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## Supersizing Religion: Megachurches, Sprawl, and Smart Growth

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## SUPERSIZING RELIGION: MEGACHURCHES, SPRAWL, AND SMART GROWTH

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### I. INTRODUCTION

The injection of religion or religious overtones into any area of American public policy creates tension. The emerging field of smart growth<sup>1</sup> to counter the increasing concerns over sprawl<sup>2</sup> proves no exception. Smart growth is not about stopping growth, but about better managing growth so that communities and regions can improve their quality of life and more effectively plan for the future. It is based on such principles as encouraging reinvestment into existing communities and promoting broad-based public participation in planning decisions. But to be successful, no matter the initial tension created, smart growth cannot ignore the role and placement of religious institutions.

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1. See Kaid F. Benfield et al., *Solving Sprawl: Models of Smart Growth in Communities Across America* (2001); Robert H. Freilich, *From Sprawl to Smart Growth: Successful Legal, Planning, and Environmental Systems* (1999); Jane S. Shaw & Ronald D. Utt, eds., *A Guide to Smart Growth: Shattering Myths, Providing Solutions* (2000); U.S. ENVTL. PROT. AGENCY, *Getting to Smart Growth: 100 Policies for Implementation*, at i-ii, available at <http://www.smartgrowth.org/pdf/gettosg.pdf> (last visited May 20, 2002)(hereinafter EPA, *GETTING TO SMART GROWTH*).

2. While urban sprawl has no strict definition, it is generally regarded as haphazard development occurring outside of a long-term plan, emphasizing low-density development and characterized by strip malls and heavy reliance on automobiles and the highway system. It began to rear its head following World War II, spurred in part by federal dollars in highway and housing funds. See, e.g., Benfield et al., *supra* note 1; Andres Duany et al., *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream* (2000); Shaw and Utt, *supra* note 1; EPA, *GETTING TO SMART GROWTH*, *supra* note 1, at i-ii.

Nowhere is this more evident than with respect to the growing phenomenon of so-called “megachurches.”<sup>3</sup>

The advent of suburbanization and increasing sprawl since the 1950s has seen the concomitant increase in prominence of the megachurch. “Megachurches” are defined as churches with congregations over 2,000 that provide a multitude of services outside of the traditional Sunday service. Megachurches are a relatively recent phenomenon of the last 25 years whose numbers have largely increased over the past 20 years. While an accurate accounting is difficult, there are well over 600 megachurches in the United States, occupying a vast quantity of land.

At the heart of the megachurch movement is the desire to grow and provide more comprehensive services for church members. To appeal to a congregation of over 2,000 members and provide a broad range of services to these members, churches began to seek large campus settings. Religious institutions can enjoy zoning preferences under the federal Religious Land Use and Institutionalized Persons Act (RLUIPA)<sup>4</sup> enacted in 2000. Combined with the fact that land is often more easily available in newer suburban areas, megachurches find it easy to locate in such areas. Another impetus for megachurches to locate further from the cities and even suburban areas stems from resistance from communities to megachurches locating in their area. By building a megachurch in exurban areas, it may avoid conflict. It may also spark development and traffic around the megachurch, which brings with it a host of growth issues that can in turn produce conflict involving transportation, land use, and environmental concerns. With the rise of the broader smart growth movement and uncertainty surrounding the extent of the application of RLUIPA, these conflicts are bound to increase in the short-term.

The explosion of megachurches poses significant challenges for planners and smart growth proponents. As of yet, however, the connection between

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3. The vast majority of megachurches are nondenominational or interdenominational, and therefore we do not refer to any specific denomination when utilizing the term “megachurch.” Almost half of megachurches surveyed stated that denominational leadership is of no importance. Close to three-fourths of megachurches identify themselves as either Evangelical (forty-eight percent) or Pentecostal (twenty-five percent). Hartford Inst. For Religion Research, *FACToid: Megachurches: Evangelical not Fundamentalist*, available at <http://www.fact.hartsem.edu/denom/MegaFactoid2.pdf> (last visited May 20, 2002). However, it is used here to refer to a Christian church context, as the vast majority of “megachurches” are indeed Christian. It should be noted that mosques, synagogues, and other religious establishments might also qualify for megachurch status and exhibit the same characteristics and influence on a community as their Christian counterparts. Cf. GERALD GAMM, *URBAN EXODUS: WHY THE JEWS LEFT BOSTON AND THE CATHOLICS STAYED* (1999) (discussing the exodus from Boston of the surrounding Jewish population as contrasted to the relative stability of Catholic parishioners in houses of worship of all sizes).

4. 42 U.S.C. §§ 2000cc to 2000cc-5 (2001).

sprawl, smart growth, and megachurches has been largely overlooked by scholars and planners.

This article examines the parallels between sprawl and megachurches and how the smart growth movement should consider incorporating megachurches. Section II explores a linkage between growth and megachurches. Section III analyzes the difficulties in legal proscriptions of land use by megachurches. Section IV looks briefly at examples of the expansion of a megachurch in an area where smart growth initiatives are in effect. Section V tackles the issue of incorporating the challenges presented by megachurches into the smart growth and planning context. Finally, section VI offers suggestions for proceeding in the future.

