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## **OLMSTEAD'S PROMISE AND COHOUSING'S POTENTIAL**

**Carrie Griffin Basas\***

### INTRODUCTION

The Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), called for the deinstitutionalization and integration of people with disabilities in their communities. The Court clarified that Title II of the Americans with Disabilities Act (ADA) required that people with disabilities, whenever feasible and appropriate, no longer be shut away in nursing homes, state hospitals, and segregated schools to live as outcasts and pariahs.<sup>1</sup> In the ten years since *Olmstead*, legal and social changes have been slow to happen. People with disabilities continue to live in state institutions and struggle for integration in their communities. The Community Choice Act<sup>2</sup> and the Inclusive Home Design Act<sup>3</sup> (or some version of it) are reintroduced each year with little fanfare and progress. News headlines are littered with stories about the abuse of people with disabilities in these facilities,

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1. See generally Aldred H. Neufeldt, *Empirical Dimensions of Discrimination Against Disabled People*, 1 HEALTH & HUM. RTS. 174 (1995) (exploring the treatment of people with disabilities as pariahs); Geneva Richardson, *Autonomy, Guardianship, and Mental Disorder: One Problem, Two Solutions*, 65 MOD. L. REV. 702, 703–04 (2002).

2. H.R. 1670, 111th Cong. (2009). The Community Choice Act was reintroduced on March 24, 2009, but it has not yet been passed.

3. H.R. 1408, 111th Cong. (2009). The Inclusive Home Design Act would require that all newly-built, federally-funded, single-family homes and townhomes meet four requirements: (1) include one accessible entrance; (2) have doorways on the main floor with minimum 32" passageways; (3) include one wheelchair-accessible bathroom on the main floor; and (4) place electric and climate controls at wheelchair-accessible heights. See Posting to Justice for All blog, Inclusive Home Design Act Introduced, <http://jfactivist.typepad.com/jfactivist/2009/03/inclusive-home-design-act-introduced.html> (last visited July 1, 2009).

including the most recent fight club stories from Texas, in which youth with developmental disabilities were pitted against one another by staff members at a state-run institution and school.<sup>4</sup> After the first fight club story broke, several others followed. The stream of similar narratives confirmed people's suspicions that state services were continuing to fail people with disabilities in significant ways.<sup>5</sup>

While the *Olmstead* decision may have heralded the spirit of the ADA, it did not set forward a plan or series of ideas for integration.<sup>6</sup> To be fair, expecting policy plans and community strategies from case law may be asking too much from the Court. The independent living movement within disability rights has much to offer to this problem, however, as does the cohousing movement of environmentalism.<sup>7</sup>

Cohousing is a participatory form of housing, where residents collaborate in the design and governance of their communities.<sup>8</sup>

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4. See Terri Langford & Matt Stiles, *State Schools Aren't Strangers to Complaints*, HOUSTON CHRON. ONLINE, Mar. 11, 2009, <http://www.chron.com/disp/story.mpl/metropolitan/6306442.html> (describing the investigation into the fight club at the Corpus Christi school and allegations of abuse of students with disabilities at other state schools).

5. The abuse of people with disabilities in institutional settings is not limited to Texas. Other states, such as Michigan, New Jersey, Ohio, and Maryland, all share similar narratives. See David Milne, *Mentally Disabled People Still Find No Welcome Mat*, 39 PSYCHIATRIC NEWS 22 (2004) (detailing the Michigan abuse cases); Matthew Dolan, *Disabled Center's Closure Debated*, BALTIMORE SUN, Feb. 2, 2007 (describing a Maryland state-run institution as an "abomination"); Spencer Hunt & Debra Jasper, *Abuse, Neglect Go Unpunished: Caregivers Accused of Hurting the Mentally Retarded Are Rarely Prosecuted*, CINCINNATI ENQUIRER, [http://www.enquirer.com/mrdd/abuse\\_neglect.html](http://www.enquirer.com/mrdd/abuse_neglect.html) (exploring the injustices of abuse in Ohio, chiefly how abusers are paid to leave state employment rather than prosecuted) (last visited Aug. 29, 2009); Susan K. Livio, *Disabled Rights Group Sues N.J. to Get Report About Disabled Man's Alleged Abuse*, N.J. REAL TIME NEWS, July 22, 2009, [http://www.nj.com/news/index.ssf/2009/07/disability\\_rights\\_group\\_sues\\_t.html](http://www.nj.com/news/index.ssf/2009/07/disability_rights_group_sues_t.html) (discussing the downplaying of abuse in New Jersey).

6. See Anita Silvers & Michael Ashley Stein, *Review: Disability and the Social Contract*, 74 U. CHI. L. REV. 1615, 1638 (2007) ("In the post-Olmstead world, courts are forced to consider the impact on a state's budget created by competing demands on available resources," and "this is especially anguishing").

7. See Katharine B. Silbaugh, *Women's Place: Urban Planning, Housing Design, and Work-Family Balance*, 76 FORDHAM L. REV. 1797, 1800 (2007) (arguing that the modern neighborhood creates "structural impediments to equal citizenship" and that cohousing may be a solution).

8. In the National Council on Disability's 2003 analysis of the federal and state implementation of *Olmstead*, it recognized that the most successful states had involved advocates with disabilities in identifying people who did not need to be institutionalized and had also defined the most integrated setting as one that promoted community access and inclusion. Press Release, National Council on Disability, National Council on Disability Says Community-Based Services Work: Some States Receive High Marks (Aug. 19, 2003), <http://www.ncd.gov/newsroom/news/2003/r03-433.htm>.

These intentional communities can lead to neighborhoods where diversity is sought after and integrated into the plan, perceived limitations are offset by the collective's talents, personal strengths are shared, and private home ownership is made more affordable for everyone.<sup>9</sup> In addition to alleviating the environmental, economic, and community impacts of sprawl in today's housing developments, the cohousing movement is dismantling people's senses of psychological isolation.

In this article, I will explore what the "smart growth" and "new urbanism" trends in the cohousing movement<sup>10</sup> have to offer to the realization of *Olmstead's* continuing promise of community integration. Cohousing may offer people with different kinds of disabilities—from cognitive to physical—an attractive alternative to institutional life or alternative group homes by making the promise of affordable, autonomous home ownership possible.<sup>11</sup> It also provides for a residential setting in which people can perform some of the tasks at which they excel (e.g., cleaning, cooking, shopping, babysitting) and trade off the tasks which they may not be able to do (e.g., driving, heavy-lifting, gardening, home repair) because of physical, mental, or economic limitations.<sup>12</sup> Cohousing's emphasis on equal, participatory citizenship within the community, and the intentional construction of shared living spaces and shared lives, may

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9. See James A. Kushner, *Car-Free Housing Developments: Toward Sustainable Smart Growth and Urban Regeneration Through Car-Free Zoning, Car-Free Redevelopment, Pedestrian Improvement Districts, and New Urbanism*, 23 U.C.L.A. J. ENVTL. L. & POL'Y 1, 10 (2005) (emphasizing the financial appeal of cohousing-style arrangements for low-income and elderly residents).

10. The six most often cited tenets of cohousing are "participatory process, neighborhood design, common facilities, resident management, non-hierarchical structure and decision-making, and no shared community economy." Cohousing.org, *What Are the 6 Defining Characteristics of Cohousing?*, [http://www.cohousing.org/six\\_characteristics](http://www.cohousing.org/six_characteristics) (last visited July 1, 2009); see also KATHRYN MCCAMANT & CHARLES DURRETT, *COHOUSING: A CONTEMPORARY APPROACH TO HOUSING OURSELVES* (1988).

11. See Haya El Nasser, *Seniors at Home in Cohousing*, USA TODAY, May 4, 2009, available at [http://www.usatoday.com/money/economy/housing/2009-05-03-co-housing\\_N.htm](http://www.usatoday.com/money/economy/housing/2009-05-03-co-housing_N.htm) (discussing cohousing as an alternative to institutions for seniors).

12. Cohousing can create "new" kinds of families as well. See Rebecca M. Ginzburg, Note, *Altering "Family": Another Look at the Supreme Court's Narrow Protection of Families in Belle Terre*, 83 B.U. L. REV. 875, 889 (2003) (explaining cohousing's allure for elders and single parents); see also Laura M. Padilla, *Single-Parent Latinas on the Margin: Seeking a Room with a View, Meals, and Built-In Community*, 13 WISC. WOMEN'S L.J. 179, 186, 190 (1998) (providing an overview of cohousing's strengths in building community).

bring spatial and legal restructuring to the lives of people with disabilities.

Part I of the article will examine the law and legacy provided by *Olmstead*, including a brief history of the case and some of the refinements that followed from subsequent case law.<sup>13</sup> Part II provides an overview of the principles and practices of the independent living movement and what it might offer to today's proposals for green, egalitarian cohousing for people with disabilities.<sup>14</sup> Part III introduces the missing piece of building intentional communities through cohousing, analyzing its contributions and limitations when applied to the needs of people with varied disabilities.<sup>15</sup> Finally, Part IV fuses the independent living movement with cohousing and examines three existing communities of cohousing and their takeaway lessons for public or privately driven cohousing for people with disabilities.<sup>16</sup>

## I. THE LAW AND THE LEGACY OF *OLMSTEAD* AND THE INTEGRATION MANDATE

The story of *Olmstead* is all too common in the disability community, even some ten years after the Supreme Court's decision in the case. It highlights the need for greater cooperative living models for people with and without disabilities. Elaine Wilson and Lois Curtis had spent most of their lives in mental institutions, despite the fact that their medical providers believed that they would be better served if they were integrated into the community. In 1995, the Atlanta Legal Aid Society filed a lawsuit against the state of Georgia, claiming that it had violated Curtis' rights under Title II of the Americans with Disabilities Act (ADA) by segregating her in state mental hospitals and institutions, when community placements would have been more appropriate; Wilson joined the suit in 1996.<sup>17</sup>

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13. See discussion *infra* Part I.

14. See discussion *infra* Part II.

15. See discussion *infra* Part III.

16. See discussion *infra* Part IV.

17. L.C. by Zimring v. Olmstead, 138 F. 3d 893, 895 (11th Cir. 1998).

In 1998, the Eleventh Circuit held that the state's failure to provide integrated community services was an ADA violation.<sup>18</sup>

The Supreme Court was given the task of interpreting the Department of Justice's regulation under the ADA: "A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."<sup>19</sup>

In examining the regulation, the Court found that the institutionalization of people with disabilities, where community-based options had been recommended, not only perpetuated stereotypes about people with disabilities as pariahs and outcasts, but also deprived them of the benefits of enjoying daily life activities in their communities. This integration mandate did not leave states without defenses, however. They could still assert that providing such services would be fundamental alterations of their programs if the costs were too high or if providing community-based supports prevented them from equitably assisting other people with disabilities.

Subsequent cases have not gone far to extend *Olmstead's* reach. Courts have gone out of their way to circumvent interpreting the decision too broadly and even at all.<sup>20</sup> When given the opportunity, they have punted on integrating people with disabilities more into their communities and in viewing community-provided services holistically. The most important kernel from *Olmstead* seems to be the notion of prioritizing the group of people with disabilities over individual needs where conflicts related to costs and resources would deplete the available supports for the greater whole:

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18. *Id.* at 899–900 (11th Cir. 1998).

