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Building a Community Base for Housing Development in the 1990s: A Modest Proposal for Buffalo, New York

GEORGE M. HEZEL*

PLANNING for decline is only slightly more attractive than planning a funeral. For that reason it is seldom done. As a political enterprise, planning for decline is particularly hazardous and is seldom something anyone politically sensitive will own up to having done.¹ In Buffalo in the 1990s, such an enterprise may not only be necessary, it may also be an essential element of planning for new opportunities concealed by the specter of decline.

In the first part of this short essay, the demography of Buffalo's housing conditions will be described as well as some of the economic causes. Trends in the local low income housing "market" will also be identified. The second part of this essay will describe the existing housing development infrastructure and current development activities undertaken both by the private and public sectors. The final section will propose an agenda which might be pursued in the course of this decade to enhance the prospects of realizing new opportunities for community based development activities.

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1. Daniel P. Mulvey, S.J., frequently uttered these thoughts when discussion turned, as it often did when we collaborated in the Division of Housing at Catholic Charities, to the subject of planning for Buffalo's housing needs. Mulvey may have been recalling something he had read or, more likely, he may have been drawing from his own observations on political life. This essay is dedicated to the memory of Mulvey, who died on November 9, 1990, after spending much of the last thirteen years of his life trying to persuade all who would hear him of the need for community based development in Buffalo. Mulvey was instrumental in the creation of two local supports for community based development - Delta Development of Western New York, Inc. and Jubilee Community Development Loan Fund, Inc., both described *infra*.

1. INTRODUCTION

The Buffalo area has been battered by several decades of economic and social decline, including population loss, loss of industrial base and employment infrastructure, and loss of housing stock affordable to low income families.² The 1980s have witnessed resurgence in Buffalo, but only in selected sectors. Most evident among the beneficiaries of the renaissance are the central business district, the waterfront, and selected neighborhoods bordering the central business district such as the Pratt-Willert neighborhood on the Eastside of Buffalo. While these sectors have thrived on developments spurred by focused policy and public decision-making and ample federal, state and local development funds, many sectors, particularly the Eastside neighborhoods, have declined further. Factors in this decline have included misdirected public policy, lack of consensus within the neighborhoods, lack of organizational infrastructure, and concomitant inattention to focused advocacy for needed development funds available from governmental sources. These same sectors have suffered from a lack of technical and planning support necessary to sustain development.

Decades of decline have taken their toll not only on the neighborhoods' commercial and industrial bases but also on the available housing stock.³ Housing, once both ample and affordable in almost all neighborhoods in the City of Buffalo, has become a premium in most areas as a result of two decades of relentless demolitions following years of inattention to code enforcement and ravages of time. Low income housing has become particularly scarce in Buffalo and the two counties comprising the Consolidated Metropolitan Statistical Area, as a recently published survey and study indicate.⁴

The decline in availability of low income housing combined with the presence of several relatively new state development programs as well as some new initiatives from the federal Department of Housing and Urban Development, offers a new opportunity for community based organizations ("CBOs") existing within low income neighborhoods of Buffalo.⁵

2. See Perry, *The Politics of Dependency in Deindustrializing America: The Case of Buffalo, New York*, in *THE CAPITALIST CITY* (Feagin & Smith eds. 1987) [hereinafter Perry]. See also P. LEONARD, *A PLACE TO CALL HOME: THE CRISIS IN HOUSING FOR THE POOR—BUFFALO, NEW YORK* (1988) [hereinafter LEONARD].

3. Perry, *supra* note 2, at 119 and 125.

4. P. LEONARD, *supra* note 2, at 37.

5. The New York State Low Income Housing Trust Fund Program, N.Y. PRIV. HOUS. FIN. LAW § 1100 (McKinney Supp. 1991), and the Affordable Home Ownership Development Program, N.Y. PRIV. HOUS. FIN. LAW § 1110 (McKinney Supp. 1991), are two good examples of state devel-

A vital network of CBOs having the capacity and credibility for undertaking housing development activities can make a needed contribution to the City of Buffalo by enhancing the stock of critically needed low income housing. At the same time, this network of CBOs could secure a measure of control over the development, ownership and management of this newly created asset and expand jobs available to the presently under-employed segments of the City.⁶

To undertake housing development activities, however, and thus to capture available employment opportunities and control of newly created assets, CBOs will need to make critical choices about their roles in housing development. In addition, concerted advocacy calling for a shift in housing policy focus by city administrators will have to be undertaken. Finally, an infrastructure consisting of planning and other technical services will have to be aligned to support this development venture.

2. CHANGES IN ECONOMY, DEMOGRAPHY AND HOUSING CONDITIONS IN BUFFALO

As Buffalo begins the 1990s, its population hovers near 350,000, roughly the same number as resided in the City in 1900.⁷ The similarity between the Buffalo of the turn-of-the-century and the Buffalo of today stops at population count, if one agrees with the analysis of David C. Perry and the staff of the Center for Regional Studies. At the turn of the century, Buffalo was at the center of the national economy, boasting the third largest port in the country and the second largest rail terminus.⁸ Both economy and industrial base were expanding along with Buffalo's population.⁹ The forecast for the end of the century is not nearly as rosy, according to Perry:

At present, prospects for the region to regain its place at the center of the economy are doubtful. The population has suffered a precipitous decline and the sex and age structure of those who remain exhibits disturbing signs of long-term unemployment, welfare and age-based dependency and poverty.¹⁰

Described as the "demography of dependency," patterns of data on

opment programs. The Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. No. 101-625, 104 Stat. 4079 (1991), is the new federal housing development agenda recently enacted.

6. See Schramm, *Local, Regional, and National Strategies*, in *BEYOND THE MARKET AND THE STATE: NEW DIRECTIONS IN COMMUNITY DEVELOPMENT* (Brwyn & Meehan eds. 1987).

7. Perry, *supra* note 2, at 119.

8. *Id.*

9. *Id.*

10. *Id.* at 125.

Buffalo from the United States Department of Commerce and the New York State Department of Social Services suggest that the Buffalo of the 1990s will host an aging population, increased structural unemployment and increased reliance on long-term welfare assistance.¹¹ Needless to say, such patterns have a dramatic impact on the capacity of the City and region to provide affordable housing for its low income residents. Not surprisingly, recently published data from the American Housing Survey done in 1984 for the Buffalo Consolidated Metropolitan Statistical Area confirmed projections found in earlier analyses.¹² But even those who habitually studied the Buffalo housing scene were stunned by the Survey findings.