## II. THE LINK BETWEEN MEGACHURCHES AND SPRAWL

It is being increasingly recognized that sprawl – low-density, automobile dependent development – has been the dominant land use pattern in the United States since World War II. Metropolitan areas across the country, particularly in the South and West, are growing outward. For instance, between 1960 and 1990, the amount of developed land more than doubled, while the population grew by less than half.<sup>5</sup> The 2000 census confirmed that suburbs are continuing to grow much faster than cities.<sup>6</sup>

Sprawl and the growth of megachurches appear to be mutually reinforcing concepts. While little research has been done on megachurches, what does exist largely emanates from work carried out by Dr. Scott Thumma with the Hartford Institute on Religion Research at the Hartford Seminary.<sup>7</sup> They have concluded that the most sprawling metropolitan areas “contained the highest number of megachurches.”<sup>8</sup> Research indicates that megachurches are located predominantly in the suburbs of large cities, with almost two-thirds of megachurches locating in the suburbs of cities with population sizes greater than 250,000.<sup>9</sup> Megachurches have risen both in numbers and in individual

5. BENFIELD ET AL., *supra* note 1, at 3.

6. U.S. Census Bureau (2000).

7. See, e.g., Scott L. Thumma, *The Kingdom, the Power, and the Glory: Megachurches in Modern American Society* (1996) (unpublished Ph.D. dissertation, Emory University) (on file with authors). Thumma, a professor at the Hartford Seminary and researcher with the Hartford Institute on Religion Research, has collaborated with several other researchers to conduct the Faith Communities Today research on both churches and megachurches, the results of which can be found at the <http://fact.hartsem.edu/default.htm>.

8. Scott Thumma, *Exploring the Megachurch Phenomena: their characteristics and cultural context*, available at [http://hrr.hartsem.edu/bookshelf/thumma\\_article2.html](http://hrr.hartsem.edu/bookshelf/thumma_article2.html) (last visited May 20, 2002); Thumma, *The Kingdom, the Power, and the Glory*, *supra* note 7, at 486 (“Nearly all megachurches are to be found in the suburbs of large cities.”).

9. Carl S. Dudley et al., *Faith Communities Today: A Report on Religion in the United States Today*, available at <http://www.fact.hartsem.edu/Final FACTrpt.pdf> (last visited May 21,

size. Attendance at megachurches has risen an average of ninety percent in the last twenty years. This growth follows the tendency of American culture towards bigger and better, as seen by the megastore, megamall, and megatheater.

Clearly part of the appeal of megachurches is that they are serving a need. Megachurches provide significant social services and values to a community, and can in fact create their own communities. These generally positive traits stand in stark contrast to the generally negative connotations often associated with “mega” anything, including megastores. “Mega” with the church is a reference only to size and the issues associated with the rise of large churches that provide additional services (a characteristic of the megachurch) and is not meant to convey a negative association. In terms of location, the megachurches follow the suburban sprawl model,<sup>10</sup> as it has been demonstrated that megachurches locate predominantly in suburban areas.

The constituency that the megachurch attracts is mostly found in suburbia,<sup>11</sup> and at the same time the megachurch that the constituency desires is located in suburbia. As with suburbs, the racial makeup of about 80% of megachurches is predominantly white. The typical congregation consists of college-educated middle and upper-middle class. Many megachurches were

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2002); Media Advisory, Hartford Inst. For Religion Research, Hartford Seminary, *Megachurches Cluster in Bible Belt, Study Shows* (Nov. 8, 2001), available at <http://www.fact.hartsem.edu/Press/mediaadvrsy3.htm>.

10. The suburban sprawl model goes generally as follows:

Step 1: Cheap outlying rural land, low property taxes, attractive open spaces and, usually, access to jobs in a city or close-in developed suburbs by highway or rail, cause developers to build new subdivisions.

Step 2: Residential growth mounts; costs for new infrastructure drive local government to expand the tax base by attracting more businesses and industries. Rising property assessments and taxes compel large landowners to sell to developers.

Step 3: With increased development, many residents find their areas becoming “crowded,” the various amenities that attracted them declining, and property taxes and other costs rising.

Step 4: People and developers are ready to move to more distant, largely undeveloped, and lower-cost rural areas. Back to Step 1.

NAT’L GOVERNORS ASS’N, JOEL S. HIRSCHHORN, *GROWING PAINS: QUALITY OF LIFE IN THE NEW ECONOMY* 6 (2000).

11. The terms “suburbs” and “suburbia” in this article are used to include rather than exclude the exurbs and exurbia. Exurbia can be said to be a result of low density development in suburbia and can be characterized as an extended suburban fringe. Exurbs result in some respects from the desire of suburbanites to limit additional development in their communities (following the NIMBYism, or “Not In My BackYard” concept). Research has demonstrated that there is no distinct separation between suburban and exurban households, and thus such a distinction is not used in this article. See Arthur C. Nelson & Thomas W. Sanchez, *Exurban and Suburban Households: A Departure from Traditional Location Theory?*, 8 J. OF HOUSING RESEARCH 249 (1997).

not “planned” in the sense of conforming to a state, regional, or local comprehensive plan (due in large part because many communities do not have meaningful comprehensive plans) and conformed to the cultural environment to meet the growth demands of their members due to increased services.<sup>12</sup> This includes locating outside established transportation conduits, including any public transportation system, and propagating reliance on the automobile. The same economic subsidies for sprawl, such as those involving road construction and housing, subsidize the location of the megachurch.<sup>13</sup> Thus, when megachurches grow, the model is fundamentally the same as sprawl. Geographically, 72% of megachurches are predominantly located in the South and West,<sup>14</sup> where many of the larger sprawling cities also exist. Thus, it seems intuitive that sprawl and the megachurch enjoy a symbiotic relationship. This relationship, however, is presently ill-defined and requires further examination and research by planners.