19. *Olmstead v. L.C.*, 527 U.S. 581, 592 (1999) (quoting 28 C.F.R. § 35.130(d) (1998)).

20. Courts' reluctance to interpret broadly or extend *Olmstead* is reflected in several decisions, such as *Pennsylvania Protection and Advocacy, Inc., v. Pennsylvania Dep't of Public Welfare*, 402 F.3d 374, 381–82 (3d Cir. 2005) (distinguishing between costs as a fundamental alteration defense and the appropriateness of costs as determining the appropriate remedy); *Frederick L. v. Dep't of Public Welfare of Pennsylvania*, 364 F.3d 487, 492 (3d Cir. 2004) (underscoring that *Olmstead's* integration mandate was not "boundless"); *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 1184 (10th Cir. 2003) (recognizing that *Olmstead* applies even when people with disabilities are not institutionalized and applying its principles to a state-run prescription program).

Unjustified isolation, we hold, is properly regarded as discrimination based on disability. But we recognize, as well, the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States' obligation to administer services with an even hand. Accordingly, we further hold that the Court of Appeals' remand instruction was unduly restrictive. In evaluating a State's fundamental-alteration defense, the District Court must consider, in view of the resources available to the State, not only the cost of providing community-based care to the litigants, but also the range of services the State provides others with mental disabilities, and the State's obligation to mete out those services equitably.<sup>21</sup>

*Olmstead* has come to stand for the proposition of integration, but not at the level of all policymakers and rehabilitation specialists believing that is possible or even desirable to integrate a large portion of people with disabilities. The integration mandate, therefore, sidesteps the problem of full integration by equating it with measures that are too costly and burdensome to state, local, and federal governments.

## II. BRIEF HISTORY AND PRINCIPLES OF THE INDEPENDENT LIVING MOVEMENT

### A. *The Rolling Quads—Independent Living Across the Nation*

Cohousing's potential for realizing the integration mandate turns on the principles advanced by the independent living movement as well. To understand that movement's contributions to *Olmstead's* legacy is to chronicle its founding principles and early direct actions. These core fights for integration, equality, and recognition run as threads through the disability rights movement almost fifty years later.

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21. *Olmstead*, 527 U.S. at 597.

The early sixties were a time of social fervor and political upheaval on the University of California-Berkeley's campus; it had already seen activism related to the war, race, and gender. In 1962, Ed Roberts, the future "Father of the Independent Living Movement," was admitted to the University of California-Berkeley.<sup>22</sup> Roberts had contracted polio as a teenager and the university perceived his serious disability to be a liability and burden to its operations. Given the extent of his physical disability, he was unable to live on campus in dormitory housing. After a struggle with the university, Roberts was permitted to reside in the student health center.<sup>23</sup> Shortly thereafter, Berkeley began to admit more students with disabilities. Realizing their shared experiences of isolation and stigma, the disabled students began to form coalitions to not only change the face of the campus, but also the surrounding communities.

Their focus was on living independently, which had been denied to them by the university, state service providers, and other community actors.<sup>24</sup> Together, they formed an on-campus activism and support group called "The Rolling Quads"; this campus-based work eventually extended to the surrounding Berkeley area where they established the country's first center for independent living (CIL) in 1972.<sup>25</sup> As Roberts noted in a letter to a friend in the disability rights movement, "I'm tired of well meaning noncripples with their stereotypes of what I can and cannot do directing my life and my future. I want cripples to direct their own programs and to be able to train other cripples to direct new programs. This is the start of something big—cripple power."<sup>26</sup>

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22. See Ed Roberts: The Father of Independent Living, [http://www.ilusa.com/links/022301ed\\_roberts.htm](http://www.ilusa.com/links/022301ed_roberts.htm) (last visited June 22, 2009).

23. Berkeley's Bancroft Library maintains an oral history archive of the independent living movement. University of California Berkeley, The Disability Rights and Independent Living Movement, <http://bancroft.berkeley.edu/collections/driilm/> (last visited June 22, 2009).

24. See Douglas J. Usiak et al., *Independent Living Management*, 20 J. VOCATIONAL REHABILITATION 1, 1 (2004) (emphasizing how the Rolling Quads made people in wheelchairs more "commonplace" on the streets of Berkeley, challenging notions of disabled people's dependence on others).

25. See *id.* Berkeley's CIL was successful in getting the nation's first curb cuts.

26. See Ed Roberts, *supra* note 22.



These coalitions grew nationally, as more people with disabilities learned about the efforts at Berkeley and the groundswell in California.<sup>27</sup> By the late 1970s, other grassroots groups were joining the independent living movement. And by 1978, the Rehabilitation Act of 1973 allotted funding for CILs as long as they were “consumer-controlled, community-based, cross-disability, non-residential private nonprofit” agencies governed by and providing an array of independent living support services for people with disabilities.<sup>28</sup>

Each center emphasized the provision of attendant care services, assistance with daily living tasks, and accessible and affordable housing options. Under the Rehabilitation Act, these centers were charged with four services: “peer counseling, independent living skills training, individual and systems advocacy, and information and referral.”<sup>29</sup> The staff and board of each center had to be at least half people with disabilities and each center was run as a nonprofit.<sup>30</sup> The focus was, and continues to be, on supporting people with disabilities as they live integrated lives within their communities. CILs are situated to act in supporting roles to develop the relationships and resources to support cohousing’s effort to integrate people with disabilities and realize the potential of *Olmstead*.

### B. ADAPTING a Movement

The story of the independent living movement also highlights the importance of protest, particularly around transportation and nursing home issues. These themes are alive ten years after *Olmstead* and infuse the discussion about cohousing’s approach to interdependent living in integrated communities of people with and without disabilities. In many senses, the second wave of disability rights in the United States was the recognition of the power of people *in state*

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27. See generally SAMUEL R. BAGENSTOS, LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT (2009) (discussing the evolution of the independent living movement and its key advocates).

28. Rehabilitation Act of 1973, Pub. L. No. 102-569, tit. 7, § 702 (amended 1992).

29. See Usiak et al., *supra* note 24, at 1.

30. *Id.*

institutions to claim their own fates. The lessons from the story of ADAPT will help us to understand the kind of fundamental shift in conceptualizing the lives of people with disabilities that needs to happen to re-imagine communities and their potential to be therapeutic, holistic, and transformative.

Just as the civil rights movement has been shaped by mainstream actors and others perceived as more radical, so has the independent living movement of disability rights coalesced.<sup>31</sup> Wade Blank, ADAPT's eventual founder, was a product of the civil rights movement. In the early 1970s, he was working in a Denver-area nursing home and realized through a task as simple as trying to bring some of its residents to a Grateful Dead concert that the goals of the institution and those of the individual were often in conflict.<sup>32</sup> By 1974, Blank had funneled his frustration with institutionalization into forming the Atlantis Community, a consumer-driven attendant care service for people with disabilities who wanted to live in the community.<sup>33</sup>

In time, Blank realized that people with disabilities would never be able to live independently if they did not have access to transportation. By July 1978, American Disabled for Accessible Public Transit (ADAPT) had formed.<sup>34</sup> Twenty disabled protesters and allies coordinated an inaccessible bus take-over and stoppage in Denver.<sup>35</sup> By 1983, ADAPT coalesced as an activist effort to make public transportation accessible.<sup>36</sup>

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31. Examples of the tension between more moderate direct action and radical social change abound. For example, consider the split of the Weathermen from Students for a Democratic Society, or the evolution of the Black Panthers movement from the racial civil rights movement. See MARK RUDD, *UNDERGROUND: MY LIFE WITH SDS AND THE WEATHERMEN* (2009) (discussing the Weathermen founder's formation of the faction); ROBIN D.G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* 62 (2002) ("[H]igh expectations begot the civil rights movement; the movement's failure to achieve all its goals and to deal with urban poverty begot Black Power.").

32. Gina McDonald & Mike Oxford, *History of the Independent Living Movement*, <http://www.thewholeperson.org/HistoryofIL.htm> (last visited Feb. 24, 2010).

33. *Id.*

34. *Id.*

35. *Id.*

36. Ravi Malhotra, *The Politics of the Disability Rights Movements*, 8 *NEW POLITICS* (2001), available at <http://www.wpunj.edu/newpol/issue31/malhot31.htm>.

ADAPT's most striking quality was its daringness. The organization was not afraid of confronting what they believed to be the oppression of people with disabilities. Their demonstration approaches included chaining themselves (and their wheelchairs) to inaccessible buses and crawling up the stairs of the U.S. Capitol.<sup>37</sup> After making advances in public transportation, they shifted their focus and name to American Disabled for Attendant Programs Today. This shift brought them closer to the goals and strategies of the independent living movement, but it did not spare them criticism from its members.<sup>38</sup> ADAPT's brave, but sometimes reactionary, stance on issues affecting people with disabilities made its members easy targets for more moderate and conservative members of the disability rights movement. While the independent living movement was no model of complacency, ADAPT abandoned all politeness and overturned stereotypes about disabled people's passivity. It unapologetically embraced the principles of direct action from the civil rights movement.<sup>39</sup>

### III. INTENTIONAL COMMUNITIES AND THE COHOUSING MOVEMENT

How does the American independent living movement resonate with green living and cohousing? While the disability rights movement, led by people with disabilities, has been trying to liberate brothers and sisters<sup>40</sup> with disabilities so that they can live freely in their chosen communities and not in institutions, the intentional community movement has been empowering non-disabled people,

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37. *Id.*

38. *Id.*

39. *Id.* ("The tactics of organizations like ADAPT undeniably indicate the potential for a praxis of disability politics from below."); see also HANDBOOK OF DISABILITY STUDIES 547 (Gary L. Albrecht et al. eds., 2001) ("[D]irect action has enabled the movement to expose very directly the cause of disability oppression—for example, inaccessible buildings and transportation systems or patronizing charity events.").

40. Disability rights is a self-determination movement. See Laurie E. Powers et al., *Leadership by People with Disabilities in Self-Determination Systems Change*, 13 J. DISABILITY POL'Y STUD. 126 (2004) (exploring the importance of individual and collective leadership within the movement).

primarily, to return to their own senses of community.<sup>41</sup> Many people believe that the notion of “community” has been lost in the modern era and that suburban sprawl, increased work hours, and physical and emotional separation have taken primary roles in the shaping of daily lives.<sup>42</sup> These forms of separation can have particularly devastating effects on people with disabilities who may already experience isolation and alienation.

But isolation may be the tie that binds everyone in the modern American “neighborhood.” Neighborhoods are increasingly collections of buildings and not synergies of ideas, resources, and supports. Where children once rode bikes, parents traded babysitting duties with neighbors, and a neighborhood teen voluntarily offered to mow the elder neighbor’s grass for free, tract townhomes, suburban mini-mansions, and expensive urban lofts have replaced them. As a popular Talking Heads song “Nothing But Flowers” playfully critiques the rise of development by pretending that society decides to reverse it one day:

This used to be real estate  
 Now it’s only fields and trees  
 Where, where is the town  
 Now, it’s nothing but flowers  
 The highways and cars  
 Were sacrificed for agriculture  
 I thought that we’d start over  
 But I guess I was wrong

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41. *But see* Emily Talen, *The Problem with Community in Planning*, 15 J. PLANNING LITERATURE 171 (2000) (emphasizing that the notion of building a “sense of community” is not well-conceived, as demonstrated by a study of sixteen different cities’ planning documents).