According to one analysis of these data, prepared by the Center on Budget and Policy Priorities, the housing burdens carried by poor households in the Buffalo area have grown dramatically in the past eight years.¹³ Using as a standard of affordability that no more than 30% of household income should be consumed in housing costs, the study discovered that 94% of poor households in the Buffalo area were paying more than they could afford to house themselves.¹⁴ Even more startling were two correlative findings: 75.3% of all poor renter households in the Buffalo area were spending at least 50% of their available income on housing, and 52% of all poor renter households in the Buffalo area were spending at least 70% of their available income for housing costs.¹⁵ Figure 1 displays these facts in graphic form:¹⁶

11. *Id.* at 126.

12. *See* P. LEONARD, *supra* note 2, at iii.

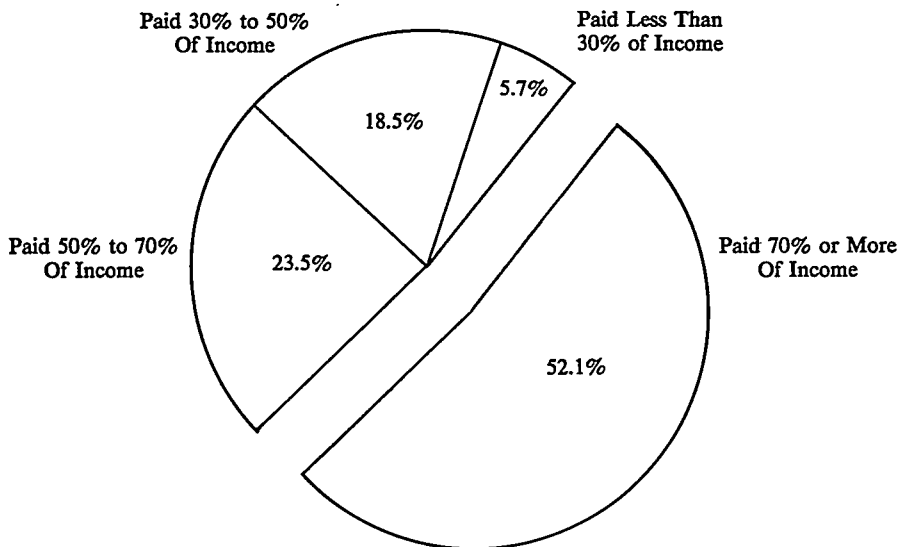
13. *Id.* at 2.

14. *Id.* The Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, Title III, § 322, 95 Stat. 400 (codified as amended at 42 U.S.C. § 1437a (a) (West Supp. 1990)), shifted the standard of affordability from 25% to 30% of family income. Were we to use the more stringent pre-1981 standard of affordability, a more intensified burden of housing costs would be displayed.

15. P. LEONARD, *supra* note 2, at 2.

16. *Id.* at 3.

FIGURE 1
 PERCENT OF INCOME SPENT ON HOUSING BY POOR
 RENTERS IN BUFFALO, 1984



Source: U.S. Census Bureau
 American Housing Survey, 1984

The impact of these housing cost burdens begins to resonate when one examines the amount of money left in the poor family's budget for food, clothing and all other expenses after paying the rent. For example, a family of three, at the high side of the poverty line, with an annual income of \$8,277, would have \$690 available for all family expenses. But if that hypothetical family paid 70% of its available income on housing costs, it would have just \$207 left for all other household expenses.¹⁷ The median, or more typical, poor family in the Buffalo area had an income of \$5,000 when data were gathered for this study in 1984. If that typical poor family had to pay 70% of its monthly income for rent, the family would have only \$125 remaining for all other household expenses.

The number of households in Buffalo with incomes of less than \$5,000 was 37,600¹⁸, not an insignificant percentage of the total number of Buffalo households.¹⁹ The number of units in Buffalo which would

17. *Id.* at 4.

18. *Id.* at 11.

19. Bureau of the Census, U.S. Dep't of Commerce and the Office of Policy Development and

rent at what is considered affordable rents, using the Department of Housing and Urban Development standard,²⁰ is 12,100. Even assuming that each of the 12,100 units were rented to one of the 37,600 poor households, an assumption without a basis, there would be a shortage of 25,000 units of affordable housing for this one category of renters alone.²¹

Turning to a second category of renters at the lower end of the Buffalo rental market, the family with an annual income of less than \$10,000, the survey finds a shortage of 10,700 affordable units in 1984.²² More significantly, however, a comparison of data gathered for this category of renter in 1976 and 1984 shows a worsening trend in the housing market in Buffalo. While in 1976 a surplus of about 5,000 units affordable to this category of renter existed, by 1984 the surplus was erased and a 10,700 unit shortage had developed.²³ How is it possible to have a market swing of 15,700 units in just eight years? The answer assuredly does not lie on the supply side of this market, since the number of units affordable to this segment of the market grew by almost 5,000 units during those eight years.²⁴ Rather, the explanation is found in the demand side of the market, where the number of households with annual incomes below \$10,000 grew during the eight year period.²⁵ The following table showing a comparison of income and housing costs in Buffalo between 1976 and 1984 illustrates this point:²⁶

Table 1. Income and Housing Costs in Buffalo, 1976 and 1984

	1976	1984	Change
Renters			
Median Annual Income	\$14,186	\$10,916	-23%
Median Monthly Housing Cost	285	289	+1.4
Owners (with Mortgage)			
Median Annual Income	\$26,814	\$24,219	-10%
Median Monthly Housing Cost	427	464	+ 9

Research of the U.S. Dep't of Housing and Urban Development, HOUSING CHARACTERISTICS FOR SELECTED METROPOLITAN AREAS: BUFFALO, NEW YORK CONSOLIDATED METROPOLITAN STATISTICAL AREA (1988).

20. P. LEONARD, *supra* note 2, at 11.

21. *Id.* at 12.

22. *Id.* at 10.

23. *Id.* at 8.

24. *Id.* at 8, 10.

25. *Id.* at 38.

26. *Id.*

Between 1976 and 1984 the median annual household income in Buffalo dropped from \$14,186 to \$10,916, a decrease of 23%, which placed new pressure on the low end of the rental market. The drop in median annual income would seem also to indicate that some of the shifts in job base projected by Perry had already begun to be felt in Buffalo in 1984.²⁷

The net effect of the changes noticed in these two studies of the local economy and housing conditions is to create a gap of at least 35,700 units of housing affordable to households with incomes below \$10,000. What is more, if Perry's worst fears are borne out, the trend will worsen over the remaining years of this decade, due largely to additional pressures on the demand side of this segment of the market,²⁸ and by the end of this century an even more daunting gap will have developed.

