

OCTOBER 2010

REPORT



ISPU

Building Mosques In America:

Strategies for Securing Municipal Approvals



Kathleen E. Foley

ISPU Fellow

Institute for Social Policy and Understanding



© 2010 Institute for Social Policy and Understanding. All rights reserved.
No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Institute for Social Policy and Understanding. The Institute for Social Policy and Understanding normally does not take institutional positions on public policy issues. The views presented here do not necessarily reflect the views of the institute, its staff, or trustees.



Kathleen E. Foley

Cornell University

ISPU Fellow

About The Author

Kathleen E. Foley is a fellow at the Institute for Social Policy and Understanding (ISPU) and a PhD candidate in Cornell University's Department of City and Regional Planning. She studies land use planning and conflict management in public processes. Her dissertation research, funded by the Graham Foundation for Advanced Study in the Fine Arts and the Barakat Foundation, focuses on the development of Islamic centers in American suburbs. She is particularly interested in the civic engagement of immigrants via participation in public review processes, as well as the influence of public negotiation and compromise on the evolution of a distinctly American form of mosque architecture. She received her B.A. in communications from Ithaca College, with minor studies in the history of Islamic architecture and urbanism, and holds an M.A. in historic preservation planning from Cornell University.



Table of Contents

- 5** Executive Summary
- 9** Introduction
- 15** **Part One:** Research Design and Description of Case Studies
- 23** **Part Two:** Strategies for Addressing Opposition,
Reducing Conflict, and Securing Municipal Approvals
- 45** Conclusion

Protesters march in opposition to the proposed Park 51 mosque.



Executive Summary

This report is intended as a best practices guide for faith communities, as well as for the professionals and advocates supporting them, as they attempt to develop or expand houses of worship in the face of organized grassroots opposition. Recommendations are drawn from case studies of mosque development proposals made in the eighteen months immediately following September 11, 2001—arguably the most tumultuous period Muslim Americans had faced prior to the recent shockwaves caused by the so-called Ground Zero mosque, also known as the Park 51 development.

Although the mosques examined in this report faced neither a nationally networked, hyper-aggressive grassroots opposition movement nor the mainstream media glare that current mosque development proposals are encountering in the wake of Park 51, they were up against highly emotional responses as well as legitimate land use concerns. Key lessons from these case study mosques are distilled in this report.

The report begins by contextualizing opposition to Park 51 in a thirty-year crescendo of resistance to mosque proposals, including the inestimable impact of the 9/11 attacks. Reaction to the Park 51 proposal marks a dramatic departure from previous opposition tactics and is often depicted as the single catalytic event inspiring the current national grassroots movement against mosque development. Such an analysis is far too simplistic. A broader perspective is offered here by examining myriad national and international events and conditions that together form the sociopolitical context for heightened tensions around mosque proposals. Particular emphasis is placed on the impact of a coinciding national election season, as well as the rise of the Tea Party and its grassroots organizing prowess.

Next, the research methodology is outlined and the three subject mosque developments are briefly described. Then, based on conflict and response patterns identified in the studies, specific recommendations are made to faith communities planning real estate developments. As a foundation, constitutional protections for the free exercise of religion are presented, along with the intent of the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

*The value of
a neighborhood's
existing
population
diversity and
variety of uses is
a key consideration
in mosque
development."*

As part of the recommendations, a site-selection tutorial designed to identify locations that are least likely to cause significant conflict is offered. Emphasis is placed on understanding allowable uses in zoning codes and anticipating lines of opposition when variances are required. The value of a neighborhood's existing population diversity and variety of uses is established, and the particular problems of proposing a mosque in a residential neighborhood are addressed. Strategies for streamlining required reviews are also presented.

Moving away from these nuts-and-bolts process considerations, the report then turns to the human interactions that can influence outcomes in the development process. Advance troubleshooting with municipal planning officials is encouraged, as are early and frequent interactions with likely opponents. Methods for educating the public about Islam generally and a mosque proposal specifically are offered. The importance of a diverse supporting coalition is stressed.

Finally, the report suggests conflict management strategies for public review sessions. These include discussion of the faith community's presentation style and approach as well as the establishment of clear and enforceable guidelines for public comment.

The report concludes by making recommendations for mosque members' public engagement after land use approvals have been secured and their facility has been built. A development review should be regarded as only an initial step in the faith community's integration into and contribution to the broader civic sphere.



PARK

NO 5
EXCE
7

*The former Burlington Coat
Factory building that is the
proposed site of Park 51.*



Introduction

The controversy surrounding the so-called Ground Zero mosque, also known as Park 51, has catapulted real estate developments by Muslim American communities and grassroots opposition to such undertakings onto the national media stage. The symbolism of the development site or, more accurately, its ascribed symbolism—it is not, in fact, located at Ground Zero, nor is it simply a mosque—and the emotions that the location inspires are impacting mosque developments across America. In Park 51’s wake, proposals from Tennessee to Minnesota and California are receiving national media attention and facing opposition fueled by the organizing power of national grassroots causes. What once would have been local land use controversies are now being presented as issues of national and international significance. Most importantly, they are serving as proxies for a number of more complex struggles commonly reduced to simple dichotomies: Islam versus the West, Islam versus Judeo-Christian culture, and the culture wars between “red” and “blue” America.

Arguably, the controversy over Park 51 is having a greater impact on the development efforts of local Muslim communities than did the 9/11 attacks themselves. Although the dramatic, well-organized national opposition movement to this single development is unprecedented, resistance to mosque proposals (as well as Islamic community centers, schools, and other related uses) is not new. Opposition to mosques has been documented since the early 1980s,¹ when proposals to develop such facilities increased to meet the needs of a growing and maturing Muslim American community.² Prior to the Park 51 controversy, however, conflicts over mosque development in American cities and suburbs were local affairs that rarely garnered attention beyond the municipalities in which they were proposed. Opponents tended to focus their critiques on such land use issues as parking, traffic, and noise, even if those stated reasons veiled their true intent to exclude Muslims from the neighborhood.³ Zoning and planning boards frequently yielded to public pressure and denied the necessary permits.

In Park 51’s wake, mosques across the US are receiving national media attention and facing opposition fueled by the organizing power of a national grassroots movement.

1 See Kathleen M. Moore. *Al Mughtaribun: American Law and the Transformation of Muslim Life in the United States*. Chapter Six: “There Goes the Neighborhood: Mosques in American Suburbs.” Albany: State University of New York Press, 1995.

2 Mosques were developed in America throughout the twentieth century, but not in any notable numbers much before 1990. After 1965 and as a result of reforms in American immigration laws and increasing political upheaval in the Middle East and South Asia, Muslims began arriving in the United States in unprecedented numbers. These new immigrants soon outnumbered earlier generations of immigrants as well as indigenous African American Muslims, who typically congregated in storefront mosques. As a whole, however, these post-1965 immigrant Muslims did not establish purpose-built mosques in sizable numbers for several decades. Many Muslims believe that Islam discourages wealth accumulation via compounding interest, so communities often saved for several decades before having sufficient resources to plan and propose religious facilities. The increase of mosque construction after 1990 reflects this phenomenon, as well as the desire of Muslim Americans to provide proper Islamic education and community resources for younger generations.