Consider siting a megachurch. Most often, megachurches are located in residentially-zoned areas, both to be closer to their members and because that is essentially the default position of most local zoning codes. The problem with locating a megachurch near residences arises when the church plans to use its land not only for sanctuaries, but for parking lots, day care facilities, athletic fields, classrooms, hotels, convention centers, skate parks, restaurants (including franchise fast foods such as McDonalds), bookstores, gyms, and dormitories.<sup>15</sup> These are ancillary services outside the traditional Sunday service. As an editorial in *The Oregonian* stated:

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12. In a survey, the following percentages of megachurches responded that the current space for each of the following categories was less than needed:

Worship space, 46.2%;  
Education space, 70.9%;  
Fellowship space, 63.9%; and  
Parking space, 64.6%.

Hartford Inst. For Religion Research, Hartford Seminary, Faith Communities Today megachurch data research, available at <http://fact.hartsem.edu/denom/megas-factfreq.pdf> (last visited June 14, 2002).

13. In this respect, megachurches not only reflect sprawl patterns but encourage it as they provide a further justification for growth and extension as the church members desire to move closer to their churches.

14. Hartford Inst. For Religion Research, Hartford Seminary, *FACToid: Megachurches: Growth in the Sun*, available at <http://www.fact.hartsem.edu/Press/fnlfact6.pdf> (last visited May 20, 2002). Forty-one percent are located in the south (including Texas); thirty-three percent in the west; six percent in the northeast; thirteen percent in the Midwest; and nine percent in the northwest. Texas, California, and Florida, as one might expect, lead the list with sheer numbers of megachurches.

15. Patricia Leigh Brown, *Megachurches as Minitowns*, THE NEW YORK TIMES, May 9, 2002, at F1.

Places of worship are no longer little brown churches in the vale, but “megachurches,” temples, mosques, synagogues, and traveling tents. Many become one-stop shopping centers and offer everything from basketball leagues, 24-hour child care and drug counseling to entire K-12 schools.

... And the bigger the church, the more likely it generates traffic and attracts people at all hours. That is when the nice church next door can feel like the neighbor from hell.<sup>16</sup>

This is a key characteristic of a megachurch – the ability to offer a multitude of services for the member: something for everyone. Carrying out these activities requires facilities and space, including additional building structures, athletic fields, and parking lots. Anecdotal evidence suggests that these new constructions and expansions in the last two years typically involve a total campus of between 50 and 80 acres for a megachurch. Many of these services are marketed through advertising campaigns, and a majority of megachurches have their own websites.

The ancillary activities to the Sunday service during the week can often create conflict between the megachurches and surrounding neighborhoods. Avoiding such conflict may encourage megachurches to locate further out from residential areas into greenspaces. Such non-traditional land uses in residentially-zoned areas create burdens for the surrounding neighborhood. All these and other non-traditional church activities may be theoretically protected as religious uses and may not be excluded from even the most quiet secluded residential neighborhood.<sup>17</sup>

The arguments opposing megachurches parallel those used against increasing commercial and residential developments: increased traffic, increased noise, increased pollution, increased strain on infrastructure, and adverse effects on the economy.<sup>18</sup> The arguments used in support of megachurches likewise parallel those used by other developers: increased business and opportunity and increased community services.<sup>19</sup> Notably, however, the megachurches cannot argue that they will directly increase the tax base and contribute economically to local governments, as they are exempt

16. Editorial, *Zone thy Neighbor as Thyself; Careful Planning from Local Governments Can Help Churches and Communities Live Together*, THE OREGONIAN, June 25, 2001, at E10.

17. See U.S. CONST. amend. I; Roman P. Storzer & Anthony R. Picarello, Jr., *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 GEO. MASON L. REV. 929, 932 n.24 (2001).

18. See Storzer & Picarello, Jr., *supra* note 17; Vanessa Ho, *Congregating Around Changes Mainline Religions Dwindle As Megachurches Gain Ground*, SEATTLE POST-INTELLIGENCER, Mar. 18, 2002, at A1; Sean Robinson, *Plan for huge church blunted Federal Way zoning: City Council committee recommends against allowing megachurches in business zones*, TACOMA NEWS TRIBUNE, June 19, 2001, at B1.

