

Losing My Religion: Church Condo Conversions and Neighborhood Change

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Limestone. Granite. Stained glass. Ornamental gold. Richly polished wood. All are found in the beautiful historic churches in America's cities. But the church is more than liturgical space. The church welcomes immigrants (often with services in their native tongues), engages in outreach by feeding the poor, and serves as a political mobilizing workspace. In short, it becomes one with the community. However, as church membership and attendance slide downward (coupled with demographic shifts of parishioners moving out of the neighborhood), these once graceful structures are increasingly underutilized, under-maintained, and potentially abandoned.

First African Baptist Church in Philadelphia serves as a powerful example of this trend. Founded in 1809 (the building was erected in 1906), it was once the home of the country's oldest African American congregation. Years of deferred maintenance (estimated at \$5 million) and a shrinking congregation (from 1,000 to 100) led to its closing. The building was sold for \$1 million to a developer on Christmas Eve 2015. The neighborhood, South Philadelphia, has been called a "white hot real estate market." The area has become a part of the city's millennial renaissance, with luxury apartments and high-end condos with garages and decks that offer views of the city skyline (Simmons 2016). An ad for another church around the corner from First African that has been acquired by developers reads: "Development opportunity in hot neighborhood bustling with new construction and vibrant community." A proposed new use for the former First African Baptist Church is residential condominiums.

This spate of redevelopment rides the coattails of a new population surge in the central neighborhoods of America's cities. People are moving back into the central city and bringing a demand for housing with them. A phenomena sweeping through cities is the conversion of churches to residential use (either condominiums or rentals). For the city, this constitutes a victory on several fronts. Abandoned (and previously tax-exempt) property is put to use. New residents spark new business development. Tax revenues are enhanced. For the neighborhood, though, the sale of a church represents not just a demise of worship space, it is also the loss of a

communal anchor. Death of the church severs the thread that ran through the neighborhood – the thread of community.

This chapter examines the trend of church conversions into residential use from several perspectives. It will begin with a review of the historical foundations of the role of churches in neighborhood life in the United States. Although the religious significance served as a magnet, the nonreligious activities act as glue. A key fact, though, is that the churches are, generally, right in the middle of residential areas. From a zoning perspective, this has engendered legal challenges as the churches increasingly engaged in nonreligious activity. The auxiliary uses that make a church more than a religious structure also challenge the zoning exemptions that permit churches to exist in residential neighborhoods.

In order to capture the magnitude of this potential conversion market, the demographics of church attendance and church real estate will be reviewed. The northeastern and north-central United States figure prominently in this discussion because this area has not only decreasing church attendance, but concomitantly has a high concentration of older gothic church structures that are architecturally stunning but expensive to maintain. I concentrate on mainline Protestant (Episcopal, Lutheran, Methodist, and Presbyterian) and Catholic churches because these are the denominations where one is most likely to find concentrations of large church buildings that are attractive for redevelopment.

All of this is happening against the backdrop of a central city renewal. Between 2010 and 2013, city growth outpaced suburban growth (Frey 2014). People, especially the millennials, are flocking to the city for the ease of walkability and social interaction (Leinberger and Doherty 2011). Church conversions are most often architecturally stunning and therefore quite appealing to a younger/more affluent buyer. In many instances, church conversions are taking place in transitional neighborhoods, which leads to consideration of gentrification and changes in community identity.

These streams of inquiry will be brought together to examine what happens when a church is converted into another use. Although there are instances of reusing a shuttered church as a school or community center, when a neighborhood church is converted to luxury apartments and/or condominiums, the clash of gentrification rings loudly. Because many of the churches have significance far beyond the bricks and mortar, community voices are raised in opposition. Unlike the “fake history” recounted by Lior Strahilevitz (Chapter 5, this volume), the history of the church in these neighborhoods is quite real. The interplay of historical significance (if not outright historical preservation), community spirit, and local governments’ desire for growth combine in a unique fashion.