3 Scholars and the general public tend to focus on 9/11 as the seminal event that changed Americans’ perceptions of Muslims generally and specifically of fellow citizens who are Muslim. However, the tragedy of 9/11 is only the most dramatic in a series of events that shaped the nation’s collective relationship to Islam through the 1980s and 1990s and amplified nativist and xenophobic prejudices against Muslim Americans. The negative reception of mosque developments in those decades was influenced by such events as the OPEC oil embargos of the 1970s, the 1979 Iran hostage crisis, the 1985 Achille Lauro hijacking, the 1989 Pan Am Flight 103 bombing, and the first World Trade Center attack in 1993.

Map highlighting anti-mosque incidents across the country over the past five years.



As a result, Muslim American communities often spent years searching for developments sites before finally succeeding. In fact, it was not unusual for them to settle for parcels that were undesirable but more likely to be approved, or to make considerable compromises on their original plans.⁴

The tragedy and trauma of the September 11th attacks heightened the scrutiny of mosque proposals across the nation and influenced opposition strategies. In the years immediately following the attacks, the true emotions of some opponents were more freely expressed in public hearings—fears about terrorism and the role of mosques in terrorist training were openly invoked to justify their opposition to mosque projects and question the civil rights of Muslim Americans to develop real estate for worship purposes. Such topics dominated many hours of public sessions across the country, despite their irrelevance to land use reviews. Sophisticated opponents, however, understood that review boards could not deny necessary approvals on the basis of fear and bias and thus employed the language of land use to mask true desires to keep Muslims out.

Certainly, legitimate land use concerns have been at the core of many cases since 9/11. But addressing these issues productively amidst the din of anger and suspicion has been challenging for even the most seasoned review board members. Often, municipal officials and lay board members are dealing with levels of conflict they have never experienced and for which they are not trained or prepared. Yet even in this maelstrom, most mosque proposals made in the last decade were eventually approved for construction. Fortuitously, in 2000 Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA), thereby creating a safer climate in which to propose religious property developments of all kinds and reaffirming the cherished civil right to exercise one's religion freely. When lawsuits have been the only remedy for contentious mosque proposals, RLUIPA has helped ensure their approval.⁵ This legislation will be discussed later in the report.

Resistance to mosque proposals over the last decade was tame by comparison to what we see today. Protest, even if bruising, at least took place in the controlled environment of public

⁴ Documentation of mosque proposals from the 1980s and 1990s is thin. My assessment is based on the Moore chapter, cited above, on accounts found in the press review I conducted for my research, and on the community histories shared with me by case study participants.

⁵ For an analysis of outcomes for religious land use claimants under RLUIPA, particularly as compared with previous federal legal regimes, see: "Religious Land Use in the Federal Courts under RLUIPA," *Harvard Law Review*. June 2007, Volume 120 Issue 8, pages 2178-2199.

sessions and within the framework of public debate—Muslim American applicants had the opportunity to respond to accusations and counter speculation with facts. Now, however, a vocal and organized opposition is in the streets with placards and bullhorns, shaping public opinion through national media coverage. Some Muslim Americans and advocates may look back with a sense of nostalgia to the days when cooler heads generally prevailed, rejecting reactionary bigotry in favor of the American ideals of equality and religious tolerance. Certainly, the Park 51 development is fanning the flames of Islamophobia and negatively impacting responses to mosque proposals nationwide. But it is a mistake to treat Park 51 as either the culmination of America's collective 9/11 pain or the single catalyst for the national drama unfolding daily on our television and computer screens. Park 51 is being proposed in the eye of a perfect storm.

The national grassroots movement against mosque development, and the "Islamization" of America that the movement claims will follow mosque construction, rises against a backdrop of broad cultural angst. The limited success of the extended wars in Iraq and Afghanistan is straining the nation's patience and resources. Periodic terrorist activity across the globe, along with thwarted attempts on American soil, contributes to increasing fear and tension. The economy has collapsed, and in a pattern typical of financial hardship, the very immigrants who were once welcomed by a flush nation are being villainized and aggressively rejected by a growing nativistic contingency. Although the brunt of this backlash is focused on Central and South American laborers, the general sentiment is extending to all immigrants—especially those who are Muslim. In a -statistical void, bloggers and other pundits describe the growth of Islam in America as exponential, which only feeds rising nativist anxieties.⁶

On the political front, reactions triggered by the 2008 election add further drama to the Park 51 saga. A conservative base shocked by the election of Barack Obama and a Democratic Congress has rebelled against the two-party status quo and added a powerful player to the local and national political stage. The Tea Party is built on a foundation of anger over taxation in general, and healthcare reform and the Wall Street bail out in particular. The movement, which also has a strong evangelical Christian orientation, is gaining traction nationwide, expanding

⁶ Pamela Geller, the author of the blog "Atlas Shrugs" and co-founder of several groups dedicated to fighting the "Islamization" of America, is widely credited with having brought Park 51 to the national spotlight and coining the misnomer "Ground Zero Mosque." Certainly, she is a powerful voice and a media darling, appearing regularly on network and cable television as an "expert" on Islam. Analyses that treat Geller as the causal force behind the controversy, I would argue, are far too simple and dismiss the larger societal trends discussed here. See: Daniel Burke, "Pamela Geller, 'Queen Of Muslim Bashers,' At Center Of N.Y. 'Mosque' Debate." The Huffington Post: http://www.huffingtonpost.com/2010/08/20/pamela-gellerqueen-of-mus_n_689709.html. Accessed 9/16/2010.

its membership and garnering the affiliation of political candidates at all levels. Paradoxically, these Right-leaning Tea Partiers draw on the lessons of Saul Alinsky, the decidedly leftist father of community organizing. Openly following his Rules for Radicals, Tea Partiers have quickly and efficiently organized disparate individuals with “inchoate anger”⁷ to respond to a variety of issues, including mosque development proposals across the country. Their influence on and participation in mosque protest rallies is seen in over-the-top tactics designed to garner media attention.⁸ The dissemination of images and accounts from these unfortunate events seems to be emboldening local grassroots opponents to mosque proposals and inspiring copycat responses far from Ground Zero. Adding to the fury, politicians at every level of government are weighing in on Park 51 and other mosque proposals in increasing numbers during this 2010 election season.⁹ The combination of protest and politics places tremendous pressure on development review board members, and Muslim Americans may be justified in worrying whether their proposals will be given a fair hearing.