42. Where neighborhoods and communities are functional and integrated, however, dramatic shifts in crime, health, well-being, and the environment can occur. Robert J. Sampson et al., *Assessing “Neighborhood Effects:” Social Processes and New Research*, 28 ANN. REV. SOC. 443 (2002); *see also* Mario Luis Small & Katherine Newman, *Urban Poverty after “The Truly Disadvantaged”*: *The Rediscovery of the Family, Neighborhood, and Culture*, 27 ANN. REV. SOC. 23, 44–45 (2001) (calling for greater investigation and research with a focus on Latino communities); L.M. van Alphen et al., *The Significance of Neighbours: Views and Experiences of People with Intellectual Disabilities on Neighbouring*, 53 J. INTELL. DISABILITY RES. 745, 755–57 (2009) (emphasizing the need to design programs and strategies to better integrate people with intellectual disabilities in their neighborhoods to get the full benefits of social interaction).

Once there were parking lots  
 Now it's a peaceful oasis  
 you got it, you got it.<sup>43</sup>

Cohousing's core principles are: "a participatory process, neighborhood design, common facilities, resident management, non-hierarchical structure and decision-making, and no shared community economy."<sup>44</sup> Cohousing is community without a commune. A good example of cohousing would be a development in which people gathered together to design a community that fit their set of needs. Private, individually owned or rented spaces could be downsized to allocate more space to shared spaces, such as green areas, a workshop, communal kitchen and dining room, guest room, and playground. Residences would be clustered, sometimes leaving undeveloped land for environmental preservation. Each person would participate fully in the design and implementation of the cohousing community. No one leader is identified or privileged. Each resident gets a vote in how the community will be structured and coordinated. Finally, cohousing does not call for a shared economy. Residents would not pool their finances and the community usually does not generate income for any member.

The current trend toward exploring the possibilities of intentional communities such as cohousing reflects societal leanings toward smart growth and new urbanism.<sup>45</sup> Smart growth is the recapturing of urban cores to enable people to live, work, and walk to the services and experiences that they need to enjoy.<sup>46</sup> The focus is on the urban

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43. TALKING HEADS, (*Nothing But*) *Flowers*, on *NAKED* (Warner Bros. Records 1988). The song continues: "And as things fell apart, no one paid much attention." Interestingly enough, lyrics from this song emerge in other articles about cohousing, but they first sprang to mind for me as I was writing the first draft. Only later did I realize that something about (*Nothing But*) *Flowers* reminded others of the recapturing of community.

44. Cohousing.org, *supra* note 10.

45. See Bruce Katz, Brookings Institution, *Smart Growth and New Urbanism* (presentation June 8, 2001), [http://www.brookings.edu/speeches/2001/0608downtownredevelopment\\_katz.aspx](http://www.brookings.edu/speeches/2001/0608downtownredevelopment_katz.aspx) (emphasizing the continued decentralization of population, employment, and services and the costliness of this trend).

46. See Smart Growth Online, SmartCode V9.0, <http://www.smartgrowth.org/library/articles.asp?art=3571> (last visited June 25, 2009). SmartCode is an open source set of smart growth guidelines promulgated from existing sustainability and urban planning guidelines. *Id.*

renaissance by promoting city development that will protect and restore the environment, increase green transportation options, and foster job access.<sup>47</sup> Smart growth addresses not only being able to live and play close to where a person works, but also creating or reclaiming opportunities for greenbelts, open areas, and neighborly interactions.<sup>48</sup> Smart growth was a movement formed by urban planners and policymakers, while architects and designers contributed the most to the principles of new urbanism. As I will discuss in a later section, these approaches resonate well with a model that integrates people with disabilities by collocating them with independent living centers, social services, employment coaching, accessible transportation, healthcare, and neighborhood support.

The concept of new urbanism is connected to smart growth, but unlike the overall economic and regional planning foci that smart growth has, new urbanism concentrates on the design of the individual neighborhoods themselves. It promotes compact living—using no more space than is necessary and using the aesthetic principles of architecture and open spaces to attract people to this lifestyle shift. The new urbanism movement has pushed for neighborhoods that encourage greater social interaction and higher density living.<sup>49</sup> Unlike the smart growth model, new urbanism does not limit its reach to enhancing services in an existing city core.<sup>50</sup> New urbanism principles can combat poor suburban design as well, encouraging mixed use opportunities and thereby increasing live-work arrangements for residents.

The Congress for New Urbanism, a leading policy-setter in urban planning, advocates for:

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47. See JULIAN AGYEMAN, *SUSTAINABLE COMMUNITIES AND THE CHALLENGE OF ENVIRONMENTAL JUSTICE* 63 (2005) (arguing that sustainable communities “protect and enhance the environment, meet social needs, and promote economic success”).

48. See generally F. KAI BENFIELD ET AL., *SOLVING SPRAWL: MODELS OF SMART GROWTH IN COMMUNITIES ACROSS AMERICA* (2001).

49. Jo Williams, *Designing Neighbourhoods for Social Interaction: The Case of Cohousing*, 10 J. URB. DESIGN 195 (2005).

50. Smart Growth Online, *About Smart Growth*, <http://www.smartgrowth.org/about/default.asp> (last visited June 25, 2009) (highlighting that smart growth focuses on existing cities and older suburbs).

[T]he restructuring of public policy and development practices to support the following principles: neighborhoods should be diverse in use and population; communities should be designed for the pedestrian and transit as well as the car; cities and towns should be shaped by physically defined and universally accessible public spaces and community institutions; urban places should be framed by architecture and landscape design that celebrate local history, climate, ecology, and building practice.<sup>51</sup>

The charter also includes language about promoting diversity in race, income, and age through intentional neighborhood design. The charter does not mention disability specifically, but I will explore later in this article how these guiding principles of affordability, physical access, transit-focused development, and mixed use can benefit people with disabilities.

Reversing in part suburban flight, new urbanism calls for a return—however nostalgic—to the kinds of cities and towns that we enjoyed before cars and sprawl dominated the lives of many Americans. Sprawl consumes more than two million acres of land every year, scattering people and creating new, far-reaching demands for goods and services.<sup>52</sup> These kinds of communities make transportation barriers and access to resources and employment even more difficult for people with disabilities because they focus on autonomy, wealth, and mobility.

Despite its apparent strengths, new urbanism and smart growth are criticized by some scholars and urban planners who argue that a sense of community cannot be generated nor forced from the physical layout of neighborhoods themselves through new urbanism or better regional planning through smart growth.<sup>53</sup> Smart growth often

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51. Congress for the New Urbanism's Charter, <http://www.cnu.org/charter> (last visited June 25, 2009).

52. National Geographic, Virtual World, The New Suburb?, [http://www.nationalgeographic.com/features/00/earthpulse/sprawl/index\\_flash.html](http://www.nationalgeographic.com/features/00/earthpulse/sprawl/index_flash.html) (last visited June 25, 2009).

53. See Talen, *supra* note 41, at 180–83 (reviewing neighborhood planning documents for sixteen communities across the United States and critiquing the assumption that planning communities will end in the formation of them).

undermines environmental and social justice by pushing lower income people to the edges of desirable neighborhoods, making integration and diversity more aspirational, than realized, goals.<sup>54</sup> As one author put it, smart growth can overlook “enduring inequalities of place, space, and race.”<sup>55</sup>

Critics also cite positive demand for alternative housing options and suburban lifestyles as creating expansion around existing cities and towns.<sup>56</sup> This philosophy that sprawl is not harmful, but merely a product of the market and population growth, drove a lot of development through the last half of the twentieth century.<sup>57</sup> But communities should stand for more than mere market demands and forces, and reflect principles of equity, diversity, and inclusion.<sup>58</sup>

Cohousing has grown as a reaction to sprawl and its environmental and social consequences. While communities may have grown organically in the past, people are intentionally forming communities today. Cohousing's option, among others, allows for people to maintain a sense of private ownership, but design a neighborhood that causes people to interact in shared common spaces, such as gardens and kitchens, and curtails some common design practices that isolate owners. Parking spaces, for example, are not generally located adjacent to an individual's home. He or she must walk to a shared lot and pedestrian traffic is routed such that intimacy and familiarity is encouraged. Members may also share meals together, divide tasks of daily living (e.g., babysitting, home maintenance,

54. AGYEMAN, *supra* note 47, at 111 (connecting “spatial segregation” and “decreased social mobility”).

55. ROBERT D. BULLARD, *GROWING SMARTER: ACHIEVING LIVABLE COMMUNITIES, ENVIRONMENTAL JUSTICE, AND REGIONAL EQUITY* 10 (2007).

56. Not all accounts of the suburbs are negative. Many scholars have recognized the function that suburbs can serve in accommodating lifestyle needs, urban space limitations, and economic constraints. For more about the joys of the suburbs, see Nicole Stelle Garnett, *Suburbs as Exit, Suburbs as Entrance*, 106 MICH. L. REV. 277, 279 (2007) (dispelling the notion that suburbs are only an “exit from urban life”); Note, *Locating the Suburb*, 117 HARV. L. REV. 2003, 2005 (2004) (“[U]nlike the city, which has generally managed to anchor itself geographically, the suburb exhibits a fluidity that causes it continuously to shift and sprawl, die and resurrect, defer and reproduce.”).

57. See Nicole Stelle Garnett, Review, *Save the Cities, Stop the Suburbs?*, 116 YALE L.J. 598, 602 (2006) (advocating for the growth of cities based on their distinctiveness and offerings, while not demonizing the suburbs).

58. BULLARD, *supra* note 55, at 12 (arguing that regional planning should “shape the behavior of private market forces to achieve fair outcomes for all”).



grocery shopping, carpooling), and decide on a governance structure that encourages participation from most, if not all, members of the cohousing effort. As I will argue, people with disabilities can participate in beneficial ways in these kinds of communities and the exchange of resources need not always be quantifiably one-for-one.

Today, several thousand people<sup>59</sup> live in cohousing developments across the United States. The cohousing movement is even more popular in Europe, where in Denmark more than one-percent of the population lives in cohousing.<sup>60</sup> More cohousing plans are becoming specialized and recognizing the changing needs of people in rural, urban, and suburban settings. Each cohousing group tries to embrace the strengths of its particular location and the skills of its members. Creating cohousing for elders is becoming a growing trend, for example, and this kind of cohousing model overturns traditional notions of aging, paternalism, and care-giving. I will explore some examples of effective cohousing models and their application to potential cohousing developments that are inclusive of people with disabilities in the next section.

#### IV. THE FUSION OF THE TWO MOVEMENTS—INDEPENDENT LIVING MEETS COHOUSING

##### A. *Urban Cohousing As Exemplar*

While cohousing provides great potential for individuals interested in becoming vital members of communities, people with disabilities have not been targeted recruits for integrated cohousing

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59. More than 113 cohousing communities have been completed in the United States, with the average community size being between fifteen and thirty-five households. Press Release, Abraham Paiss & Assocs., Completed Cohousing Communities Neighborhoods in the United States (October 2008). More information is also available at [Cohousing.org](http://Cohousing.org).

