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# Building Social Capital Through Place-Based Lawmaking: Case Studies of Two Afro-Caribbean Communities in Miami—The West Grove and Little Haiti

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# Building Social Capital Through Place-Based Lawmaking: Case Studies of Two Afro-Caribbean Communities in Miami—The West Grove and Little Haiti

Matthew Fowler<sup>1</sup>

*A community is the mental and spiritual condition of knowing that the place is shared, and that the people who share the place define and limit the possibilities of each other's lives. It is the knowledge that people have of each other, their concern for each other, their trust in each other, the freedom with which they come and go among themselves.*  
—Wendell Berry<sup>2</sup>

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1. J.D. Candidate, May 2014, University of Miami School of Law. I would like to thank Professor Anthony V. Alfieri, founder and director of the Historic Black Church Program at the Center for Ethics and Public Service. I would also like to thank my fellow students in the Historic Black Church Program and my parents for their constant support.

2. WENDELL BERRY, THE LONG-LEGGED HOUSE 61 (1969).

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INTRODUCTION

African-Americans, Haitians, and Latinos remain largely racially segregated in impoverished communities. While there has been a small decrease in residential segregation due to the out-migration to the suburbs of a small number of African-Americans, residential segregation has proven to be resistant to change and remains the “structural linchpin” of American race relations.<sup>3</sup> The true cause of racial disparity is persistent racial animosity and discrimination, and this persistent disparity, despite decades of study and governmental action, cannot be addressed through individual or family-based government benefit support programs and school desegregation alone. Given this embedded structural racism, low-income communities of color have more recently focused on race- and identity- conscious approaches as alternatives to achieve social integration, civic equality, and economic justice. Organizations such as faith-based institutions and diverse non-profit groups have also focused on race- and identity-conscious community-based empowerment as a more effective strategy in attacking structural racism. Government efforts to revitalize distressed urban neighborhoods have also been redirected to race- and identity-conscious focused programs.

Place-based laws have the potential to be applied in a similar manner to direct economic resources to and provide structural,

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3. Lawrence Bobo, *Keeping the Linchpin in Place: Testing the Multiple Sources of Opposition to Residential Integration*, 2 REVUE INT’L DE PSYCHOLOGIE SOCIALE 307 (1989) (noting that study results indicate that two forms of racism, fashioned prejudice and a sense of racial group position, consistently influenced opposition to residential integration; class-based explanations had little explanatory power; pragmatic objections, in this instance self-interested concerns, had small but equivocal effects; and, the value and ideological factors of political conservatism and individualism exerted a modest influence on attitudes on residential integration).

legal frameworks for low-income neighborhoods to help existing residents remain in place, to improve those areas, and to achieve social integration. Using a socio-legal approach, this Article will examine the efficacy of place-based lawmaking to empower inner-city neighborhoods through the use of a variety of legal and political tools that are founded on the concept of building social and cultural capital. The Article will evaluate existing combinations of place-based laws, such as historic restoration programs, neighborhood conservation district designation coupled with affordable housing protections, zoning code revision strategies, and culturally tailored health, economic development, and art programs, by analyzing two examples—the Afro-Caribbean communities of the West Grove and Little Haiti in Miami, Florida—where specific identity-conscious strategies have been pursued and propose new combinations that might protect and nurture existing social and cultural capital in similar communities. These examples will show that focusing on sociological and legal methods to build social and cultural capital may help inner-city residents mitigate the negative effects of living in a poor and segregated community and obtain more concrete benefits from urban revitalization in their community.

Part I of this Article provides a brief description of Miami's low-income communities, describing how structural racism and poverty have shaped these communities. Part I also highlights these communities' potential for cultural and social self-integration. Part II will focus on defining the concept of social capital and its application to low-income communities, provide a survey of federal place-based lawmaking efforts and criticisms, and conclude with an analysis of the potential for positive social bonding and community empowerment through place-based strategies. Parts III and IV will analyze two case studies, the West Grove and Little Haiti, where place-based lawmaking, focused on Bahamian and Haitian culture respectively, has been used in order to support and build social capital. Part V will attempt to summarize findings, lessons learned, and propose new combinations of place-based laws that may more effectively promote equitable development, advance distributive justice, and enhance social integration in similar communities throughout the Americas. Finally, the Article offers a brief conclusion synthesizing its major points.

## I. THE REALITIES OF MIAMI'S LOW-INCOME COMMUNITIES

“[T]he history of race relations in Miami is a history of dis-

placement and subjugation.”<sup>4</sup> Hyper-segregation and concentrated poverty continue to be realities in many of Miami’s inner-city neighborhoods burdening them with high concentrations of poverty and deteriorating physical conditions. The recent 2008–12 U.S. Census Community Survey estimated that the median household income of 35.5 percent of families with children and 39.8 percent of individuals in the City of Miami is below the poverty level, the third highest among places with 250,000 or more people in the nation in 2008.<sup>5</sup> The same census surveys estimated for the median household income for Miami-Dade County is \$43,464, while the median income for the City of Miami is currently \$29,762 according to the income limits published by U.S. Department of Housing and Urban Development.<sup>6</sup>

Furthermore, existing government-supported, people-based approaches “focus on what those neighborhoods lack, rather than what they have.”<sup>7</sup> As one commentator has stated, “[t]his construction defines such spaces, by omission, as places of despair; it thereby justifies people-based strategies that move existing residents out of inner-city neighborhoods.”<sup>8</sup> Federal government policies have been and continue to be explicitly and implicitly motivated by racial bias, such as neighborhood redlining and inner city public housing segregation. Policies of this sort coupled with overall reductions in urban aid appropriations, in addition to federal policies related to highway transportation, suburban infrastructure development, and mortgage-interest tax policy, have resulted in highly segregated and physically isolated neighborhoods like the West Grove and Little Haiti.

As noted by William Julius Wilson in his landmark study, *The Truly Disadvantaged*, concentrated poverty has had devastatingly negative effects on the social capital of inner-city minority neighborhoods.<sup>9</sup> Furthermore, federal poverty de-concentration

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4. Anthony V. Alfieri, *Faith in Community: Representing “Colored Town,”* 95 CAL. L. REV. 1829, 1833 (Oct. 2007) [hereinafter Alfieri, *Faith in Community*] (quoting from Elizabeth Aranda, *Poor and Homeless in Miami*, MIAMI HERALD, Feb. 7, 2007, at 17A).

5. U.S. Census, 2008-12 Community Survey - City of Miami, available at <http://factfinder2.census.gov>.

6. *Id.*

7. Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L.J. 803, 807 (Mar. 2012).

8. *Id.*

9. See generally WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (Univ. of Chicago Press 1987) (analyzing structural changes in the United States economy and related changes in the social fabric of inner cities) [hereinafter WILSON].

and de-segregation programs have exacerbated the problem by leading to the voluntary outmigration of relatively wealthier African-Americans. As explained in Wilson's study, the 1966 *Gatreaux* litigation<sup>10</sup> led to federal and local policies, such as the Section 8 program and its Housing Choice Voucher program,<sup>11</sup> with the main goal of de-concentrating poverty. With de-concentration programs, the most able have taken advantage of the programs to move and have left those unable to leave behind, resulting in still higher poverty concentrations.<sup>12</sup> On a practical level, studies have shown that many of the hoped for benefits have not been achieved. Low-income residents have failed to build social capital when they have moved into higher-income neighborhoods.<sup>13</sup> These programs have resulted in destruction of pre-existing communities<sup>14</sup> and elimination of the safety net that their old communities provided for them.<sup>15</sup> Moreover, even when found effective, these programs have only affected a tiny portion of these households.<sup>16</sup> However, as will be discussed below, more recent and current programs are seeking to undo the effects of prior government policies that led to, or at least assisted in, poverty concentration in the first place.<sup>17</sup>

Despite the popular conception that poor communities are dysfunctional, these communities, just as other communities, contain networks and institutions that are valuable to their residents and to society. As studies have indicated, "low-income communities generally function well . . . [and] most adults work, interact in

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10. *Hills v. Gatreaux*, 425 U.S. 284 (1966).

11. The Section 8 Program of the Housing Act of 1937 (42 U.S.C. § 1437f) authorizes the payment of rental housing assistance to private landlords on behalf of approximately 3.1 million low-income households in the United States. The largest part of the section is the Housing Choice Voucher program, which pays a large portion of the rents and utilities of about 2.1 million households. The Housing Choice Voucher Program provides "tenant-based" rental assistance, so a tenant can move from one unit of at least minimum housing quality to another.

12. WILSON, *supra* note 9, at 9.

13. Michael Diamond, *De-concentrating Poverty: De-constructing a Theory and the Failure of Hope*, in COMMUNITY, HOME, AND IDENTITY 3 (Michael Diamond & Terry Turnipseed, eds., Farnham, 2012), available at <http://scholarship.law.georgetown.edu/facpub/1111> [hereinafter Diamond] (citing Melody L. Boyd et al., *The Durability of Gains from the Gatreaux Two Residential Mobility Program: A Qualitative Analysis of Who Stays and Who Moves from Low-Income Poverty Neighborhoods*, 20 HOUS. POL'Y DEBATE 119, 125 (2010) [hereinafter Boyd]).

14. *Id.* at 4, (citing Steven Steinberg, *The Myth of Concentrated Poverty*, in THE INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICAN CITIES 213 (Chester Hartman & Gregory Squires eds., 2010)).

15. *Id.* at 3.

16. *Id.*

17. *See generally id.* at 8.

traditional ways, rely on their friends and neighbors, and obey the law.”<sup>18</sup> It is also a mistake to assume that all residents want to move out of their neighborhoods. Residents may actually fear the loss of extensive social networks of family and friends and increased social isolation and vulnerability in racially hostile new neighborhoods. Recent studies have found that seventy-six percent of relocated residents’ social networks are from their previous communities and fifty-four percent visit their communities at least once a week.<sup>19</sup> The studies reveal that residents maintain existing social networks and are materially attached to their communities, and relocation programs may result in more damage than benefits. In fact, those forced to move often move back to their original neighborhood, or to a similar neighborhood at their first opportunity.<sup>20</sup> This Article is an attempt to provide a fuller appreciation of how these impoverished communities have combatted detrimental public and private forces and, further, how they have altered unjust institutional and structural relations among these forces through racial- and identity-focused place-based lawmaking.