19. See Storzer & Picarello, Jr., *supra* note 17; Ho, *supra* note 18; Robinson, *supra* note 18.

from taxation. For this reason, some urban municipalities prefer for megachurches to locate in the suburbs. To offset that property tax deficiency, the megachurches can, and often do, rely on the First Amendment to argue that any zoning and restrictions infringe on the constitutional right of religious freedom.<sup>20</sup>

While a megachurch creates jobs within its own organization, the strong regional competition from such a large institution can decrease the number of opportunities in small local congregations. Intuitively, the megachurch would seem to pull both believers and non-believers from a large surrounding region, leading to the possibility that smaller neighborhood-based churches could lose numbers. Since most churches depend on members contributions, a small church with dwindling numbers will eventually close its doors or “go dormant” under the pressures of heavy competition.<sup>21</sup> This is the same effect as noted with the superstores, putting the Mom-and-Pop stores out of business. However, this phenomenon is not assured, as it is possible that smaller churches within the same area as a megachurch may actually fare better under the economics of “cluster location.”

Another important consideration of megachurch growth is that the environmental implications are the same as for building structures of equivalent size in an equivalent setting. The large parking lots exacerbate stormwater runoff and erosion. The facilities place increased capacity and strain on sewage systems and other infrastructures. More energy is consumed. More traffic and vehicle miles traveled (and thus mobile source air pollution) are generated. Unfortunately, it is difficult to generalize about the ecological footprint of each megachurch, because environmental assessments conducted by megachurches are virtually nonexistent, and each project will be different. There exists a dearth of literature and study on any special impacts a megachurch may impose on the environment.

### III. SMART GROWTH AND REGULATION OF MEGACHURCHES

As a threshold matter, it is important to recognize that smart growth does not attempt to regulate the substance of religion or what is practiced. Smart growth practices provide an evaluation of the environmental, economic, and social implications of development and growth. Smart growth recognizes the regional impacts of growth and the value of regional cooperation<sup>22</sup> in an effort

20. See Mike Lewis, *Showdown Looms Over Size of Rural Churches; In Trying to Limit Sprawl, King County Council Might be Wading into a Constitutionally Sensitive Realm*, SEATTLE POST-INTELLIGENCER, June 2, 2001, at B1.

21. NANCY L. EIESLAND, *A PARTICULAR PLACE: URBAN RESTRUCTURING AND RELIGIOUS ECOLOGY IN A SOUTHERN EXURB* 207 (2000).

22. See PETER CALTHORPE & WILLIAM FULTON, *THE REGIONAL CITY: PLANNING FOR THE*



to move beyond the difficulties of the “Not In My BackYard” principle (NIMBYism) that often opposes *any* additional development. It further seeks to promote infill and mixed-use development, along with the availability of public transportation, to help limit the harmful byproducts of sprawling development. As of yet, however, smart growth has failed to acknowledge religion and megachurches. Land use regulations such as zoning ordinances may play a role in the location of religious institutions. Ordinances allowing churches in residential areas were enacted most often in the context of the smaller, traditional church. A megachurch may be out of place in such a community, and may be more appropriate in mixed-use and commercial areas or even considered a planned use development. If ordinances do not accommodate megachurches, then the megachurches are forced to move farther out into suburban areas. Defining the framework within which a dialogue can take place regarding a restriction on a religious institution is a tricky affair. Is implementing a smart growth regulation that binds a church, such as imposing a size restriction, a land use matter or a matter of religious freedom?

Thus far it appears that smart growth has had a limited impact on guiding the megachurch phenomenon. There has been little correlation shown thus far between states with smart growth programs and the development of megachurches in these states. For example, in King County, Washington, which boasts a state smart growth statute, a war was waged between the county government and the religious establishment over a development ordinance that was proposed and adopted under the authority of the state statute, but subsequently repealed, that would have limited the size of churches to 10,000 square feet. Two primary reasons exist to explain this seeming incongruity. First, the smart growth movement has largely failed to take megachurch growth into account. Second, it is especially difficult to impose legal restrictions on megachurches as religious institutions and their expansions and siting.

The First Amendment’s Free Exercise Clause and statutory protections of religious liberty are the cornerstone of church development protections against legal challenge. The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)<sup>23</sup> affirmed the general trend allowing church development in residentially-zoned areas.<sup>24</sup> RLUIPA consists of two main elements: it codifies

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END OF SPRAWL (2001).

23. 42 U.S.C. §§ 2000cc to 2000cc-5 (2001).

24. RLUIPA was passed in response to the 1997 holding by the United States Supreme Court that Religious Freedom Restoration Act of 1993 was unconstitutional in *City of Boerne v. Flores*, 521 U.S. 507 (1997). See Robert R. Tuttle, *How Firm Foundation? Protecting Religious Land Uses After Boerne*, 68 GEO. WASH. L. REV. 861, 862 (2000). RLUIPA has had an immediate impact on local governments. Larry Carson, *Church Size Restrictions Abandoned*,

the free exercise exemptions and it prohibits discrimination and total exclusion. These constitutional and federal protections provide the backbone of a religious institution's freedom to locate in residential neighborhoods.