60. Matthieu Lietaert, *The Growth of Cohousing in Europe*, <http://www.cohousing.org/cm/article/europe> (last visited July 31, 2009). One other interesting example of cohousing abroad comes from Oaxaca, Mexico, where an American physician is building a community centered around universal design principles, which should be attractive and affordable for not only his aging patients but people with all kinds of mobility concerns and families. See Alvin Starkman, *Universal Design, Cohousing, and Economic Necessity Spur Green Housing Project in Oaxaca, Mexico*, posted by Scott Rains, Rolling Rains Report, <http://www.rollingrains.com/2009/07/convergence-universal-design-cohousing-and-economic-necessity-spur-green-housing-project-in-oaxaca-m.html> (July 31, 2009).

communities.<sup>61</sup> Intentional communities of people with disabilities and non-disabled co-residents have existed since the 1960s, but these models often isolate people with disabilities in settings that can be highly supervised, homogenous, and paternalistic.<sup>62</sup> Many of these disabled-dominant communities are alternatives to group homes and institutions, but they carry some of the baggage of these models in recreating isolated settings that encourage socialization largely among disabled residents and a limited group of trained employees or volunteers.<sup>63</sup>

Focusing on bringing disabled people into existing and newly forming cohousing communities without a disability bent can transform the functional and perceived roles of disabled people in society. Disability scholars and advocates have long recognized an interactionist model of disability where stereotypes, bias, and animus against people with disabilities can be dismantled through

61. Perhaps, cohousing should have targeted people with disabilities earlier in its development. As many social theorists have pointed out, the institutionalization of people with disabilities, particularly as supported by myths about people with developmental disabilities, continues to reinforce segregation and oppression. See Samantha A. DiPolito, *Olmstead v. L.C. - Deinstitutionalization and Community Integration: An Awakening of the Nation's Conscience?*, 58 *MERCER L. REV.* 1381, 1382 (2007) ("Institutionalized individuals suffer a dramatic loss of physical freedom with severely invasive treatment."); SHEILA MCNAMEE & KENNETH J. GERGEN, *THERAPY AS SOCIAL CONSTRUCTION* 155 (1992) ("'[H]andicapping language' and its 'pejorative effects' are applied both to disabled people and the people who interact with them.").

62. Segregation is possible even where communities, on their faces, are not composed of only people with disabilities. It can take the form of housing based on a charitable model of disability, such as the L'Arche Communities. According to L'Arche's website, the communities are "family-like homes where people with and without disabilities share their lives together, give witness to the reality that people with disabilities possess inherent qualities of welcome, wonderment, spirituality, and friendship." L'Arche USA, <http://larcheusa.org/> (last visited Aug. 28, 2009). This model, in its sixteen incarnations in the United States, may not create permanent relationships and communities for people with development disabilities because "assistants" (non-disabled residents) only have to commit to one year and they come to the communities with the idea of service, not of equal footing in the crafting of community. One alternative to segregated cohousing would be congregating cohousing, where residents hire support staff to assist with tasks of daily living, such as housekeeping and meal preparation. See Shirley Confino-Rehder, *Co-Housing in America*, <http://univdesign.com/NEW/page14/files/CohousingInAmerica.pdf> (last visited Aug. 28, 2009) (on file with author).

63. For example, volunteers without disabilities live with people with mental and intellectual disabilities in Innisfree Village in rural Crozet, Virginia, working together to run an organic farm, community farmshare, weavery, bakery, and in-town store. While Innisfree's model upends a doctor-patient model of institutional life, it still places nondisabled people in a role of living in relative isolation. For more information about Innisfree, see the community's website at <http://www.innisfreevillage.org> (last visited Aug. 6, 2009).

interactions between disabled and nondisabled people.<sup>64</sup> Being confronted with the reality of living with a disability is important for non-disabled people who may perceive the quality of life of people with disabilities, particularly those with cognitive disabilities, as being extremely low.<sup>65</sup>

Cohousing models are especially powerful in urban settings, where people with all kinds of disabilities, who might otherwise be limited by the dearth of public transportation, jobs within walking distance, and government and social services, can access them easily. They are not car-dependent or dependent on others for rides. They can perform the tasks of daily living, such as grocery shopping, visiting doctors, and holding a job, more easily. Urban cohousing communities hold the greatest potential for realizing the vision of *Olmstead* and its plaintiffs.

The Congress for the New Urbanism recognizes these strengths in a broader context, by articulating the values of the movement as resulting in the creation of communities where:<sup>66</sup>

- Cities and towns should bring into proximity a broad spectrum of public and private uses to support a regional economy that benefits people of all incomes. Affordable housing should be distributed throughout the region to match job opportunities and to avoid concentrations of poverty.
- The physical organization of the region should be supported by a framework of transportation alternatives. Transit, pedestrian, and bicycle systems should

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64. Kate Stanley, *The Missing Million: The Challenges of Employing More Disabled People*, in *WORKING FUTURES? DISABLED PEOPLE, POLICY AND SOCIAL INCLUSION* 31 (Alan Roulstone & Colin Barnes eds., 2005) (“If you change the dynamics of the relationship between the individual and the wider social context, you can change the outcomes for disabled people. In this way, disability can be seen as a description of what happens when a person with impairment interacts with their environments over time.”).

65. See Michael L. Perlin, *THE HIDDEN PREJUDICE* 40 (2000) (calling people with mental disabilities “invisible” and erroneously perceived as “violent” by society).

66. CNU.org, Charter of the Congress for the New Urbanism, <http://www.cnu.org/charter> (last visited Feb. 23, 2010).

maximize access and mobility throughout the region while reducing dependence upon the automobile.

- Many activities of daily living should occur within walking distance, allowing independence to those who do not drive, especially the elderly and the young. Interconnected networks of streets should be designed to encourage walking, reduce the number and length of automobile trips, and conserve energy.
- Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community.

People with and without disabilities need and deserve the opportunity to live in real neighborhoods that encourage their economic independence, home ownership, and community access.

### *B. Models in Practice*

To understand the potential application of the cohousing model to the needs of people with disabilities and the mandate of *Olmstead*, we need to consider how it is currently working around the country. From over a hundred examples<sup>67</sup> of effective cohousing practices, I have selected just three. They each represent different strengths of the model and potentialities for people with disabilities. I will try to capture them in just a paragraph or two, but the richness of these communities and their focus on integration, diversity, and sustainability should not be oversimplified.

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67. See Press Release, Abraham Paiss & Assocs., *supra* note 59.

### 1. *East Lake Commons Cohousing (Decatur, Georgia)*<sup>68</sup>

Situated on twenty acres a few miles from downtown Atlanta, East Lake Commons was “designed to fulfill ideals of social diversity and environmental sustainability.”<sup>69</sup> East Lake Commons (ELC) consists of 67 families trying to avoid “cookie-cutter housing developments” and to “live in a caring environment, in cooperation with each other and the land.”<sup>70</sup> The cohousing community has fit nicely into the revitalization of the East Lake section of the city and has benefited from support from government and private sources.<sup>71</sup> East Lake is an intergenerational neighborhood with a layout that encourages pedestrian interaction, community gardening, and wildlife conservation.<sup>72</sup>

I chose East Lake because of its focus on accessibility for not only residents, but also for visitors. It is a model in making an urban cohousing model work for people with mobility impairments. According to East Lake’s vision statement, among the community’s aims are: including “disabled people in homes and outdoor spaces;” encouraging “efficient use of . . . people’s skills, energy, and time;” “maximiz[ing] people’s ability to live in our community if they have or develop disability, by planning for systems which facilitate various levels of assistance;” “welcom[ing] diversity of . . . physical or mental ability . . . and forming new views and practices that further understanding and fairness.”<sup>73</sup> East Lake has the most comprehensive statement on disability in its community of any of the three examples that I will explore.

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68. Cohousing.org, East Lake Commons, <http://www.cohousing.org/directory/view/2943> (last visited July 30, 2009).

69. East Lake Commons: Our Community, <http://www.eastlakecommons.org/MainPages/OurCommunity.htm> (last visited July 2, 2009).

70. East Lake Commons: Goals and Ideals, <http://www.eastlakecommons.org/Ideals/ideals.htm> (last visited July 2, 2009).

71. East Lake Commons: Our Community, *supra* note 69.

72. *Id.*

73. East Lake Commons: Vision, <http://www.eastlakecommons.org/Ideals/vision.htm> (last visited July 2, 2009).

In addition, one of its founding principles was visitability.<sup>74</sup> Disability access was taken into consideration from the outset. The community framed its accessibility goal as: "Include in each unit and common house at least one no-step entrance and one accessible bathroom on the same floor to ensure 100% 'visitability' for the physically disabled."<sup>75</sup> East Lake Commons decided to make visitability at the core of its design and building in 1997, with the assistance of Eleanor Smith, the director of Concrete Change.<sup>76</sup> Concrete Change has led a movement for over twenty years to encourage builders and homeowners to consider if people with physical disabilities would be able to exercise some level of independence in visiting their homes.<sup>77</sup> East Lake Commons has advanced this mission by serving as a model for other cohousing communities and developments in Atlanta. It also prominently includes visitability guidelines on its website.<sup>78</sup> Like the next two cohousing communities that I will explore, ELC's access issues were largely informed by having people with disabilities and advocates involved in the early stages of planning.<sup>79</sup> The community has had residents with blindness, mobility impairments, dementia, and other disabilities.

The benefits of accessibility also flow to people without short-term disabilities and mere visitors to the community. According to Eleanor Smith,

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74. E-mail from Anne Olson, East Lake Commons' appointed contact, to author (June 30, 2009) (on file with author).

75. East Lake Commons: Goals, <http://www.eastlakecommons.org/Ideals/goals.htm> (last visited July 2, 2009); see also Gabriella Burman, *Field of Greens: A Moshav Takes Root in Atlanta's East Lake Commons*, ATLANTA JEWISH TIMES, Oct. 24, 2003, at 14, 15 ("All homes have inconspicuous ramps leading to wide front doors that enable anyone with a disability to visit a home."); Eleanor Smith, *To Boldly Go: Visitability in Cohousing*, COHOUSING MAG., May 2007 (discussing how the ELC resident and wheelchair-user's social life has been transformed by the community's visitability standards affecting passageways and first-floor bathrooms).

76. Concrete Change, <http://www.concretechange.org> (last visited July 2, 2009).

77. *Id.*

78. East Lake Commons: Visitability, <http://www.eastlakecommons.org/Documents/Misc/Visitability.htm> (last visited July 2, 2009).

79. E-mail from Eleanor Smith, ELC, to author (July 2, 2009 and July 16, 2009) (on file with author).

Quite a few people have benefited from access when recovering from surgery, breaking their leg, etc. Three men with major learning disabilities stay here many hours per month, when they are with the person who professionally assists them with daily living. They add an interesting new twist to our diversity. We also sometimes need to respond to requests for changes/policies due to chemical sensitivity.<sup>80</sup>

Access at ELC has come to mean financial achievability as well. The community focused on affordability in planning the neighborhood.<sup>81</sup> The community was intended to consist of lower income, middle class, and upper class housing options to ensure diversity of perspectives and access. The original cost of the units began at \$90,000, and depended on size; this figure was from 1999.<sup>82</sup> Community planning began in 1997 and the last few homes were completed in 2001.<sup>83</sup> Current resale values range from approximately \$180,000 to \$350,000.<sup>84</sup>

## 2. *Eastern Village Cohousing (Silver Spring, Maryland)*<sup>85</sup>

Eastern Village Cohousing (EVC), located in the DC suburb of Silver Spring, Maryland, was completed about five years ago.<sup>86</sup> The community consists of 56 condominiums, ranging in size from 650 to 2000 square feet.<sup>87</sup> It has several community-shared areas, including a yoga room, library, workshop, game room, dining room, kitchen, and guest room. Much like ELC, the project was initiated by a developer, Don Tucker; EVC was an urban retrofit of a former office building. As a condominium complex, the building did not need to

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80. E-mail from Eleanor Smith, ELC, to author (July 16, 2009) (on file with author).