ROLE OF THE CHURCH IN NEIGHBORHOOD LIFE

Religious services constitute only a fraction of a church’s impact in the neighborhood. A church often serves as a social service and community anchor. Churches

can be institutional agents that impact the communal trajectory of the neighborhood (McRoberts 2003, 123). One scholar noted that the breadth of community impact spans the gamut from health care to political power to physical nourishment (Day 2014, 61).¹

As waves of foreign immigrants swept into U.S. cities, the church created (or, in many cases, recreated) a common language, heritage, and social structure for the migrants. African American migrants moving from the South into Northern cities experienced the same assimilation pattern into neighborhood churches (McRoberts 2003, 105). Religious beliefs and the physical structures that house that belief serve as “ballast for immigrants as they struggle to adapt to their new homeland” (Hirschman 2004, 1211). In a city that is a sea of “other,” the immigrant church serves as not only a spiritual refuge, but also a social one. One scholar has noted that in many immigrant churches, although there may be a common ethnicity, language, and place of origin, the communal functions the church provided are shared by those who do not necessarily share the same religious values (Ley 2008, 2062). Whether it be English language instruction, job services, food support, or just plain socialization, the immigrant church plays a pivotal role. Continuing into today, the church serves as a place of refuge and assimilation for immigrants. Even after the first immigrants move away, the church welcomes the next wave (Ley 2008, 2070).

Research has also highlighted the importance of the neighborhood church in the area of public health. Because there is collective identity and an established support system, church congregations are ideal forums for public health initiatives through behavioral outcomes (Eng et al. 1985, 82). Through models such as Parish nurses, the church can promote wellness by “holistically addressing the physical, emotional and spiritual needs of congregational community members” (Miskelly 1995, 1). One pointed example is the work that churches have done in promoting HIV/AIDS testing by providing not just the opportunity to test, but also community support for making the decision (Day 2014, 80).

As far back as W. E. B. Du Bois, scholars have highlighted the social and political power of the church within the community (Du Bois 1903). Because of the social capital and linkages forged in the congregation, churches are often a pivotal player in political activism. As intermediaries between the state and the individual (Greenberg 2000, 380), the social networks in the congregation serve as fertile grounds for political discourse. Interestingly, attendance at church is not the catalyst for political activism. Political activism is linked to the church actually encouraging its congregants to become politically active (Brown and Brown 2003, 634).

The church’s role in the neighborhood often extends beyond its congregation. In a study by the Partners for Sacred Places organization, a stunning 81 percent of the beneficiaries of church-based social services were not members of the congregation (Sacred Places 2008, 11). Quantifying the “halo effect” of church activity in economic terms has begun. Preliminary results indicate that the 12 congregations in the

Partners for Sacred Places study contributed \$52 million to the common good each year (Day 2014, 68).

In recent times, the social interaction of the church and the neighborhood has grown in both size and institutionalization. After a period of increased social service spending by government between 1994 and 2002, spending on social services dropped almost 16 percent between 2002 and 2007 (Gais 2009, 13). The Great Recession exacerbated this downward trend. The social services provided in the churches are not *in addition* to government-provided social services – often they are substitutes for decreasing government-provided services. Churches have taken up the slack left by the government's exit. Several studies show that between 87–92 percent of churches support at least one social program (Wuthnow 2006, 28–32). As of 2011, 59 percent of Catholic parishes reported performing social services for their communities (Gray 2011, 2). In fact, the increased involvement of churches was an explicit government policy of the federal government when George W. Bush established the Office of Faith-Based and Community Initiatives in 2002 (Wuthnow 2006, 14).² Whether congregations are categorized as “caring communities” (with a set of shared values, beliefs, understandings, traditions, and norms) or “service organizations” (with arms-length, or contractual understandings) (64 et seq.), they serve as the social safety net for many people. While the religious services of a church may signify its existential existence, its ancillary activities tie it to the social fabric of the neighborhood.

ZONING LAW AND RELIGIOUS USE

One reason that the church is such a powerful community-building institution is that it often sits squarely in the residential neighborhood. While religious exemptions to residential use through special use permits are common, the question becomes much more difficult as churches branch out to use their structures for more than religious services. Ancillary uses such as daycares, meeting spaces, and soup kitchens may fulfill the missionary commitment of the church, but often fly in the face of existing zoning regulation. The legal question to be answered is whether these ancillary activities are deemed part of religious practice (thus permitted under zoning regulation) or outside religious use (thus not permitted under zoning regulation). Stated another way: can the government restrict ancillary activities without infringing on religious practice? The jurisprudential route to this answer has been circuitous as the courts and lawmakers look for a way to balance the freedom of religion with the government's need for consistency and neighborhood stability.