The free exercise exemption releases religious institutions from laws that substantially burden their religious exercises, unless the exemption threatens a compelling governmental interest. RLUIPA states that "[n]o government shall...impose or implement a land use regulation... that imposes a substantial burden on...religious exercise... unless [it]... is in furtherance of a compelling governmental interest... and... is the least restrictive means."<sup>25</sup> Under the doctrine of religious liberty, those who would challenge the development of a church in a residential neighborhood have an enormous hurdle to overcome—strict scrutiny review. Most groups who seek to challenge a church's development on the basis that the burden on the religion is insubstantial or the governmental interest is compelling have thus far failed.<sup>26</sup> Religious liberty provides strong protections against a church's exclusion due merely to NIMBYism. With such strong protections, a church has, in essence, a federally created incentive to locate in outer suburban areas where the land is cheaper and it can be closer to its congregants. While RLUIPA provides a church with substantial protections against land development laws and regulations, the path of least resistance is clearly for megachurches to locate where these regulations are the least stringent. Avoiding potential conflict with residents following the NIMBYism concept also plays a role in location selection. Both of these roads lead to suburbia.

One of the inherent problems in achieving smart growth at the state and local level, which smart growth laws have rarely addressed, is the emphasis placed in current law on independent municipalities and the dependence of such municipalities on property taxes. Such taxation limits the capacity of many municipalities to raise revenues, thereby eroding the financial base necessary to adopt new sustainability measures. As megachurches pay no taxes, do not contribute to the coffers, and occupy an enormous amount of land, they are disfavored within local government limits on simply a revenue basis. To compensate for the lost revenue of a megachurch location, the property taxes of all other residents, both parishioners and non-parishioners, would increase, raising the question of whether it is appropriate for non-parishioners to disproportionately subsidize the megachurch.

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THE BALTIMORE SUN, March 28, 2001, at 6B (local government abandons proposed zoning due to RLUIPA).

25. 42 U.S.C. § 2000cc(a).

26. See Shelly Ross Saxer, *When Religion Becomes a Nuisance: Balancing Land Use and Religious Freedom When Activities of Religious Institutions Bring Outsiders into the Neighborhood*, 84 KY. L.J. 507 (1996).

A typical local government zoning regulation permits churches and religious land uses in residential districts either absolutely or as a special exception subject to reasonable regulation for purposes such as public health and safety.<sup>27</sup> In fact, special use permits and exceptions to zoning regulations are commonly used for church locations, including megachurches, in residential areas.<sup>28</sup> Municipalities which refuse to grant permission to churches to increase their off street parking in dense urban areas create an incentive for megachurches to move outward into undeveloped land in suburban and exurban areas.<sup>29</sup> Since there is an economic incentive for churches to move nearer to a larger pool of wealthier members, churches are all too ready to make the move when they decide that it is time to expand.

Some churches choose to fight the battle over zoning, while others simply move to other areas where the use is allowed and space is available.<sup>30</sup> In one California community just outside Los Angeles, when city planners desired a ten-month extension on a building moratorium to develop a cohesive redevelopment plan, a megachurch aggressively fought the proposal because it would adversely affect the megachurch's proposed project, which included a bookstore and a coffee shop.<sup>31</sup> Another example in the Atlanta metro area points to several of the problems inherent in megachurch zoning.<sup>32</sup> A proposed 36-acre campus megachurch, which would have included a church, a senior center, a flower shop, an outreach center, a Christian academy, softball fields, and a library, in Clayton County, Georgia was denied a special use permit, touching off a federal lawsuit.<sup>33</sup> Residents in Clayton County objected to the project, fearing the church would bring commercial development. The lawsuit was dropped after the megachurch scaled back its plans and changed locations (to a nine acre site).

The question remains open as to what extent a state or local government can or should control megachurch growth. More particularly, the regulation of commercial enterprises, which are increasingly operated by megachurches,

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27. See Saxer, *supra* note 26, at 512.

28. See, e.g., Carol McGraw & Peggy Goetz, *Irvine Church Could Go Supersize*, THE ORANGE COUNTY REGISTER, May 18, 2001 (conditional permit may be used for church expansion).

29. See Lyle E. Schaller, *MEGACHURCH! Marketing Savvy and jumbo parking lots have combined to produce a new breed of big churches*, CHRISTIANITY TODAY, March 1990, at 22.

30. For a more comprehensive treatment and accounts of land use and religious disputes, see the Becket Fund website at <http://www.becketfund.org>.

31. William Lobdell, *Church Seeks to Derail Building Ban*, LOS ANGELES TIMES, Nov. 25, 2000, at B4.

32. Peter Scott, *Megachurch Abandons 'Panhandle' for new site*, THE ATLANTA JOURNAL AND CONSTITUTION, Sept. 8, 2001, at 1H.

33. *Divine Faith Ministries v. Clayton County*, No. 01-CV-0448-BBM (N.D. Ga. 2001), available at <http://www.lawyersweeklyusa.com/alert/usa/zoning.htm> (last visited May 20, 2002).