Muslim Americans—and all faith communities—should take heart. Despite shifting societal winds, the First Amendment stands and protects all religions. The legal structure that made mosque developments possible even in the darkest days following 9/11—RLUIPA—is still in force. This report offers lessons drawn from three case studies of mosque developments proposed within eighteen months of the 2001 attacks. Although these particular mosque proposals did not face the nationally networked, hyper-aggressive opposition movement that current mosque development proposals are encountering, they were often, and to varying degrees, up against emotional, angry and bigoted responses.

After a brief description of the case studies, key lessons from them are distilled for Muslim American communities hoping to develop their own facilities, as well as for their advising professionals and supporting advocates. Although this report is intended primarily for Muslim American communities and the recommendations particularly focus on issues raised by mosque

7 Kate Zernike, “Shaping Tea Party Passion Into Campaign Force” The New York Times, Published 8/25/2010. Accessed via the Times website 9/16/2010: http://www.nytimes.com/2010/08/26/us/politics/26freedom.html?_r=1&scp=1&sq=saul%20alinsky%20&st=cs

8 A dramatic example is the protest in Temecula, California during which protestors were encouraged to bring dogs to Friday prayers at the mosque there in order to offend and intimidate Muslim worshippers, many of whom consider dogs and pigs ritually unclean and polluting. See: Tim O’Leary, “Temecula Mosque Proposal Targeted in Pending Protest,” Fallbrook Bonsall Village News. First published 7/23/2010, Issue 29, Vol. 14. Accessed 9/23/2010 via <http://www.thevillagenews.com/story/49601/9/23/2010>.

9 In perhaps the most blatantly racist campaign ad to date, Republican candidate for North Carolina’s second district Renee Ellmers equates Park 51 to so-called victory mosques in Jerusalem, Cordoba and Constantinople, and uses the terms “Muslim” and “terrorist” interchangeably. http://www.salon.com/news/politics/war_room/2010/09/22/mosque_ad_north_carolina (accessed 9/30/2010).

developments, the lessons presented are generally applicable to any faith group attempting to develop real estate for worship purposes and potentially facing local opposition.

Finally, the term “mosque” is used in this report to refer generically to the physical structures built by Muslim American communities and the range of activities that occur inside them. Traditionally, “mosque” specifically indicates the hall in which prayers are conducted. In the United States and other parts of the world where Muslims are minorities, however, prayer halls are normally accompanied by a number of accessory spaces that serve the faith community’s broader social and educational needs. A high proportion of Muslim American communities refer to their facilities as “community centers” and/or “Islamic centers” as a way to communicate the diversity of activities and services which take place within them. As a shorthand, however, leaders and members commonly refer to their facility as “the mosque,” as do the media and most non-Muslims. Therefore this report also will use “mosque” as a general term.



*Islamic Center of the Northeast
Valley, Scottsdale, Arizona:
Southwest entrance to the social
hall, currently used for prayers.*



Part One: Research Design and Description of Case Studies

In the course of my research, I identified the following three cases of controversial mosque development from among nationwide press coverage of proposals made within eighteen months of September 11, 2001. For comparability among cases, I focused particularly on mosques with primarily immigrant-origin memberships, located in suburban districts—the areas of fastest growth for the Muslim American population.¹⁰ Geographic distribution, neighborhood type, and the form of public review (e.g. use variance, site plan review, and design review) were also considered. My final selections were the Muslim American Community Association in Voorhees, New Jersey (20 miles outside Philadelphia); the Islamic Center of the Northeast Valley in Scottsdale, Arizona; and the Islamic Center of Savannah, Georgia.

To build a multi-faceted and balanced understanding of each case study, I interviewed the mosque leaders and any consulting professionals with whom they worked (e.g. lawyers, planners, and architects); municipal planning staff, attorneys, and review board members; neighbors and others who opposed the developments; and those who advocated for the Muslim American community. In addition, I reviewed all public files and press coverage related to the cases.¹¹ Key findings, which will be detailed in part two, included the importance of careful site selection; the critical need for advance conflict management on the parts of the Muslim community and the municipal planning staff; the advantages of public education, focused public relations, and coalition building; and the necessity for Muslim Americans to engage in the broader public sphere. Summaries of the case studies follow.

The Muslim American Community Association, Voorhees, New Jersey

Voorhees Township, New Jersey is a dense suburban community located twenty miles east of Philadelphia. Beginning in the 1950s, the post-World War II housing boom transformed this agricultural area into suburban subdivisions. In the 1960s and 1970s, white urban dwellers moved to Voorhees en masse to escape Philadelphia's post-industrial decline and racial violence. Since the 1980s, the township has experienced continued dramatic population growth and development expansion. Although still predominantly white, its demographic profile has diversified some and includes a small but thriving Muslim American community made up primarily of South Asian immigrants.

¹⁰ See Ihsan Bagby, et al. *The Mosque in America: A National Portrait, A Report from the Mosque Study Project*. Washington, DC: Council on American-Islamic Relations, 2001.

¹¹ Data from the three source groups were analyzed using cross-study synthesis to emphasize similarities and differences among the mosque developments. Findings were considered in the theoretical contexts of land use planning and law, conflict management, and Islamic architecture.

Abandoned design for the Muslim American Community Association, Voorhees, New Jersey, including the cupola that was misrepresented by opposition members as a minaret.
Keith Haberem, Architect.



Between March 2003 and November 2004, Muslim leaders sought public approvals to build a mosque and community center in the township. They selected a blighted corner parcel located on the edge of an upper middle class residential neighborhood, hoping to rehabilitate the two abandoned structures for their use. The neighborhood was predominantly a mix of older, modest ranch housing and large-scale custom homes. It also included a private school and some commercial uses adjacent to the mosque site. The site itself consisted of three parcels, two zoned for residential use and one for commercial use. Houses of worship were allowed as of right on the residentially-zoned parcels, but not in the commercial zone. Because of this a use variance was required.

The zoning board of appeals (ZBA) conducted the use variance hearings and site plan review. The sessions were complex and carried out in the glaring spotlight of regional and national media coverage. Levels of public participation and tension during the review process were high but not unprecedented.¹² Media accounts of the opposition to the proposal leave the impression that the conflict was entirely based on fear inspired by 9/11 and the American-led invasion of Iraq, which had taken place only three weeks before the first public hearing. However, careful analysis demonstrates that the confluence of a more complex set of factors escalated conflicts and nearly paralyzed the public process. The most problematic of these are presented below.

Increasing residential development pressures had reached an apex in Voorhees not long before the mosque proposal; the neighborhood around the mosque had been heavily impacted by related traffic issues. The most recent comprehensive plan process, which received high public participation, had focused particularly on broadening the commercial tax base. Mosque opponents seized upon the loss of the development parcel to a tax exempt religious entity. The ZBA's members received poor legal advice for their deliberations and therefore had difficulty understanding the bounds of their review.¹³ Similarly, board members and the public alike were insufficiently educated about hearing processes and requirements, and public comment was poorly controlled. Factually inaccurate statements made by members of the public and ZBA

12 Voorhees planning staff and ZBA members reported that more people have come out for hearings on gas stations and a new Wal-Mart than did for the mosque review. The nature of the tension itself was unusual because of its primary causes—9/11 and the war in Iraq.