## II. PLACE-BASED LAWMAKING DEFINED

### A. *Social Capital Defined*

Social capital consists of the ways in which individuals and communities create trust, maintain social networks, and establish norms that enable residents to act cooperatively toward the pursuit of shared goals.<sup>21</sup> Improved social networks and norms can provide the framework for policy-makers and community organizers to help communities and individuals achieve better outcomes. Social capital is generally defined as value stored in relationships, and community organizations can often utilize that value to mobilize development—a process of building reciprocal expectations and a product benefit of built up social trust,<sup>22</sup> which

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18. *Id.* at 16.

19. See Sudhir Venkatesh & Isil Celimli, *Tearing Down the Community*, 138 SHELTERFORCE, Nov.–Dec. 2004, at 10, available at <http://www.nhi.org/online/issues/138/Chicago.html>.

20. Diamond, *supra* note 13, at 4 (quoting Boyd, *The Durability of Gains*, *supra* note 14, at 122).

21. See, e.g., DAVID HALPERN, SOCIAL CAPITAL 1-19 (2005) (reviewing the history, debates, and conceptual understandings of the term over time).

22. See Alan Kay, *Social Capital, the Social Economy, and Community Development*, 41 COMM. DEV. J. 160, 162 (2006).

residents can draw upon in order to solve common problems.<sup>23</sup>

Jane Jacobs in *The Death and Life of Great American Cities*, used the term “social capital” and although she did not explicitly define the term, her usage referred to the value of relationships and cooperative action between people who share an interest in maintaining a healthy neighborhood.<sup>24</sup> These relationships over time become networks of “small-scale, everyday public life and thus of trust and social control” necessary to the “self-governance of urban neighborhoods.”<sup>25</sup> Social scientists now define social capital as forms of neighborhood social cohesion and informal social-control capacity that regulate negative conditions in a neighborhood.<sup>26</sup> Low levels result in reduced community cohesion and may increase crime, generate mutual suspicion, and lower health, environmental, and educational standards.<sup>27</sup> As argued by Wilson, without sufficient social capital, communities are unable to build or sustain adequate social networks to enable collective action.<sup>28</sup> On the other hand, he argues, “[i]n neighborhoods with high levels of social organization, adults are empowered to act to improve the quality of neighborhood life.”<sup>29</sup>

Scholars have developed theories of “two types of social capital—‘strong ties,’” or “bonding” of the kind that typically form between neighbors and friends, and “weak ties,” or “bridging” that connect different communities. Both can be thought of “horizontal.” “Bridging” social capital is argued to be the most effective means of securing long-term advancement and security because individuals are exposed to higher performing groups and individuals that may serve potential role models or, in other words, allow them to “get ahead.” “Bonding” social capital creates collective efficacy or capacity that enables a community to accomplish its own common goals easier and quicker or in other words, allow

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23. See generally Robert E. Land & Stephen P. Hornburg, *What is Social Capital and Why Is It Important to Public Policy?*, 9 HOUS. POL’Y DEBATE 1, 4 (1998).

24. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 146–83 (1961).

25. *Id.* at 155–56; see generally WHAT WE SEE, *ADVANCING THE OBSERVATIONS OF JANE JACOBS* (Stephen A. Goldsmith & Lynn Elizabeth eds., 2010).

26. Nicole Stelle Garnett, *The People Paradox*, 2010 U. ILL. L. REV. 43, 52–53 (“Collective efficacy is perhaps best understood as a form of applied social capital—it is a means by which communities harness the energy generated by ‘social networks and the norms of reciprocity and trustworthiness that arise from them’ for the purpose of addressing neighborhood problems.”) (citations omitted).

27. See Alan Kay, *Social Capital, the Social Economy, and Community Development*, 41 COMM. DEV. J. 160, 167 (2006).

28. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS* 20 (1996).

29. *Id.*



them to “get by.” Debate continues within academia regarding the relative value of bonding social capital versus bridging social capital. A community founded exclusively on bonding capital may create insularity but such insularity helps the community maintain control of local conditions, but may make it less effective in resisting external threats. Critics also are concerned that networks and norms can become racially charged and lead to social capital inequities and further structural racism<sup>30</sup> by making them more insular and isolated.<sup>31</sup> The risk is more pronounced when uncritical attempts are made to maximize social capital in self-identified communities without considering local circumstances or existing social networks. Maintaining a critical focus on pragmatic ways that social networks and norms, and, more specifically, ways that existing social networks may be enhanced to empower a community and to benefit them may avoid the risks of further structural racism and community isolation. Moreover, some scholars argue that “bonding capital may be a prerequisite to building effective bridging capital.”<sup>32</sup> Thus, building intra-community connections can provide for stronger social networks and enduring social norms that, in turn, can provide the framework for building inter-community connections and increased bridging social capital. “Linking,” a third type of social capital, has been developed to explain the connections between communities and institutions of power such as local, state, and federal governments, banks, and large businesses and can be thought of as “vertical” in nature. Policy-makers now recognize that all three types are necessary in order for communities to overcome discrimination and improve their social cohesion and status. With a foundation of significant bonding capital, a framework to build linking social capital between community advocacy groups and government agencies may be established, and thereby further enhance beneficial outcomes.

Studies have shown that communities with strong civic engagement and social capital networks develop more responsive governments and better outcomes.<sup>33</sup> Increased bonding capital is an important factor in addressing and confronting certain legal disputes, such as land use and housing issues. The communities

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30. See JOHN FIELD, *SOCIAL CAPITAL* 74 (2003).

31. See, e.g., Nicola Morrison, *Neighborhoods and Social Cohesion: Experiences from Europe*, 8 INT'L PLAN. STUD. 115, 135 (2003).

32. *Id.*

33. See generally ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* (Princeton Univ. Press 1993).

have low turnover, and, residents live together, share common interests, and interact with the same actors-government agencies and developers. They can create more effective advocacy organizations to protect themselves and resolve disputes.

*B. An Overview of Government Initiatives and Criticism of Place-Based Lawmaking*

Many of the federal government's past place-based programs failed to revitalize impoverished inner-city communities. Programs, such as The Economic Opportunity Act of 1964 (EOA)<sup>34</sup> and the 1966 Demonstration Cities and Metropolitan Development Act (the "Model Cities" program)<sup>35</sup> focused on providing pockets of urban poverty the tools of community organization, work training, education, health programs, housing, and legal services.<sup>36</sup> As one commentator has stated, "while such programs, and others such as Head Start and the Legal Services Corporation, provided money directly to poverty-stricken neighborhoods, they did not provide—and could not provide—those neighborhoods legal tools to fight for their interests within the local structure in which they found themselves."<sup>37</sup> Furthermore, "the tools for fighting poverty were, from the beginning, centralized in the federal government, far from the people in the neighborhoods served by these programs."<sup>38</sup>

After nearly a century of focus on poverty decentralization through blight removal and slum clearance, in 1979, the National Commission on Neighborhoods issued an exhaustive report advocating neighborhood-based approaches rather than the federal government's top-down approach.<sup>39</sup> The report recognized that,

Neighborhoods are human in scale, and they are immediate in people's experience. Since their scale is manageable they

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34. Pub. L. No. 88-452, § 201, 78 Stat. 508 (1964) (repealed 1981).

35. *Id.*; see also ROBERT HALPERN, *REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES* (1995).

36. SANDRA PERLMAN, *NEIGHBORHOODS THAT WORK: SOURCES FOR VIABILITY IN THE INNER CITY* 22, 22 (1980).

37. Stephen R. Miller, *Legal Neighborhoods*, 37 *HARV. ENV. L.R.* 105, 132 (2013) [hereinafter Miller, *Legal Neighborhoods*] (citing History, *LEGAL SERVS. CORP.*, <http://www.lsc.gov/about/what-is-lsc/history> (last visited Jan. 23, 2013)).

38. *Id.* (citing Pub. L. No. 88-452, § 201, 78 Stat. 508 (1964) (repealed 1981); see also HALPERN, *supra* note 35).

39. NAT'L COMM'N ON NEIGHBORHOODS, PEOPLE, BUILDING NEIGHBORHOODS: FINAL REPORT TO THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES 6–10 (1979) [hereinafter *PEOPLE, BUILDING NEIGHBORHOODS*]; see also PERLMAN, *supra* note 36, at 14.

nurture confidence and a sense of control over the environment. Neighborhoods have built in “coping mechanisms” in the form of churches, voluntary associations, formal and informal networks. The neighborhood is a place where one’s physical surroundings become a focus for community and a sense of belonging.<sup>40</sup>

The report also suggested “that neighborhoods be given legal tools to manage their own environments.”<sup>41</sup> Unfortunately, “the report’s findings were largely ignored with the ensuing change in presidential administrations.”<sup>42</sup>

In the 1980s and 1990s, research by Wilson and others shed new light on the devastating effects of concentrated poverty on cities and residents of the affected neighborhoods.<sup>43</sup> Since then, there have been serious debates about how best to address the issue either through direct investment to improve conditions in the troubled neighborhoods themselves, or by placing an emphasis on mobility strategies to facilitate the movement of the poor out of the worst areas and into “neighborhoods of opportunity” elsewhere.<sup>44</sup> More recently, however, there is a growing recognition of the need for “a broader portfolio of *place-conscious* strategies that simultaneously improve neighborhood conditions, open up access to opportunity rich communities, and realign regional growth and development strategies to better connect low-income people and places with regional opportunities.”<sup>45</sup>

Alone, people-based lawmaking is insufficient or even inapplicable for the purposes of intervention to combat structural racism and ingrained poverty in the inner city. While policymakers may now view place-based lawmaking efforts to directly improve conditions in troubled neighborhoods—through improvements in housing, schools, and other services and amenities—as more promising, they also need to know in some depth how this “inside

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40. PEOPLE, BUILDING NEIGHBORHOODS, *supra* note 39, at 276.

41. Miller, *Legal Neighborhoods*, *supra* note 37, at 133; *see also* PERLMAN, *supra* note 36, at 14.

42. Miller, *Legal Neighborhoods*, *supra* note 37, at 133.

43. *See* WILSON, *supra* note 9; *see also* PAUL A. JARGOWSKY, POVERTY AND PLACE; GHETTOS, BARRIOS, AND THE AMERICAN CITY (Russell Sage Found. 1997).

44. PETER A. TATIAN, ET AL., BUILDING SUCCESSFUL NEIGHBORHOODS 1 (Urban Inst., April 2012) at 1, *available at* <http://www.urban.org/UploadedPDF/412557-Building-Successful-Neighborhoods.pdf>.

45. MANUEL PASTOR & MARGERY AUSTIN TURNER, REDUCING POVERTY AND ECONOMIC DISTRESS AFTER ARRA: POTENTIAL ROLES FOR PLACE-CONSCIOUS STRATEGIES (Urban Inst. 2010).

the neighborhood” work can be motivated and accomplished.<sup>46</sup> Such efforts are a function of time and place—specific to the circumstances of a particular community. Therefore, contextual analysis is critical to developing communities of resistance and empowerment.