Entirely apart from the pressure exerted on the demand side of the low income housing market, three additionally significant, but unaccounted for, factors loom large on the supply side of the market. Individually, each factor will squeeze an already tight market; in combination, the factors could create a crisis. The first, lapsing low income use restrictions on multi-family units federally subsidized under below market interest rate and mortgage subsidy programs,²⁹ may permanently remove as many as 2,916 units from this part of the market³⁰. Built during the 1960s and 1970s with the assistance of mortgage subsidies provided by the federal government, these units, though owned and managed privately, are rent restricted for the terms of their mortgages.³¹ The mortgages covering these 2,916 units make them ripe for buyout in the 1990's. Discharge of these mortgages will also discharge the owners' obligations to limit eligibility to low income tenants and to restrict rents.³² Particularly vulnerable among these units are the 1,181 units located sufficiently close to the upscale waterfront and central business district new housing

27. Perry, *supra* note 2, at 126.

28. *Id.* at 125-6.

29. These two programs are authorized by § 236 of the National Housing Act, ch. 847, Title II, 48 Stat. 1247 (1934), as amended by Act of Aug. 1, 1968, Pub. L. No. 90-448, 82 Stat. 498 (1968) (current version at 12 U.S.C. § 1715z-1 (1988)) and § 221(d) of the National Housing Act, ch. 847, Title II, 48 Stat. 1247 (1934), as amended by Act of Aug. 23, 1954, ch. 649, Title I, 68 Stat. 599 (1954) (current version at 12 U.S.C. § 1715l-(d)(3) (1988)). Units subsidized under these two programs are subject to rent restrictions only for the terms of their mortgages.

30. U.S. DEP'T OF HOUSING AND URBAN DEV., BUFFALO AREA OFFICE, SURVEY OF SUBSIDIZED HOUSING IN ERIE COUNTY, NEW YORK (Sept. 28, 1990) [hereinafter SURVEY OF SUBSIDIZED HOUSING] (available at the Charles B. Sears Law Library, University at Buffalo, as part of a compilation of housing information entitled SELECTED HOUSING INFORMATION FOR WESTERN NEW YORK (1991) [hereinafter HOUSING INFORMATION]).

31. 12 U.S.C. § 1715z-1; 12 U.S.C. § 1715l-(d)(3).

32. 12 U.S.C. §§ 1715z-1 & 1715l-(d)(3).

developments to make them especially attractive candidates for gentrification.³³

The second factor which can be expected to affect the supply side of the low income housing market in Buffalo is the operating capacity of the Buffalo Municipal Housing Authority ("BMHA") itself. In November of 1959 BMHA had a total of 6,621 units of housing in its stock.³⁴ Between 1966 and 1982, BMHA added to its stock 976 units, primarily for housing the elderly.³⁵ Yet in 1990, BMHA reported having a stock of only 5,688 units and occupancy of only 4,194 units.³⁶ The inventory and occupancy report recognizes the incapacity of BMHA to recapture 1,909 units of its stock for low income use because the units have long been vacant and now require gut rehabilitation which would cost as much or more than brand new units.³⁷ Written off of the inventory list are three entire projects—Dante Project, Ellicott Mall and Kensington Heights. These projects were constructed between 1952 and 1959, and contain a total of 1,577 units.³⁸ Also written off the inventory list is a large portion of a fourth project, Douglass Towers, containing 335 units.³⁹ The gap currently existing between inventory and occupancy—a gap of 1,494 units—may tell of additional units which will have to be removed from inventory in the years immediately ahead.⁴⁰ Assuming that BMHA is able to preserve a substantial number of those units through aggressive marketing and tightened management, it would not appear prudent to rely on BMHA to expand the supply of low income housing in the near future.

The third factor relates to the capacity of the development infra-

33. SURVEY OF SUBSIDIZED HOUSING, *supra* note 30. Specific reference is made to the Shoreline Apartments and Towne Garden Apartments (also referred to as Ellicott Community Redevelopment and Ellicott Redevelopment). Each of these complexes is made more attractive by the proximity of new developments of single family homes with assistance from the New York State Affordable Housing Program. See N.Y. PRIV. HOUS. FIN. LAW §§ 1110-1113 (McKinney 1985).

34. BUFFALO MUNICIPAL HOUSING AUTHORITY, DATA ON OCCUPIED PROJECTS UNDER MANAGEMENT (Sept. 1989) [hereinafter PROJECTS UNDER MANAGEMENT] (available in HOUSING INFORMATION, *supra* note 30).

35. *Id.*

36. BUFFALO MUNICIPAL HOUSING AUTHORITY, OCCUPANCY AND MARKETING DEP'T, COMPARISON VACANCY REPORT [hereinafter COMPARISON VACANCY REPORT] (available in HOUSING INFORMATION, *supra* note 30).

37. See, e.g., Ellicott Mall Partnership Turnkey Application (Feb. 3, 1990) (available in HOUSING INFORMATION, *supra* note 30), filed under N.Y. PRIV. HOUS. FIN. LAW § 1106 (McKinney Supp. 1991). The projected cost of rehabilitating just one of the eight vacant towers is estimated at more than \$4.5 million, a cost of more than \$70,000 per unit.

38. PROJECTS UNDER MANAGEMENT, *supra* note 34.

39. *Id.*; COMPARISON VACANCY REPORT, *supra* note 36.

40. COMPARISON VACANCY REPORT, *supra* note 36.

structure in Buffalo to create a stream of newly available affordable units. As the following section of this essay shows, the low income housing development infrastructure currently available in Buffalo does not generate confidence that the gap existing now, much less the projected gap, can be closed without concerted future action. Required, above all, are deliberate efforts to enhance the capacity of the development system to generate new units of housing and to rehabilitate older units at rents affordable to households with incomes below \$10,000.

3. BUFFALO'S LOW INCOME HOUSING DEVELOPMENT INFRASTRUCTURE

Low income housing development activities tend to follow the path of existing subsidy programs. This is so because, to a greater degree than market-driven housing developments, low income development requires the interjection of federal, state, and local governments in the development process.⁴¹ The stream of low income development activities in Buffalo over the past four decades, not surprisingly, therefore mirrors available governmental subsidy programs. In the 1950s, more than 2,500 units of low income public housing were developed on the Eastside of Buffalo, prompted primarily by the availability of state public housing development funds.⁴² Similarly, from the mid-1960s through the 1970's, massive development of housing for the elderly followed federal housing program allocations under Section 202.⁴³ Most recently, the funds available under the state affordable housing program have spawned a swarm of single-family new construction developments in the City.⁴⁴ These new single-family projects, though beneficial to the City in terms of new tax base, are targeted to moderate rather than low income families.⁴⁵ Accordingly, the single-family home construction program cannot be expected to address the current deficit of low income units in the Buffalo area.