13 The ZBA attorney provided no guidance on the Religious Land Use and Institutionalized Persons Act. Instead, it was the applicant's attorney who, in a memo to the ZBA chair, offered a primer on the law and its requirements. During a pre-vote discussion period for the use variance, a ZBA member read into the public record information on RLUIPA that he had gathered on the internet. This was the first mention of the law in a public session.



Muslim American Community Association, Voorhees, New Jersey, as built.

members were allowed to stand in the public record, and, gaining validity by neglect, they compounded with repetition and influenced deliberations. Additionally, fear-based diatribes went unchecked in comment periods and drowned out matters of purview and legitimate land use concerns.

The township and neighborhood were relatively homogenous in terms of race and ethnicity; most municipal officials and opponents had no prior experience with and little knowledge of Islam and Muslims. Public statements indicated that not a small number based their understanding of the way mosques work on such ubiquitous images as Mecca's Grand Mosque during Hajj season. Misperceptions about mosques were only exacerbated by the mosque community's leader, who provided ambiguous information about the anticipated occupancy and use patterns. Even if this information had been clear, weaknesses in the zoning code made the deliberation of mosque-specific issues (such as calculating occupancy for a congregation that prays on the floor without seats) difficult and confusing. From a design perspective, opponents requested that the mosque's design "blend in" with the surrounding residential architecture and "not look like a mosque." This request was highly problematic because Muslim leaders and mosque opponents had very different understandings of how this subjective concept should be interpreted in the design.

The final straw for opponents came after the site plan had been approved and zoning permits had been issued for the project. When the Muslim community applied for a building permit, it was clear that its architect had made substantial modifications to the approved design without requesting municipal approval. A stop work order was issued and public hearings were reopened. Given the lengthy and detailed review process that already had taken place, the late-stage changes further eroded the mosque leadership's credibility with the municipality and the surrounding neighborhood and reignited tensions.¹⁴

In the end, despite believing they were on solid legal ground to pursue the modified mosque design, the Muslim community withdrew it, reverted to the approved design and proceeded with construction. The president commented that law suits never make good neighbors. After

Opponents requested that the mosque's design 'blend' in with the surrounding residential architecture and 'not look like a mosque'.

¹⁴ There was considerable disagreement between the ZBA and the mosque's attorney about design purview. The mosque had undergone site plan review, not design review. The development site was not in an historic district; the applicant's attorney therefore felt that the specifics of its form beyond height and setback requirements were not the purview of the ZBA. Opponents and a majority of the ZBA disagreed and found the changes to be "significant" as defined by statute. This finding required the Muslim community either to submit to a new site plan review or revert to the elevations and plans as approved. They opted for the latter.

*Proposed design for mosque
in Scottsdale, Arizona.
Sal Ramel, Architect*



concerted efforts by the Muslim community since the mosque opened, tensions have eased in the neighborhood. My interviews with former neighborhood opponents reveal that none of their fears about traffic, noise, or criminal activity on the mosque site has come to fruition. In fact, most said that the Muslim American Community Association is an excellent neighbor and an amenity in the neighborhood.

The Islamic Center of the Northeast Valley, Scottsdale, Arizona

The Scottsdale case study is particularly interesting because the single approval that the mosque proposal required was design review. The development site is in a predominantly white, upper-middle class, single-family residential zone in which houses of worship are allowed as of right, so a use variance or other zoning approval was not required. Still, the proposal, put forward by a mostly South Asian immigrant Muslim community, was contentious and the ensuing debate reached far beyond the issues over which the board had jurisdiction.

To be sure, 9/11 had a tremendous impact on the Scottsdale proposal. The first public hearing was scheduled just three weeks after the attacks, but postponed by one month to allow emotions to calm. Despite the delay, fears about terrorism were openly cited in public comments. Planning staff assigned to the proposal reported receiving anonymous phone calls threatening reprisals if they shepherded the mosque to approval. Interestingly, though, data analysis and interviews seem to support the theory that legitimate land use concerns did trump fear for those living closest to the development site.¹⁵ Chief among those concerns was the question of the mosque's compatibility with a neighborhood of custom and semi-custom single-family homes, built in a flurry of construction activity beginning around 1995. Even though the Muslim community was within its rights to build in the neighborhood, opponents spent a good deal of energy arguing otherwise.

The only real legal ground on which one could oppose the Scottsdale mosque complex (which includes educational and social spaces as well as an imam's residence) was its design, the area of purview for the review board. Strict city-established guidelines for the neighborhood, as well as those of surrounding private homeowners' associations, dictate a specific muted "desert" color palette and low-slung forms approximating a southern Mediterranean style.

¹⁵ As of this writing, data analysis for the Scottsdale case study is ongoing.



Mosque structure in Scottsdale, Arizona reflects design compromises.

As originally designed, the mosque complex had a contrasting palette and colorful stained glass windows. Opponents and some design review board members felt that the comparative brightness of the proposed structures was aesthetically incompatible with the neighborhood. More troubling for the neighbors, however, was the overall height of the complex, particularly the proposed dome and minaret. The potential loss of mountain and city views, for which most property owners had recently paid a premium, was a source of particular agitation. So troubling was it, in fact, that a number of them attempted to broker a land swap to move the mosque to a parcel of land on a nearby commercial thoroughfare.

The leaders of the Muslim community were aware of their rights under the Religious Land Use and Institutionalized Persons Act and invoked it when they felt that opponents were having an undue influence on the design review board's deliberations. RLUIPA was more a big stick than an actual threat for the mosque's leaders, who wanted very much to be accepted by and contribute to the broader community. Indeed, they made significant modifications to their original design in order to appease surrounding property owners.

To reduce the complex's intrusion on surrounding vistas and still achieve the height necessary to meet their programmatic needs, the Muslim community decided to excavate substantially below grade before building. To meet this significant expense, the prayer hall and minaret were relegated to a phased plan and have not yet been built;¹⁶ prayers take place in the complex's social hall. This solution satisfied most opponents, and those I interviewed reported being pleasantly surprised by the limited impact that the mosque actually has had on their neighborhood. Arguably, however, the Scottsdale Muslim community made compromises beyond what it needed to make—the original height of the complex met the standing zoning code for the neighborhood and could lawfully have been approved had they decided to press on.

The Islamic Center of Savannah, Georgia

The Savannah mosque development was selected as a contrast case for the larger study. The faith community that built and attends the Islamic Center of Savannah is the city's second Muslim

16 My interviews with Scottsdale mosque opponents suggest that many incorrectly believe that the minaret and dome were removed from the plans as part of the viewshed negotiation. In fact, the design review board approved the minaret and dome as part of the phased plan and both will be constructed when funds are available. It will be interesting to see how neighbors respond once that construction begins.