81. E-mail from Anne Olson to author (July 2, 2009) (on file with author).

82. *Id.*

83. *Id.*

84. *Id.*

85. Cohousing.org, Eastern Village, <http://www.cohousing.org/directory/view/6329> (last visited Aug. 12, 2009).

86. Interview with Rodney Elin (June 30, 2009) (Rodney Elin is an Eastern Village Cohousing resident with a mobility-related disability).

87. Eastern Village Cohousing: About Us, <http://www.eastervillage.org/evsummary.html> (last visited July 30, 2009).

comport with many ADA standards of accessibility that would be triggered for places of public accommodation.<sup>88</sup> Where it may have stumbled access-wise, EVC excelled in its commitment to green living in a new urban area; its reclamation and reinvention of existing space can be a benchmark for other cohousing communities. Some of its shortcomings have lessons to offer, as well.

According to its mission statement, Eastern Village is “an intentional urban community committed to inclusive decision-making through consensus and the following principles: ‘We cherish and support diverse ages, ethnicities, interests, *abilities*, relationships and spiritual beliefs (emphasis added). We value ecological responsibility, sustainable design and a balance of aesthetics and affordability . . . .’”<sup>89</sup> Eastern Village is accessible to Washington DC’s public subway system and has met and exceeded many principles of green building. The project has received a LEED Silver rating.<sup>90</sup> It is the most eco-friendly residential building in the surrounding county.<sup>91</sup> It has a green or “living” roof where vegetation and a waterproof barrier replace traditional asphalt shingles or metal roofing. The complex’s indoor air temperatures are governed by a geothermal heating and air-conditioning system, relying on deeply

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88. But the Fair Housing Act, as amended, 42 U.S.C. § 3604 (f)(3)(C) (1990), would provide broader protections. It calls for multi-unit (four or more) residential facilities to have accessible features in ground units and in all units if the building is elevator-equipped. The building must have accessible entrances, too. Accessibility construction standards apply to private and public buildings constructed after 1991, which would not apply to the Eastern Village Community. 42 U.S.C. § 3604(a)–(d) and (f)(3)(C) (1990).

89. Eastern Village Cohousing: About Us, <http://www.easternvillage.org/evsummary.html> (last visited July 30, 2009).

90. U.S. Green Building Council, Certified Projects List, Eastern Village Cohousing Condominium, <http://leedcasestudies.usgbc.org/overview.cfm?ProjectID=404> (last visited Feb. 25, 2010) (outlining the eco-friendly features of Eastern Village).

91. Jason Tomassini, *LEEDing the Way in ‘Green Design’*, SILVER SPRING GAZETTE (Md.), Feb. 18, 2009, available at [http://www.gazette.net/stories/02182009/silvnew184401\\_32474.shtml](http://www.gazette.net/stories/02182009/silvnew184401_32474.shtml). LEED is a certification system that awards points to design and implementation decisions that are “green” and energy efficient. The LEED system considers “sustainable sites (14 points), water efficiency (5 points), energy and atmosphere (17 points), materials and resources (13), and indoor environmental quality (15).” To be merely “LEED-certified,” a building needs a minimum of 26 points. Silver certification begins at 33 points, gold at 39, and platinum at 52. Eastern Village achieved 34 points on the LEED scale. *Id.*



buried pipes to exchange surface hot air for subterranean cool air and vice versa.<sup>92</sup>

Currently, one member of the community identifies as having a disability and that individual coordinates the community's communications and hosting of visitors and guests.<sup>93</sup> While some of the common areas are accessible to people with disabilities, many areas are not and there are even more access issues if an individual considers the units and their degree of visitability for someone with a mobility impairment.<sup>94</sup> Universal design was advanced as a design principle during the initial planning stages of the community, but it was rejected by the developer and other residents.<sup>95</sup> Eventually, the three people with disabilities who had been originally interested in joining the cohousing project dropped out, save one.<sup>96</sup>

The original unit's costs were developer-driven and between \$250,000 and \$450,000.<sup>97</sup> Units on resale are even more expensive. One unit is currently available for \$485,000.<sup>98</sup> In comparison, the average listing price for other homes in Silver Spring is \$325,000, but these homes may not offer the same advantages of location, green living, community, and other amenities as Eastern Village.<sup>99</sup>

While the eventual disappearance of a strong minority community of people with disabilities at EVC is disappointing to me, it is a common story. The three examples that I explore in this paper all demonstrate the roles that people with disabilities can have in shaping the cohousing developments, but some social and economic costs exist. I will explore this issue later in this section.

92. A geothermal system creates a loop, using the earth as a source of natural heat and a place to deposit unwanted hot surface air. See James McCown, *Close-Knit Quarters*, CONTINENTAL MAG., Mar. 2008, available at <http://magazine.continental.com/content4163>.

93. Interview with Rodney Elin (June 30, 2009).

94. *Id.*

95. *Id.*

96. *Id.*

97. Stacey Cohan, *Silver Spring Co-Housing*, WUSA9.COM, [http://www.wusa9.com/news/news\\_article.aspx?storyid=36064](http://www.wusa9.com/news/news_article.aspx?storyid=36064) (last visited July 1, 2009).

98. Units for sale at Eastern Village are listed on the community website, <http://www.easternvillage.org/forsale.htm>. For a virtual tour of Eastern Village, check out <http://www.easternvillage.org/evctour/index.htm> (last visited July 1, 2009).

99. Yahoo! Real Estate, Silver Spring, MD Listing Prices (updated Aug. 3, 2009), [http://realestate.yahoo.com/Maryland/Silver\\_Spring](http://realestate.yahoo.com/Maryland/Silver_Spring).

### 3. *Glacier Circle Senior Community (Davis, California)*

The final example of a model cohousing community is more focused and limited in scope than the other two and embraces disability from the perspective of aging and its effects. Billed as the country's first cohousing development for elders, Glacier Circle is located in Davis, California, and was completed in late 2005.<sup>100</sup> Eight townhomes are organized around a common house. The common house has a living and dining area, but it also took into consideration the evolving needs of the aging residents by building a studio apartment for an on-site nurse. The average age of the residents is eighty.<sup>101</sup>

Unlike many cohousing communities, most of the residents of Glacier Circle had preexisting relationships, but new ones were also formed. A *New York Times* journalist reports: "Here you get to pick your family instead of being born into it," said a legally blind Glacier Circle resident. "We recognized that when you're physically closer to each other, you pay more attention, look in on each other. The idea was to share care."<sup>102</sup> As another resident put it, "The idea is to kind of take care of each other."<sup>103</sup> Some residents cited the desire for community, concerns about "anonymity" in the world as they aged, loneliness with the passage of spouses and children, and the desire to return to familiar living structures, such as the dormitories and communes of youth.<sup>104</sup> They were drawn to cohousing for a variety of reasons, but all shared the common thread of desiring to have a community and a neighborhood as they went into the final decades of their lives.

Residents were able to make it happen financially because of successful professional lives and financial independence. The

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100. Patricia Leigh Brown, *Growing Old Together, in New Kind of Commune*, N.Y. TIMES, Feb. 26, 2006, available at [http://www.nytimes.com/2006/02/27/national/27commune.html?\\_r=1&en=a389effcc8c0675b&ex=1298696400&partner=rssnyt&emc=rss&pagewanted=all](http://www.nytimes.com/2006/02/27/national/27commune.html?_r=1&en=a389effcc8c0675b&ex=1298696400&partner=rssnyt&emc=rss&pagewanted=all).

101. *Id.*

102. *Id.*

103. Pamela Martineau, *Friendship at Heart of New Senior Community*, SACRAMENTO BEE, Mar. 27, 2006, at B1, available at [www.jmh-architect.com/pdf/03-27-06\\_sacbee\\_friendship.pdf](http://www.jmh-architect.com/pdf/03-27-06_sacbee_friendship.pdf).

104. Brown, *supra* note 100.

complex cost about \$3.2 million to build with each unit in the \$400,000 range some four years ago. Residents also pay \$350/month in dues and have a rental unit that brings in more than \$850/month.<sup>105</sup>

While members of Glacier Circle may miss the intergenerational dynamics of ELC and EVC, they have a common life stage of aging to guide their collective decision-making and community-building. Confronting various health challenges and the realities of living as elders have made them more open to planning for access in their communities than arguably a cohousing community of twenty and thirty-somethings would envision. Perhaps, the experience of disability or anxieties about it can be the strongest call for universal access.

### *C. Fusing Independent Living and Green Living*

#### *1. A Synthesis of Interdependence and Connectedness*

The opportunities for the independent living and green living movements to inform one another's principles and practices are exciting. As born in Berkeley, the American independent living movement focuses on advancing an ethic of care within communities and integrating people with disabilities in the larger surrounding communities.<sup>106</sup> It is not about developing clusters of disabled people living in segregated or "special" conditions. Independent living, rather, calls for community supports to be mobilized to assist individuals with disabilities to achieve whatever degree of autonomy they desire.<sup>107</sup>

Green living, through the cohousing model, recognizes an interdependence of all people—with their environments and with one

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105. *Id.*

106. See Martha Minow, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 224–25 (1990) (valuing people's relationships with one another over a rights-based quest for autonomy and separation).

107. Professor Ann Hubbard discusses this relationship between the independent living movement and autonomy in the context of choosing among "life plans" and understanding the meaningful role of support with major life activities in the shaping of the lives of Americans with disabilities. See Ann Hubbard, *Meaningful Lives and Major Life Activities*, 55 ALA. L. REV. 991, 1008–09 (2004).

another.<sup>108</sup> It fuses the concept of being stewards of the land and its resources with being present for others with whom we live in community. Both movements revolve around issues of intent and planning, and recognize that different people bring different skills to our daily interactions. Part of those interactions needs to be centered on notions of support, cooperation, and collaboration.

The communities just explored were never intended to be communities for people with disabilities alone. While a person or two with a disability may have participated in the initial planning, through the construction, and community-building phases, not one of these communities began to meet the needs of people with disabilities solely. Many of the mission statements for other cohousing communities around the country do not include disability or access language in their organizing documents and it is even more difficult to find examples of communities where people with disabilities are recruited to live with *non-disabled* people.<sup>109</sup> Communities where people with disabilities are isolated and segregated are not in furtherance of *Olmstead's* goals. As the need for affordable, sustainable housing increases, people with disabilities need to be part of the plan.