proves troublesome because if a megachurch is able to claim religious protection for the commercial entity, then it gains a competitive advantage over non-religious commercial enterprises.<sup>34</sup> This reverse discrimination effect is counterintuitive and counterproductive. Protection of the exercise of religious expression should not be allowed to include profit ventures under the guise of religious freedom. For example, under RLUIPA, a government is defined to include state and local governments,<sup>35</sup> who are the dominant forces in land use regulation. RLUIPA preempts state and local acts and regulations unless a state or local law provides protections of religious exercise at least the equivalent to those provided in RLUIPA.<sup>36</sup> Furthermore, RLUIPA is to be construed broadly in favor of religious protection.<sup>37</sup> Although RLUIPA caselaw is only now beginning to develop and a degree of uncertainty exists, it appears that state and local laws passed to implement smart growth programs may not have much influence on religious institutions, including megachurches.<sup>38</sup> As a practical matter, few local governments will run the risk of costly litigation for allegedly imposing a substantial burden on a megachurch through land use regulation. Further, it could have the result of allowing a church to operate a commercial enterprise under the umbrella of religious protection in an area where a similar non-religious commercial enterprise would not be allowed to operate. This fact increases the importance of finding a way to incorporate the megachurch into smart growth thinking and implementation, as RLUIPA actually provides a disincentive for megachurches to abide by and cooperate with local and regional governments attempting to implement smart growth principles and practices.<sup>39</sup> Of note is that when megachurches do combine multiple activities on their campus area they are implementing the mixed-use principle of smart growth. However, this mixed-use development would ideally fit within a regional plan.

#### IV. HYDE PARK AND SMART GROWTH IN AUSTIN<sup>40</sup>

34. Megachurches may operate these entities themselves, or may spin off non-profit or for-profit ventures. They may also sell or lease portions of the property to church members or others associated with the church for religiously-oriented business and commercial ventures. The question remains, however, whether these entities and ventures fall under the protective umbrella of RLUIPA and religious use of the property.

35. 42 U.S.C.S. § 2000cc-5.

36. 42 U.S.C.S. § 2000cc-3(h).

37. 42 U.S.C.S. § 2000cc-3(g).

38. See Edward J. Sullivan, *The Religious Land Use and Institutionalized Persons Act of 2000: An Update*, 25 ZONING AND PLANNING LAW REPORT 25 (April 2002).

39. See James L. Dam, *Churches Use New Federal Statute to Win Zoning Cases*, LAWYERS WEEKLY USA, Aug. 17, 2001, available at <http://www.lawyersweeklyusa.com/alert/usa/zoning.htm> (last visited May 20, 2002).

40. Jenny Staff Johnson, *One Megachurch's Manifest Destiny*, REGENERATION QUARTERLY

Hyde Park, a megachurch in Austin, Texas which claims over 10,000 members, illustrates the disconnect between smart growth initiatives and megachurches as previously discussed. The City of Austin has a progressive smart growth initiative that is implemented through a point system for new development, with different points awarded for the application of different smart growth principles. A primary component of the reward from the point score is a tax incentive. Unfortunately, a tax incentive is not enticing to a church.

The lack of motivation for a church in a smart growth program and the neighborhood concerns over expansion and growth of the megachurch led to conflict. Hyde Park, located in the city limits of Austin, gains over half of its members from northwest Austin and thirty percent from southwest Austin. Few residents of the immediate community are members. Hyde Park has become a regional church in the Austin area, with members traveling from different locales to worship and participate in the church. This raises an interesting question: should Hyde Park move to its constituents, or focus on attracting a closer membership? Without an incentive to remain in the central city under the smart growth initiative (which promoted infill and redevelopment), Hyde Park made the economical choice. The megachurch chose to build a satellite megachurch facility in suburban northwest Austin. However, the 58-acre "quarries" project has met with considerable opposition in its own right, with neighbors of the quarries property objecting on the grounds of traffic and environmental concerns. Meetings between the neighbors and the church have resulted in gridlock.

Back in the city, neighbors expressed several concerns with the proposed expansions. First, the traffic is clearly a concern for the neighborhood residents, who insist that prior expansions have increased traffic flow and disrupted the neighborhood. Second, the increase in impervious surface area due to the parking lot creates flooding on neighbors' property and increases stormwater runoff. The proposed solution to this drainage problem – the construction of a reinforcement wall – was placed on hold because the wall could conflict with the expansion plans of the church. A permit for a proposed parking garage expansion was denied by the city in large part because the expansion failed to comply with a neighborhood consistency requirement promulgated under the city's smart growth and development regulations. Expansion of the church, according to Hyde Park, is part of God's plan. The church responded with a federal lawsuit under RLUIPA.<sup>41</sup>

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(Spring 2000), available at <http://www.regenerator.com/6.1/megachurch.html> (last visited June 9, 2002); Erica C. Barnett, *Grow and Prosper*, THE AUSTIN CHRONICLE, Nov. 19, 1999; Erica C. Barnett, *Quarries Qualms*, THE AUSTIN CHRONICLE, Nov. 19, 1999.

41. Hyde Park Baptist Church v. City of Austin, No. A-01CA-212-JN (W.D. Tex. 2001),

Hyde Park illustrates several of the points and problems linking sprawl, neighborhoods, and other problems with a growing megachurch. Even in a city with an advanced and relatively successful smart growth initiative, no mechanism exists in Austin that accommodates the difficulties posed by megachurch growth. The church, for its part, expanded into a regional church that needed to appropriately address the pains of growth and demonstrate a community spirit. It seeks to follow its constituents into suburbia by moving away from the city core. Austin's experience with Hyde Park embodies the difficulties inherent in blending smart growth with megachurch growth, highlighting the difficulty of the Austin metropolitan area's lack of a larger regional plan.