In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc (“RLUIPA”)), with the stated goal of protecting religious freedoms in a way that is compatible with municipal objectives. The legislation was enacted to meet the need for special safeguards of religious worship in the United States. Germane to the

present discussion, RLUIPA focuses on the treatment of “land use of religious institutions as ‘religious exercise’” (Adams 2002, 2364; 42 U.S.C. §§ 2000cc, 2000cc-5), and extends the use of the property as eligible for the same rights and protections as other forms of religious practice (Adams 2002, 2364).³

RLUIPA provides that no government may enact a land use regulation that “imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.” Further, RLUIPA defines religious exercise as: “any exercise of religion, whether or not compelled by, or central to, a system of religious belief. The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose” (42 U.S.C. § 2000cc-5).⁴

RLUIPA “calls for responsible religious freedom and responsible government: the statute protects churches that are attentive to neighbors and community, and affirms municipalities that address adverse impacts of religious land use with controls that are direct, carefully tailored, and evenhandedly applied” (Carmella 2009, 488–90). This well-choreographed dance between local municipalities and the religious institutions within their boundaries contributes to the social capital of society, allowing these institutions to provide for their communities while at the same time enacting zoning provisions that promote the safety and welfare of the community (Carmella 2009, 488).

In the years before RLUIPA, the law was murkier; courts were reluctant to interfere with local zoning laws. Courts, as well as cities and their inhabitants, had become used to the tight controls and monitored growth of zoning codes, wary of the instability that might ensue with less stringent land use controls (Carmella 2009, 494; Sunstein 1989, 473).⁵ Courts saw zoning ordinances as a stabilizing force in communities and were reluctant to shake things up, preferring instead to see the benefits and stability of anticipated land use patterns that the zoning ordinances provide (Carmella 2009, 496–97). The courts’ opinions, particularly in reviewing religious land use and auxiliary uses, varied greatly depending on a number of factors, including the location of the church and the specificity of local ordinances (Galvan 2006, 219).

Recognizing the importance of auxiliary uses to a church, the court sometimes ruled in favor of claimants even if the practice was not fundamental to the religion. In *St. Johns Evangelical Lutheran Church v. City of Hoboken*, for instance, the city of Hoboken tried to close a homeless shelter that provided meals and a place to sleep for dozens of individuals (479 A.2d 935, 939 (1983); Stout 2011, 465). The church argued that offering sanctuary was a tradition firmly entrenched in its history and that closing the shelter would put many people at risk. While it was clear that imminent harm would result if the church were forced to cease its operations as a

homeless shelter, the court acknowledged that the city's concerns for following health and safety protocols should also be addressed. The New Jersey Superior Court found that it would be a "travesty of justice and compassion" for the city to prevent the church from operating a homeless shelter. The court reasoned that providing for the poor was a principal use of the church, protected from the reach of the city's zoning power (*St. Johns v. City of Hoboken*, 479 A.2d 935, 939 (1983)). In an effort to comply with health and safety standards, the church agreed that it would reduce the number of occupants to 20 and was then permitted to carry on its operations (939).

RLUIPA clarified the protection of what constitutes the free exercise of religion. Religious practice is many things to many people. It can range from actual prayer in an organized fashion within the walls of a church to daycare or social services that the church provides, or even educational or recreational activities. This breadth of possible over-inclusive activity has been cited by one court as possibly including "parking lots and playgrounds, convents, rectories, and monasteries . . . day care centers, drug rehabilitation centers, and softball fields" (*Warner v. Phuoc Long Buddhist Temple of CT, Inc.*, 2010 WL 4352716, citing Rathkopf and Rathkopf 1978, 20–53). Too broad a reading would allow RLUIPA to cover all auxiliary uses, permit these uses to function outside of regular land use regulation, and perhaps grant religious landowners an immunity of sorts from local ordinances (Galvan 2006, 209). One commentator has questioned whether RLUIPA allows churches too much lenience to the detriment of the community (Hamilton 2012, 959).

RLUIPA broadly defines religious exercise as any exercise of religion, whether or not it be central to religious belief; the building in which these things take place is an extension of that exercise (RLUIPA. 42 U.S.C. § 2000cc), thereby removing the necessity of analyzing whether a particular use is integral to an individual's or organization's religious exercise (*Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004)). The rationale behind accessory uses is to allow religious organizations to carry out the principal use, to "operate fully with the necessary and appropriate accessory uses allowed" (Saxer 2008, 596). This expansive view would pull in any use of the property if the church can tie that use to furtherance of its religious mission. The social services and community endeavors of a church are safeguarded simply because of this linkage to religion.

