing were determined to be (a) current residents of the mitigation area, (b) low-income residents of the 400-acre *Corridor Plan* area, (c) low-income former residents of the mitigation area and relatives of current residents (this category was included because of the many decades of highway planning and lack of action), (d) low-income residents of Fayette County, and (e) other low-income households.

In terms of geographical scope, the primary options were to include only the Southend Park neighborhood or some larger area. On balance, a larger geographical base seemed to offer greater advantages, including broader support from the community, better opportunities for fundraising, and more potential to have a beneficial impact on the community. Disadvantages might include lack of accountability and higher management costs. Neighborhood representatives on the Steering Committee were also concerned that a larger geographical base would divert attention from the

redevelopment of Southend Park, while other committee members emphasized the broad need for affordable housing throughout Fayette County. Federal Highway Administration officials expressed a concern that the CLT be designed to focus on the mitigation area, while at the same time allowing it to eventually benefit other parts of the county. Finally, the Steering Committee settled on Fayette County as the service area for the CLT, with a stipulation in the bylaws that no activities would take place outside of Southend Park during the first 10 years of the CLT's existence.¹² Consistent with the choice of a large service area, a decision was made to name the trust LCLT.

The Steering Committee has also decided to establish the LCLT as a nonprofit membership organization. Consistent with the guidelines promulgated by the Institute for Community Economics (2002), there will be two classes of membership: (a) regular members and (b) supporting members. The regular members consist of lessee members and general members. The lessee members "lease or own housing from the Corporation [that is, the LCLT] or . . . lease or own housing that is located on land leased by another entity from the Corporation."¹³ The general members are either identified as such in the Articles of Incorporation or participate in an orientation meeting, submit an application including a statement of support for the CLT, and pay dues. All regular members are entitled to vote at membership meetings. Supporting members pay dues and may attend meetings, but do not have voting rights.

The proposed structure for the Board of Directors also follows the guidelines of the Institute for Community Economics. In particular, the proposed 12-member LCLT board has the standard tripartite structure, with one-third consisting of "lessee" representatives, one-third "general" representatives of the Fayette County community, and one-third representatives of the public interest. Until the Newtown Pike Extension project is completed, three of the public positions will be reserved for representatives of the LFUCG, the Kentucky Transportation Cabinet, and the Federal Highway Administration.¹⁴

In early 2005, the LCLT Steering Committee began to consider ground lease provisions. Although a number of decisions were made by mid-2005, the key provision concerning the resale formula had not yet been determined. After community ownership and control of land, restrictions on resale of property are probably the most controversial aspect of CLTs. Thus, it is not surprising that discussion of this topic was deferred until after less difficult issues were resolved.

HIGHWAY ENVIRONMENTAL IMPACTS, SOCIAL JUSTICE, AND COMMUNITY LAND TRUSTS

Social Justice and Environmental Impact Assessment

Social justice issues became a part of environmental impact assessment following President Clinton's Executive Order 12898, which required federal agencies to consider and mitigate "disproportionately high and adverse" effects of their policies and activities on minority and low-income populations (U.S. President, 1994). The Executive Order also requires greater public participation on the part of affected groups. With respect to the Federal Highway Administration, the Executive Order was articulated by FHWA 6640.23 (U.S. Department of Transportation, 1998), which defines key terms such as "adverse effects," "low-income," and "minority" and gives instructions for avoiding and mitigating environmental injustices. Adverse effects cover a range of health and environmental impacts, including social and economic changes such as "disruption of community cohesion" or "displacement of persons, businesses, farms, or nonprofit organizations" (FHWA 6640.23, § 2.f.). "Low income" refers to households below the poverty line, while "minority" refers to individuals who are black, Hispanic, Asian American, American Indian, or Alaskan native.¹⁵

The FHWA regulations require the agency to avoid disproportionately high and adverse impacts on minority and low-income populations and to consider “mitigation and enhancement measures and potential offsetting benefits to the affected minority or low-income populations” (§ 6.b.). Environmental justice impacts must be addressed in planning and environmental impact assessment documents.