#### V. INCORPORATING MEGACHURCHES INTO GROWTH PLANNING

Megachurches arguably have a religious duty to promote smart growth planning rather than sprawl. Christianity (and all modern religions) support the notion that we should plan for the future, and that the future is just as important as the present.<sup>42</sup> The Bible itself supports the idea of sustainable living.<sup>43</sup>

Though smart growth concerns have not formally entered the forefront of the megachurch debate, religious observers of the megachurch have identified issues that specifically relate to smart growth ideals and effective sustainable regional growth planning. The critical idea that this paper suggests for smart growth advocates is to recognize that there is a great need to pull the religious community into the smart growth debate as an ally. Megachurches are consuming vast amounts of suburban lands with little planning or effective interaction with the surrounding community. Bringing these megachurches into the smart growth movement will improve their development process and reduce the weaknesses that threaten to undermine their effectiveness and sustainability.

A common concern for both church leaders and smart growth advocates is "sustainability."<sup>44</sup> Megachurches market to middle class white suburbanites

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available at <http://www/rluipa.com/cases/HydeParkBaptist.html> (last visited May 20, 2002).

42. See, e.g., HERMAN E. DALY & JOHN B. COBB, JR., FOR THE COMMON GOOD: REDIRECTING THE ECONOMY TOWARD COMMUNITY, THE ENVIRONMENT, AND A SUSTAINABLE FUTURE 404 ("God is everlasting, and future lives are as important to God as present lives. To serve God cannot call for the sacrifice of future lives for the sake of satisfying the extravagant appetites of the present.")(1994).

43. See *Deuteronomy* 9:1-10:11 (Revised Standard Version).

44. See WORLD COMM'N ON ENV'T & DEV., OUR COMMON FUTURE: HOW TO TAKE CONTROL OF URBAN GROWTH AND IMPROVE YOUR COMMUNITY 43 (1987)(United Nations Brundtland Commission's definition of sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own

that live in a culture of shopping malls and media marketing. If megachurches fail to achieve a level of sustainability, they will leave behind abandoned complexes where green space once stood. The challenge for the smart growth movement is to help churches plan for a better, more sustainable future whether they have already developed land or are beginning to think about the possibilities.

The siting of megachurches is a particularly thorny issue. The trend has been towards suburban expansion, following the sprawl model. However, smart growth emphasizes more mixed use and planned developments. Since these megachurches depend on a certain "suburbanite" constituency, the argument can be made that locating megachurches in cities or older suburbs through infill and mixed-use development rather than the suburban community may financially weaken the organization and hamper its long term sustainability.

One strategy that should be explored by land use authorities and growing megachurches is the smart growth principle of infill development. Communities can attract such development by prioritizing sites and identifying and removing barriers to development.<sup>45</sup> This includes rezoning and providing incentives and credits for infill development. This may be a difficult concept to apply to megachurches. First, one of the common incentives for infill development includes property tax credits, which would not be applicable to churches that do not pay property taxes. Second, the size of proposed expansions and development by megachurches often range between 50-80 acres, which may be difficult to locate in a city area where infill is desirable. Third, megachurches attract and are attracted to a certain demographic, and that demographic is the suburbanite. Infill may take place in the suburbs themselves. For example, in West Covina, California, a suburban city to Los Angeles, the Faith Community Church, a megachurch with about 8,000 members, purchased and renovated a 21 acre, 172,000 square foot aircraft manufacturing facility.<sup>46</sup> Thus, local governments should examine incentives promoting church location within the city that may in turn help draw back those people who left in the city exodus that has taken place in recent decades. This can only be done, however, through cooperative efforts and a change in certain policies and attitudes in both the government and religious community. For example, a regional redistribution of wealth that would not overly penalize local governments for allowing large tracts of land to be devoted to a

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needs."); EBEN FODOR, *BETTER NOT BIGGER* 19 (1999) ("But it's not hard to see that much of our natural inheritance is slipping through our fingers. Each day we have less to pass on to the next generation.").

45. EPA, *GETTING TO SMART GROWTH*, *supra* note 1, at 56.

46. See Faith Community Church: Welcome, available at <http://www.fccwc.org/welcome.htm> (last visited May 4, 2002).

megachurch complex. If smart growth advocates are able to bring megachurch congregations to the table, a major step toward long term livable development will have been made.

Furthermore, local and regional governmental entities could work with a church to open up off street parking or develop mass transit lines which ease the increase in traffic and need for parking lots. Traffic is typically the greatest concern of neighbors to the megachurch. Some megachurches have bussed in members from a satellite parking facility, but most choose to build lots or decks on the property, and vehicular traffic and access is a major concern. Planning around transportation modes and exploring the possibilities of mass transit within the regional context may offer opportunities for both the megachurch and the local government. Megachurches could also apply “green” concepts in architecture and construction.<sup>47</sup>

Critical in the implementation of smart growth is the understanding that smart growth develops on a regional level.<sup>48</sup> While individual municipalities have made great progress on certain sustainability issues and must continue to do so, smart growth planning is much more effective at the regional level.<sup>49</sup> The problems of growth often transcend local boundaries, with municipalities ill-equipped to tackle the broad issues involved and often competing against one another when attempting to do so. Decisions made in one jurisdiction can have serious consequences in a neighboring or nearby jurisdiction. Megachurches provide a prime example. Most megachurches draw on multiple communities within a region for their membership.