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108. This interdependence may come into conflict with traditional notions of national sovereignty, for example. See Loyal Rue, *Noble Lies and the First Amendment: A Symposium on the Death of Discourse: Act II: After the Death of Discourse*, 64 U. CINN. L. REV. 1277, 1292 (1996) ("The principle of national sovereignty is incommensurate with the ecological and economic interdependence of all human groups on the planet. The principle of national sovereignty is, therefore, an obstacle to the measure of global human solidarity and cooperation essential for the achievement of personal wholeness and social coherence."). But even in a less extreme form, the green movement has advanced growing awareness of the delicate balance between humankind, ecology, and the material world. Professionals, such as architects and builders, have had tremendous influence on advancing the notion of interdependence. See Stephen T. Del Percio, *The Skyscraper, Green Design, and the LEED Green Building Rating System: The Creation of Uniform Sustainable Standards for the 21st Century or the Perpetuation of an Architectural Fiction?*, 28 ENVIRONS ENVTL. L. & POL'Y J. 117, 129 (2004) (recognizing architects' leading role in signing the "Declaration of Interdependence for a Sustainable Future").

109. Communities like "A Home for Mike," however, have actively sought members with disabilities and are raising funds to make cohousing affordable for low-income disabled residents. Mike's neighbors held a disability workshop at the 2009 Cohousing Conference in Seattle, WA. Interview with members of the CoHo Community (July 6, 2009).

## 2. *Strengths: Human Relationships and Environmental Care by Design*

If the goal of *Olmstead* is one of integration, these communities may have achieved it unintentionally. Let us consider what has worked—principally, design focused on relationships, desegregation, and environmental stewardship; role-sharing and weakness/impairment off-setting; and the minimization of individual transportation and material needs.<sup>110</sup> The assets of the communities are ones that benefit not only disabled people, but non-disabled people as well. I will discuss each of these strengths briefly in turn.

The hallmark of both movements is the idea of intention—that society’s problems are best tackled by working in knowledge of the facts and possibilities.<sup>111</sup> Accordingly, cohousing communities are *intentional* communities, communities by design. As the three communities discuss exemplify, much of the design flows from a set of founding principles espousing equality and equity. Residents are encouraged to have equal say in what happens and to work toward resolution of dilemmas through a consensus model.<sup>112</sup> Everyone is invested in the community and what happens to it; the community is more than mortar and foundation. It is the building of a space where people live and develop ties with one another. Through the intentional design of smaller individually owned living quarters and grander shared spaces, interaction is fostered. The community space bends and conforms to fit its members, just as it has in the cases of visitability and accessibility.

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110. These strengths are reflected in the tenets espoused by other sustainability scholars. As Julian Agyeman breaks down the sustainability principles outlined in footnote 47—sustainability includes “maximizing everyone’s access to the skills and knowledge needed to play a full part in society.” AGYEMAN, *supra* note 47, at 63.

111. The most pronounced form of intention comes in intentional communities, where communities do not spring up organically, but are planned and organized around central visions. Cohousing is one form of intentional community, but it is not the only one. See DIANA LEAFE CHRISTIAN, *CREATING A LIFE TOGETHER: PRACTICAL TOOLS TO GROW ECOVILLAGES AND INTENTIONAL COMMUNITIES* xv (2003) (emphasizing that even with good intentions in place only about ten percent of all of these communities are able to thrive).

112. See AGYEMAN, *supra* note 47, at 63 (One goal of a sustainable community should be to “empower all sections of the community to participate in decision-making and consider the social and community impacts of decisions”).

The vision of community is long-range.<sup>113</sup> Architecture that takes into consideration one's wellness over the lifespan fosters independence and mobility as well, even if residents may not have disabilities at the time of planning the community. This "aging-in-place" approach recognizes that health ebbs and flows over one's lifetime and that rather than living in fear of change, communities should plan for and embrace it.<sup>114</sup>

The notion of building long-term relationships extends beyond creating a community of people with shared values and a commitment to the immediate community. It entails environmental stewardship as well.<sup>115</sup> This idea that we are all responsible for what we build together—be it physical or psychological—creates a system of work, but of rewards, too. Energy-efficient housing, for example, lends itself to greater affordability over the long-term for all residents. Living lightly as a smaller community of eight homes or fifty-eight, allows what is valuable about the cohousing community to be shared with others.

## 2. *Role-Sharing and Balancing: Embracing Interdependence*

While the cohousing movement was not started by people with disabilities, people with disabilities have shaped its values and its values are beneficial to disabled people seeking equality. Because the cohousing model removes some of the privacy typically found in

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113. See, e.g., CHRIS SCOTT HANSON, *THE COHOUSING HANDBOOK: BUILDING A PLACE FOR COMMUNITY* 22–23 (2004) (highlighting that the complexities of planning in cohousing communities are not just with the financial aspects, but also with the long-range goals and visions of the residents); CARLOS W. PRATT ET AL., *PSYCHIATRIC REHABILITATION* 328 (2007) (pointing out that while the independent living movement's goals may include independence even where a great deal of community support is needed, the provision of those services can be costly and administratively challenging for governments).

114. Several initiatives have recognized the growing need for elders to be able to age-in-place. The Aging in Place Project, for example, focuses on the importance of universal usability in the design and construction of residential environments, and also concentrates on assembling community-based resources for older people interested in remaining in their homes. See *Raise the Voice, The Aging in Place Project: Assuring Quality At-Home Services for Seniors*, [www.aannet.org/files/public/AgingInPlace\\_template.pdf](http://www.aannet.org/files/public/AgingInPlace_template.pdf) (last visited Aug. 28, 2009).

115. The mission of the Smart Growth Network, for example, is to "foster distinctive, attractive communities with a strong sense of place." Organizations supporting this kind of effort can be found at Smart Growth Online, <http://www.smartgrowth.org/about/principles/resources.asp?resource=5&type=12&res=1280> (last visited August 28, 2009).

urban and suburban housing developments, it also exposes the needs and impairments of all residents as they move through their daily lives.<sup>116</sup> Rather than being embarrassed by an inability to meet all of the extraordinary demands placed on working parents, elders, or people with chronic health conditions, this kind of community tries to gather its collective resources to divide and share responsibilities and labor. Intentional communities strive to value unpaid work as much as work for remuneration.<sup>117</sup>

Role-sharing—whether it be childcare, grocery-shopping, maintenance, or another task of daily living—recognizes that one person, disabled or not, cannot do everything well.<sup>118</sup> Perhaps, the greatest collaborative potential of independent living and green living is found in its inherent welcoming and promotion of interdependence.<sup>119</sup> Rather than seeing only people with disabilities as needing “special” help, communities that acknowledge

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116. Illness should not be viewed as a liability in cohousing. As this article explores, it can be an organizing principle. See also Barbara Simpson & Tanusha Raniga, *Co-housing as a Possible Housing Option for Children Affected by HIV/AIDS: Evidence from Informal Settlements*, 15 URB. FORUM 365, 365 (2004) (“The link between the built environment, that is, the structural context in which people live, and their well-being cannot be underestimated. An ideal and responsive built environment facilitates the effective functioning of people.”).

117. See AGYEMAN, *supra* note 47.

118. Cohousing feeds into feminist notions of role-sharing unbounded by gender. See Dana Young, Note, *The Laws of Community: The Normative Implications of Crime, Common Interest Developments, and “Celebration,”* 9 HASTINGS WOMEN’S L.J. 121, 126–27 (1998) (lauding the communal aspect of cohousing to reduce childcare, cooking, and other domestic work demands on women and single-parents); Rachel F. Moran, *How Second-Wave Feminism Forgot the Single Woman*, 33 HOFSTRA L. REV. 223, 294 (2004) (“[C]o-housing is a response to the perception that demographic and economic transformations have made traditional housing arrangements unsuitable for meeting many residents’ needs.”); Mark Fenster, *Community by Covenant, Process, and Design: Cohousing and the Contemporary Common Interest Community*, 15 J. LAND USE & ENVTL. L. 3, 49–50 (1999) (citing the ability of cohousing to overcome traditional gender dyads and to generate “group identity”). But see Katharine B. Silbaugh, *Women’s Place: Urban Planning, Housing Design, and Work-Family Balance*, 76 FORDHAM L. REV. 1797, 1835 (2007) (drawing a parallel, however, between high-density industrial revolution housing and women’s work and the new model of cohousing).

119. Disability scholars have long argued for putting interdependence and independence on equal footing. See V.C. Thompson, *Independent and Interdependent Views of Self: Implications for Culturally Sensitive Vocational Rehabilitation*, 63 J. REHABILITATION 16 (1997) (highlighting the role of culture in creating relationships of care and defining roles); cf. Jan Walmsley, *Contradictions in Caring: Reciprocity and Interdependence*, 8 DISABILITY & SOC’Y 129, 138–40 (1993) (blurring the distinction between care-giver and receiver); Irving K. Zola, *Developing New Self-Images and Interdependence, in INDEPENDENT LIVING FOR PHYSICALLY DISABLED PEOPLE* (Nancy M. Crewe & Irving K. Zola eds., 1983) (challenging the dominance of medical experts in determining the best paradigms for independent living).

interdependence de-stigmatize the expectation of assistance for and from every community member. Collaboration embodies an ethic of care that can be applied to neighbors, regardless of disability status.<sup>120</sup>

People with disabilities, in particular, can benefit from role-sharing and the offsetting of individual strengths and weaknesses because it is sometimes just a few tasks of daily living that keep them from being in an integrated living setting. This kind of option has the potential to ease their fears and the concerns of family members. Granted, disabled residents need to be able to contribute to the cohousing community in various ways; it is not a substitute for nursing home care or guardianship. However, the people most in need of those services are the least likely to be affected by *Olmstead* or the cohousing movement. If a person with severe paralysis, can for example, babysit, but not do gardening and grocery-shopping, a cohousing community might alleviate some of the added expense or impossibilities of living alone and paying for assistance. A new mother or father might appreciate the extra set of hands and feel overloaded as it is.<sup>121</sup> Or if a person with autism needs a consistent social environment and schedule, a cohousing community might provide structure, and that individual could still contribute to the community in ways that any other resident might.<sup>122</sup> This barter or sharing approach based on mutual respect and understanding allows a community to see each member as offering a particular bundle of skills and talents and gives it the task of figuring out how to make the best use of them.<sup>123</sup>

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120. Even outside of the cohousing model, neighborhood collaboration serves an important role in problem-solving. See, e.g., David A. Julian, *Planning for Collaborative Neighborhood Problem-Solving: A Review of the Literature*, 9 J. PLANNING LITERATURE 3 (1994) (emphasizing collaboration's potential in both structured agency relationships and informal interactions).

121. See Young, *supra* note 118.

122. But see Joseph F. Kennedy, *A "Green" Architect Falls in Love . . . with Frogson Cohousing*, 127 COMMUNITIES 49, 52 (2005) (relaying how cohousing may be too much social contact for some members).

123. Bartering can be an effective strategy for older people with limited resources, too. See Marty Rose Noberini & Rochel U. Berman, *Barter to Beat Inflation: Developing a Neighborhood Network for Swapping Services on Behalf of the Aged*, 23 GERONTOLOGIST 467, 469-70 (1983) (describing barter model in the Bronx and suggesting approaches for developing this service elsewhere); see also David S. Wilson, *First-Aid for Housing the Low- and Fixed-Income Elderly: The Case for Resuscitating*



### 3. *Minimizing Individual Needs*

One perennial barrier for people with disabilities is the cost of home ownership and its concomitant expenses related to maintenance and upkeep.<sup>124</sup> In cohousing communities, however, residents commonly share tools and material goods, even though they continue to privately own their homes and do not share their incomes. The need for sixty individual lawnmowers is gone and people may also share some other household and personal items, such as clothes, repair kits, bicycles, children's toys, and electronics. Because so many people are attracted to cohousing for its green features, the focus remains on minimizing consumer consumption and reusing and "upcycling" whenever possible. To live in such a community makes ingenious swap fests and bartering for goods and services possible.