41. See Jacobs et al., GUIDE TO FEDERAL HOUSING PROGRAMS (BNA) 12 et seq. (1985).

42. PROJECTS UNDER MANAGEMENT, *supra* note 34.

43. *Id.*; SURVEY OF SUBSIDIZED HOUSING, *supra* note 30.

44. DEP'T OF INSPECTIONS AND COMMUNITY REVITALIZATION, CITY OF BUFFALO, ANNUAL REPORT, 1989 ACTIVITIES SUMMARY (Jan. 25, 1990) [hereinafter 1989 ANNUAL REPORT] (available in HOUSING INFORMATION, *supra* note 30). See also Buffalo News, Nov. 25, 1990, at B1.

45. Buffalo News, Dec. 16, 1990, at A1. The regulatory framework of the program, found at 21 N.Y.C.R.R. §§ 2160 - 2187 (1985), under which the homes are subsidized, would appear to target moderate to low income occupants. See 21 N.Y.C.R.R. § 2164.35(c) (1985). The news account referenced above suggests that some occupants have income above the moderate level. In either case, the units are clearly not targeted to low income families.

The demise of a major portion of federally subsidized low income development programs beginning in the early 1980's signaled hard times for the low income development infrastructure in urban areas.⁴⁶ For that reason, the 1980's witnessed the emergence of state funded low income housing development programs to pick up the development slack created by the demise of federal development programs.⁴⁷ By the mid-1980's, the State of New York had enacted three new development programs targeted at three separate income strata beginning in 1983. The first of these state programs was intended to address the increasingly visible problem of the homeless.⁴⁸

The Homeless Housing and Assistance Program ("HHAP") was enacted in 1983 and the sum of \$50 million was allocated for a four year period.⁴⁹ The primary purpose of the program, as its name indicates, was to develop sufficient numbers of emergency shelters and other temporary shelters to house the street homeless and others rendered homeless by virtue of a variety of hardships. Though originally intended to be terminated four years after its enactment, the program lingers on with a somewhat broadened scope.⁵⁰ The second state program was enacted as a response to what was perceived to be the withdrawal of the federal government from low income housing development in 1981.⁵¹ The Housing Trust Fund Program ("HTF") was established initially to rehabilitate existing buildings into residential units for low and very low income households.⁵² An annual allocation of not less than \$25 million was committed to this program for an unspecified number of years.⁵³

Of particular interest was the feature of this program which gave an eligibility preference to community-based housing development corporations.⁵⁴ The program also provided a development bonus in the form of additional administrative funding to community-based housing develop-

46. See Dolbeare, *The Low-Income Housing Crisis*, in AMERICA'S HOUSING CRISIS 29 (C. Hartman ed. 1983).

47. See, e.g., N.Y. SOC. SERV. LAW § 41 (McKinney Supp. 1991); N.Y. PRIV. HOUS. FIN. LAW §§ 1100-1103, 1106-1106(g), 1110-1113, 1120-1123 (McKinney Supp. 1991).

48. N.Y. SOC. SERV. LAW § 41 (McKinney Supp. 1991).

49. *Id.*

50. See N.Y. PRIV. HOUS. FIN. LAW §§ 63-69 (McKinney Supp. 1991) (Article III-A of the Private Housing Finance Law created the Permanent Housing For Homeless Families Program. This program substantially expands the scope of the Homeless Housing and Assistance Program (HHAP)).

51. N.Y. PRIV. HOUS. FIN. LAW § 1100 (McKinney Supp. 1991).

52. *Id.*

53. 1985 Session Laws, ch. 67, N.Y. PRIV. HOUS. FIN. LAW § 1100 (McKinney Supp. 1991).

54. N.Y. PRIV. HOUS. FIN. LAW § 1101(7) (McKinney Supp. 1991).

ment corporations for each project successfully completed.⁵⁵ The third state development program, the Affordable Home Ownership Development Program, targeted the moderate income household interested in home ownership but unable to purchase a home because of limited income and high housing costs.⁵⁶ This program, when combined with a related development subsidy, yields a capital subsidy of up to \$25,000 per unit of new housing.⁵⁷ An annual allocation of \$25 million was committed to this program.

Although these several development subsidy programs have been available for several years, few of Buffalo's community based housing corporations have successfully used them. Of those few that have been able to secure funding reservations under these state programs, almost without exception each has had to rely on private developers rather than on-line staff to carry out the development function.⁵⁸ The lion's share of housing development subsidies allocated under the state's affordable housing program to the City has been used by for-profit developers to develop and market new single family houses for moderate income families.⁵⁹ Even subsidies allocated to the City under the HTF, a program with a designed preference for and financial incentive to not-for-profit corporations, have gone largely unused by not-for-profits.⁶⁰ Of the three largest projects funded under this program in the City, two have been undertaken by for-profit entities which in effect have ghost-developed the projects for their partner not-for-profit CBOs for which funding reservations had been made.⁶¹

One wonders why the fifteen CBOs operating in the City and funded by the City's Department of Community Development have been so reluctant to enter the field of low income housing development, particularly in view of the overwhelming need for such housing demonstrated in

55. N.Y. PRIV. HOUS. FIN. LAW §§ 906(2), 1006(2) (McKinney Supp. 1991).

56. N.Y. PRIV. HOUS. FIN. LAW §§ 1110-1113 (McKinney Supp. 1991).

57. N.Y. PRIV. HOUS. FIN. LAW §§ 1110-1113, 1130-1133 (McKinney Supp. 1991).

58. Of five funded projects in Buffalo only three have more than 10 units each—Emerson Rowhouses, School 62 conversion, and St. Ann's Apartments. The Emerson Rowhouse and School 62 projects both have been undertaken principally by for-profit, private developers. St. Ann's Apartments is being developed by Delta Development of Western New York, Inc., a not-for-profit development company. Interview with Joseph V. Schollard, Commissioner, Dept. of Inspections and Community Revitalization, City of Buffalo, Oct. 22, 1990.