The Executive Order and the FHWA regulations make it clear that projects such as the Newtown Pike Extension require measures to mitigate environmental injustices. The road project will cause significant development pressures in the Davistown area, with widespread displacement, particularly in the Southend Park area, which has a very high poverty rate. The redevelopment of the neighborhood with new affordable housing and services will help to prevent displacement of residents and disruption of the community, and will also help to offset the adverse impacts of development pressures elsewhere in the Newtown Pike Corridor. The redevelopment project seems to follow fairly directly from the analysis of impacts on neighborhoods within the Corridor. What is particularly innovative about the Lexington case is the proposal to establish a CLT to ensure that housing remains affordable in perpetuity.

Community Land Trusts and Environmental Justice

The CLT proposal appears to go beyond what would previously have been considered adequate mitigation measures in such circumstances. Fundamentally, the CLT model was chosen by the planning team because it offers a means to ensure perpetual affordability of homeownership and, possibly, rental housing. Also, the CLT model offers support services and a common focus for the neighborhood that should help to maintain community cohesion. Moreover, it gives the community a meaningful role in the operation and management of its own affairs.

The CLT is viewed by the highway and community development planners as a means for preserving the value of the public’s substantial investment in redevelopment of infrastructure and new affordable housing in the neighborhood. In effect, the Lexington planners have come down on the side of preserving the public’s investment in housing rather than maximizing the wealth of low-income home buyers. This range of choices is reflected in an ongoing debate regarding low income and minority homeownership policy. On the one hand, some officials wish to preserve public subsidies for home buyers to help additional low-income buyers in the future. On the other hand, some desire to integrate low-income and minority households as quickly as possible into the mainstream by not requiring repayment of subsidies.

Variations in the ways that down payment subsidies are structured reflect these different philosophies.¹⁶ In some cases, subsidies are in the form of interest-free second mortgages that require repayment when the subsidized house is sold; in the case of “soft” second mortgages, no repayment is required as long as the home is not resold for some minimum period of time (such as 5 years). The philosophy underlying the latter approach also serves as the basis for the idea of Individual Development Accounts (IDAs), which match low-income households’ savings account deposits (Sherraden, 1991). The IDA concept recognizes the fact that low income translates into an inability to accumulate wealth. The IDA matching funds accelerate the accumulation of wealth and thereby facilitate the purchase of a house or, in some cases, the establishment of a small business or the pursuit of higher education. These matching funds need not be repaid if used for approved purposes.¹⁷

In spite of the arguments in favor of wealth accumulation among minority and low-income households and, consequently, in opposition to resale restrictions, it seems that the approach taken by the planners in Lexington is more consistent with Executive Order 12898 and the FHWA implementation regulations. Although approaches other than establishment of a CLT could avoid destroying the existing community initially, rising land values and development pressures would

eventually push low-income households out of the neighborhood. In other words, alternative approaches could delay the adverse impacts of the highway on the community but they ultimately would not be able to prevent them.

Although the CLT model meets the highway planners' criteria, the use of a CLT as a highway environmental impact tool raises a difficult issue that could be a major stumbling block in some circumstances. Advocates and staff of CLTs emphasize the importance of a strong community base of support.¹⁸ In the Lexington case, the CLT is being imposed on the community by the planners. The community in this case is very suspicious of the planners; many residents have spent decades living in the shadow of a proposed highway project that never materialized but nevertheless has had considerable adverse impacts on the neighborhood. The planners are well aware of this and have worked hard to overcome the problem. Early in the process they appointed a neighborhood liaison, and they have held numerous community meetings. They have encouraged the formation of a neighborhood association and ensured that there is significant neighborhood representation on the CLT Steering Committee. In spite of these efforts, residents are still skeptical and suspicious about the highway project and the CLT. Whether the community will ever fully embrace the CLT model remains to be seen.

FORTY ACRES AND A MULE: THE SYMBOLIC AND INVESTMENT VALUE OF LAND OWNERSHIP

The Symbolic Importance of Land Ownership

The American Dream of homeownership remains an elusive goal for many low-income households, particularly low-income African Americans. In that context, the CLT concept is particularly difficult to digest for African American households. African Americans in Southend Park are well aware of the "forty acres and a mule" debacle that took place after the Civil War. Many freed slaves had reason to believe that they would be allocated 40 acres and a mule or two as a part of land reform in the South following the war. Congress created the Bureau of Refugees, Freedmen, and Abandoned Lands and authorized abandoned and confiscated plantations to be divided into 40-acre plots and then rented or sold to former slaves. Congress also authorized the provision of rations and supplies to the freedmen to help them to establish small farms. In part, because Congress failed to appropriate funds for this purpose, the director of the new Bureau decided to lease land to the freedmen to yield a source of revenue to cover the cost of rations and supplies. However, before the Bureau could accomplish much, President Andrew Johnson granted amnesty to the former plantation owners. Subsequently, the Southern Homestead Act made public lands available to freedmen in theory, but generally not in practice (Oubre, 1978).