Certain objections to place-based lawmaking, however, have continued to impede its increased use. Law-and-economics scholars and staunch integrationists attack place-based lawmaking on economic and social grounds.<sup>47</sup> They favor the alternative of people-based lawmaking, which directs economic subsidies to poor individuals, so that such individuals can move to places that may contain better housing, economic, and social resources.<sup>48</sup> These policies inherently overvalue bridging capital—the integration of public housing residents into other communities—and undervalue bonding capital—the pre-existing social networks of residents’ pre-existing communities.

While allowing residents to move to better housing and to neighborhoods with less overall poverty and crime, other claimed benefits such as more social capital leading to better employment, health, education, and social integration are not supported by the evidence.<sup>49</sup> Section 8 vouchers and other poverty de-concentration programs are only funded to affect a tiny proportion of the poor (75,000 out of nearly 6,700,000 people below the poverty line).<sup>50</sup> Only a few end up in truly mixed-income communities, and most end up in communities much like those that they have left,<sup>51</sup> and of those, many eventually move back to their original neighborhoods within a few years.<sup>52</sup> Moreover, with de-concentration, the new communities are artificial with little meaningful social interaction taking place between higher- and lower-income residents,<sup>53</sup>

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46. *Id.* at 1.

47. *See generally* Alexander, *supra* note 7, at 811-13 (discussing law and economics critique).

48. *See generally* Nestor M. Davidson, *Reconciling People and Place in Housing and Community Development Policy*, 16 *GEO. J. ON POVERTY L. & POL’Y* 1, 1 (2009) (defining people-based policies).

49. Diamond, *supra* note 13, at 11 (citing Susan J. Popkin, *The HOPE VI Program: What has Happened to the Residents*, in *WHERE ARE THE POOR TO LIVE: TRANSFORMING PUBLIC HOUSING COMMUNITIES* 70 (Larry Bennett et al., eds., 2006)).

50. *Id.*

51. G. Thomas Kingsley et al., *Patterns of Section 8 Relocation in the HOPE VI Program*, 25 *J. URB. AFF.* 427, 429 (2003).

52. Diamond, *supra* note 13, at 3 (citing Boyd, *supra* note 14, at 125).

53. *Id.* at 13 (citing SUSAN J. POPKIN ET AL., *A DECADE OF HOPE VI: RESEARCH FINDINGS AND POLICY CHALLENGES* 23 (2004), [http://www.urban.org/UploadedPDF/411002\\_HOPEVI.pdf](http://www.urban.org/UploadedPDF/411002_HOPEVI.pdf)).

and there is the concomitant loss of social capital that had existed in the original communities. In addition to indirect financial costs, residents feel a sense of stigma and alienation in their new communities with associated emotional and psychological costs.<sup>54</sup> People-based laws, essentially, are ineffective in raising community consciousness because they do not address cultural identity.

*C. Potential for Positive Social Bonding and  
Community Empowerment Through Place-Based  
Race- and Identity- Conscious Strategies*

Discrimination may be manifested in government policy or in physical space. Likewise, racial and cultural identity shift in accordance with context. As numerous studies have demonstrated, residential context matters in forming perceptions and attitudes.<sup>55</sup> Effective neighborhood revitalization and enhancement of existing social capital depends on compelling public expressions of community identity, knowledge, and power. However, opening public space to the assertion of community identity and self-knowledge requires an understanding of a community's existing social and cultural attributes and private market and government forces' impact on the community.

The cultural environment matters because it has material effect on the way residents see, speak, and think about the world. It affects the behavior of individuals, families, and institutions and affects the interaction between individuals and their environments—cultural, economic, and social. In sum, culture affects how “we navigate our environment in making choices and how our environment frames those choices.”<sup>56</sup> A greater understanding of the positive and negative attributes of the cultural environment of inner-city neighborhoods can inform government and development policy.

Ignored positive social capital exists in inner-city areas, and this capital is a valuable asset for low-income residents and their communities. Efforts to “[s]earch for a deeper, normative meaning

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54. Mark L. Joseph, *Is Mixed-Income Development an Antidote to Urban Poverty*, 17 HOUSING POL'Y DEBATE 209, 217 (2006).

55. See SUSAN WELCH ET AL., RACE AND PLACE: RACE RELATIONS IN AN AMERICAN CITY 2 (Cambridge Univ. Press, 2001); see generally Neal Kumar Katyal, *Architecture As Crime Control*, 111 YALE L.J. 1039 (March 2002) (describing influence of architectural context on social behavior and providing numerous examples of the effects on inner-city social networks).

56. Anthony V. Alfieri, *Post-racialism in the Inner City: Structure and Culture in Lawyering*, 98 GEO. L.J. 921, 925 (April 2010) [hereinafter Alfieri, *Post-racialism*].

[to] decipher[ ] residents' stories"<sup>57</sup> and "a sense of meaning"<sup>58</sup> can reveal residents to be the self-empowering subjects. For example, government, community, and resident historic preservation collaborative efforts that focus on the discovery and application of historical knowledge can enhance residents' efforts to revitalize their community.<sup>59</sup> In essence, making room for resident voices in the public telling of cultural stories will empower the community by "discrediting traditional images of neighborhood neglect and blight and by crediting existing social and cultural attributes."<sup>60</sup> In structurally marginalized neighborhoods like the West Grove and Little Haiti, cultural and social stigmas accompanying the hyper-marginalized identities of poor black residents "inhibits individual self-elaboration and group integration in the cultural and social spheres of civic [life]."<sup>61</sup> Place-based lawmaking can address the damaging effects of stigmatizing, difference-based resident identity.

Appropriate place-based lawmaking can be developed and adopted to address these attributes and build social capital, and thereby, revitalize and empower these communities. A de facto 'legal neighborhood' emerges from the overlay of neighborhood-specific place-based legal and political tools that, in turn, empowers the neighborhood.<sup>62</sup> Employing place-based lawmaking to revise the cultural frame of dependency empowers individual resident and community self-identity, revitalizes the economic and social health of the community, and allows residents through race-conscious and identity-conscious empathy and solidarity to reassert social and political authority over their own community.<sup>63</sup> Numerous studies have documented that strong social networks can produce significant economic and social welfare gains for geographically defined communities.<sup>64</sup> Racial- and identity-focused programs can help inner-city residents mitigate the negative effects of living in a poor and segregated community and obtain more concrete benefits from urban revitalization in their commu-

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57. Alfieri, *Faith in Community*, *supra* note 4, at 1862.

58. *Id.*

59. See, e.g., ANDREW HURLEY, *BEYOND PRESERVATION: USING PUBLIC HISTORY TO REVITALIZE INNER CITIES* (2010).

60. *Id.*

61. Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 807 (2008) [hereinafter Alfieri *(Un)Covering Identity*].

62. See generally Miller, *Legal Neighborhoods*, *supra* note 37, at 143 (discussing the concept of 'legal neighborhoods' created through the use of land-use law).

63. Alfieri, *Faith in Community*, *supra* note 4, at 1856.

64. See DAVID HALPERN, *SOCIAL CAPITAL* 43-169 (2005).

nities. Initiatives, however, must acknowledge the “complex interplay of structural and cultural factors” in the formation and maintenance of racial inequality and poverty.

As described by its founder and director, the efforts of the Historic Black Church Program (HBCP)<sup>65</sup> at the University of Miami School of Law in conjunction with its community partners, and similar initiatives elsewhere in South Florida, are campaigns to advocate, organize, and counsel the marginalized West Grove community to “uncover the structure and culture of identity.”<sup>66</sup> Such initiatives afford residents “a potentially beneficial opportunity to engage in authentic self-elaboration, to obtain equal treatment, and to exercise the liberty of full participation in cultural and social environments.”<sup>67</sup> Moreover, it gives residents “a useful chance to collaborate in grassroots, interest group mobilization”<sup>68</sup> in support of self-elaboration and community empowerment. Furthermore, by “repudiate[ing] the stigma of sub-group marginalization” and its cultural restrictions,<sup>69</sup> rather than “mut[ing] or repress[ing] a disfavored or stigmatized identity trait,”<sup>70</sup> these efforts approach racial and multicultural “difference as a meaning-making factor central to the construction of individual, group, and community identity.”<sup>71</sup> To explore contemporary practices of race- and identity-conscious place-based lawmaking, the Article presents two case studies, one based on the efforts of the HBCP in the West Grove neighborhood of Miami, and the other on on-going community-based efforts in the Little Haiti neighborhood of Miami.

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65. Since 2000, HBCP students have worked with tenants, homeowners, and small businesses in the impoverished Coconut Grove Village West neighborhood of Miami. Based at the Law School’s Center for Ethics & Public Service, the HBCP is a community-based education rights, civil rights, environmental justice, and oral history program which collaborates with non-profit organizations such as the Ministerial Alliance of Coconut Grove, the Coconut Grove Collaborative CDC, the West Grove Homeowners and Tenants Association, and various community-formed steering committees to provide self-help advocacy training. Past efforts have included sponsoring community health fairs, education rights workshops, historic resource designation assistance, land-use law research and litigation support, and prisoner reentry programs.

66. Alfieri, *Post-racialism*, *supra* note 56, at 963.

67. Alfieri, *(Un)Covering Identity*, *supra* note 61, at 809.

68. *Id.* at 813.

69. *Id.* at 814.

70. *Id.* at 811.

71. *Id.* at 809.

### III. PLACE-BASED LAWMAKING CASE STUDY: THE WEST GROVE

#### A. *The West Grove: History and Cultural Issues*

The West Grove neighborhood of Miami, a historically segregated enclave of Bahamian and African-American laborers, is surrounded by the wealthy neighborhood of Coconut Grove to the north, east, and south, and by the City of Coral Gables to the west.<sup>72</sup> According to the 2010 census, the population is 5,300 people, of which 83 percent is black, with a per capita average income of \$23,273.<sup>73</sup> The area has been designated a Targeted Urban Area by Miami-Dade County<sup>74</sup> and a Neighborhood Development Zone by the City of Miami,<sup>75</sup> while neighboring Coral Gables has some of wealthiest neighborhoods in the nation.<sup>76</sup>

Despite its unique nature and importance to the Black community, the West Grove has been the victim of discrimination by the City of Miami and other governmental agencies throughout its history.<sup>77</sup> Originally settled by Bahamian residents in the 1880s and joined by African Americans in the 1920s, West Grove residents built South Florida's first black public school, church,

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72. The West Grove is bordered by U.S. 1 on the north and west, Franklin Avenue on the south, and McDonald Street and Main Highway on the east.