The role of the smart growth movement should be to step in and encourage sustainability. Sustainability can only come when the megachurch, the locality, and the neighbors collaborate in the process. Without collaboration the development story goes something like this: protected by the Constitution and certain interpretations of RLUIPA, a megachurch develops in quiet suburban residential neighborhoods to be close to its wealthier congregants, local neighbors are unhappy with the increased congestion and the move out even farther to find the quiet secluded location they desire. As people leave the neighborhood the megachurch loses members and eventually feels the need to follow its congregants and move further out into yet more undeveloped lands. This is the story of sprawl. The challenge for smart growth advocates is to change this story to one in which the megachurch, the city, and the community’s concerns are heard and a solution which satisfies each group is

47. See JOHN A. DUTTON, *NEW AMERICAN URBANISM: RE-FORMING THE SUBURBAN METROPOLIS* (2001); KENNETH B. HALL & GERALD A. PORTERFIELD, *COMMUNITY BY DESIGN: NEW URBANISM FOR SUBURBS AND SMALL COMMUNITIES* (2001).

48. See CALTHORPE & FULTON, *supra* note 22; MANUEL PASTOR, ED., *REGIONS THAT WORK* (2000).

49. See CALTHORPE & FULTON, *supra* note 22; PASTOR, *supra* note 48.



generated during the development process to help curb the trend of outward growth.

The solution, or rather the implementation of smart growth, does not flow solely from substantive regulations and fiscal incentives. Rather, an integral part of smart growth is the process that creates those regulations, incentives, and other guiding principles. Consensus building plays a vital role in smart growth. Community-based organizations are increasingly leading neighboring visioning processes and using new tools to promote smart growth and sustainability – and this includes megachurches, who can provide a valuable resource with their ability to mobilize thousands of members. There are few places in America that offer the opportunity to address and interact with a mobilized force of thousands of citizens, neighbors, constituents, voters. This fact makes the megachurch a force to be reckoned with on matters of policy within those communities they serve.<sup>50</sup> Furthermore, the megachurch adds a moral dimension to the idea of smart growth, rising above the technical discussions surrounding infrastructure and transportation policies.<sup>51</sup>

From the standpoint of a land use planner, the problem of ensuring smart growth revolves primarily around the difficulty of deciding what to do in the face of conflicting needs and differing assessments, not in deciding in some technical way whether or not new growth meets some absolute benchmark of acceptability.<sup>52</sup>

Overcoming that hurdle of “deciding what to do” is the key, and it can only be accomplished through a consensus building approach that involves all the relevant (and committed) stakeholders with meaningful dialogue.

The Hyde Park example provides an instance where consensus building is crucial. No formal legal structure exists that governs the conduct of the parties to the degree each would like, and there exists a serious difference of opinion about the future growth of the area. Consensus building is appropriate in two respects to the Hyde Park case. First, consensus building should be used in a mediation format to reach a compromise. Second, the consensus building approach should be utilized to form a long term vision of the neighborhood and community, which would focus both the church and neighborhood on

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50. See Thumma, *The Kingdom, the Power, and the Glory*, *supra* note 7, at 14 (“With the power of this voting constituency in one’s pocket, the megachurch pastor is able to wield more than just moral persuasion when attempting to influence the decisions of city and county officials.”).

51. DAVID RUSK, *INSIDE GAME OUTSIDE GAME* 333 (1999).

52. See EPA, *GETTING TO SMART GROWTH*, *supra* note 1; Lawrence Susskind, Discussion Paper on Consensus Building and Smart Growth, Prepared for the Center on Sustainable Growth, George Washington University (forthcoming)(on file with authors); LAWRENCE SUSSKIND, ED., *THE CONSENSUS BUILDING HANDBOOK: A COMPREHENSIVE GUIDE TO REACHING AGREEMENT* (1999).

sustainable objectives. The critical lesson that developers, community planners, local and regional governments, churches and their neighbors need to learn is that collaboration benefits everyone and helps sustain what exists and plan wisely for the future.

## VI. CONCLUSION

The continued growth of megachurches represents an important win-win opportunity for the application of smart growth principles, both for the smart growth movement and for the megachurch itself. If megachurches do not plan and grow in a sustainable manner within the community at large, they will continue with sprawl-like behavior and remain part of the problem, in contradiction to the Christian ethos of being a good neighbor. Efforts should be made to educate megachurches regarding smart growth and involve them as active stakeholders in developing a vision of the future. This must be done on a consensus basis because there is little by way of practical legal mechanisms to control a megachurch.

To do this, however, requires a clearer understanding of the intersection between megachurches and sprawl. While certain qualitative aspects can be surmised from present data, a more thorough study of the ecological footprint left by a megachurch must be undertaken. Megachurches clearly are a social force serving the needs of their members that should be understood, as they present a chance to apply smart growth initiatives. By reaching the megachurch, smart growth enterprises are reaching those individuals who need to understand the implications of growth and sprawl the most – the suburbanites. While hopeful of the opening of the window of opportunity, much research and work remains to be done in addressing megachurches within the context of smart growth planning.