On one level, "forty acres and a mule" is raised in the Lexington context because of the fear that the CLT and opportunities for homeownership represent yet another promise that is likely to be broken. Once homeowners see new housing under construction on the site, this concern will dissipate. On another level, the post-Civil War debacle parallels what is happening in Lexington in a more subtle way. Following the war, many freedmen wanted and expected to become owners of 40-acre plots. Congress's halfhearted efforts to make things right for the former slaves resulted initially in a policy requiring that the 40 acres be rented, at least until the lessees could save enough to buy the plots outright. Similarly, most homeowners or potential homeowners, particularly African Americans, would prefer freehold ownership of the land rather than a leasehold arrangement. In this context, leasehold is a second best arrangement that, for upwardly mobile households at least, could only be viewed as a possible step along the way to purchase of a house with fee simple ownership of the underlying land.

This leads to questions about marketability of the houses in the proposed CLT. Lexington has experienced some difficulty selling houses with freehold ownership of land and substantial subsidies (but only limited restrictions on resale) in a HOPE VI redevelopment of a former public housing project. If there are affordable homeownership options elsewhere in the Lexington area, sometimes with subsidies and little or no resale restrictions, it is not clear why many buyers would choose to purchase a house in a CLT. Homeownership in the CLT may only be attractive to displaced homeowners in Southend Park who are likely to receive extraordinary subsidies if they remain in the neighborhood and have no other options for maintaining homeownership.

The Investment Value of Homeownership in the Context of a Community Land Trust

Community land trusts generally limit owners' equity interests to the sum of their down payments, mortgage principal payments, and a percentage of the increase in the value of the house, but not the land. Typically, sellers are allowed to earn something like 25% of the appreciation in the value of the structure.¹⁹ The exclusion of all land value and much of the increase in building value from the resale price calculation keeps the cost low for subsequent buyers.

Bylaws for CLTs typically include a statement to the effect that the resale "formula shall allow the seller to receive a price based on the value that the seller has actually invested" (this is from the model CLT bylaws in Institute for Community Economics, 2002, chap. 5, p. 40). This is generally applied in practice to the extent that sellers receive their down payments and principal payments on resale. However, the seller's share of the appreciation in value is typically unrelated to the seller's investment. Relating the seller's share of the appreciation to the seller's investment requires a clear definition of what constitutes the seller's "investment." The usual approach to shared appreciation is to give the seller a percentage of the total appreciation (for land and buildings) that corresponds to the percentage of the original purchase price not financed by subsidies (i.e., the percentage financed by the homeowner's down payment and first mortgage). For example, if the original purchase price was \$100,000 financed by a \$25,000 interest-free loan provided by local government and \$75,000 financed by the homeowner, then the latter's share of the appreciation would be 75%, and the local government's would be 25%.

In the case of a CLT, where the homeowner has no investment in the land, the shared appreciation calculation could focus solely on the value of the building. If the full value of the building is financed by the homeowner's down payment and mortgage debt with no subsidies, then the homeowner would be entitled to 100% of the appreciation in the value of the structure. However, if the CLT or some other entity subsidizes part of the cost of the structure, then the appreciation in the value of the structure would be shared in proportion to the value of the subsidy relative to the original value of the structure. In any case, the homeowner's share of the appreciation would rarely, if ever, be as low as 25%.

The other side of this issue, of course, is the need to preserve affordability for the next buyer. Affordability for subsequent buyers will be affected by house values, incomes, and interest rates at the time of resale. Even without attempting to simulate various scenarios, it is obvious that a 25% (or other arbitrary) allocation of appreciation at the time of resale is unlikely to maintain affordability at the same level as was the case for the initial sale. Moreover, the resale price excludes land value in the basic CLT model, and exclusion of land value probably has a greater impact on affordability than any limitations on the resale price of the structure, given that most of the upside potential in urban housing prices is in the value of the land, not the value of the structure.