There are limitations, however. The fact that an accessory use is employed by a religious entity does not automatically guarantee it protection as a religious exercise (Saxer 2008, 619). In *Westchester Day School v. Village of Mamaroneck* (386 F.3d 183, 189 (2d Cir. 2004)), for instance, the district court granted summary judgment in favor of a religious school whose application to make improvements to its building had been denied. The district court did not address the issue of whether the expansion of the school was for religious purposes. Rather, the court reasoned that the project was religious in nature because the school was a religious school attended by students who wished to further their religious education and was therefore

protected from local land use ordinances under RLUIPA (189). On appeal, the 2nd Circuit argued that under this logic, if two schools applied for the expansion of their gymnasium with the only difference being that one was a religious school, the zoning board would not be allowed to reject the application of the religious institution (189). The circuit court vacated the decision and remanded the case back to the district court to review, among other issues, whether the scope of RLUIPA manages to protect the free exercise of religion without conferring special benefits to religion.⁶

This requirement of furtherance of religious practice in order to withstand scrutiny under RLUIPA will be vital in answering the question of how to replace social services provided by a church that is now a residential structure. It will not simply be an exercise of moving the services to a different location in the same neighborhood because the loss of religious exemption means that the use will most likely violate zoning regulation. As will be discussed, *infra*, the loss of community benefit without direct method of replacement differentiates the conversion of a church from other instances of development.

CHURCH CLOSINGS

Many of the churches established during the great migration to U.S. cities are standing as empty edifices with high maintenance bills and few parishioners to pay those bills. It is important to note that the conversions to condos are not causing the closing of churches. Cities such as Pittsburgh, Detroit, Philadelphia, Chicago, and Boston all suffered large population losses in the last half of the twentieth century. These urban churches have fallen victim not just to the changing demographics of urban America, but were also dealt a knockout blow of dwindling church attendance.⁷

As one scholar who studies Catholic demographic trends points out, there are beautiful religious structures in New York and Philadelphia and Cleveland – all the urban areas that have seen decreases in population (Wang 2015). She goes on to note that as population decreases, the people in the pews are elderly and are not being replaced by younger generations. In response to these and other pressures, churches are closing at a good clip. However, church closings are not evenly distributed. For example, during an earlier round of church closings by the Catholic Archdiocese in Philadelphia, there were charges that the church was abandoning the inner city (Rzeznik 2009, 73–90). Indeed the Archdiocese of Detroit learned the importance of narrative in the late 1980s when it received harsh criticism by citing “white flight” as the underlying reasons for the closings (Bridger and Maines 1998). The massive physical size of most of the churches constrains incremental downsizing. Once the decision to close is made, the entire structure becomes abandoned.

Nationally, Roman Catholic churches date, on average, from 1920, with the majority having been built between the 1940s and 1950s (Gray 2011). The number

of parishes peaked around 1990 with 19,620 churches. Some of these churches closed, some merged. Many consolidated services so that many parishes share services with other parishes. According to the CARA, the center specializing in social science research about the Catholic Church, about a third begin a multi-parish arrangement during the period 1995–2004 and another third from 2005 or later so that 67 percent of parishes began sharing services from around the year 1995 through the present (Gray 2011).

The 2000s saw a drop in the number of Catholic churches to 1965 levels. Catholic parishes numbered about 19,000 in 2000. By 2010, the number was fewer than 17,800 (Gray 2011). The decline can be seen in specific cities. In Detroit, for instance, the Archdiocese of Detroit saw the largest number of closings in 1989, with 26 churches closed that year, many of them ethnically oriented congregations that once served the local Polish and German communities (Archdiocese of Detroit 2016). Among the reasons for the decline in Detroit parishioners was the construction of a major highway that required the demolition of 500 homes, leaving parishes without parishioners, and contributing to the decline in church attendance (Bukowczyk 1984). In one Detroit neighborhood, the area never recovered from civil unrest in 1967 and churches merged until finally the remaining church building was sold to a developer (Detroiturbex.com 2016).

The Archdiocese of New York instituted dramatic cuts in 2015 with 40 parish closings and 59 mergers (Archdiocese of New York 2015). The number of parishes in the Archdiocese of Chicago shrank considerably in 1990, with 32 closings (Archdiocese of Chicago, Archives and Records Center). In 2004, the Archdiocese of Boston announced sweeping closures and mergers. The pain was not evenly spread. Sixteen of the 66 closed or merged parishes were in the city of Boston. In the entire diocese, the number of urban churches was reduced by 27 percent (Boston.com 2016).