73. U.S. Census Bureau, American Community Survey 2011, 5-Year Estimates.

74. A Targeted Urban Area (TUA) is an area designated by Miami-Dade County as suffering from increasing social and economic disparities with the county's other neighborhoods. A TUA is an economic development priority area and focus of public efforts largely directed, in theory if not in practice, by community input. *Economic & Demographic Profiles and Reports, Regulatory Economic Resources*, MIAMI.GOV, (last edited: Fri Feb 28, 2014 10:16:00 AM) <http://www.miamidade.gov/business/economic-demographic-profiles.asp>.

75. A Neighborhood Development Zone (NDZ) is an area designated as a distressed neighborhood in most need of assistance. In theory, city investment in housing, public infrastructure improvements, slum and blight removal, and economic development is concentrated on Model Blocks within the NDZ. The aim is to provide a visible and concentrated neighborhood revitalization initiative that can serve as a catalyst for further private investment and change in the NDZ. V. *Neighborhood Development Zones and Model Blocks*, 35 CITY OF MIAMI, CONSOLIDATED PLAN, FISCAL YEARS 2009-2013 (2013), available at <http://www.ci.miami.fl.us/community-development/Docs/Reports/Consolidated%20Plan%20FY2009-2013%20version%201.0s%20UTO%209-22-2009.pdf>.

76. U.S. Census Bureau, American Community Survey 2006-2010. Coral Gables' Old Cutler-Hammock Oaks neighborhood is ranked 4th in the nation with a mean income of \$596,851, Gables Estates is ranked 11th with a mean income of \$531,447, and Snapper-Hammock is ranked 22nd with a mean income of \$481,124.

77. See Alex Joseph Plasencia, *A History of West Coconut Grove from 1925: Slum Clearance, Concrete Monsters, and the Dichotomy of East and West Coconut Grove* (Graduate Thesis - Clemson University) (May 2011) (on file with author) (providing an in-depth history of discriminatory practices in the West Grove).



library, fraternal society and cemetery.<sup>78</sup> In the 1920s, the residents of the West Grove were intentionally segregated and relocated to a small area between U.S. 1, Grand Avenue and Lincoln Drive, in order to create an entirely white neighborhood in Coral Gables.<sup>79</sup> It is due to the efforts of West Grove residents that other projects in the 1930s failed to relocate them to “model towns” in southern, central and northern Dade County.<sup>80</sup> West Grove residents also suffered negative effects from racist projects in the 1940s and 50s, which saw the construction of a concrete wall in order to provide “suitable protection” for the all-white neighborhood to the south of it, and paved streets that did not run continuously from the West Grove to South Grove.<sup>81</sup>

Throughout this time, the City of Miami operated Incinerator No. 2,<sup>82</sup> popularly known as “Old Smokey” which emitted toxic smoke, odors, ash and soot throughout the neighborhood, and was shut down only after residents of Coral Gables found it to be a nuisance.<sup>83</sup> These projects continued into the 1970s and 80s with the construction of a ten-foot chain-link fence topped with barbed wire to seal off condominiums from the West Grove, which the City of Miami did not object to, and the exclusion of the Douglas Road Metrorail station from overpass access.<sup>84</sup> In the 90s, South Grove residents built tall fences to block pedestrian passage from the West Grove, again without objections by the City.<sup>85</sup> The latest of these discriminatory and unfair projects is the City Commission’s decision in 2010 to launch a trolley car system that would once again exclude the West Grove, and install an unsightly, industrial trolley bus depot in the residential and business heart

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78. *Coconut Grove: Bohemia on the Bay*, MIAMI: GREATER MIAMI AND THE BEACHES, <http://www.miamianandbeaches.com/places-to-see/coconut-grove> (last visited Jan. 25, 2014).

79. Rich Lang, *The Black Gables*, PRESERVATION NATION (July 26, 2011), <http://www.preservationnation.org/magazine/2011/story-of-the-day/the-black-gables.html>; see also Ava Moore Parks, *Charles Avenue and The West Grove: 43 McFarlane Homestead Historic District*, MIAMI BLACK VISITOR GUIDE, <http://miamiblackvisitorguide.com/historic.html>.

80. William Labbee, *There Goes the Neighborhood*, MIAMI NEW TIMES, Aug. 7, 1991, available at <http://www.miaminewtimes.com/1991-08-07/news/there-goes-the-neighborhood/4/>.

81. Kirk Nielsen, *The Wall*, MIAMI NEW TIMES, Feb. 2, 1998, available at <http://www.miaminewtimes.com/1998-02-05/news/the-wall/full/>.

82. CITY PLANNING AND ZONING BOARD, DWELLING CONDITIONS IN THE TWO PRINCIPAL BLIGHTED AREAS 1, 26 (1949).

83. *City of Miami v. City of Coral Gables*, 233 So. 2d 7 (Fla. Dist. Ct. App. 1970); *City of Miami v. City of Coral Gables*, 240 So. 2d 499 (Fla. Dist. Ct. App. 1970).

84. Nielsen, *supra* note 81.

85. *Id.*

of this oft-victimized neighborhood.<sup>86</sup>

Despite this poor treatment, a strong religious network, family networks, and a common sense of history and cohesive architectural environment hold the West Grove together as a community. Other strengths of the West Grove include strong and dedicated community leadership and nonprofit organizations, which historically have provided a framework for enhancing social networks and building social capital. Negative issues include drug use, poor community facilities and infrastructure, depressed economic conditions, vacant lots and urban blight, and poor housing standards. The efficacy of several recent and ongoing place-based lawmaking efforts in the West Grove—grounded in an understanding of West Grove’s social and cultural attributes—will be described and analyzed in the following sections.

### *B. Zoning Code Initiatives*

#### 1. Historic Resource Designation

Historic buildings are tangible links with the past. They help give a community a sense of identity, stability and orientation. The West Grove built environment consists of simple frame, vernacular shotgun houses, Bahamian “conch” cottages, Key West-style homes, and historic black churches. This unique built environment offers a glimpse into Miami’s pioneering past that is nearly unparalleled in South Florida. Many structures and sites in the West Grove are of significant historical and cultural value deserving historic and architectural resource designation. In addition to preserving important community cultural resources, designation results in significant financial benefits, such as access to government and non-profit funding programs, government and private grants, ad-valorem tax exemptions, and tax credits, which, in turn, enhances community economic and social status.

The Federal government encourages the preservation of historic buildings through various means. For example, Federal tax incentives support the rehabilitation of historic and older buildings. The Federal Historic Preservation Tax Incentives program is one of the Federal government’s most successful and cost-effective

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86. Jenny Staletovich & Andres Viglucci, *Building of bus depot rankles Coconut Grove neighborhood*, MIAMI HERALD, Dec. 29, 2012, available at <http://www.miamiherald.com/2012/12/29/v-print/3159744/building-of-bus-depot-rankles.html>; see also *Trolley*, CITY OF CORAL GABLES, <http://www.coralgables.com/index.aspx?page=325>; <http://www.miamidade.gov/auditor/library/2012-07-03-BCC.pdf>.

community revitalization programs<sup>87</sup> promoting the rehabilitation of historic structures of every period, size, style and type. They are instrumental in preserving the historic places that give cities, towns and rural areas their special character. The tax incentives for preservation attract private investment to the historic cores of cities and towns. They also generate jobs, enhance property values, and augment revenues for State and local governments through increased property, business and income taxes. The Preservation Tax Incentives also help create moderate and low-income housing in historic buildings. Through this program, “abandoned or underused schools, warehouses, factories, churches, retail stores, apartments, hotels, houses, and offices throughout the country have been restored to life in a manner that maintains their historic character.”<sup>88</sup> Additional funding sources include State of Florida Historic Preservation Plan,<sup>89</sup> State of Florida SHPO,<sup>90</sup> City of Miami Tax Exemption,<sup>91</sup> State of Florida Historic Preservation Grants,<sup>92</sup> and Federal Tax Credits.<sup>93</sup>

With the assistance of pro-bono historical preservation professionals and HBCP students, many of the local institutions of historical significance, such as Christ Church and Macedonia Church—the oldest continuously operating black congregation in Miami, dating from 1895—have sought and obtained historic designation or are seeking designation. Listing on the National Register for Historic Places prevents demolition, inappropriate alteration of historic properties, and incompatible new development in historic districts. While owners of public buildings have sought or are seeking designation, private owners have resisted designation of their properties due to misperceptions concerning

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87. NATIONAL PARK SERVICE, HISTORIC PRESERVATION TAX INCENTIVES (2012), available at <http://www.nps.gov/tps/tax-incentives.htm>.

88. *Id.*

89. FLORIDA DEPARTMENT OF STATE, DIVISION OF HISTORICAL RESOURCES, FLORIDA'S COMPREHENSIVE HISTORIC PRESERVATION PLAN, 2012-16, available at <http://www.flheritage.com/preservation/comprehensive/docs/Comp2012-16Completedoc.pdf>.

90. State Historic Preservation Law, Florida Department of State, Director of the Division of Historical Resources designated as State Historic Preservation Officer (SHPO), FLA. STAT. § 267 (2012).

91. Historic Preservation, Ad-valorem Tax Exemption, MIAMI, FLA., MUN. CODE, § 23, Art. II (2013), available at [http://library.municode.com/HTML/10933/level3/PTIITHCO\\_CH23HIPR\\_ARTIADVATAEX.html](http://library.municode.com/HTML/10933/level3/PTIITHCO_CH23HIPR_ARTIADVATAEX.html).

92. Florida Administrative Code (“F.A.C.”), Historic Preservation Grants Program, FLA. STAT. § 267.0617, Chapter 1A-39, available at [http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2011&AppMode=Display\\_Results&Mode=Search%2520Statutes&Submenu=2&Tab=statutes&Search\\_String=267.0617](http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2011&AppMode=Display_Results&Mode=Search%2520Statutes&Submenu=2&Tab=statutes&Search_String=267.0617).

93. Tax Reform Act of 1986, Pub. L. No. 99-514, § 47, 100 Stat. 2085 (1986).

potential restrictions.<sup>94</sup> Miami communities such as other areas of Coconut Grove, Buena Vista, and Morningside, however, have sought, obtained, and benefitted from historic resource designation and historic district designation. Additional efforts by neighborhood organizations are required to inform West Grove residents of the financial and cultural benefits of designation and the need to preserve the community's important historical resources. Given private property owner resistance to designation, alternative place-based zoning efforts have also been explored by local government and concerned West Grove residents.