*The Savannah
community
garnered national
headlines when
the local mosque
structure was
firebombed in 2003;
however, there
was no resistance
to the new mosque
development.”*

congregation and consists primarily of Pakistani, Indian, and Arab Americans.¹⁷ Beginning in November 2001, the mosque had its first home in a former single-family residence. The community garnered national headlines when the structure was firebombed in 2003. I considered it as a case study candidate based on that event, expecting to tell a “clash of cultures” tale of Muslim Americans in the Bible Belt, complete with a tumultuous public review process. As it turns out, however, the fire bombing was the only controversy related to the mosque, and it took place several months after regular worship commenced. There had been no resistance to the mosque proposal—not a single member of the public even attended the hearings for the use approval required for the Muslim community to rehabilitate the house as a prayer hall. Similarly, when members forged ahead with plans to construct a purpose-built mosque and community center on the site two years later, not a single comment was received during the site plan review hearings. A number of factors contributed to the conflict-free review process for the Islamic Center of Savannah.

The Muslim community chose its site wisely; the significance of this decision cannot be overstated. The mosque is located in a transitional district which was evolving from its original use as a single-family home neighborhood to mixed-use; the few remaining single-family homes on large lots already were islands in a sea of apartment complexes and semi-detached townhouses, adult care facilities, university facilities, commercial uses and, most significantly, a number of large Christian congregations. Controversies over the compatibility of land uses, therefore, already had arisen and been resolved before the mosque proposal ever came into play. The site itself had been rezoned from a single-family designation to a multi-family designation, smoothing the way for a use approval for a house of worship.

The leaders of the Islamic Center of Savannah are reputable physicians respected across the city. As the mosque’s public face, they lent a significant degree of credibility to the proposal. Additionally, their wide-reaching social and business networks were essential to the success of their development review, affording them access to resources and expertise that aided their negotiation of Savannah’s complex zoning regime. Finally, the doctors and their consulting planner conducted a proactive, door-to-door outreach campaign in the neighborhood to gather and respond to property owners’ concerns in advance of public reviews. This approach allowed them to demonstrate their commitment to being good and conscientious neighbors.

When one considers the case study mosque developments and the grassroots opposition they faced as a composite, a number of lessons emerge to inform planning and conflict management strategies for faith communities undertaking development projects. These are generalized below as recommendations.

17 Savannah’s first Muslim community is largely African American and worships near the city center. The city itself is almost evenly divided ethnically between Caucasian Americans and African Americans. According to the 2000 census, taken just before the mosque development, Pakistani, Indian and Arab Americans together constitute less than 5% of the city’s population.



*Dar al Islam; Photo courtesy
of Asad Tarsin*



Part Two: Strategies for Addressing Opposition, Reducing Conflict, and Securing Municipal Approvals

BUILDING A MOSQUE: LOCATION, LOCATION, LOCATION

When choosing a development site to construct a purpose-built mosque or to rehabilitate an existing building for use as a mosque, the primary concern is often convenience for the greatest number of members. Mosques located close to members' workplaces and homes enable them to attend daily prayers more frequently and with less disruption to their schedules. But in a political climate in which opposition to mosque construction and expansion is growing across the country, Muslim Americans need to give careful consideration to conflict minimization; that is, choosing those sites that are least likely to cause conflict and most likely to be granted municipal approvals.

Some might find this assertion problematic. Why, they might wonder, should a Muslim community be prevented from building a mosque on their first-choice parcel? The answer is complex. Development is controlled by zoning and other codes; proposed change of any kind is unsettling to many property owners and residents; and, in a racial and political climate increasingly hostile to Muslims, mosque proposals often inspire fear and outrage in the local community. Before undertaking such a project, Muslim community leaders must educate themselves about development options, public relations strategies, and, most importantly, their rights under the law.

This is not to say that Muslim leaders should be dissuaded from pursuing development sites they consider to be ideal. For the purposes of this report, Muslim Americans' legal rights to build are assumed. Rather, this section is a best practices guide intended for Muslim American communities specifically, and faith communities generally, that intend to pursue a real estate development project, as well as for the advocates and professionals supporting their efforts. What follows is an assessment of likely hurdles, as well as proven strategies, for reducing conflict in public approvals processes.

UNDERSTANDING THE LAW

The following is a broad explanation of religious practice and land use rights afforded to all citizens under the United States Constitution and a key federal regulation. It is offered not as legal advice, but as general background knowledge designed to further the reader's

understanding of topics discussed in this report. Faith communities intending to undertake real estate development should seek the professional advice of a land use attorney.

The First Amendment to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

There are two aspects of the First Amendment which together constitute the so-called separation of church and state in American law. The first is the Establishment Clause, which was originally intended to prevent the federal government from declaring a national religion or preferring one religion over another, including non-religion. In the twentieth century, case law extended the restriction to the states.

The Free Exercise clause, which is more complex, has been the subject of a range of interpretations.¹⁸ As a nation we have struggled to balance the constitutional right to unfettered religious practice with the need to regulate other activities, including land use and development. In recent years a flurry of legislative and judicial activity has resulted in shifting boundaries and varying standards for determining what is termed the government's "compelling interest" in regulating religious land developments, as well as the extent to which a government entity can limit free practice via the application of local land use laws. A full discussion of these decisions and actions is beyond the scope of this report. Instead, this section will focus on the culmination of the debate and the single most important law pertaining to religious land uses: the federal Religious Land Use and Institutionalized Persons Act of 2000, known as RLUIPA (pronounced ree-loopa).¹⁹

¹⁸ There are many resources available on the topic of the First Amendment. One historical reference is Wilson and Drakeman's Third Edition of *Church and State in American History: Key Documents, Decision and Commentary from the Past Three Centuries*. Cambridge, MA: Westview Press, 2003. Another source that is particularly helpful in the context of religious land uses is Deborah Rosenthal's article "Religion and the Constitution," included in edited volume *RLUIPA Reader: Religious Land Uses, Zoning, and the Courts*. Michael S. Giaimo and Lora A. Lucero, editors. Chicago: ABA Publishing, 2009.

¹⁹ Pub. L. No. 106-274, 114 Stat. 803-807, codified at 42 U.S.C. § 2000cc-2000cc-5. The name of the act indicates its two focus areas: limiting restrictions placed on religious entities by land use regulations, and on federal prisoners to practice their religion freely while incarcerated. Marci A. Hamilton describes RLUIPA as a "sausage" and a "quintessentially legislative product." It is a bill which, after being stripped by compromise of many of its original elements, pertains in its final form to the two strangely paired issues of land use and federal prisoners. *RLUIPA Reader*, chapter 2, "The History of RLUIPA," page 31. See footnote 18 for full citation.