59. Buffalo News, Nov. 25, 1990, at B1, col. 1.

60. Compare figures contained in The Buffalo News, Nov. 25, 1990, in which projects costing more than \$53 million were undertaken with subsidies from the Affordable Housing Program and figures contained in the 1989 ANNUAL REPORT, *supra* note 44.

61. See *supra* note 58.

recently published reports.⁶² The answer probably lies principally in the structure of the typical CBO as well as in the lack of mediating institutions to support community-based development. One suspects too that the typical financing package necessary to support low income housing development is so complex that it makes many wary of attempting to understand and use it. Finally, the amount of energy and resources necessary just to make an initial assessment of feasibility—an essential element of any proposal for federal, state or local funding—undoubtedly frightens off many not-for-profit corporations.

In the City of Buffalo, nineteen CBOs are listed on the roster of housing programs funded with community development block grant funds in 1990-1991.⁶³ Of those corporations sixteen are slated to receive a total of \$1,029,455 in administrative support from block grant funds, an average of nearly \$75,000 per corporation.⁶⁴ In addition, those corporations will also receive more than \$1.3 million in administrative support from the State of New York through the neighborhood preservation program,⁶⁵ an average of just under \$90,000 per corporation.⁶⁶ On average, then, each of these corporations can expect to receive nearly \$165,000 in administrative support from these two sources of revenue. Administrative support is used to pay the salaries and benefits of staff and to pay for office overhead. While \$165,000 is hardly enough in revenues to qualify a corporation for inclusion in the Fortune 500 largest corporations, it might be considered an ample starter fund for a community-based not-for-profit development corporation, were the corporation free to focus on development activities exclusively.

Each of these fifteen corporations, however, is charged by virtue of receiving administrative support from block grant and neighborhood preservation program funds with managing several service oriented housing programs such as the free paint program, the home security program, and the rehabilitation loan and grant program.⁶⁷ While on-line staff devotes much of its time to servicing these several programs, executive staff spend many hours justifying expenditure of administrative support mon-

62. See P. LEONARD, *supra* note 2.

63. CITY OF BUFFALO, LIST OF COMMUNITY ASSISTANCE ORGANIZATIONS (Sept. 1990) [hereinafter COMMUNITY ORGANIZATIONS LIST] (available in HOUSING INFORMATION, *supra* note 30).

64. CITY OF BUFFALO, ALLOCATIONS OF CDBG FUNDS, 1990-1991 [hereinafter CDBG FUNDS] (available in HOUSING INFORMATION, *supra* note 30).

65. *Id.*

66. *Id.*

67. Interview with Erma Brown, Executive Director, Ellicott District Community Development, Inc. (Oct. 23, 1990).

ies by filling out quarterly reports to the several funding sources, by reapplying for next year's funds, and by lobbying their local and state legislators for support of their corporations.⁶⁸ Thus, many of the housing corporations are on a treadmill of annual funding cycles, which produce ever decreasing support because of the shrinking federal, state and local budget allocations to these programs. The net result is that more effort is exerted to produce fewer dollars of support for what are essentially housing service rather than development programs.

In order to act as agents of housing development, CBOs must struggle to emancipate staff from service functions to find time to map out and implement a housing development strategy. Ironically, such a course of action in housing development rather than service provision would ultimately produce income and assets unfettered by program requirements imposed by governmental sources of funds. An incidental benefit from this course of action is that the corporations will also allow staff to develop marketable skills in the areas of housing development and management.

A second structural problem afflicting CBOs in Buffalo is that the "field" they work is crowded by other corporations, many of which label themselves "community-based" corporations and rival already existing corporations for scarce administrative funds.⁶⁹ Apart from thinning the spread of administrative funding, the crowded field also narrows the geographic area of development opportunity for each corporation, since, under the New York State neighborhood preservation program, each corporation is required to have specifically defined geographic borders within which to exercise its preservation activities.⁷⁰ A geographically limited development area may force the corporation to attempt more difficult development projects at greater risk because they may be the only available opportunities within the corporation's turf.⁷¹

Although most of the CBOs in Buffalo have the political connections necessary to assure a stream of operating funds from governmental sources, most lack links to those mediating institutions which private, for-profit housing developers believe are essential. Few of the corpora-

68. *Id.*

69. COMMUNITY ORGANIZATIONS LIST, *supra* note 63.

70. N.Y. PRIV. HOUS. FIN. LAW §§ 902-03 (McKinney 1976 & Supp. 1991).

71. An example of this phenomenon is the attempted rehabilitation effort by Ellicott District Community Development, Inc., of the Johnston Street Firehouse, a project plagued almost from the start by requirements imposed by the New York State Historical Preservation Office. The historical preservation requirements caused costs to skyrocket, resulting in abandonment of the project. Interview with Erma Brown, *supra* note 67.

tions have established and maintained a sufficiently sound relationship with a financial institution to leverage a credit line for development of housing.⁷² Few participate in or are conversant with trade associations of developers, even though such associations have information useful—some might even say essential—for housing developers.⁷³ Because of inexperience, few have sufficient credibility with architects, engineers and construction companies to permit undertaking preliminary feasibility assessments without incurring great up-front costs.⁷⁴ Financial institutions, trade associations, and construction industry ties are all part and parcel of being in the world of housing development. If CBOs are serious about engaging in housing development activities, they must cultivate relationships with standard or alternative versions of these entities.

An especially difficult part of housing development, particularly low income housing development, is preparing a coherent financial plan. More often than not, a financial plan supporting development for the lower end of the low income line will involve several layers of financial support, each of which will entail the application of separate loan or grant criteria and separate occupancy requirements.⁷⁵ What is more, each layer of financing will entail dealing with one or more federal, state or local governmental agencies, each of which will have its own underwriting standards.⁷⁶ Attempting to meet the requirements of each set of underwriting standards can be a sufficient challenge to an experienced financier. For the uninitiated it can be instant doom. Even after one has grasped the underwriting standards imposed by governmental funding sources and discovered how to arrange them into a coherent development pattern, obstacles remain. The most difficult of the remaining ob-

72. The problem of credit line may in fact have as much to do with lack of tangible corporate assets as with lack of development experience.

73. None of the Community Organizations listed in the COMMUNITY ORGANIZATIONS LIST, *supra* note 63, is registered as a member of the Niagara Frontier Builders Association or the National Apartment Owners Association.

74. The cost of preliminary feasibility assessment is willingly undertaken by professionals if there is some prospect that uncompensated effort will ultimately be rewarded.