Land values rise owing to urban population and income growth and other factors, but the values of structures are tied to replacement costs, that is, the cost of construction. Furthermore, construction costs must be adjusted by depreciation, meaning that structure values increase at slower rates than construction costs. As an example of this, residential frame construction costs for Lexington increased at an annual rate of about 2.5% per year between 1995 and 2000 (Boeckh, 1995, 2000).²⁰ Using 1.5% as a rough estimate of the depreciation rate for houses yields an annual increase of 1% in value.²¹ In contrast, residential property values (buildings plus land) in the Lexington-Fayette area increased by an average of about 4.7% between 1995 and 2000.²² Given that land value contributes only a fraction of total property value, this overall rate of increase implies a much higher rate of growth in land values.

Marketing materials for Albuquerque's Sawmill Community Land Trust illustrate the lack of clarity about differences in the growth rates for land and building values that is evident in the basic CLT model (Sawmill Community Land Trust, 2004). The materials state correctly that property values in Albuquerque in recent years had been growing about 6% annually. But this percentage is then used inappropriately to illustrate hypothetical increases in building values, which were almost certainly much less than 6%. Residential frame construction costs went up by only 1.6% in Albuquerque between 1995 and 2000, implying virtually no increase in building values during that period after adjusting for depreciation (Boeckh, 1995, 2000).

A study of the Burlington Community Land Trust provides an account of actual returns to investment in BCLT houses (Davis & Demetrowitz, 2003). Looking at 97 resales, homeowners on average sold after 5.33 years and received \$2,700 in appreciation, roughly 25% of the average appreciation of about \$12,000. Appreciation of \$2,700 over 5.33 years implies an average appreciation rate of about 3%. Construction costs increased by about 2.2% in the Burlington area between 1995 and 2000 (Boeckh, 1995, 2000), for example, suggesting that the typical increase in residential structure values was on the order of 0.7% per year, after adjusting for depreciation. Realizing that 25% of the appreciation of the structure was an inadequate return to lessees, the ground lease was changed to give lessees 25% of total appreciation (for land and buildings) accruing to the unsubsidized portion of the property.²³ At least some of the resales in the Davis & Demetrowitz study must have benefited from this more generous allocation. However, nearly a third of the resold homes provided no appreciation to lessees.

The Burlington study also considers how well affordability of homeownership has been maintained in the Burlington case. On average, the study found that affordability improved between the initial sale and the resale. At the time of initial purchase the average housing unit was affordable to a household at 60% of area median income; by the time of resale, these units were affordable to households at about 52% of area median income (Davis & Demetrowitz, 2003, p. 9, Table 2). It is not clear how this was affected, or how this will be affected in the future, by the change in the resale formula.

Another resale formula issue has to do with the ability of residential appraisers to accurately separate the value of land and improvements for the purposes of determining resale value. Staff at Sawmill Community Land Trust noted that they had difficulties finding appraisers willing to do this kind of valuation.²⁴ The Uniform Residential Appraisal Report required by Freddie Mac and Fannie Mae requires appraisers to use both sales comparison and reproduction cost methods, so residential appraisers should be able to accurately estimate building values using the latter method. However, it is not clear whether adjustments for depreciation are generally accurate.

There is a need for additional research regarding the resale provisions of CLT ground leases. Such research would simulate multiple realistic scenarios and attempt to design a policy that would both reward sellers in proportion to their investments and maintain affordability with respect to some desired benchmarks. The standard seller's share of 25% of appreciation in structure value

is arbitrary and unrelated to the standard bylaw requirement to base the return to the seller on the amount of the seller's investment. It also provides a very small return to lessees given that structure values net of depreciation typically increase at a low rate or not at all.

THE ADEQUACY OF SUBSIDIES FOR LOW-INCOME RENTERS

The small numbers of homeowners in Southend Park can generally be relocated successfully into newly developed housing using a combination of highway relocation subsidies of up to \$22,500 per household and HUD subsidies through programs such as HOME.²⁵ The *Southend Park Housing Finance Analysis* (EHI Consultants, 2005) identifies a range of possible construction costs for new housing in the neighborhood from \$42,000 to about \$50,000 for houses constructed by Habitat for Humanity to as high as \$102,000. Assuming that existing houses will be appraised at about \$25,000 each and that each household will qualify for \$22,500 in highway relocation funds, the financing gap will be in the range of \$2,900–\$54,500. If the actual cost of the new houses is at about the middle of the range identified, then there should be no difficulty in finding sufficient HUD funds to cover the financing gap.