## 2. Neighborhood Conservation District (NCD) Regulations

In response to the inability of traditional zoning to effectively preserve the identity of existing neighborhoods, communities have sought additional zoning tools to regulate redevelopment. Zoning overlays supplement traditional zoning, and are intended to address specific benefits or burdens in a particular geographic area by applying supplemental rules. A neighborhood conservation district (NCD) is a zoning overlay district that allows existing neighborhoods to preserve physical amenities, affordability, and landscape features that impact the experience of the neighbors as a community. The focus on the physical infrastructure is rooted in the belief that such rules can create or influence particular social patterns and foster a greater sense of community. NCDs offer some of the protections that are traditionally found in an historic district (HD) zoning overlay, but typically the NCD's application and recognition process is not as stringent and its protections are more flexible and custom-designed to address neighborhood-specific issues that city government may otherwise be unlikely or reluctant to address.<sup>95</sup> A challenge associated with NCDs is the degree to which provisions are required or voluntary with lax provisions often jeopardizing the underlying value of the NCD.

The use of NCDs is an attractive option for the West Grove where, as discussed *infra*, property owner support for a full HD designation is lacking, the requisite historic significance for an HD designation is limited to certain streets and prominent build-

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94. See Molly Cummins, *Making the Case for Historic Preservation in the Village West, Coconut Grove, Florida* (May 13, 2005) (Research Paper) (on file with author) (noting, based on extensive interviews with residents, resistance by homeowners to residential property historic resource designation).

95. Adam Lovelady, *Broadened Notions of Historic Preservation and the Role of Neighborhood Conservation Districts*, 40 URB. LAW. 147, 148 (2008).

ings, and residents do not desire the excessive building and use limitations associated with an HD designation.<sup>96</sup> The West Grove NCD also serves as a compromise between residents desiring a level of preservation and protection and those that fear the classification will lead to increased housing costs.<sup>97</sup> The West Grove NCD has been appended to the City of Miami's recently adopted Miami 21 Zoning Code. The code explains that the West Grove is "of special and substantial interest due to unique Caribbean and Bahamian character and heritage"<sup>98</sup> illustrating "the incomparable legacy of the African-American community."<sup>99</sup> Specific provisions include, for example, a Mixed-Use Cultural District primarily dedicated to "culturally-themed boutiques, gift-shops and bookstores, hair salons, apparel, restaurants and cafes, music shops and outdoor plazas, straw markets, cultural facilities, art and upscale cultural entertainment that reflect a Caribbean culture."<sup>100</sup>

While, in theory, West Grove land use decisions are supposed to take place within the NCD framework, the reality is that the decisions have been persistently individualized and ad hoc. Despite the intent to embody and codify the West Grove's vision for its own neighborhood, with only limited flexibility, instead developers have continued to develop new devices and, with the assistance of city staff and politicians, to retain flexibility that continues to allow them bargain ad hoc directly with city officials.<sup>101</sup> Regarding the massive six-block Pointe Group Grove Village project located in the center of the West Grove, despite the adoption of the West Grove NCD into the Miami 21 Zoning Code, the application was submitted under a Major Use Special Permit (MUSP) and considered on a parcel-by-parcel basis. An ad hoc political bargain was struck between the City Commission, acting in its official capacity as the Planning and Zoning Board, and the developer, thereby circumventing the entire NCD framework. The

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96. See MIAMI 21 ZONING CODE, Appendix A, Art. 2. Village West Island District and Charles Avenue (NCD-2) (2013), available at [http://www.miami21.org/final\\_code\\_April2013.asp](http://www.miami21.org/final_code_April2013.asp).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. See, e.g., Alejandro Esteban Camacho, *Mustering the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement and Adaptive Planning in Land Use Decisions*, 24 STAN. ENVTL. L.J. 3, 11, 16 (2005); Carol Rose, *Planning and Dealing: Piecemeal Land Controls as Problem of Local Legitimacy*, 71 CAL. L. REV. 837, 848-50 (1983).

developer was able to increase the density and surpass the established building height maximum of five stories and include an eight-story portion. Another project in which a developer circumvented the NCD is the City of Coral Gables Trolley Maintenance Facility. The City of Miami Planning Director, claiming the authority of administrative discretion and disregarding the intended uses specified in the NCD, approved the application for an industrial use within a commercial district and also directly abutting a residential district. In response to this project, pro-bono attorneys, with litigation support from HBCP students, filed a lawsuit on behalf of West Grove residents directly abutting the proposed facility. While intended to be the “hard” law typical of most zoning regulations, the NCD and similar zoning tools require no more than consideration and allow decision-makers to ignore such considerations. In practice, the West Grove NCD is merely “soft” law; this allows developers to continue to develop as they please, and politicians to continue governing on an individualized and ad hoc basis, thereby subordinating community input.

### 3. Historic Charles Avenue Corridor Designation

Charles Avenue runs east to west along the southern border of the West Grove lined with the most undiluted concentration of historic structures in the City of Miami. It probably meets the local government’s requirement for historic resource designation. Many of the West Grove’s most important historic landmarks are along this street, including the Coconut Grove Playhouse, Stirrup House, Charlotte Jane Memorial Cemetery, Macedonia Baptist Church, Odd Fellows Hall, and the Mariah Brown House. Signs placed along the street by community organizations detail the history of the structures located there, essentially making it a de facto historic district. Just short of historical district designation, the City of Miami has designated it a “Historical Corridor.”

Landmark designation projects like Historic Charles Avenue present significant opportunities for building existing social capital and empowering the West Grove community. Here, the planning process has involved extensive community participation and involvement to counteract the typical and detrimental “geography of economic development” and work to the benefit of this impoverished community.<sup>102</sup> The project has four components: street

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102. See, e.g., Barbara L. Bezdek, *To Attain “The Just Rewards of So Much Struggle”: Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA L. REV. 37 (2006); see also Audrey G. McFarlane, *When Inclusion Leads to Exclusion:*

design, historic resource designation for significant structures, collection of oral histories, and the drafting of new zoning and code enforcement ordinances. With the assistance of the HBCP, Charles Avenue residents meet monthly to discuss their concerns and consult with pro bono design professionals. Immediate problems relate to ineffective code enforcement by city, a perception of bias, partiality, and unfairness on the part of city officials, demolition due to neglect by non-resident property owners, and a lack of community outreach by outside institutions. The Historic Charles Avenue project provides a framework to address these problems as well as providing a long-term framework to enhance social networks and build social and cultural capital for the entire West Grove community.

Beyond conservation and rehabilitation efforts of structures and the streetscape, the Charles Avenue project is also focused on preserving cultural ephemera, such as historic signs and aspects of neighborhood life and culture.<sup>103</sup> Use of public history is recognized as an important tool to revitalize inner-city neighborhoods.<sup>104</sup> “[H]istoric preservation should ‘celebrate the history of the citizens’ most typical activities—earning a living, raising a family, carrying on local holidays, and campaigning for economic development or better municipal services.’”<sup>105</sup> The result has been an increased desire of current neighborhood residents to portray the histories of their lives in a city’s neighborhood, not just preserve the neighborhood’s architecture.<sup>106</sup> The Charles Avenue project includes historical markers, and an annual fair is planned to commemorate its historic importance to the community. Murals of neighborhood leaders and activists are also a common form of this type of historic preservation.<sup>107</sup> This kind of memorialization can

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*The Unchartered Terrain of Community Participation in Economic Development*, 60 BROOK. L. REV. 861, 894 (2000-01) (describing similar efforts to encourage community participation).

103. See, e.g., Stephen R. Miller, *Historic Signs, Commercial Speech, and the Limits of Preservation*, 25 J. LAND USE & ENVTL. L. 227, 244–57 (2010) (providing an historical overview of the development of historic preservation).

104. See generally ANDREW HURLEY, *BEYOND PRESERVATION: USING PUBLIC HISTORY TO REVITALIZE URBAN CITIES* (2010) (citing numerous examples of inner-city neighborhoods where historic preservation uses public history as a process for inclusive community engagement).

105. Miller, *Legal Neighborhoods*, *supra* note 37, at 154–55 (quoting Dolores Hayden, *Placemaking, Preservation and Urban History*, 41 J. ARCHITECTURAL EDUC. 45, 46 (1984)).

106. *Id.*

107. See, e.g., Mural of West Grove historical figures on South Douglas Road and Frow Avenue, in Miami, FL (photograph on file with author).

coalesce into a neighborhood identity, and also help less politically powerful communities to establish a claim on a neighborhood in the face of gentrification, or to protest adverse or undesirable development.<sup>108</sup> Recently, a West Grove community group completed the “One Grove” mural portraying prominent historic figures directly opposite the controversial Trolley Garage project.

### C. *Community Benefits Agreements*

The historic West Grove neighborhood has experienced many years of neglect, disinvestment, and continuing negative impacts to the social fabric of the community. Adjacent to downtown Coconut Grove and with two major thoroughfares—Grand Avenue and Douglas Road—the West Grove is experiencing development pressures with massive high-end condominium, upscale retail, and commercial office development, leaving little opportunity for neighborhoods to avoid rapid gentrification. To that end, community-based groups such as the Ministerial Alliance of Coconut Grove have attempted to enter into Community Benefits Agreements (CBAs) with private real estate developers seeking to redevelop properties in the West Grove. In anticipation of these major redevelopment projects proposed for the area on public and/or private property, the group has developed a list of projects and programs that would benefit the existing community at large. It is anticipated that all of these activities would be paid for by contributions from the public, private, and philanthropic sectors through a permanent trust fund and seeded specifically by those investors/developers who will execute new development projects within the area.

CBAs are “a powerful tool for neighborhoods in negotiating with developers seeking to build larger projects and have become a particularly popular tool for those working in the social justice and labor movements.”<sup>109</sup> With a CBA, a neighborhood group, rather than city officials, can negotiate directly with a developer

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108. See *Grove Community Mural Project*, URBAN RESURRECTION, <http://www.urbanresurrection.org/2012/05/09/grove-community-mural-project/> (last visited Feb. 8, 2014).