The loss was felt not only in the Catholic Church, but in other denominations, as well. The Presbyterian Ministry saw its highest number of closings in 2012 (Presbyterian Church Summaries of Statistics – Comparative Statistics; www.pcusa.org). The church dropped from 10,466 churches nationally in 2011 to 9,829 in 2014. The bishop explained that the closings “were necessary . . . because of shortages of cash, worshippers and priests,” and were “mostly in inner-city neighborhoods and inner-ring suburbs” (O’Malley 2010). The Lutheran Church saw a steady rate of closings nationally between 2000 and 2014, with an average of 36 churches closing each year.⁸ In 2002, the Episcopal Church had 7,305 parishes nationally. By 2013, that number had shrunk to 6,622 (Episcopal Church 2013).⁹

DEMOGRAPHIC CHANGES IN AMERICA’S CENTRAL CITIES

Church closings were predicated not just by a decrease in church membership, but also by population loss. Many of these churches stood in neighborhoods that

suffered through massive population hemorrhages. However, although church attendance has yet to see a significant resurgence, it is a new day of population gains in many U.S. cities. After decades of persistent population loss, it appears that American urban centers have turned the corner. The first decade of the millennium followed the demographic pattern of the preceding 50 years of suburbs growing faster than cities. However, from 2010 to 2013, the growth pattern reversed. In fact, in these three years, cities gained more people than they did in the entire preceding decade (Frey 2014). In contradistinction to stories in the popular press, Baby Boomers are not driving this urban population growth (Bahrapour 2013; Keates 2013). This urban renaissance is driven by millennials (Couture 2015). Cities such as Buffalo, Cleveland, New Orleans, and Pittsburgh (all population losers over the previous 50 years) saw a significant increase in their young, college-educated population (Miller 2014). Central Philadelphia (extending to South Philadelphia and Fishtown) has grown so much over the past 15 years that it now ranks second only to Midtown Manhattan when it comes to people living in the heart of a city (Philly 2015). Changing lifestyle preferences (walkability/public transportation,¹⁰ the “hip” factor), coupled with the deindustrialization of the cities, are drivers of the millennial attraction to living in central cities (Brinig 2014, 160; Glaeser 2006).¹¹ One real estate industry spokesman went so far as to assert that “The Millennial generation is the key to a sustained real estate recovery” (RealtyTrac 2014).

The central city “recovery” comes at a time when magnificent churches are undergoing deconsecration, renovation, and conversion. No exact data draw a direct line, but the increased supply of condominiums is feeding the demand of new urban dwellers. Church conversions present an interesting offering often in areas that are more affordable as they undergo demographic transition.

CHURCH CONVERSIONS TO CONDOS – SOME EXAMPLES

From an architectural perspective, an abandoned church is a breathtaking opportunity for adaptive reuse. In fact, churches have been converted to artist studios, community centers, and even brew pubs! However, these uses invite others into the neighborhood without permanence. The focus on reuse as residential use (apartment or condominium) requires us to address the issue on a deeper level as the use introduces not just a change within the walls of the structure, but also a change in the composition of the neighborhood. Paradoxically, it is easier to convert a church to a condominium or apartment because, as noted earlier, they generally are located in a residential neighborhood and therefore the new use usually does not require a rezoning effort.

St. Anthony’s of Padua Roman Catholic Church was built in 1889 to serve the Gray’s Ferry neighborhood in Philadelphia. The church served as a neighborhood anchor for 113 years. Its path was in line with the now well-worn story. Where the once thriving parish had 2,000 families and five priests, it dwindled to 175 families and one

priest. The church closed in 1999, and another denomination (Greater St. Matthew Baptist Church) bought the property in 1999. However, mounting maintenance costs and lack of parking sealed its fate and that congregation moved out in 2014. Neighbors met with the developer to try to convince him to use the space as a community center, but were told that only use as housing could find financing. In the end, the neighbors were consoled by the fact that the structure could not be demolished due to its historical certification so that, although the use would be housing, the building's façade would remain. It was sold to a developer that converted it to apartments. Gray's Ferry (and the whole area known as Graduate Hospital or Center City West) is quickly gentrifying. In one study, the Graduate Hospital area had the largest gains in home price-income ratio in all of Philadelphia between 2000 and 2014 (Pew Trust 2016). According to the real estate website Trulia.com, the median sales price of a home in the Graduate Hospital community was \$338,000 in September 2010, peaked at \$435,000 in 2014, and stood at about \$405,000 in September 2015. The median rent for the area has risen from \$1,800 in April 2015 to about \$2,075 in 2016. Christened "Sanctuary Lofts," the apartments are leasing for \$1,200–\$1,650/month.