The real financing difficulty concerns the renters who will be relocated. As noted above, most of the households in Southend Park are renters and very few of those are likely to be able to make the transition to homeownership. Highway relocation benefits for renters are normally limited to a total of \$5,250 in rent subsidies payable over 42 months or \$5,250 toward a down payment on a home. Of the 14 renting households surveyed for the *Housing Finance Analysis*, seven occupy one-bedroom units at an average monthly rent of about \$400. According to HUD, the fair market rent for one-bedroom units in Fayette County was \$619 in 2004. This gap implies a need for a rental subsidy far in excess of \$5,250 over a 42-month period. The gaps are even greater for households occupying larger units. In cases such as this, federal regulations will allow rental subsidies to exceed the normal cap. However, the highway relocation benefits provide no assistance beyond the initial 42 months. Many of the renting households probably do not qualify for HUD housing vouchers (Section 8) for various reasons.

The cost of rental housing could be reduced to some extent by using Low Income Housing Tax Credits to help finance development, although this is unlikely to eliminate the entire gap in rents. The other possible source of subsidy is to use the proceeds from the commercial property to be owned by LCLT to cross-subsidize Low Income renters. This suggests that all or much of the commercial property needs to be leased at market rates, which may conflict to some extent with a desire to attract social services that will benefit LCLT residents. In any case, it is clear that there is a need to develop a business plan that will balance LCLT expenses, including rental subsidies, with revenues.

THE FUTURE OF COMMUNITY LAND TRUSTS AS TOOLS FOR ENVIRONMENTAL IMPACT MITIGATION

The *DEIS* for the Newtown Pike Extension raises the standard for addressing the social and economic impacts of new transportation infrastructure on low-income and minority communities. Highway planners in Lexington, Kentucky, have designed a mitigation strategy that has the potential to provide permanent protection for the low-income community of Southend Park. Most, if not all, of the possible alternative strategies do not guarantee that housing will be affordable in perpetuity and thus would only postpone disruption of the community and displacement of its residents.

Nevertheless, CLTs as environmental impact mitigation tools face some significant hurdles. One problem is selling the idea of communal land ownership to African American and low-income

households. Not only does land ownership have even more symbolic importance for African Americans than it does for other Americans, it is a particularly poignant issue for low-income African Americans who, like their ancestors, have not been able to participate in the American Dream. To get African American and low-income households to buy into the CLT concept, it probably needs to be presented as a means for building assets that can later be used to buy a house and land outside of a CLT. However, this requires that CLTs be straightforward about the likely returns to investment in a CLT home, and to make certain that those returns are as attractive as they can be without compromising the objective of maintaining affordability for subsequent buyers. Further study that simulates investment returns and affordability for subsequent buyers under various realistic scenarios and resale formulas would be helpful in allowing CLTs to make more informed decisions about ground lease provisions. Otherwise, it appears that CLTs are likely to adopt simple rules of thumb, such as the 25% rule, which may or may not serve their purposes.

Another hurdle concerns renters rather than homeowners. Rental relocation subsidies are limited to only 42 months' duration. Low Income Housing Tax Credits can help to reduce the cost of developing new housing or rehabilitating existing housing; however, this is unlikely to sufficiently reduce the cost for many low-income households. And at least some households will likely not be eligible for federal rent vouchers. These considerations mean that, in the context of environmental impact mitigation where low-income renters are going to be displaced, CLTs must be designed to generate enough revenue from other sources to subsidize rents for residential tenants. This underscores the need for careful business planning to ensure that likely expenses are matched by revenues.

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ENDNOTES

- 1 Support for CLTs due to the fact that they maintain long-term affordability emerges in various contexts, including advocacy of affordable housing (Abromowitz, 1991; Kenn, 1995–96; McStotts, 2004; Stone, 1993), sustainable urban development (Roseland, 1992), community control over urban development (Gunn & Gunn, 1991; Williamson, Imbroscio, & Alperovitz, 2002), and economic empowerment of low-income communities (DeFilippis, 2001).
- 2 Early case studies of this and other CLTs may be found in Swann, Gottschalk, Hansch, and Webster (1972) and White (1982). The experiences of several CLTs are discussed in White and Matthei (1987), Krinsky and Hovde (1996), and OPAL Community Land Trust (1999).
- 3 Telephone interview with Ellen Giordano, Director of Research and Program Development for the Institute for Community Economics, June 2, 2005. For a list of CLTs and sponsoring organizations, see <<http://www.iceclt.org/clt/cltlist.html>>.
- 4 This paragraph is based on discussion at the Community Land Trust Roundtable, held at the Lincoln Institute of Land Policy, December 16, 2004.
- 5 Interview with BCLT staff, March 31, 2006; see also <<http://www.bclt.net/aboutclt.shtml>>.