75. The St. Ann's Apartments project, for example, combines three layers of financing—a New York State Housing Trust Fund loan, a Rental Rehabilitation loan from the City of Buffalo, and equity investment through the Low Income Housing Tax Credits. Each program imposes occupancy requirements and rent restrictions. The developer in this project was required to find the most stringent set of requirements and apply them as the least common denominator to the project.

76. In New York State, for example, although both the Housing Trust Fund Program and the Low Income Housing Tax Credit Program are administered by the same state agency—the Division of Housing and Community Renewal, each program uses a different set of underwriting standards and different staff to shepherd the same project. N.Y. PRIV. HOUS. FIN. LAW §§ 47-e, 575 & 1102 (McKinney 1976 & 1991 Supp.).

stacles relates to the transmittal of information to and among the variety of governmental agencies involved in project funding.⁷⁷ One quickly learns that it is hazardous to assume that staff within the same office have a clear idea of their respective roles and a clear understanding of requirements imposed by a fellow staff member overseeing a different aspect of the agency's funding commitment.⁷⁸ Apart from the problem involving interagency transmittal of information, another interagency obstacle confronts the developer of low income housing. Funding cycles and timelines used by the variety of housing agencies are not always compatible, even though the funding use may be declared compatible by the agencies themselves.⁷⁹ Thus, a would-be developer may find it impossible to meet one agency's time requirements simply because another agency has failed to process documents in a timely fashion.⁸⁰

Assembling and implementing a coherent financial plan for the development of low income housing is an essential, but elusive goal for thinly staffed corporations. Yet, by definition, most of the currently funded CBOs listed as engaged in community development activities in their respective geographically-defined neighborhoods in Buffalo are small, thinly staffed corporations.⁸¹ The energy, staff time, financial skill, and development sophistication required to prepare and shepherd a fi-

77. Since each agency understands that it is only one piece of the project funding, each is reluctant to commit its piece of the funding until it receives assurances that the other agencies involved will also commit its piece. The developer is cast in the role of both transmitting the information and interpreting it to sister agencies.

78. In shepherding the St. Ann's Apartments project through the Housing Trust Fund review process, I was surprised to learn that a decision made by staff in the tax credit part of the office was not communicated to staff in the Housing Trust Fund section, even though staff members occupied office space within feet of each other.

79. Low Income Housing Tax Credits are necessarily on a one year funding cycle. N.Y. PRIV. HOUS. FIN. LAW § 572 (McKinney 1976 & Supp. 1991). Housing Trust Fund loans and grants frequently spread over a multi-year cycle. N.Y. PRIV. HOUS. FIN. LAW § 1102 (McKinney 1976 & Supp. 1991). Though described as compatible programs, it is difficult to keep them yoked to the same project because of the different funding cycles and different underwriting standards.

80. An attempt to develop a suitable building in Niagara Falls, New York, into an "adult home," a home for aged and impoverished persons needing some support services, was frustrated, in part, by such interagency problems. In December 1988 the HTF reserved a grant to cover most of the construction costs for the project. In need of additional construction capital, the developer, at the invitation of the HHAP, submitted an application to cover the construction financing gap. Alternatively, the developer might have pursued the gap financing by seeking an allocation of low income housing tax credits. Relying on HHAP assurances that a decision on the funding application would be made in two months, the developer deferred making the tax credit application. Beyond its worst fears, the developer received a funding denial from HHAP only in October and only after insistent requests for a decision. The denial came too late in the tax credit year for an application to be submitted for an allocation of tax credits.

81. See COMMUNITY ORGANIZATIONS LIST, *supra* note 63.

nancial plan through the various agencies necessary to fund low income housing development currently places this kind of development beyond the reach of most of the local corporations, even though they are set up precisely to accomplish this kind of development.⁸² However, with modest changes in public policy related to development issues, along with some additional administrative support and assistance in financial and organizational planning, certain local community development corporations will be able successfully to undertake low income housing development.

4. AGENDA FOR THE 1990s: DEVELOPMENT OF A COMMUNITY BASE FOR LOW INCOME HOUSING DEVELOPMENT

Although mention of the word "agenda" undoubtedly will raise the specter in some quarters that public cost and therefore tax dollars will be needed to implement the course of action suggested, the agenda about which I speak has little negative fiscal impact. In fact, much of what is suggested simply involves coordination of the efforts of already existing organizations, use of existing federal, state and locally funded development programs, and a healthy dose of planning and consensus development. The only assumption behind the agenda is that planning, consensus, and coordination are in the realm of possibility as we look ahead through the next decade.⁸³ If these are real, then the City of Buffalo will be able to leverage immense development opportunities in the 1990s while, at the same time, provide for its expanded housing needs.

Creation of a community base for housing development in the 1990's calls for concerted action from four quarters: CBOs, local government, the churches, and the university. Although only a decade or two ago it might have been ridiculous to assume the possibility of a joint venture among these groups, more recent experience points to modest, but hopeful beginnings of alliances among them.⁸⁴ An examination of each of these groups shows how each could contribute to the agenda.

For the CBO the next decade will be at least as difficult as the past decade. Federal and state administrative support is likely to continue to

82. See N.Y. PRIV. HOUS. FIN. LAW § 901 (McKinney 1976 & Supp. 1991).

83. The antipathies among the legislative and executive branches of City government may lead many to be unnecessarily sceptical about possibilities in this realm.

84. These hopes are not completely without basis, if one looks at some of the joint ventures recently undertaken by the University, local government, religious groups and community based organizations, described *infra*.

decline⁸⁵ and not all will survive this decline, just as not all survived the last decade of decline.⁸⁶ Accordingly, CBOs and their governmental support systems increasingly will value a capacity to generate administrative support from sources other than government. These corporations will need to become increasingly self-reliant and, therefore, will need to focus on expanding capacity to act as developers rather than on continuing to provide housing services only. This shift in focus is likely to be prompted as much by the need for low income housing units as by the corporations' need for survival. The shift in focus will also bring tangible benefits to the community supporting the corporation. Specifically, as development opportunities are exploited, the community stands to benefit from new jobs in construction, marketing, management and maintenance—jobs with greater transferability to the private job sector than those associated with provision of soft services to the community. The community also stands to benefit from exercising a degree of control over the asset created, housing units, an asset which will become more valuable as demand grows over the next ten years.⁸⁷

Development oriented CBOs will need to adopt a disciplined, business-like approach to decision-making about projects to be undertaken. Their boards of directors will need both a strong community base of representation and some specialized skills which may not be found in the community. The staff of the corporations will need to develop skills which may be only seminally present now. Staff will also need to establish lines to trade organizations, financial institutions, competent and sympathetic contractors, architects, and lawyers to assist in assessing the feasibility of projects. The planning and development committees of these corporations will also need to be realistic about establishing salary levels commensurate with the additional responsibilities of staff.⁸⁸

The City of Buffalo also is an essential player in the transformation of CBOs into agents of low income housing development. The shape and focus of the City's policy on housing development, the role its depart-

85. The so called "funding cap" found in the Neighborhood Preservation Program of the Private Housing Finance Law, N.Y. PRIV. HOUS. FIN. LAW § 903 (McKinney 1976 & Supp. 1991), continues to threaten the survival of many CBOs. Similarly, there is no reason to believe that administrative support for CBOs provided by the federal government through the Community Development Block Grant Program will not continue to dwindle.