Holy Trinity German Catholic Church in Boston's South End, like other churches, was much more than a physical structure. Holy Trinity was the only German Catholic Church in Boston in the 1800s, and new immigrants joined the church to hear Mass in their native language (Holy Trinity 2016). The present structure was dedicated in 1877 (Holy Cross 2016). In recent years, it also served as base of operations for a day program for homeless adults and a center for at-risk youth, a regular concert series, and social justice ministries. The Boston Archdiocese closed the building in 2008 and deconsecrated it in 2012, citing declining attendance and increased maintenance costs (Keith 2014). Holy Trinity parishioners formed a preservation group in October 2013 and lobbied for the church to remain open. They proposed to assume all the maintenance costs of Holy Trinity Church in return for the Archdiocese authorizing one Mass there per year. That proposal was rejected (*Boston Catholic Insider* 2014). When the Archdiocese of Boston sold Holy Trinity to New Boston Ventures for \$7 million in 2014, the archbishop stipulated that the use of a relegated church may be "profane but not sordid."¹² Vacant for nearly five years, it will come to life again – not as a church, but as high-priced condominiums. The South End real estate market is bursting with development amid the current hot real estate market (D. Adams 2015a). Now christened "The Lucas," the former church has been transformed into a luxury condominium building with 33 units that come with a price tag of mid-\$600,000 to \$4,000,000 (Pohle 2016).

WEAVING NEW NEIGHBORS IN PLACE OF RELIGION

When the new occupants of the former church move in, they bring new sensibilities to the neighborhood. Familiar refrains of gentrification ring true, but in these

instances, the newcomers represent more than an addition – they represent a loss. Whether it is a community center, a food pantry, or a safe space for at-risk youth, the community loses valuable social capital in the conversion of the church in a way that other development does not engender. Just as Brinig and Garnett (2014) contend about Catholic schools, the social capital churches generate make them effective community institutions and their loss brings tangible detriment to the neighborhood. In certain respects, conversion of a church sidesteps many of the displacement arguments put forth by scholars and policy makers who oppose gentrification (Lees, Slater, and Wylie 2008, 196). No one is forced to move; no existing housing is torn down or gutted.¹³ This may serve to make the repair of social capital easier. Building of social capital is another way of promoting trust building between the new and the existing neighbors. Just as Matthew Desmond notes (Chapter 7, this volume), trust in your neighbors is crucial. Trust and norms of civic cooperation are essential to well-functioning neighborhoods (Knack 1997, 1283). I suggest, in the same vein as Hankins and Walter, that we should strive for gentrification harnessed for the good of the neighborhood (Hankins and Walter 2012, 1519).

To realize the full picture, the reuse of a church must be approached with a more inclusive notion of value. Like any real estate transaction, valuation of church property for development relies on cap rates and discounted cash flows. But there is more to fold into the calculation. For instance, many of the negotiations over converting a church can center on the building itself, especially if the building is of historical significance. Whether this designation is precisely linked to higher value (a topic discussed in several chapters of this volume), smart developers recognize the amenity value of the physical structure of the church (whether or not it is historically certified) and monetize that value into the purchase price (D. Adams 2015b).¹⁴ I submit another component of the value is the social capital generated by the ancillary activities of the church. This capital can be described as both collective efficacy¹⁵ and actual social services. The loss of this social capital should not be borne by the community. To recoup that loss, a fee attributable to replacement value must be established and borne by either the developer or the church.

The easy solution would be to require replacement of the lost social services within the renovated structure as a condition for any development. This is an imperfect solution for two reasons: first of all, it does not capture the lost community cohesion. Second, due to the zoning issues detailed, *supra*, this is not a feasible alternative for legal reasons. In this instance, zoning works to the detriment of the existing neighborhood, as the value of the social services vanish upon redevelopment. Although there is no way for the new development to replace the religious services of the former church, the social services and other amenities can be shifted to other service providers in the neighborhood. I can suggest two ways to ameliorate the effect of loss of social services when a church is closed. Both require an imposition of a fee, but differ in who pays the fee: the church (seller) or the developer (buyer). The fee is shifted either backward to the seller in the form of a

reduced purchase price or forward to the developer, who will most likely pass it on to the homebuyer in the form of increased price (Rosenberg 2006, 213).