For many average American homebuyers, purchasing an affordable home may also mean moving farther away from the bustle of a city and its corresponding transportation systems, in order to financially sustain ownership. These cohousing communities offer the asset of access to everyone, however. While they may not be downtown, they are planned around public transportation routes and can eliminate the need for owning and maintaining an automobile. Rather than being limited by an inability to drive or to afford a car and insurance, people with disabilities can eliminate car-dependence and minimize reliance on paratransit. Amenities and services, such as grocery stores, doctors, restaurants, and shops, are available within walking distance. Being located at the center of urban activity, or even on the

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*Cooperative Housing*, 15 ELDER L.J. 293, 313 (2007) (describing how cooperative housing can lessen the worries of elders about burdens such as gardening and repairs that they would face alone in single-family residences or condominiums).

124. Home ownership rates for people with "severe" disabilities hovers at less than ten percent. The White House, Fulfilling America's Promise to Americans with Disabilities, <http://georgewbush-whitehouse.archives.gov/news/freedominitiative/freedominitiative.html> (last visited Feb. 19, 2010); see Dede Leydorf, *New Beginnings: Making Homeownership a Reality for People with Disabilities*, SHELTERFORCE ONLINE, Nov./Dec. 2003, <http://www.nhi.org/online/issues/132/assetsfordisabled.html> (finding that homeownership continues to be out of reach for many people with disabilities because of discrimination, inaccessibility, financial barriers, housing policy, and system complexities). Programs through Fannie Mae mortgages, Section 8 housing vouchers, the National Affordable Housing Act, Individual Development Accounts, and Supplemental Security Income, and Social Security Disability Insurance may all provide ownership options for low-income people with disabilities. *Id.*

edge of a large metropolis but in a new urban setting like Silver Spring, allows residents to facilitate visits by guests, friends, and others living in the high-density area.

Most encouraging, smart planning allows people to live closer to sources of employment. Expanding job options for people with disabilities is an ongoing problem faced by government, advocates, and individuals. If transportation and access barriers are reduced, the likelihood of employment rises.<sup>125</sup> Cohousing communities can offer people with disabilities exciting possibilities to be closer to independent living-focused services, as well as meaningful and varied job options. This community-by-design comes to pervade every aspect of daily life—from cooking to working, gardening to commuting. A sense of interdependence can build independence for community members, with or without disabilities, in ways they could not have afforded or envisioned acting alone.

#### *a. Limitations*

For all its strengths, the cohousing model is also limited, particularly where applied to people with disabilities living—or attempting to live—in community with non-disabled people who may not have had previous exposure to the independent living and disability rights movements. As other commentators have noted, disability awareness is one of the “final frontiers” of awareness-raising; even progressive political movements, as found and embodied in cohousing’s model, have often overlooked or minimized its importance.<sup>126</sup> The main obstacles experienced by disabled people in cohousing are attitudinal, consensus-based, and financial.

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125. In examining its own recruitment of workers with disabilities, the EEOC recognized that transportation can be a significant employment barrier. See EEOC, *Improving the Participation Rate of Targeted Disabilities in the Federal Work Force*, <http://archive.eeoc.gov/federal/report/pwtd.html> (last visited Feb. 19, 2010).

126. See generally Bonnie B. Tucker, *Preface* to Sara D. Watson et al., *Discrimination on the Basis of Disability: The Need for a Third Wave Movement*, 3 CORNELL J.L. & PUB. POL’Y 253 (Bonnie P. Tucker ed., 1994) (warning that a one-size-fits-all approach will not work for disability); Vicki Schultz, *Life’s Work*, 100 COLUM. L. REV. 1881, 1938 (2000) (calling for an “inclusive campaign to make the benefits of work available to everyone”).

Two attitudinal barriers have emerged in my discussions with and research of cohousing communities in the United States. One has been strictly on the part of nondisabled residents, while the other has surfaced as a shared issue—albeit experienced differently—for residents regardless of disability status. Some nondisabled residents have expressed concern that people with disabilities might be attracted to cohousing communities because they are looking for assistance that they cannot find elsewhere without additional cost and cohousing can provide that service.<sup>127</sup> However, in seeking support, these individuals are perceived as burdening the cohousing community by not being able to contribute on equal footing to the development of the community, the labor of upkeep, and shared responsibilities.<sup>128</sup> As one non-disabled cohousing member shared candidly about her urban community:

I would say that all cohousing communities are more aware of this [accessibility needs] than the general population. Some built in the late 1980s or early 1990s may be less accessible. But awareness has grown since then.

I must say, however, that when I hear another person with disabilities wants to move in, I'm anxious. We have a number of people over 70 now, up to age 90, and I wonder sometimes what the ratio of able to unable can be in a community and still be a "normal" community. One of our units is being looked at by a 70-year-old woman who has had a stroke and another with a spine problem.

That, in addition to women who have had and died of breast cancer, women whose babies have died, and many who have not contributed to the community because they have new babies or newly adopted children. Or teenagers needing intensive care.

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127. Telephone and e-mail interviews with residents of seven cohousing communities in the United States (confidential) (on file with author).

128. To combat these perceptions of people with disabilities as unequal contributors to society, disability rights advocates have labored to change not only the landscape of scholarship, but also of communities. See, e.g., Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 CAL. L. REV. 841 (1966) (advancing disability rights as the "right to live in the world").

Cohousing has the reputation of being a caring community so it attracts people who need or are likely to need help. But [it] is also labor intensive and people don't see this.<sup>129</sup>

This sense that the sharing is not sharing at all and is an imbalanced division of labor is something that could be internalized by disabled residents, making them feel stigmatized, unwanted, and isolated even within the walls of a defined community.<sup>130</sup> Whether or not nondisabled residents are expressing these concerns freely to their neighbors is uncertain.

For both disabled and nondisabled cohousing members, the issues of access and disability are narrowly defined—posing a second set of attitudinal barriers. When communities were asked about their disabled residents, many of them pointed to people who were blind, had experienced a stroke, used a wheelchair, or were mobility-impaired in some other way. When I prodded them further, relaying the story of *Olmstead* or specifically stating that I was interested in other kinds of disability diversity, they were unsure if it existed. Some residents “suspected” that others had psychological disabilities, but were not “out,” where others surmised that some people might be addressing chronic illnesses quietly and alone. The issue of other disabilities raised some discomfort in my conversations and email exchanges. Without comfort and candor, people with nontraditional or underrepresented disabilities cannot feel at ease living in cohousing or in revealing their disabilities, if they are hidden.

While efforts to make cohousing complexes *physically* accessible are laudable, such as in the case of East Lake Commons, the

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129. Confidential email interview with resident of a U.S. cohousing community (resident would prefer to remain anonymous) (July 11, 2009) (on file with author).

130. These issues and barriers arise in other contexts as well, most noticeably the workplace. Coworkers, for example, may perceive that people with disabilities contribute less to the end-product and are not held to as high of expectations as their non-disabled peers. See Susanne M. Bruyere et al., *Identity and Disability in the Workplace*, 44 WM. & MARY L. REV. 1173, 1180, 1192 (2003) (suggesting that negative stereotypes about workers with disabilities may keep them from being hired, but the most successful tool for dismantling these stereotypes is to hire them).

integration mandate and spirit of *Olmstead* calls for welcoming communities to people from all experiences of disability—from autism to HIV, Down’s Syndrome to depression. With varied disabilities, just as with intergenerational approaches to cohousing, particular life-stage illnesses or impairments can be off-set and celebrated. One person’s disability can compensate for and complement another person’s impairment.<sup>131</sup>

Without a critical core, people with disabilities may also feel silenced in the consensus-based decision-making model of cohousing. Consensus is geared toward having an open discussion where people raise concerns and the group moves toward a position and resolution.<sup>132</sup> People may “stand aside” from the group’s direction. They may also attempt to move the group onto a different path. But the guiding notion is that mutually reached resolution is the goal. When people from minority viewpoints constitute a numerical minority as well, they may be excluded from consensus and still have lingering concerns about the group’s decision.<sup>133</sup>

One disabled, cohousing resident related how he had felt like his effort to enlighten his community about the need to make doorways accessible and stairways safe for people with disabilities had been quashed.<sup>134</sup> He did not attribute the silencing to just the group’s decision to direct its funds toward beautifying the common space with new paint, but also realized that he became quieter and more

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131. See AGYEMAN, *supra* note 47.

132. See Mark Fenster, *Community by Covenant, Process, and Design: Cohousing and the Contemporary Common Interest Community*, 15 J. LAND USE & ENVTL. L. 3, 13–14 (1999) (presenting a model for facilitating minority voices in the consensus model). *But see* FRANK B. CROSS, DECISION MAKING IN THE U.S. COURT OF APPEALS 159–62 (2007) (suggesting that a consensus model in the appellate courts can lead to conciliation by majority members); Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 YALE L.J. 226, 302–03 (2006) (describing how minority members in intentional communities will pick up on changes in social dynamics in the decision-making process and will move toward accommodating the majority).

133. In this sense, the positive benefits on health and well-being created by living in community can come into tension with a decision-making model that might highlight one’s limited power. *But see* Mark Harris, *Mayberry for the Millennium*, VEGETARIAN TIMES, Dec. 1998 (describing the “Roseto effect,” named after a close-knit community in eastern Pennsylvania where people experienced extraordinary health benefits from living in such a supportive neighborhood); Ellickson, *supra* note 132, at 303 (describing how majority members of the community might “informally compensate” minority viewpoints and members and support them on later issues after succeeding with their own agendas).

134. Interview with cohousing resident (June 30, 2009) (on file with author).

resigned to the outcome because he was a minority of one.<sup>135</sup> Friends and neighbors who saw his position outside the meeting did not join his advocacy during the consensus session.

The final barrier for people with disabilities interested in cohousing can be making it financially possible. Because cohousing is either privately fueled or developer-driven, participants need to have savings in reserve or be willing to pay for housing that has been marked up by a developer. The private or profit model can prevent lower income residents from joining communities.<sup>136</sup> While physical access is cheaper when it is planned for from the time of groundbreaking, people with disabilities may not be able to participate this early in the process because of limited financial resources.<sup>137</sup> Making cohousing affordable is the next issue that I will address.

#### *b. Creating Incentives in the System—Affordability*

Affordability remains an intimidating barrier for realizing the potential of cohousing for people with disabilities. One critique levied against the sustainable housing movement has been that it is a dream only attainable by the middle and upper classes. Naysayers of the independent living movement have also attacked the full integration of people with disabilities in their communities on grounds of expense.<sup>138</sup> These arguments are crumbling, however, as

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135. See Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERKELEY J. GENDER L. & JUST. 101 (2010) (discussing the experiences of women with disabilities in the legal profession as a “minority of one” in many employment settings).

136. See Young, *supra* note 118, at 126 (describing the adaptive nature of cohousing and its ability to be tailored to the financial needs of groups of individuals, particularly people with mobility impairments); see also Geoph Kozeny, *Cohousing: Affordable Housing?*, 127 COMMUNITIES 79, 79–80 (2005) (providing the examples of subsidized units and neighborhood retrofits as potential solutions to economic hurdles in cohousing).