86. In 1981 there were 26 CBOs in the City of Buffalo funded with Community Development Block Grant Funds; today there are 15. See COMMUNITY ORGANIZATIONS LIST, *supra* note 63.

87. See Schramm, *supra* note 6, at 158-60.

88. Salaries are set by the Boards of Directors of the corporations funded by the City with the approval of the Buffalo Urban Renewal Agency (BURA). In the interest of protecting the public fisc, BURA has attempted to keep salaries as low as possible.

ments play in providing administrative support for development, and the manner in which it allocates development monies all determine the extent to which CBOs will be able to act as development agents. The executive and legislative bodies of City government need to fashion a set of coherent policies on housing development, based on accurate assessment of need and realistic planning and coordination of effort.⁸⁹ Antipathies between the executive and legislative branches have spawned a set of policies which result in dissipated energies and resources at a time when both energy and resources are declining.⁹⁰ Allocation of administrative energies and development resources should follow the lines of these policies.

The City's new housing construction program has devoured the lion's share of development resources in the past.⁹¹ While the program has both commanded widespread attention and produced additional tax base for the City, it cannot be the principal, and certainly not the exclusive, focus of development energy when significant unmet need exists for low income units.⁹² A more balanced approach, which also happens to be targeted to demonstrated need,⁹³ would combine new homes for the lower end of the moderate income bracket with development of new or rehabilitated units for the low income bracket. This approach would also provide a suitable ground for participation in development activities by CBOs.

Assuming that the City's available resources will be increasingly strained over the next several years as burdens formerly carried by the federal government are passed on to state and ultimately local government, it will be necessary for the City to target both its own staff efforts and administrative support for CBOs carefully. For that reason alone, the City's policy and practice should reward coordination of development efforts by public, quasi-public and private groups. CBOs should be rewarded with additional administrative support through the community development block grant program when they successfully engage in development efforts. Similarly, the Buffalo Urban Renewal Agency should

89. The focus on the Affordable Housing Program's new construction program would lead one to believe that affordable housing for the moderate to middle income sector is the most pressing need in the City.

90. The splitting of the housing development function between the Department of Community Development and the Department of Inspections and Community Revitalization is one symptom of these antipathies.

91. Buffalo News, Nov. 25, 1990, at B1.

92. See P. LEONARD, *supra* note 2.

93. *Id.*

support salary increases for staff of CBOs when they produce development successes.⁹⁴ Development subsidies administered by the City under the federal low income housing tax credit program⁹⁵, the rental rehabilitation program⁹⁶, the 312 program⁹⁷, the affordable housing program⁹⁸, and the housing trust fund program⁹⁹ should be awarded on a priority basis to those projects undertaken by CBOs, particularly when likelihood of success is reasonably assured by the presence of technical support.

By encouraging the creation of a network of competent CBOs, the City in the end will be serving its own purposes. Not only will the shelter needs of its low income members be served, but costs of producing and managing new housing units will not create additional tax burdens for the City. But more importantly, in creating new city based development capacity the City will expand employment opportunities for its citizens.

The third participant in my proposed agenda for the 1990s is the church community of Buffalo.¹⁰⁰ I include the church community as an important part of the agenda because of this community's past role in the world of low income housing advocacy and development. The church community traditionally has concerned itself with the shelter needs of Buffalo's low income and elderly citizens.¹⁰¹ Of greater interest, since the mid 1960s the church community has promoted the creation of community based advocacy organizations to serve the needs of the poor.¹⁰² More recently, the church community has supported the entry of CBOs into the world of housing and economic development.¹⁰³

Two recent ventures by the church community in Buffalo promise to

94. See *supra* note 88.

95. I.R.C. § 42 (1990).

96. Pub. L. No. 98-181, Title III, § 301, 97 Stat. 1196 (codified as amended at 42 U.S.C.A. § 1437o (West Supp. 1990)).

97. 42 U.S.C. § 1452b (1990).

98. N.Y. PRIV. HOUS. FIN. LAW § 1110-1113 (McKinney Supp. 1991) (Affordable Home Ownership Program).

99. N.Y. PRIV. HOUS. FIN. LAW § 1100 - 1103 (McKinney Supp. 1991) (Low Income Housing Trust Fund program).

100. When I use the word "church" community I am referring collectively to the religious entities of Buffalo, whether or not they actually gather together in a church.

101. Various church groups have sponsored elderly housing developments in the Buffalo area. See SURVEY OF SUBSIDIZED HOUSING, *supra* note 30.

102. The Campaign for Human Development, to mention one church sponsored institution providing such support, has given three year grants to advocacy organizations for almost two decades. The Campaign for Human Development is a creation of the United States Catholic Conference. See THE CHD DEVELOPMENT PROJECT WORKSHEET (Feb. 2, 1986) (available in HOUSING INFORMATION, *supra* note 30).

103. *Id.* Within the Campaign for Human Development, a new division focused on community based housing and economic development has been in operation since 1983. Delta Development of

provide especially needed support for community based development enterprises in the 1990s. The first, creation of a not-for-profit housing development company, was undertaken with the sponsorship of the Roman Catholic Diocese of Buffalo in 1988.¹⁰⁴ The development company, Delta Development of Western New York, Inc., was formed expressly to act as a catalytic agent in the development of low income housing in Western New York.¹⁰⁵ The proponents of Delta's formation visualized a company which would act in concert with CBOs while at the same time drawing on the strength of the Catholic Church's prominent position within Buffalo.¹⁰⁶ As a partner with CBOs, Delta has the capacity to link these corporations with financial institutions which might otherwise not wish to do business with them alone. Delta also is able to bring the skills of architects, engineers, accountants and other professionals to its projects, even when a project might appear too speculative to command the attention of professionals. Thus, Delta has the capacity to become an intermediary institution in low income housing development.