One alternative shifts the payment of the fee to the seller (i.e., a reduction in the net sale price). In this scenario, a portion of the sale price is put into a set-aside or escrow by the seller. The amount of the set-aside would be a rough approximation of the cost to replace the social services provided by the church. This amount would be donated to the church's social service provider for use by other churches in the neighborhood or close proximity. This method has the advantage of placing the burden of internalizing the externalities on the party whose action causes them to occur. When the diocese (or other canonical body) decides to close a church, an inventory and cost of social and community services that take place in the building should be calculated. Upon sale, an amount sufficient to continue the activity at another location will be held back from the purchase price in the same manner as other escrow accounts (such as environmental escrow accounts).

The other alternative is to require the developer to contribute a fee to social service agencies to offset the impact of the loss of social services in the church. Akin to the Percent for Art fee in Philadelphia¹⁶ or the fee imposed on hotel conversions in San Francisco¹⁷ this method would be less tied to the community, but more easily assessed than a fee to the diocese. Whether this fee is shifted to the ultimate buyer in the form of a high price or paid by the developer in lower profit is open for debate (Ihlanfeldt and Shaughnessy 2004). There is even evidence of "overshifting" where the homebuyer's cost includes a multiple of the fee (Rosenberg 2006, 12). The important point is that the costs of the externalities of development are accounted for in the transaction and are not borne by the third-party members of the community.

Impact fees (or exactions) have had a long and somewhat contentious relationship with development. A fee for redeveloping a former church is a monetary imposition that would potentially be subject to heightened "exactions" scrutiny after the court's ruling in *Koontz v. St. Johns River Water Management District* (570 U.S. ___, 133 S. Ct. 2586 (2013); see also Fennell and Peñalver 2013, 335). Cynically, exactions can be described as extortion – the city holds a building permit hostage for ransom. However, they provide an efficient means to internalize externalities of development. Although some thought *Nollan v. Calif. Coastal Comm'n.* (483 U.S. 825 (1987)) and *Dolan v. City of Tigard* (512 U.S. 374 (1994)) – the two decisions that set out the "nexus" and "proportionality" requirements for exactions – would slow (or even stop) municipalities from utilizing impact fees, the report of their death was greatly exaggerated.¹⁸ The full impact of the recent decision in *Koontz* remains to be seen. Land use law commentators are split as to whether *Koontz* was the "worst takings decision ever" (Echeverria 2014, 1), or a "straightforward application" of *Nollan* and *Dolan* (Martin 2014, 39). Nevertheless, with an amenable state statute, a reasonable degree of nexus and rough proportionality, impact fees remain popularly used today to fund street widening, green space provisions, and more.¹⁹

Returning to the question of how to replace the loss of community services when a church is converted, the notion of an impact fee can be applied. However, in this case, instead of the municipality receiving the fee, it would be directed to an approved social service agency or other approved not-for-profit whose work can replace the loss in social services or community amenity. In light of the flourishing network of community-based organizations and faith-based social service agencies performing more and more of the social work done in America's urban centers, a fee for the impact of lost social services can be easily tied to a continuation of those services by another provider.²⁰

In either of the proposed schemes, current neighborhood residents will benefit as they see that part of the purchase price is expressly dedicated to preservation of the social fabric that is now being rewoven. New residents will recognize that moving into a former church is more than a residential decision, thus hopefully sowing the seeds of neighborhood interaction from the very beginning. Community does not have to be lost when a church is converted. Through deliberate action to retain the humanitarian and social impact initiatives, it can find new life to the benefit of all.