109. See Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5 (2010); see also Patricia E. Salkin & Amy Lavine, *Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements*, 17 J. AFFORDABLE HOUS. 113 (2008); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001); JULIAN GROSS ET AL., COMMUNITY BENEFIT AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE (2005),



for specific benefits to be provided to its community. In essence, as one commentator has stated, CBAs “are a self-help version of value recapture theory, effectuated by community coalitions through direct negotiation of detailed agreements with the developers.”<sup>110</sup> “The concept of public value recapture is to recoup a portion of the public fisc [tax base] that is transferred to private interests through the vague and opaque processes of public/private real estate development partnerships. As we have seen, in much urban redevelopment, the way is paved by the local government’s aid to private developers through an array of forms including infrastructure inducements, foregone taxes, deferred taxes, land clearance and assembly, and the exercise of eminent domain.”<sup>111</sup> The purpose of the CBA is to avoid unjust enrichment, and benefit the local community affected by the development.

In addition to community groups, the City of Miami, as authorized under state statute,<sup>112</sup> has also attempted to negotiate CBAs. During the City of Miami Planning and Zoning Board proceedings considering approval of the Pointe Group project described above, one of the commissioners stated,

[I]t becomes my responsibility as the elected official to figure out a way to make sure that the residents that are there that are a part of it are really engaged in the process. And that’s one of the reason[s] . . . that I try to build—especially if it’s me giving money, me giving land, me giving zoning changes, that I try to put a community benefits agreement in it, that at least we can have some common ground.<sup>113</sup>

Continuing, the commissioner acknowledged,

The developer was looking at doing everything from minority subcontractors participating in the project to recruiting businesses in the area to actually participate to retail ownership. . . . A lot of times the jobs are great, [ ] when you’re talking about building a community, it really goes beyond just having a job. It’s about having ownership to a certain

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available at [http://community-wealth.com/\\_pdfs/articles-publications/state-local-new-report-gross.pdf](http://community-wealth.com/_pdfs/articles-publications/state-local-new-report-gross.pdf).

110. Bezdek, *supra* note 102, at 107.

111. *Id.*

112. Local Government Comprehensive Planning and Land Development Regulation Act, FLA. STAT. § 163.3161 (2010); Florida Local Government Development Act, FLA. STAT. §§ 163.3220-163.3243 (2010).

113. Meeting Minutes, City of Miami Planning & Zoning Meeting, Nov. 17, 2011, at 49-50, available at [http://egov.ci.miami.fl.us/meetings/2011/11/2292\\_M\\_City\\_Commission\\_11-11-17\\_Verbatim\\_Minutes\\_\(Long\).pdf](http://egov.ci.miami.fl.us/meetings/2011/11/2292_M_City_Commission_11-11-17_Verbatim_Minutes_(Long).pdf).

extent. And for me, you know—and I can say this because, you know, I represent a district that truly has many challenges. But I also realize how important it is in order for me to rebuild those communities; that I have to empower if not the people that are living there, people that reflect the people that live there, empower them so that they begin to see people looking like them making their community work.<sup>114</sup>

Despite these public statements, later the same evening, the City Commission, acting in its official capacity as the Planning and Zoning Board, unanimously approved the Pointe Group project without a CBA for the West Grove community. As described above, under the MUSP approval process, the city approved expanded zoning allowances and density bonuses and only required voluntary compliance with “guidelines” proffered by the developer rather than impose mandatory conditions. While attempts to develop a Pointe Group CBA were defeated, West Grove community groups assisted by HBCP students continue to pursue CBAs elsewhere and have recently proposed a CBA framework to resolve the Trolley Garage controversy discussed *infra*.

#### IV. PLACE-BASED LAWMAKING CASE STUDY: LITTLE HAITI

##### A. *Little Haiti: History and Economic, Social, and Cultural Issues*

Little Haiti or La Petite Haïti is a neighborhood in Miami, Florida, known as a traditional center for Haitian immigrants, and Francophone culture in the city. In the early 1900s, a small farming community, Lemon City, developed in this area, and in 1925, it was annexed by Miami, along with the town of Little River to the north, and the town of Buena Vista to the south, each of which now comprise modern-day Little Haiti.<sup>115</sup> The area is currently experiencing a cultural renaissance. While attempts are underway to make Little Haiti into an ethnic enclave, efforts have been hampered because many prosperous residents have moved away. Factors contributing to the district’s gentrification are the close proximity of the Miami Design District and, as real estate prices continue to rise, Haitians and other residents of the low-income area are being displaced.

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114. *Id.*

115. Little Haiti has a viable business district along Northeast Second Avenue, and, geographically, this neighborhood is considered to stretch from 54th Street in the south, to the northern Miami city line, or 86th Street. The eastern border is the Florida East Coast Railways, and Interstate 95 marks the western side.

Unlike other ethnic communities that have achieved greater integration in South Florida, Little Haiti has remained socially and economically isolated from Miami's greater metropolitan area.<sup>116</sup> Haitians are among the poorest demographic groups in the region. The poverty rate for Haitians in Miami-Dade County (30 percent) is almost twice the overall poverty rate in the county (18 percent),<sup>117</sup> and one-third of all Haitian households in Miami-Dade County are considered low-income.<sup>118</sup> The median household income in Little Haiti (\$15,277) was less than half the median household income in the Miami-Fort Lauderdale metropolitan area (\$40,320).<sup>119</sup> The unemployment rate in the community is 19 percent, compared with 7 percent in the Metropolitan Statistical Area.<sup>120</sup> Sixty-two percent of adults over 25 in Little Haiti do not have a high school diploma, and only 4 percent have a bachelor's degree.<sup>121</sup>

Furthermore, the Little Haiti community has cultural traits that contribute to its social isolation. Language skills are a significant challenge both for Haitian immigrants and the organizations that serve them. The majority of Haitian immigrants stay within Haitian social and economic circles in order to carry out their daily business, a situation that restricts options for housing, employment, and transportation.<sup>122</sup> Poor language skills also restrict the opportunity to earn a living and provide for their families. In the Federal Reserve study interviews, Little Haiti residents pointed to a perceived lack of information reaching residents about resources that exist outside of the community's boundaries.<sup>123</sup> Addressing the issues facing Little Haiti is particularly challenging because of the Haitian's unique perspective of poverty. Despite living close to or below the poverty line in South Florida, many Haitian immi-

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116. See generally THE ENDURING CHALLENGE OF CONCENTRATED POVERTY IN AMERICA: CASE STUDIES FROM COMMUNITIES ACROSS THE U.S. 47-55 (David Ericson et al. eds., Federal Reserve 2008), available at <http://files.eric.ed.gov/fulltext/ED505600.pdf> [hereinafter ENDURING CHALLENGE]; Philip Kretsedemas, *Language Barriers and Perceptions of Bias: Ethnic Differences in Immigrant Encounters with the Welfare System*, 32 J. SOCIOLOGY & SOC. WELFARE 109, 109-23 (2005); REBECCA SOHMER, THE HAITIAN COMMUNITY IN MIAMI-DADE: A GROWING THE MIDDLE CLASS SUPPLEMENT (Brookings Inst. 2005).

117. SOHMER, *supra* note 116, at 6.

118. *Id.* (Low-income refers to households earning less than \$18,000.)

119. U.S. Census Bureau, Census 2010.

120. *Id.*

121. *Id.*

122. ENDURING CHALLENGE, *supra* note 116, at 50.

123. *Id.*

grants do not consider themselves poor.<sup>124</sup> “Comparatively, many are better off in the United States than in their homeland,” and, perhaps as a result of this more positive perception of their situation, “Haitians are slow to seek services aimed at improving their social and economic standing.”<sup>125</sup> In general, Little Haiti’s residents “are not likely to ask for assistance, even if they are eligible for it,”<sup>126</sup> and community organizations that have had success reaching the Haitian community must use creative outreach strategies.

Positive cultural attributes of Little Haiti’s social environment to support and strengthen social capital and empower the community include an extended family support system, common religious beliefs, and viable and active community service organizations. Many households are comprised of three generations (grandparents, parents, and children) and other distant relatives, and these familial support networks provide an important safety net for residents of Little Haiti.<sup>127</sup> Haitians are also known for their reluctance to work together as a larger community,<sup>128</sup> however, they are very religious. As a result, Little Haiti’s many churches serve as gathering places and represent a unique opportunity to access the Haitian community. As studies have found, “[t]he organization that brings the community together most effectively is the Catholic Church, which provides many services to the Haitian community.”<sup>129</sup> The Church “conduct[s] outreach and offer[s] programs that provide information, education, counseling, and other services to promote the social and economic well-being of Little Haiti residents.”<sup>130</sup> Lastly, as will be described below, an increasing number of neighborhood-based social service agencies have also enhanced Little Haiti’s social networks and empowered

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124. *Id.* at 49.

125. *Id.* (quoting Jacques St. Louis, a homeownership counselor at the Little Haiti Housing Association, “They see that they are making \$12,000 a year, and they think that’s good money.”).

126. *Id.* at 50.

127. *Id.* at 51.

128. ALEX STEPICK, CAROL DUTTON STEPICK, & PHILIP KRETSEDEMAS, CIVIC ENGAGEMENT OF HAITIAN IMMIGRANTS AND HAITIAN-AMERICANS IN MIAMI-DADE COUNTY (Fla. Int’l Univ. 2001), available at <http://www.wkkf.org/pubs/Devolution/Pub3670.pdf>.

129. ENDURING CHALLENGE, *supra* note 116, at 51 (noting that “[a]ccording to Father Reginald Jean-Mary, the pastor of Notre Dame d’Haiti, weekend church services bring close to 4,000 congregants to Little Haiti from across South Florida, illustrating that multigenerational Haitian families still identify with the Little Haiti community”).

130. *Id.* Notre Dame d’Haiti and the Toussaint L’Ouverture Center

its residents by providing culturally and linguistically sensitive social services.

### B. Residential Zoning Code Revisions

In Little Haiti, housing quality is poor, and most of the homes are small (less than 1,200 square feet).<sup>131</sup> As found in a recent study by the Federal Reserve and the Brookings Institution, “many have been illegally subdivided and have un-permitted structures on the property.”<sup>132</sup> Families also often pool funds or share units in order to afford housing resulting in severe overcrowded and unsafe conditions.<sup>133</sup> In addition, as gentrification pressures intensify in the neighborhood, housing affordability will likely worsen for Little Haiti’s residents.<sup>134</sup> With the recent economic recovery and very little undeveloped land remaining in the northern neighborhoods of Miami, developers are looking at older neighborhoods such as Little Haiti, as new candidates for redevelopment.<sup>135</sup> As discussed below, residents are often dependent on Creole-speaking services accessible only in Little Haiti, and further displacement from the neighborhood will have significant detrimental impact on the neighborhood’s existing social networks and social capital.