137. See, e.g., Lisa I. Iezzoni, *Blocked*, 27 HEALTH AFF. 203, 208–09 (2008) (discussing the costs of retrofitting spaces later and arguing that “planning ahead for physical access is cheaper”); Robin Paul Malloy, *Inclusion by Design: Accessible Housing and the Mobility Impaired*, 60 HASTINGS L.J. 699, 733 (2009) (providing the example of wider doorways to argue that planning ahead for access may cost “\$50” vs. retrofitting at a cost of “\$700”).

138. Supporters of cohousing, however, often argue that the model gets people *away* from a yuppy lifestyle, dominated by consumerism and self-indulgence. See Reihan Salam, *A Call for Yuppie Communes*, GOOD MAG., Nov. 28, 2007, available at <http://www.good.is/post/a-call-for-yuppie-communes/>; David Wann, *Laboratories of Social Change or “Yuppie Communes”?*,

more government and private programs make cohousing and other alternatives within reach for more people with disabilities. Recently, President Obama announced a broad government initiative to finance housing options for people with disabilities, but the overwhelming emphasis remains on rentals.<sup>139</sup>

While most of HUD's initiatives seem to be targeted at public housing and rental options for people with disabilities,<sup>140</sup> HUD offers three main affordable housing ownership programs—HOME Investment Partnerships, Self-Help Homeownership (SHOP), and the Homeownership Zone.<sup>141</sup> HOME provides direct assistance to state and local governments, under the auspices of the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. 12748 § 218. Since its inception, the program has transformed more than 450,000 affordable housing units and provided 84,000 tenants with rental assistance.<sup>142</sup>

SHOP works similarly, while directing its attention to partnerships with nonprofits. Nonprofits use the assistance to purchase home sites

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<http://www.cohousing.org/rc/labs> (“We’ve built and maintained do-it-ourselves communities because we believe there’s much more to a neighborhood than redundant rows of houses and hallways without any other humans in sight. As a self-selecting band of social and environmental activists, we decided that if the market wouldn’t supply ‘neighborhoods on purpose,’ we’d do it ourselves.”) (last visited August 28, 2009).

139. In commemoration of *Olmstead*'s anniversary, President Obama and HUD announced that they would be offering housing assistance to 4,000 non-elderly Americans with disabilities; 1,000 of those individuals would be transitioning from institutional settings to community living. Press Release, U.S. Dep't of Housing & Urban Development (June 22, 2009), <http://www.hud.gov/news/release.cfm?content=pr09-095.cfm>. On September 23, 2009, HUD announced \$500 Million in Recovery Act Grants to increase the availability of affordable housing and to “green” public housing. See Press Release, U.S. Dep't of Housing & Urban Development, HUD Announces \$500 Million in Recovery Act Grants to Add Affordable Housing, “Green” Existing Public Housing, (Feb. 19, 2010), [http://portal.hud.gov/portal/page/portal/HUD/press/press\\_releases\\_media\\_advisories/2009/HUDNo.09-185](http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2009/HUDNo.09-185).

140. HUD offers various options for housing assistance for people with disabilities, including vouchers, tax credits, and home modification loans. See HUD.gov, Information for Disabled Persons, [http://portal.hud.gov/portal/page/portal/HUD/topics/information\\_for\\_disabled\\_persons](http://portal.hud.gov/portal/page/portal/HUD/topics/information_for_disabled_persons) (last visited Sept. 24, 2009).

141. More information about these programs is available on HUD's website: <http://www.hud.gov/offices/cpd/affordablehousing/index.cfm> (last visited Sept. 24, 2009). HUD defines “affordable housing” as housing that costs no more than thirty percent of a family's income.

142. HUD's HOME Program, <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/> (last visited Sept. 24, 2009).

or to improve existing homes and to make them available to low-income residents through sweat equity and volunteer efforts.<sup>143</sup>

HUD's third program is in need of a funding infusion, but holds the most promise for the marriage of cohousing and independent living. The Homeownership Zone (HOZ) encourages communities to reclaim abandoned or blighted areas and transform them into new urbanist, smart design neighborhoods of single-family homes.<sup>144</sup> The program was last funded in 1997, however, and has collected some dust on HUD's website. While it may have intended to be a demonstration program, HOZ's core principles of sustainability, affordability, and ownership resonate well with *Olmstead's* vision. Its approach could be applied to higher density communities where single-family properties are not viable or desirable.

Where the government has perhaps disappointed affordable housing activists, communities have attempted to generate alternatives of their own. Community financing initiatives are making sustainable housing more feasible, but these initiatives need to be expanded to include cohousing and accessible communities. For example, community lenders and credit unions have stepped into lending spaces to facilitate the connection of potential homeowners with green housing, but these programs have not had home accessibility and the community integration of people with disabilities as core features.<sup>145</sup> Innovative programs, such as location-efficient mortgages (LEMS), are becoming more common in sustainability-oriented cities such as Boston and San Francisco.<sup>146</sup> At the same time, the financial crisis has had a profound impact on the overall mortgage market, leading to increased denial rates of mortgage applications.<sup>147</sup>

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143. HUD's SHOP, <http://www.hud.gov/offices/cpd/affordablehousing/programs/shop/> (last visited Sept. 24, 2009). SHOP was a creation of the Housing Opportunity Program Extension Act of 1996, 42 U.S.C. 12805 § 11 (2000).

144. HUD's HOZ, <http://www.hud.gov/offices/cpd/affordablehousing/programs/hoz/> (last visited Sept. 25, 2009).

145. AGYEMAN, *supra* note 47, at 60.

146. *Id.*

147. At least, as of late August 2009, mortgage application rates were continuing to rise, showing hopeful signs for economic improvement. Press Release, Mortgage Bankers Association, Mortgage Applications Increase in Latest MBA Weekly Survey (Aug. 26, 2009),



Other potential incentives and assistance for increasing cohousing options for people with disabilities could take the form of new tax incentives, revisited urban planning policies (both state and local), zoning flexibility, and national disability policymaking.<sup>148</sup> At the grassroots level, however, models such as “A Home For Mike” at the CoHo cohousing community in Corvallis, Oregon, make the dream of independent living more accessible, even if it does not come with ownership.<sup>149</sup> The community members of CoHo have taken their grassroots effort farther by conducting workshops at green living expos, cohousing conferences, and other venues.<sup>150</sup> They are trying to disseminate the message that cohousing and access are complementary. So far, their efforts have been well received and the biggest concerns voiced in the various workshops have been how to get started.<sup>151</sup> The CoHo members are struck by how well informed or interested non-disabled people seem to be in a model that places disability at its core.<sup>152</sup>

These various approaches are encouraging and each worthy of independent exploration; that project is well beyond the scope of this article. In summary, the realities of living with a disability include decreased access to material resources, systemically reinforced dependence on state and federal resources, and rampant societal

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<http://www.mbaa.org/NewsandMedia/PressCenter/70129.htm> (last visited Aug. 28, 2009). A recent CBS Evening News segment emphasized, however, that fifty-percent of mortgage applications are being denied currently, in comparison to almost ninety-percent of applications being approved before the financial crisis. Ben Tracy, *Consumer Credit Squeezed in New Economy*, CBS EVENING NEWS, Sept. 15, 2009,

<http://www.cbsnews.com/stories/2009/09/15/eveningnews/main5313868.shtml?tag=contentMain;contentBody>.

148. See generally Christina Kubiak, *Current Issues in Public Policy: Everyone Deserves a Decent Place to Live: Why the Disabled Are Systemically Denied Housing Despite Federal Legislation*, 5 RUTGERS J.L. & PUB. POL’Y 561, 563–64 (2008) (emphasizing that despite these programs, people with disabilities must still attempt to overcome the impossible attitudinal barriers of non-disabled people, particularly landlords, not wanting them in their neighborhoods).

149. The rental rate for the designated unit for people with disabilities, which is currently occupied by Mike Volpe, is about \$700 per month. Interview with community members (July 6, 2009). More information is available at AHIC, <http://www.ahomeincommunity.org/ahomeformike.html> (last visited Aug. 28, 2009).

150. Interview with CoHo community members (July 6, 2009).

151. *Id.*

152. *Id.*

devaluation and bias.<sup>153</sup> These factors must be at the center of any efforts to reform housing options for people with disabilities.<sup>154</sup>

## CONCLUSION

Housing accessibility is about more than wider doorways, ramped entrances, and tactile signage. It is also more than a private fight by an individual for his or her own space in which to live.<sup>155</sup> The privatization of the needs of people with disabilities falsely removes the element of discrimination that is present in the design of communities, cities, and dwellings. Access, therefore, is about the attitudes that shape living and community spaces and that provide for affordability, healthy living, and connections to the surrounding community and the natural environment. Eco-friendly cohousing opportunities that welcome and recruit people with a wide range of disabilities are at the core of a movement toward more inclusive neighborhoods that benefit all residents—disabled or not. They shape living and working options for people with disabilities, while also informing attitudes of non-disabled neighbors. Cohousing's participatory, egalitarian, intergenerational, "aging-in-place" model embraces a variety of life stages and challenges, and resonates with *Olmstead's* integration mandate and the green and independent living

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153. These realities were acknowledged globally in the drafting and adoption of the U.N. Convention on the Rights of Persons with Disabilities. Recently, President Obama signed the Convention, and it will require the advice and consent of the Senate. Joseph Shapiro, *U.S. Seeks Senate Help on U.N. Disability Rules* (National Public Radio broadcast July 24, 2009), <http://www.npr.org/templates/story/story.php?storyId=106989042>.

154. Other cohousing communities, apart from the ones profiled, are taking a lead in making intergenerational, accessible, and affordable housing options. For example, Prairie Onion Cohousing is in the initial stages of development in a formerly blighted neighborhood in the Bronzeville section of Chicago. Its vision statement clearly encompasses the values articulated by the independent living and green movements: "Prairie Onion Cohousing will create and sustain an intergenerational cohousing community within the city of Chicago designed to minimize environmental impact, encourage strong ties among residents and foster interaction with the larger neighborhood." Prairie Onion Cohousing, <http://www.prairieonioncohousing.org/vision.html> (last visited Feb 19, 2010). The cohousing group's website emphasizes the affordability of the project, accessibility, and connections to the surrounding community. The author contacted this group, but it was too early in the implementation process to speak about the effects of their access-oriented decisions. Prairie Onion Cohousing, <http://www.prairieonioncohousing.org/index.html> (last visited Sept. 9, 2009).

155. See generally Malloy, *supra* note 137, at 748 (arguing for universal design in all single-family homes and for the "public nature of private residential housing").

movements.<sup>156</sup> With the appropriate state and federal supports in place to make this form of smartly designed neighborhood available to a wider range of people, cohousing becomes a desirable and superior alternative to institutional living and group homes for many people with disabilities and many people without disabilities who might experience them at some point in their lives. To live in an inclusive, respectful community is to live in dignity and harmony with society, nature, and the interdependence of humanity.

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156. See generally Jung Shin Choi, *Evaluation of Community Planning and Life of Senior Cohousing Projects in Northern European Countries*, 12 EUR. PLAN. STUD. 1189 (2004) (providing an overview of seniors' likes and dislikes about cohousing, but mostly focusing on Sweden and the Netherlands).