AUTHOR'S NOTE

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Notes

1. Unfortunately, there have also been allegations that the church's power and influence was used to the detriment of the community. For example, during the subprime crisis, it came to light that high-cost home loans were targeted to African Americans by using the black churches. See *Mayor & City of Baltimore v. Wells Fargo*, Third Amended Complaint at 21–22 (www.clearinghouse.net/detail.php?id=11725).
2. Although arguably the intertwining of federal welfare policy and religion began earlier. For example, the 1996 welfare reform legislation included a provision known as Charitable Choice. This provision made it possible for churches and other religiously oriented service organizations to receive government funds more easily.
3. The other issue RLUIPA addressed was to protect the right of institutionalized people to the free exercise of religion.
4. RLUIPA sought to provide an alternative to past legislation, building on the overly broad reach of the earlier, invalidated Religious Freedom Restoration Act that infringed on the states' autonomy (the "RFRA") (42 U.S.C. § 2000bb (1993)), and the lack of consensus regarding the never-enacted Religious Liberty Protection Act of 1998 (the "RLPA") (H.R. 4019, § 2(a)-2(b) (1998)).
5. Sunstein states, "In the aftermath of the New Deal reformation, courts have been reluctant to use the Constitution's explicit protection of property and contracts in a way that would seriously interfere with social and economic regulation" (1989, 473).
6. See also *World Outreach Conference Center v. City of Chicago*, 787 F.3d 839 (Ill. 2015), where the court questioned whether a religious organization is entitled to "more favorable treatment than a secular institution" when the organization challenged a requirement that it obtain a special use permit for an exercise facility.

7. In his book *Urban Exodus*, Gerald Gamm (1999) presents an interesting contrast between Jews and Catholics as each group pulled up stakes and left the city for the suburbs. He asserts that the relative longevity of Catholics in the city is tied to the geographic linkages with the neighborhood parish. In contrast, Jewish residents were free to recreate religious centers freed from geographic ties.
8. A high of 43 Lutheran churches closed in 2006, and a low of 19 closed in 2013. Archives of the Evangelical Lutheran Church in America, email correspondence dated September 21, 2015, with an archivist from the Episcopal Church, who drew the numbers from his microfilm database.
9. Table of Statistics of the Episcopal Church. www.episcopalchurch.org/files/2002TableofStatisticsoftheEpiscopalChurch.pdf. Domestic Fast Facts 2013, www.episcopalchurch.org/files/domestic_fast_facts_2013.pdf.
10. Interestingly, younger people are forgoing obtaining a driver's license. Not only has there been a slight uptick for 14–34-year-olds without a driver's license (from 21 percent to 26 percent), there has been marked increase in people aged 20–34 (the workers of the immediate future) without a driver's license, from 10.4 percent to 15.7 percent. www.uspirg.org/sites/pirg/files/reports/Transportation%20%26%20the%20New%20Generation%20vUS_o.pdf.
11. This “cool” factor received widespread attention following Richard Florida's (2002) book *The Rise of the Creative Class*. See Brinig and Garnett 2014, 160; see also Glaeser and Gottlieb 2006 (“[T]he desire of consumers to live in these cities has increased enormously as a result of changes in style of government, improvements in law enforcement technology and rising incomes that have raised demand for high-end urban amenities.”).
12. According to the Code of Canon Law Ch.1 Can. 1222 sec 1 www.vatican.va/archive/ENG1104/_P4H.HTM, profane means that which takes place outside the temple.
13. Admittedly, though, it does contribute to the escalation of neighborhood rents.
14. One developer commented: “These are architecturally significant buildings. . . . It adds a lot of character and flavor to the city to keep them around, and I'm all for that – as long as the numbers work.” www.bostonglobe.com/business/2015/04/20/turning-churches-into-housing-unique-challenge-for-developers/UFPYD_tqoteHdtjBhzhuWxL/story.html.
15. I use this term in the vein of Robert Sampson in questioning the role of institutions in contributing to neighborhood stability. See, e.g., Morenoff, Sampson, and Raudenbush (2001).
16. The Philadelphia Redevelopment Authority requires developers to contribute 1 percent of construction costs on PRA-assembled developments to a fund dedicated to the commissioning of original, site-specific works of art. www.philadelphiaredevelopmentauthority.org/percent-for-art. This same type of program has come under fire in Oakland, CA, with a lawsuit filed claiming the requirement violates the Constitution's Takings Clause. See www.bizjournals.com/sanfrancisco/blog/real-estate/2015/07/oakland-development-public-art-fee.html.
17. Upheld by the California Supreme Court in *San Remo Hotel v. City and County of San Francisco*, 27 Cal 4th 643,41 P 3rd 87 (2002).

18. For an excellent review of this topic, see Rosenberg (2006).
19. The Growth Management Act of Washington State, for instance, allows permits' impact fees to be used for: "(a) public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities." R.C.W. Title 82, chapter 82.02.090. The Open Space Impact Fee Program of Chicago helps generate green spaces in the city. See more at www.cityofchicago.org/city/en/depts/dcd/supp_info/open_space_impactfee.html.
20. See Wuthnow (2006, 138) for discussion of the efficacy of using faith-based organizations to provide social services.