Home ownership is extremely important to Haitians. It represents both security, and the ultimate symbol of having achieved success. While many working class Haitians have been able to attain their goals of owning a home, it is becoming more difficult for low-income individuals to realize that dream. Little Haiti’s average income of \$14,000 reflects the general earning patterns of the county’s low-skilled and low-income Haitian population. These factors, combined with other requirements of good credit and a steady employment history, render it very difficult for low-income residents to qualify for affordable home ownership opportunities. As a result, the renter-occupied rate is very high in Little Haiti. The rate of residents renting their units is over sixty percent, which leaves the community extremely vulnerable to gentrification. Such a trend has already transformed the adjacent neighbor-

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131. *Id.*

132. ENDURING CHALLENGE, *supra* note 116, at 49.

133. *Id.*

134. *Id.*

135. Maya Roney, *America’s Next Hot Neighborhoods*, BUSINESSWEEK, March 6, 2007, available at <http://www.businessweek.com/stories/2007-03-06/americas-next-hot-neighborhoodsbusinessweek-business-news-stock-market-and-financial-advice>.

hood of Buena Vista, formerly considered part of Little Haiti, into a more affluent and gentrified community.

The “boarders” phenomenon is also very widespread in the Haitian community. In the boarding house setting, boarders renting a room pay an average of \$200 a month. If those rates are calculated on a square footage basis, the rates in the Little Haiti/North Miami areas represent some of the highest rates per square foot in the county. In a market where informal housing relationships provide somewhat of a relief to a problem which has reached crisis proportions, municipalities need to take a second look at their zoning requirements and amend them to reflect the community’s social and economic realities.

To address these issues and promote homeownership, community organizations are pursuing a variety of avenues. First, the addition of legally permitted rental-units for “boarders” would alleviate overcrowding and unsafe conditions while creating affordable rental opportunities. On-going education efforts are being promoted and assistance is being provided by the Haitian American Community Development Corporation (HACDC), formerly known as the Little Haiti Housing Association. Currently, HACDC is engaged in ongoing efforts to ensure that residential rental transactions are conducted within legal parameters and to educate both renters and owners on their legal rights and responsibilities. In addition, HACDC offers programs, which aim to move low-income residents into home-ownership by providing financial counseling, education and foreclosure prevention services.

### *C. Entrepreneurial Funding Initiatives*

Despite existing barriers to advancement due to racial discrimination, poverty, and lack of language skills, one important avenue for creating jobs and building social capital in Little Haiti is business growth within the community. Haitian-Americans have shown a strong entrepreneurial spirit, launching numerous businesses in Little Haiti. Building on this cultural advantage, there is the opportunity both to expand existing businesses in the community and to assist recent Haitian immigrants who wish to start their own businesses. There is a “strong preference in Little Haiti for culturally oriented businesses, [and] existing business owners believe that they can better meet the cultural and language needs of local residents while also providing affordable

goods and services for the community.”<sup>136</sup> Furthermore, an entrepreneurial business culture allows Little Haiti’s businesses to “adapt and benefit from [this] a cultural advantage [by allowing] them to respond quickly to developing market opportunities and offer[ing] niche services.”<sup>137</sup>

Community Development Corporations (CDCs), formed initially for the purpose of revitalizing distressed neighborhoods through redevelopment, can also serve as vehicles to achieve economic growth and enhance social capital in low-income communities such as Little Haiti.<sup>138</sup> Historically, CDCs have evolved into crucial and capable providers of housing and other services, and are significant actors in widely varied aspects of community development.<sup>139</sup> CDCs have been an important engine of community-based self-help for thirty years, engaging in market-based practices in service of their community stakeholders in innovative and effective ways.<sup>140</sup>

CDCs are typically a place-based nonprofit that focus on real estate development and neighborhood services directed to achieve community empowerment. Unfortunately, funding for community development in center cities is in limited supply. In addition, while opportunities to expand local business exist, there is also a significant need to educate and counsel entrepreneurs.<sup>141</sup> Since 2007, Miami-Dade College has received county funding to offer workshops for small businesses.<sup>142</sup> The program, formerly known as the Minority Capacity Development Program, provides Little Haiti’s small business owners with basic knowledge and tools to manage a business and establish a networking channel with other

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136. *Id.* at 51 (citing interviews with Little Haiti business owners on NE 2nd Avenue in Little Haiti conducted during the week of February 19, 2007).

137. *Id.*

138. Bezdek, *supra* note 102, at 57 (citing Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753, 766-72 (1997) (giving a brief history and overview of CDCs and community-based economic development)).

139. *Id.*

140. *Id.* at 108-09 (citing the New Community CDC of Newark, New Jersey, which developed a supermarket; the Kansas City CDC that owns a cement block factory; and finally, child care centers and health care facilities).

141. *Enduring Challenge*, *supra* note 116, at 51. According to Rasha Soray-Cameau, the lack of knowledge of U.S. business practices, including required financial reporting, tax payments, licenses, and permits, prevents Haitian immigrants from accessing needed credit as well as grants to start or expand their businesses.

142. Small Business Education Program, MIAMI-DADE COLLEGE, <http://www.mdc.edu/main/smallbusiness/> (last updated Jan. 1, 2013 10:53 AM).

businesses, governmental agencies, and private/non-profit entities. In 2012, The Haitian American Community Development Corporation received funding from the City of Miami to offer a similar program through its Northeast 2nd Avenue Partnership (NE2P).<sup>143</sup> NE2P is a community initiated and collaborative effort to increase economic opportunities while also protecting, preserving, and showcasing the historical and cultural values of the Haitian-American community. It is staffed by local business owners focused on educating, counseling, and funding small local business entrepreneurs and, despite limited funding, aims to become a beneficial force to sustain the long-term viability of Little Haiti's business community.

*D. Community-Based Initiatives: Healthcare, Cultural Events, and Urban Farming*

In Little Haiti, access to preventive healthcare is hampered by a lack of knowledge and understanding of rights to medical care. Several cultural factors are responsible for this lack of knowledge and understanding. These include deeply rooted cultural practices of residents who have not had access to health care in Haiti, the lack of cultural competency by most safety net providers, and the lack of information by the safety net providers about cultural issues and practices which may be critical to care and recovery. Access to culturally sensitive information and services are key issues, which must be addressed in dealing with access to healthcare in the Haitian community.

To address the lack of cultural competency, Sant La Haitian Neighborhood Center,<sup>144</sup> a non-profit organization located in Little Haiti, has developed and conducts training sessions. While not providing direct services, Sant La staff work with other neighborhood-based organizations to build community capacity around issues of health access. Sant La and community partners such as the Little Haiti Community Collaborative have begun providing cultural sensitivity training to improve staff interaction with their Haitian clients. The Collaborative has created health asset maps, where traditional and non-traditional providers (Voodoo healers)

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143. Economic Development, HAITIAN AMERICAN COMMUNITY DEVELOPMENT CORP., <http://www.haitianamericancdc.org/economic-development/> (last visited Mar. 25, 2014).

144. See *Sant La Haitian Neighborhood Center*, SANTLA.ORG, [http://www.santla.org/index.php?option=com\\_content &view=featured&Itemid=101](http://www.santla.org/index.php?option=com_content&view=featured&Itemid=101) (last visited March 25, 2014).



of health-related services have been identified. Moreover, the Collaborative has conducted a series of focus group sessions as well as surveys gauging members of the community's attitudes about health care issues. The Collaborative has also compiled a comprehensive list of herbal remedies commonly used for specific ailments.

Cultural movements and activities may also serve to develop and enhance existing social capital by encouraging residents to "share and construct common cultural frames and narratives."<sup>145</sup> Little Haiti's existing social cultural capital has been enhanced through resident participation in regularly scheduled cultural activities centered on Haitian art and music. One such activity is the recently established "Big Night in Little Haiti."<sup>146</sup> The festival takes place every third Friday of the month at the Little Haiti Cultural Center, and is a free celebration of Haitian culture attended by a diverse cross section of the community.<sup>147</sup> Each month, some of Haiti's biggest names share their talent, such as legendary Haitian folk singer Manno Charlemagne, performing songs about the plight of his native home and with sharp lyrics that have inspired Haitians to speak out against governmental oppression and corruption. In addition, the festival includes Haitian food, collaborative street art projects, vuvuzela parades, and museum-caliber art exhibits. The monthly celebration at the Little Haiti Cultural Center also provides critical support to the vibrant neighborhood's surrounding art galleries, studio spaces, and restaurants.

Community gardens and urban farming can also be used to strengthen social networks and build social capital through "self-help," that adds to the self-respect of residents by providing a space to gather and engage in recreational and educational activities, as well as potential economic return.<sup>148</sup> Such activities "foster collaborative relationships and social networks [that] in turn enable residents to actively work together toward common neighborhood goals and a sense of control over their space."<sup>149</sup> Recent

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145. Alexander, *supra* note 7, at 832 (analyzing hip-hop in New York City's Bronx neighborhoods as a cultural movement).

146. Big Night in Little Haiti, THE RHYTHM FOUNDATION, <http://www.rhythmfoundation.com/series/big-night-in-little-haiti/> (last visited March 25, 2015).

147. *Id.*

148. See Sheila Foster, *The City As An Ecological Space: Social Capital and Urban Land Use*, 82 NOTRE DAME L. REV. 527, 540-41 (2006) (citing Jane E. Schukoske, *Community Development through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 351, 359 (2000)).

149. *Id.* at 541.

studies of community gardening projects in Englewood, California,<sup>150</sup> and inner-city neighborhoods in Chicago, and Detroit<sup>151</sup> have demonstrated the potential for such projects to create and enhance social networks and benefit residents and their communities. Building upon the cultural heritage of traditional Haitian farming, recent attempts in Little Haiti have also met with success.

The Little Haiti Community Garden, a non-profit organization founded in 2009, is dedicated to growing fruits and vegetables using traditional Haitian farming techniques. The organization acquired and then transformed a derelict, urban lot in Little Haiti's commercial heart into a "dynamic, prosperous, and multi-purposed garden."<sup>152</sup> As stated by its founders, "[b]y teaching hands-on gardening, healthy nutrition and retail skills, the garden confronts . . . poverty [and blight] and brings additional [funds] and healthy foods into households that struggle to exist."<sup>153</sup> Recognizing Haitian farming techniques and cultural food preferences, crops such as collard greens, okra, kale, callaloo, cilantro, and calabaza are grown and sold to the neighborhood, local markets and restaurants.<sup>154</sup> Local students are educated about their cultural heritage and farming practices, and local residents are encouraged to volunteer, interact, and develop relationships with other residents.<sup>155</sup> The garden has also generated significant economic activity and resulted in the creation of jobs for the community.<sup>156</sup> As well as meeting the need for locally grown, more

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150. Eric Klinenberg, *Adaptation - How can cities be "climate-proofed"?*, NEW YORKER, Jan 7, 2013 at 35-36 (discussing how urban farming has enhanced social networks and strengthened community cohesion, which saved lives during a deadly heat wave); see also Wendell Hutson, *More Urban Gardens Planned for Englewood*, DNAINFO CHICAGO, March 21, 2013 6:22 AM) <http://www.dnainfo.com/chicago/20130321/englewood/more-urban-gardens-planned-for-englewood>.