Religious Land Use and Institutionalized Persons Act of 2000²⁰

RLUIPA prohibits a local government from imposing or implementing a land use regulation, defined specifically in the act as zoning and landmarking, in any way that imposes a substantial burden on the free exercise of individuals or a religious assembly or institution, unless the government can demonstrate that it (1) has a compelling interest to justify the regulation, and (2) has used the least restrictive means to achieve that interest.²¹ Under RLUIPA, the bar that a government body must meet to consider a zoning or landmarking action more compelling than free religious practice is high. It must be reached in a rational, fact-based process that is demonstrably unbiased and fair.

There are two key aspects of RLUIPA that faith communities should understand.²² First, the act requires local, state and federal bodies to treat religious assemblies on equal terms with nonreligious assemblies (such as private clubs or lodges).²³ That is, religious assemblies may not be excluded where secular assemblies are permitted, and they must be given the same zoning rights. Second, as written, RLUIPA considers accessory functions (such as affiliated schools, food pantries, senior centers, cemeteries, and the like) essential to the free exercise of religion and calls for them to be regulated in the same way that the primary worship spaces are regulated. That is, a local government may not place a substantial burden on the accessory use, either. However, recent court cases have begun to establish that, so long as the bases for zoning decisions are rational and equitable, the regulation of accessory uses does not necessarily place a substantial burden on a religious entity's right to free exercise.²⁴ This points to the fact that even in RLUIPA's tenth anniversary year, the regulation is still evolving based on incremental precedent; legal challenges are continually defining its boundaries more clearly.

20 Unless otherwise indicated, information in this section is drawn from: Giaimo and Lucero, *op. cit.* Adam Kingsley and Thomas Smith. "The Zoning of Religious Institutions in the Wake of RLUIPA: A Guide for Planners," *Zoning Practice*, September 2008, pages 2-7. Marc Rohr. "And Congress said, 'Let there be a religious land use': A RLUIPA Primer." *Florida Bar Journal*, 12/1/2004. Alan C. Weinstein. "Recent Developments Concerning RLUIPA," *Current Trends and Practical Strategies in Land Use Law and Zoning*, Patricia E. Salkin, ed. Chapter 1, pages 1-18. Chicago: ABA Publishing, 2004.

21 42 U.S.C. § 2000cc(A)(1)

22 The RLUIPA Reader (see footnote 18) is an excellent resource for faith communities, professionals assisting them, and their advocates. Two chapters are particularly useful—chapter three: "The Perspective of the Religious Land Use Applicant" by Roman P. Storzer and chapter ten: "The Top Ten Tips" by Daniel P. Dalton, et al.

23 When initially passed, RLUIPA was widely perceived to completely exempt religious land use proposals from local zoning and landmarking laws, and, in effect, to mandate their approval. This initial assessment that RLUIPA was something of a free pass for religious entities was not entirely accurate, and was based largely on lack of clarity in the text of the bill. Court challenges have helped define the law's reach more concretely.

24 See, among others; *Greater Bible Way Temple of Jackson v City of Jackson*, 478 Mich. 373 (2007); *Trinity Evangelical Lutheran Church v. City of Peoria, Illinois*, 07-cv-1029 (C.D. Ill. 3/31/2009); and *New Life Worship Center v. Town of Smithfield Zoning Board of Review*, 2010 R.I. Super. Lexis 101 (R.I. 7/10/10).

Attaining citizenship at an Islamic community center.



It should be noted that only a small percentage of RLUIPA challenges to municipal decisions have been filed by Muslim American communities. As was discussed in the case study section of this report, even with RLUIPA's broad protections, Muslim communities frequently concede to restrictions ordered by local officials, even when those restrictions infringe on their right to freely practice their faith. The increasingly hostile anti-Muslim sentiment since September 11th seems to pressure Muslim communities to compromise with neighbors and public officials to a degree beyond what likely would be considered acceptable by mainstream faith communities. The result, I contend, is an unequal application of land use laws among faith groups. In effect, RLUIPA, and indeed the First Amendment, only protect those religious groups that feel they hold sufficient political capital to demand the enforcement of laws.

Advance Planning for the Faith Community

Analyze and Plan for Demographic Expansion and Future Programmatic Needs

Long before faith communities meet with an architect or file a zoning application, their representatives should think carefully about their dreams, goals and capabilities. A strong internal sense of direction will help the community make wise site selections, explore creative and functional design choices, and strengthen the case that will be made to municipal officials and the public. Concrete development plans will communicate a sense of trustworthiness and stability to municipal review boards and the public.

An early step in internal planning should be conducting an analysis of current and projected demographics. Realistic membership numbers will facilitate clear discussions of key planning questions such as building occupancy and parking requirements; these issues have been heatedly contested in a number of mosque reviews. Estimates should be based upon the peak number of attendees at jum'ah (Friday congregational) prayers and, if the community is planning to host larger Eid (high holiday) events, for those celebrations as well. Community representatives should think carefully about how membership is growing. For example, how many young families with children regularly attend jum'ah prayers? How many Muslim families have moved to the area recently, or have said they would move to the area if a mosque were built? It will be easier to plan for those numbers and secure approvals for all construction now, even if funding limitations require the faith community to present a phased plan.



Aspirations for uses within the mosque and on the site should be similarly considered. Do members hope someday to provide housing for an imam and his family; funerary facilities; an elementary school? These ideas should be included in plan submissions from the earliest stages of the review process, and concept approval should be sought for all phases at once. Supporting documentation should be clear about what is to be completed in the various building phases, and mosque representatives should emphasize their commitment to presenting design details to the public as they become available.

A phased proposal based on sound projections and comprehensive planning can reduce conflict in several ways. First, the Muslim community can use a public forum to detail exactly what activities will take place within its facilities and therefore counter opponents who might protest: “we don’t know what will happen in there.” Implicit in this claim, of course, is the faulty notion that what happens inside mosques is illegal and/or dangerous. Second, the community is not vulnerable to the common accusation that Muslims try to “get their foot in the door” by securing approval for a modest project while covertly planning something on a much greater scale and with a larger impact (e.g. a more elaborate campus with a school, community center, or some other facility). Third, future neighbors with legitimate land use concerns such as parking, storm water management, and lighting will get a sense of the project’s overall impact from the outset and may be reassured by having an opportunity to influence mitigations during the earliest stages of planning.

Put most simply, conflict-ridden review processes can be egregious for all parties. It is better for a faith community to secure as many approvals as possible in the first round so that the entire municipality is spared the emotionally draining, fractious experience of repeated reviews.

Broad Considerations for Choosing a Development Site

Once mosque leaders have a sense of approximately how much space the community will need going forward, they can begin to identify potential development sites. There is no formula for identifying the perfect site—characteristics will vary from site to site and among municipalities, and of course specific needs will differ for each Muslim community. But the case studies presented above demonstrate a number of factors that are likely to reduce conflict regardless of project specifics.