- 6 The history of the Newtown Pike Extension is documented in the *Draft Environmental Impact Statement* (U.S. Department of Transportation & Kentucky Transportation Cabinet, 2005).
- 7 Note that not all of what is referred to as Davis Bottoms is included in the Southend Park neighborhood.
- 8 Along with Christian County, Fayette County has the lowest homeownership rate in Kentucky (Bourassa, Schneider, & Hagan, 2001, p. 37), due in part to the large transient student population attending the University of Kentucky.
- 9 These statistics are from the U.S. Census Bureau, *Census of Population and Housing 2000*, available at <<http://factfinder.census.gov/>>.
- 10 For more details, see the matrix in the *DEIS* at p. 252 and related discussion. The CLT model for Southend Park seems to have been first proposed by a staff attorney with the Kentucky Department of Highways who had previous experience with farmland trusts.
- 11 Michael Brown, of Burlington Associates, was hired as a consultant to the Steering Committee.
- 12 An exception would be made for property donated to the CLT and located outside of Southend Park.
- 13 This is taken from Article II, Section 1.a., of the draft bylaws for LCLT dated November 9, 2004.
- 14 In addition to the Board of Directors, the bylaws provide for Councils of Neighborhood Stewards, responsible for certain land trust operations within specific neighborhoods. These Councils report to the Board of Directors and derive whatever authority they have from the Board.
- 15 Note that this definition of “low income”, based on U.S. Department of Health and Human Services poverty guidelines, is much less inclusive than the definition established by the U.S. Department of Housing and Urban Development. The HUD definition states that low income is equal to or less than 80% of area median income, while the HHS poverty guidelines, which do not vary geographically within the continental U.S., are very roughly comparable to what HUD considers extremely low income, which is equal to or less than 30% of area median income. In Kentucky, for example, some 15.8% of persons were in poverty in 1999, while 42.1% of households were classified as low-income and 13.6% were extremely low income using HUD’s definitions (Bourassa, Barber, Hagan, Schneider, & Shiels, 2004, Tables 2.3 and 2.4, pp. 7–8).
- 16 Stegman and Luger (1993) discuss an example of this debate as it played out in Chapel Hill, North Carolina, noting that some local council members “opposed resale restrictions on philosophical grounds” (p. 419). See also Cohen (1994).
- 17 For further information about IDAs, including federal demonstration programs, see <<http://www.idanetwork.org>>.
- 18 Staff of Albuquerque’s Sawmill Community Land Trust were quick to raise this issue with respect to the LCLT and to stress the importance of a strong community base for their success (personal interview with Sawmill’s Executive Director, Ken Balizer, and others, December 9, 2004).
- 19 The Sawmill Community Land Trust ground lease specifies that this percentage is 25% for the first 15 years and then increases by one percentage point per year to a maximum of 30% after 20 years (Sawmill Community Land Trust, 1999). The sample ground lease in the *Community Land Trust Legal Manual* (Institute for Community Economics, 2002) specifies that lessees are entitled to 25% of the appreciation in the value of the structure on resale, although several alternative approaches are discussed.
- 20 Nationally, residential frame construction costs increased about 2.9% per year during the 1990s (Boeckh, 1990, 2000).
- 21 Researchers have come up with a range of estimates of depreciation rates for houses in the U.S. (see, for example, Leigh, 1980); 1.5% is about at the middle of the range. However, newer buildings may depreciate at slower rates than older ones (Appraisal Institute, 1996, chap. 17).

- 22 This is the average of the annual appreciation rates reported by the Office of Federal Housing Enterprise Oversight for the 2nd quarter of 1996 through the 2nd quarter of 2000; see <<http://www.ofheo.gov>>.
- 23 Interview with BCLT staff, March 31, 2006.
- 24 Personal interview with Ken Balizer, December 9, 2004.
- 25 The project is included in LFUCG's draft consolidated plan recently submitted to HUD (LFUCG, 2005). Highway relocation subsidies are outlined in Kentucky Transportation Cabinet (1995).

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