A second church-connected venture, Jubilee Community Development Loan Fund, Inc., was nurtured by the Buffalo Area Metropolitan Ministries ("BAMM").¹⁰⁷ Formed to provide start-up seed loans to community based development enterprises, Jubilee will pool the resources of the community through loans and grants from a variety of sources interested in socially responsible investments. Once operational, Jubilee will allow community based enterprises to stabilize, develop and qualify for more conventional funding.¹⁰⁸ At the same time, Jubilee will bring to the table a group of sympathetic business persons to evaluate community based enterprises both for business viability and for community benefit. Finally, by pooling resources and centralizing servicing

Western New York, Inc., described *infra*, has been awarded support under this branch of the Campaign for Human Development.

104. Delta Development of Western New York, Inc. was incorporated in 1988 on the recommendation of a task force set up by Bishop Edward Head to advise him on local implementation of the United States Catholic Bishops' pastoral letter on Catholic Social Teaching and the United States Economy. See CATHOLIC SOCIAL TEACHING AND THE UNITED STATES ECONOMY: WORKING PAPERS FOR A BISHOPS' PASTORAL (J. Honck and O. Williams eds. 1984).

105. Delta Development of Western New York, Inc., Certificate of Incorporation (available in HOUSING INFORMATION, *supra* note 30).

106. Delta Development of Western New York, Inc., Application to the Campaign for Human Development (available in HOUSING INFORMATION, *supra* note 30).

107. JUBILEE COMMUNITY LOAN FUND, INC., SHAPING A VISION OF COMMUNITY: AN OPPORTUNITY FOR RESPONSIVE AND RESPONSIBLE INVESTMENT (1990).

108. *Id.*

of loans, Jubilee can offer quality support to CBOs while at the same time spreading the risk of its loans.

Delta and Jubilee are examples of how the church community has leveraged its support of community based enterprise development into new free standing institutions which, by virtue of their position as intermediary institutions, will provide a continual stream of benefits to the community at large. In view of the projected enormous need for low income housing development in the next ten years, the church community's focus on creation of development infrastructure appears a wise use of its charitable instincts.

The fourth agent of the proposed agenda for the 1990s is the university community.¹⁰⁹ Although the academic community has necessarily focused primarily on teaching, research, and reflection on experience, this community also has provided valuable service to the local community through its research and reflection. The Center for Regional Studies lodged in the University at Buffalo School of Architecture and Planning and the University at Buffalo Center for Applied Public Affairs Studies, to name two centers, have consistently provided studies of the region useful for local and regional planning.¹¹⁰ Beyond research activities, however, the university has also offered concrete assistance to CBOs seeking organizational and advocacy assistance. In the mid-1980s the Urban Studies Program at Canisius College, through Dr. Ronald Coan, provided the energy to network CBOs into an institution called Neighborhood Focus.¹¹¹ Though short-lived, Neighborhood Focus provided a needed forum for self-education and advocacy among CBOs interested in housing and community development. More recently, the University at Buffalo School of Law has provided direct legal service in housing development matters to the local community and to CBOs through its supervising attorneys and students enrolled in the Low Income Housing Development Clinic.¹¹²

109. The term "university community" refers here to the collection of numerous academic institutions found in the western New York area.

110. See, e.g., CENTER FOR REGIONAL STUD., STATE U. OF N.Y. AT BUFFALO, REPORT SERIES NO. CRS 87-1, *THE BUFFALO ECONOMY: A SOCIAL & ECONOMIC OVERVIEW* (Apr. 1987); *AFRICAN AMERICANS & THE RISE OF BUFFALO'S POSTINDUSTRIAL CITY, 1940 TO PRESENT* (H. Taylor ed. 1990).

111. Originally and ironically called COAN (Committee on Aging Neighborhoods), Neighborhood Focus was a federation of community based organizations, interested academics, and staffers of legislators concerned about redeployment of development funds from the neighborhoods to the Central Business District. The author was a participant in this effort.

112. Begun in 1987, the Low Income Housing Development Clinic is part of a larger clinical educational program at the University at Buffalo School of Law, the Legal Assistance Program. The

The Low Income Housing Development Clinic bridges the academic world and the world of housing development in a unique way. As an element of an institution of learning, the Clinic allows students to hone a broad range of legal skills, reflect on the role of the lawyer in the development process, and develop a sense of client relations. As part of the low income housing development process, students must be sufficiently result-oriented to produce a usable product. This particular orientation allows students to test ideas and models while at the same time providing a useful service to the CBOs interested in housing development activities. In the short time the Clinic has been in operation, students have drafted corporate documents for a not-for-profit development corporation, two neighborhood preservation companies, and a shelter for AIDS victims. In addition, students have successfully prepared applications for government grants in an amount exceeding \$3.5 million.¹¹³

Applying this Clinic model to other schools in the university could yield exceptional benefits to CBOs active in low income housing development. Students of architecture and planning, for example, might provide preliminary design and feasibility assistance as well as making studies to CBOs, while students of management might assist in setting up appropriate management systems for housing maintenance. Students of social work might provide support services for special populations served by particular housing developments. Whatever the service provided, such clinics could support a system of housing development likely to produce and maintain quality units of housing for low income persons, while at the same time testing theory and skills in real world conditions.

CONCLUSION

Although the prospect of bringing these four proposed participants together in a coordinated housing development venture appears daunting, experience indicates it is possible. In the recent past, various of these four entities have worked together on select housing development projects and in one instance all four have actually collaborated on a pro-

housing component offers a range of legal services to groups that need assistance with development of low income housing in the western New York area.

113. Clinic students have participated in the organization of the following corporations: Delta Development of Western New York, Inc., Rohr Preservation Association, Inc., Northland/Kelley Garden Preservation Corporation, East Buffalo Community Ownership Project, Inc., and Benedict House of Western New York, Inc. Clinic students have also assisted in the preparation of the following successful funding applications: St. Ann's Apartments (\$2.4 million); Princeton Square Homes (\$820,000); Benedict House (\$300,000).

posed project.¹¹⁴ If nothing else motivates common effort, the dwindling resources of each of the participants will exert some influence towards implementation of a community based housing development strategy. Ultimately, though, all will benefit from the agenda proposed.

114. The Low Income Housing Development Clinic has provided assistance to the City of Buffalo in the development of the School 62 project. In addition, Delta Development of Western New York, Inc., Ellicott District Community Development, Inc., the UB School of Law clinic, and the City of Buffalo have collaborated on planning for redevelopment of the Ellicott Mall project.