If the community plans for additional land uses such as an elementary school these ideas should be included in plan submissions from the earliest stages of the review process.

Typical street of single-family homes near the Islamic Center of the Northeast Valley, Scottsdale, Arizona.



Learn the Zoning Map: “As of Right” Development

Mosque representatives and their consulting professionals should familiarize themselves with the municipality’s zoning map and code. It is important to know how different neighborhoods are zoned and which zones allow houses of worship “as of right.” That is, churches, synagogues, mosques and similar religious facilities²⁵ are automatically permissible uses in the zone and do not require a use variance or a use permit. This is usually the case in residential zones, and is commonly the case in commercial zones as well.

In zones where houses of worship are not allowed as of right, the applicant commonly must, among other criteria, demonstrate the facility’s “inherent benefit” to the surrounding neighborhood in order to be granted a use variance. A use’s inherent benefit is the contribution it makes to the surrounding community as a function of its very nature—religious properties, for example, usually are considered inherently beneficial because they provide locations for the free expression of citizens’ religion (an enshrined constitutional value). In addition, houses of worship commonly provide charitable, educational, social, and recreational services to the broader community. The threshold for demonstrating the inherent benefit of a house of worship is generally quite low, but the language of the discussion is an invitation for opposition arguments such as “it’s not beneficial to me,” “I don’t want services from a mosque,” and so on. If engaging in this particular debate can be reasonably avoided by selecting an alternative site, an opportunity for subjective opposition can be eliminated.

The Challenges of Residential Neighborhoods

Historically, houses of worship were located in dense residential districts to maximize pedestrian accessibility. For Muslim Americans who worship at their mosque frequently, accessibility is also prized. Although today congregants more often drive than walk to their houses of worship, particularly in the suburbs, zoning codes memorialize the tradition of walkability and generally allow religious properties as of right in residential areas. Establishing a mosque in such a zone may simplify the review process, but it may not necessarily reduce conflict.

25 In response to RLUIPA, some municipalities have developed “neutral” zoning codes that treat religious and secular assemblies equally, so these traditional categories are not present in the code. It is more likely in those cases that religious property developments will be referred to simply as “assemblies.”



Religious facilities are no longer quiet neighbors who only disrupt a residential area on Sunday mornings for a few hours. The range of services and activities that they now provide generally takes place throughout the week and into evening hours, making their noise, traffic and lighting impacts nearly constant. In short, today's religious facilities can be genuinely irritating to surrounding residents and property owners, and neighborhood opponents often have legitimate land use concerns when they resist their development. Members of faith communities should bear this in mind, and even try to imagine their proposal from the neighbors' perspective when they consider residential districts for their real estate projects.

This rather harsh assessment of religious property development should be balanced against the idea that virtually all new developments of any kind in residential zones are characterized by conflict. Particularly in suburban areas, where housing tends to be more segregated from commercial and public uses than in cities, residents often have expectations that their neighborhood will remain a haven for quiet, private living among demographically and socioeconomically similar households. Change, whether it is in the form of proposals for schools or other public services, multi-family housing, or commercial uses, is often vigorously opposed. Justifications include the protection of property values, traffic impacts, and the preservation of the "kind of neighborhood" into which the owners bought. Residents' definitions of place might be based on demographic homogeneity, uniform architecture and design standards, or single/limited land uses. When the status quo is prized, a mosque, in broad terms, is no different than a convenience store or a nursery school; all proposed new uses are likely to meet with some degree of resistance. Clearly, though, the current sociopolitical climate and increasing Islamophobia contribute to misperceptions about the purpose of mosques and drive a particularly vociferous opposition to their development and expansion, particularly in residential neighborhoods.

All this is not to say that Muslim Americans should necessarily avoid developing houses of worship in residential neighborhoods. For many reasons, including convenience, they are highly desirable areas. However, if a Muslim community does choose such a location, they must be prepared to make an extra effort when it comes to neighborhood outreach and public education. In addition, they should enter discussions with municipal officials and neighbors in the spirit of compromise. The standard for neighborliness will be high in a residential area. Being willing to meet neighbors in the middle and beyond on matters like vegetative screening and fencing, parking containment and traffic minimization, and light and sound disruptions

*Muslim Americans
developing mosques
in residential
neighborhoods
should make
extra efforts in
neighborhood
outreach and
public education.*

will go a long way toward reducing and resolving conflict. Such good faith efforts will help to establish the Muslim American community's commitment to maintaining the neighborhood's quality of life. Of course, even good faith efforts can be rejected and legal action may be required. Especially when pursuing development in a single-family residential zone, Muslim American communities should be prepared to invest resources in legal counsel.

Minimize Required Municipal Reviews

The fewer municipal approvals required for a mosque project, the less complex and less conflict-ridden the overall review process is likely to be. Avoiding a use hearing is one way to reduce reviews; avoiding site variances is another. Can the Muslim community achieve the building size and form it desires under existing setback, height, and lot coverage requirements in a particular zone, or will it have to request a number of variances to do so? The need for multiple variances may reinforce the perception that the mosque is not appropriate for the selected parcel of land, and may cause opponents to call for its relocation. Such a scenario is more likely if the community wants to rehabilitate an existing structure built before local zoning laws were enacted. The building as constructed would have been grandfathered, but any change in use or substantial structural modifications will require either compliance with current zoning and building codes or variances from them.

Finally, building a mosque in an historic district also is likely to complicate review processes and add to potential conflict. Although mosques have been built across the country for the better part of a century, it is really only in the last twenty years that they have been established in any meaningful numbers or attracted public notice. As such, Islamic forms are not yet thought of as part of the American architectural lexicon in the same way that churches and synagogues are. Domes and minarets, the mosque's most recognized design elements, are largely still considered "foreign" and "out of place." Although my research did not particularly examine mosque construction in historic districts, it seems reasonable to assume that introducing Islamic forms in landmarked zones might result in opposition based on their design compatibility and appropriateness.



Where, Then? Specific Factors to Consider in Site Selection

The case studies demonstrate the importance of taking the following factors into account when making site selections.

Neighborhood Type/Diversity of Uses

As described above, single-family residential neighborhoods may be most resistant to the introduction of a house of worship, and particularly to a mosque. The more diverse an area is in terms of the uses it contains, the more likely that property owners and residents will be open to a new or expanding mosque. A mixed use neighborhood that already includes, for example, commercial properties, multi-family homes, and, importantly, other houses of worship, is less likely to feel imposed upon by a new religious facility—variety and coexistence are already part of its daily rhythm.

Resident Diversity

Similar to use diversity, existing racial, ethnic, and socioeconomic diversity can ease local acceptance of a mosque's attendees. A neighborhood that already comfortably hosts people from a variety of backgrounds is likely to be more open to the range of ancestries typical among Muslim American communities. Racially or ethnically homogenous neighborhoods can feel threatened by the introduction of people who do not look like them or worship like they do, and racial and xenophobic antagonism based on a sense of intrusion can result. This can be particularly true in suburban communities populated by white flight in the 1950s-1970s.