151. Laura Mirviss, *Detroit Initiative Unveils Recommendations for City's Renewal*, ARCHITECTURAL RECORD, Jan. 2013, available at <http://archrecord.construction.com/news/2013/01/130109-Detroit-Initiative-Unveils-Recommendations-for-Citys-Renewal.asp> (discussing expansion of existing neighborhood initiatives such as community gardens by changing land use regulations). See also GAIL FEENSTRA ET AL., *ENTREPRENEURIAL COMMUNITY GARDENS: GROWING FOOD, SKILLS, JOBS AND COMMUNITIES* (1999) (providing case studies and analysis of 27 projects across the nation).

152. *The Little Haiti Community Garden*, YARDBIRD.COM, <http://runchickenrun.com/farmers/> (last visited Dec. 31, 2012 11:31 AM); <http://www.loveandveggies.com/the-farm/>.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

nutritional, and culturally significant food sources, the garden also serves as a model for similar inner-city communities of environmentally sustainable redevelopment.

In addition, Youth Leaders of Miami sponsors youth apprentices to conduct street outreach and surveys among residents to promote healthy food outlets and community gardens in the Little Haiti neighborhood.<sup>157</sup> Apprentices also support partnering between farmers' markets and community gardens.

## V. LESSONS LEARNED

To promote equitable development, advance distributive justice, and enhance social integration, structural and cultural impediments must be overcome, while positive cultural traits must be both recognized and nurtured. Place-based laws, implemented with sensitivity and in a collaborative process through outreach to the community and the inclusion of residents, require long-term commitment and a redemptive vision in communities like the West Grove and Little Haiti.

As has been discussed, cultural issues play a significant role in determining adequate or insufficient social capital. If inattentive to such issues, existing social capital may be undermined; conversely, attention to these issues can enhance social capital. In turn, as studies have shown, enhancing such capital may be one of the best defenses against future inappropriate or detrimental land use decisions.<sup>158</sup>

Despite some modest success, the case studies reveal that place-based lawmaking involving land use is often compromised by continuing ad hoc decision-making that thwarts neighborhood-specific goals. For example, the Pointe Group project—as with most major projects reviewed and approved at a city-wide level—had its administrative review by city departments charged with code compliance verification conducted in secret. The sheer complexity of the review is beyond the ability of the public to evaluate whether the project does in fact comply with neighborhood conservation district regulations. This forecloses the requisite degree of critical evaluation by the affected communities of the government's development approval process.

As with the Pointe Group and Trolley Garage projects, both

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157. *Little Haiti*, YOUTH L.E.A.D., YOUTHLEADMAMI.ORG (Dec. 31, 2012, 11:30 AM) <http://youthleadmiami.org/locations/little-haiti/>.

158. See Manual Pastor, Jr. et al., *Which Came First? Toxic Facilities, Minority Move-In, and Environmental Justice*, 23 J. URB. AFF. 1 (2001).

city officials and private developers intent on minimizing the political organization and potential power of low-income residents fostered by these legal tools, circumvent NCDs, CBAs, and other regulations through ad hoc decision-making. In general, the projects demonstrate that the economic power of developers trumps the democratic process. As stated by one critic, “political powerlessness of impoverished communities, [coupled with] the absence of government accountability negates the theoretical ability of the political process to trigger a correction”<sup>159</sup> resulting in “the corruption of democratic process by power and privilege.”<sup>160</sup> The Planning and Zoning Board deliberations on the Pointe Group project illustrate that this project, like other major private-sector development—deeply subsidized by zoning concessions—“channels the work to the well connected, and returns scant benefit to the public generally, and to those directly in the path of new projects.”<sup>161</sup>

Another issue of concern is gentrification and displacement. Residents feel that “[a] place to live is a human right . . . [and] ‘as black people we have always been forced out.’”<sup>162</sup> With potential economic development and improved and desirable housing standards, West Grove and Little Haiti residents may fear that “[g]entrification will become the issue of this generation, [j]ust like segregation was the issue of the generation before us.”<sup>163</sup> While the debate continues about detrimental and beneficial effects of gentrification<sup>164</sup>—the dangers of commodification and displacement and benefits of improved housing standards and more diverse and economically vibrant mixed-income neighborhoods—studies demonstrate that enhancing social networks and establishing rooted communities can help residents stem the detrimental effects of gentrification in their communities and obtain more concrete benefits from urban reform.<sup>165</sup>

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159. Bezdek, *supra* note 102, at 93 (citing ROBIN PAUL MALLOY, *PLANNING FOR SERFDOM: LEGAL ECONOMIC DISCOURSE AND DOWNTOWN DEVELOPMENT* 99-115, 134 (1991)).

160. *Id.*

161. *Id.*

162. Alfieri, *Faith in Community*, *supra* note 9, at 1865 (citing Peter Bailey, *Impromptu Community Gives Thanks in Liberty City Shantytown*, *MIAMI HERALD*, Nov. 24, 2006, at 1B (quoting Jonathan Baker, a resident of Umoja Village)).

163. *Id.* at 1844 (quoting Max Rameau in Robert Samuels, *A Lesson on the Housing Crisis*, *MIAMI HERALD*, Feb. 15, 2007, at 2NC).

164. J. Peter Byrne, *Two Cheers for Gentrification*, 46 *How. L. J.* 405 (Spring 2003).

165. See, e.g., Charles William Lawrence, *New Neighbors In Old Neighborhoods: Explaining the Role of Heritage Conservation in Sociocultural Sustainability and Gentrification*, University of Pennsylvania, ScholarlyCommons, Theses (Historic

Beyond the place-based lawmaking discussed above, additional legal tools to empower inner-city neighborhoods may include economic, land use, social service, and public services. Neighborhood-specific business improvement districts (with neighborhoods funding the districts and attracting businesses themselves), enterprise zones, and tax increment financing are potential economic tools. Communities can draft their own zoning ordinances, implement neighborhood-centered design for new projects, or adopt additional neighborhood-specific zoning provisions such as prioritizing neighborhood businesses over chain stores or establishing community facilities districts. Provision of community social and public services, such as running a neighborhood school, operating neighborhood courts, receiving neighborhood-level delivery of services, employing community policing, conducting neighborhood crime watches, and using technology can also be used to build relationships between neighbors and empower inner-city neighborhoods.

The case studies also demonstrate that new combinations of place-based laws might be necessary to protect and enhance social and cultural capital. For example, both historic district designation and affordable housing protections may be secured through transferable development rights. Other place-based laws include foreclosure prevention strategies, techniques to mitigate eminent domain abuse, beautification and blight removal efforts, community needs assessments, and land trusts<sup>166</sup> to maintain and enhance of the physical structure of the community in order to preserve beneficial aspects of the neighborhood's culture and combat its negative influences. Given that there will be people who choose to remain in their neighborhoods and that there is value in preserving their neighborhood's attributes, a full panoply of programs and intense efforts to address community issues—similar to Harlem Children's Zone<sup>167</sup>—should be deployed in inner-city

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Preservation) Graduate Program in Historic Preservation, (Jan. 1, 2010) available at [http://repository.upenn.edu/hp\\_theses/145/](http://repository.upenn.edu/hp_theses/145/); Ryan Howells, *Throw the "Bums" Out? A Discussion of the Effects of Historic Preservation Statutes on Low-Income Households Through the Process of Urban Gentrification in Old Neighborhoods*, 11 J. GENDER RACE & JUST. 541.

166. See, e.g., James J. Kelly, *Land Trusts That Conserve Communities*, 59 DEPAUL L. REV. 69 (Fall 2009).

167. Harlem Children's Zone, founded by Geoffrey Canada, designs, funds, and operates a holistic system of education, social-services, and community-building programs in Harlem to counter the negative influences of crime, drugs, and poverty and help children complete college and obtain employment. The program provides a full network of services to an entire neighborhood from birth to college and serves as a

neighborhoods.

People-based lawmaking, such as the creation of additional affordable housing and housing support, while necessary, is not sufficient to improve the quality of neighborhoods, or to reap the benefits thought to be derived from the economic integration strategy. To obtain these benefits there must be comprehensive and coordinated neighborhood-based programs grounded in the community's social and cultural context. The case studies demonstrate that "the more that residents are provided the chance to define and implement their vision for the neighborhood, the more likely they are to care about where they live."<sup>168</sup> When racial- and identity-conscious focused, these place-based legal tools can

assist neighborhoods in forming institutions that are not only tools for self-governance, but also tools for collective vision-making for the neighborhood. Having multiple groups empowered and working together in creating different visions—visions ranging from promot[ing] business interests, address[ing] crime, and educat[ing] children—has the long-term effect of providing a neighborhood with a mosaic of visions that accommodate and serve many different needs.<sup>169</sup>

## CONCLUSION

Place-based laws can preserve the features that make a neighborhood distinctive and serve to empower marginalized communities by strengthening existing and building new social and cultural capital. Strategies that recognize and overcome specific economic, social, and cultural limitations, such as substandard housing and physical blight in the West Grove or language isolation in Little Haiti, and acknowledge and reinforce positive cultural attributes, such as historic Bahamian architecture in the West Grove or Haitian agrarian culture in Little Haiti, can help to address structural racism and provide residents with the means to improve and empower their communities. By recognizing and addressing residents' social and cultural sensitivities and effectively tapping into and mining existing social networks and promoting existing social capital through enhanced place-based

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model for the federal Promise Neighborhoods program. See *The HCZ Project*, HCZ.ORG, <http://www.hcz.org/index.php/about-us/the-hcz-project> (last visited March 25, 2014).

168. Miller, *Legal Neighborhoods*, *supra* note 37, at 165.

169. *Id.*

lawmaking, the strategies outlined in this Article can help low-income, minority, and overburdened communities foster and reinforce community organization and self-definition and shape development to respond to their needs and reflect their values. To be effective and overcome external and regional political obstacles, however, actual decision-making authority to manage neighborhood-specific issues, such as land use decisions that impact the neighborhood, should be placed in the hands of residents and further limitations placed on individualized and ad hoc determinations by municipal and regional planners and policymakers.