Residents in such neighborhoods—the Voorhees case was such an example—can perceive that they fled cities to avoid the “problems” of diversity and racial integration and therefore they may not be interested in having people of color “follow” them to the suburbs.²⁶ Unfortunately, Muslim immigrants from South Asia, East Asia, the Middle East, and even Africa sometimes fail to understand and anticipate that the same racist arguments made to exclude African Americans and/or Latinos from entry into the suburbs can be generalized and applied to them as well.

Muslim immigrants sometimes fail to understand that the same racist arguments made to exclude blacks and Latinos from entry into “white-flight” suburbs can apply to them as well.

²⁶ A growing body of literature documents the diversification of the suburbs. In the past, immigrants (including those from traditionally Muslim parts of the world) first settled in urban areas, established themselves, and then moved up and out to the suburbs. Gentrification and rising costs of urban living throughout the 1990s and early 2000s has meant that immigrants increasingly settle directly in suburban and exurban communities.

Similarly, property owners who have self-segregated by class and income in higher net worth districts often are not keen on the introduction of uses that they perceive will threaten existing property values. Faith community leaders should try to identify neighborhoods with as many types of diversity as possible: racial, ethnic, socioeconomic and, as previously argued, land uses. Even better, they should try to understand the membership's own geographic distribution. For example, are there any developable parcels located near clusters of member residences or workplaces?

Recent Development and Traffic Pressures

A neighborhood that has built out rapidly in recent years or felt the pressure of encroaching commercial development may feel that any additional new uses are unacceptable, let alone a mosque. Muslim American leaders should attempt to understand the recent development history of the districts around sites being considered, as well as other major developments likely to be proposed soon. They should also identify other high impact uses already located nearby, such as schools, hospitals, and public services. The same concept applies to traffic issues; if an area is already burdened with traffic and congestion, property owners are unlikely to react positively to the prospect of even more cars being added by Muslim worshippers.

Sufficient Parcel Size

Muslim community leaders should not consider parcels that appear to be too small to contain the project's envisaged uses, both now and in the future. Parking calculations should consider needs on peak use days (viz. Friday, during Ramadan, and the two high holy days: Eid al-Fitr and Eid al-Adha). In two of the three mosque proposals I studied, opponents voiced concerns that the Muslim communities were trying to fit too much on lots that were too small; worries about overflow parking on residential streets became a focus of criticism.²⁷ Mosque representatives should make clear that their community is committed to minimizing all impacts on surrounding properties. If at all possible, mosque planners should design beyond code requirements for parking, screening, garbage containment, and other perceived nuisance issues. When publically presenting plans and privately negotiating with opponents, representatives should emphasize the faith community's forethought.

²⁷ Parking is consistently a point of contention for houses of worship regardless of religion.

Advance Planning with the Municipality and Consulting Professionals

Understand the Process/Troubleshoot

A faith community's leaders should request an advance meeting with the appropriate planning staff in their municipality. The goals of this meeting should be to help leaders identify the person(s) most likely to be able to help mosque planners and designers understand what codes will be applicable, which municipal boards will review the mosque proposal, and what those boards require to ensure that the application is ready for review. Depending on the size and structure of the local government, mosque leaders' first contact may be with a professional planner, a code officer, a clerk, or perhaps a building inspector. Mosque representatives need not have full plans or all the details of the development project worked out—in fact, at this stage it is better if the plans are still mainly preliminary. The idea is to offer a thumbnail sketch of plans so that the Muslim community can get a sense of what will be required of it, and hopefully troubleshoot any potential areas of conflict before reaching the public hearing stage of review. Properly understanding basic requirements will start faith communities off in the right direction and hopefully help them avoid costly errors as their plans develop. A mosque representative should be charged with keeping careful records of all informal meetings with municipal officials and documenting them with letters, memos or even minutes that confirm details of the conversation, what was agreed, and action items.²⁸

A key question Muslim American leaders might ask at this early stage is how the local building code calculates occupancy and parking for houses of worship and other places of public assembly. Because mosques do not use fixed seating for prayers, the standard “x number of persons per pew” used for churches and synagogues is not applicable. Logically, one simply refers to the International Building Code (IBC) guidelines for assembly spaces without seating. However, as was the case in the Voorhees study, municipal officials can feel unprepared to deal with houses of worship that do not follow the conventions to which they are accustomed. Such a lack of familiarity can lead to confusion, and confusion can lead to conflict.

28 Dalton et. al recommend this strategy not only to ease recall of details, but for use in the case of a RLUIPA lawsuit; the faith community's documentation of informal meetings may be admissible as evidence. He further recommends: “During the formal meetings, retain a court reporter to transcribe what is said. It is remarkable how many times the [municipality's] video or audio tape machine ‘malfunctions’ during critical hearings.” Giaino & Lucero, op. cit. Page 157.



Assemble a Team

Ideally, Muslim American communities should assemble a team of professionals to prepare and submit applications, make presentations in public hearings, and address any legal issues that might arise as part of the public review process. These might include a consulting planner, an architect and/or engineer, and a land use lawyer. A planner might also help with a zoning ordinance analysis during the site identification phase and advise areas in which to focus real estate searches.²⁹

Professionals can be costly, of course, so hiring them may be beyond the financial means of some faith communities; however, the investment would go a long way toward minimizing the impact of grassroots opposition. In cases where there simply are no resources for professional consultation, the mosque's leadership should first assess the skills within the community. For example, are any of its members employed in planning, architecture, or law? Might some of them donate their time and in-kind services? Leaders should ask members to explore their networks. Do they know anyone who might assist the community either at a reduced rate or pro bono? Leaders should also reach out to established mosque communities and ask who assisted them with their land use proposals.

A note of caution should be added. It is critical that faith communities have the right people working with them, particularly in the contentious environment currently surrounding mosque developments. Although financial constraints and personal relationships may make it difficult to decline, for example, an immigration attorney who has offered services, in the end a person working outside of his or her area of expertise may end up costing the community more than it saves them. It is better to identify experts and work with them in a limited, affordable capacity at those process junctures where their experience and knowledge will be most effective, rather than accepting free services and/or expertise from a professional whose skill set does not meet the project's specific needs.

²⁹ Depending on local policies, municipal planners may be able to assist with this type of review, as well.

Advance Planning with the Neighborhood, Likely Opponents, and Likely Supporters

Educate the Public

The fear of the unknown, coupled with powerful and frightening media-generated images of Muslims and the country's increasingly hostile racial and sociopolitical climate is often at the core of grassroots opposition to mosques. The case studies presented above demonstrate that the most effective means of addressing that fear is engaging in proactive, open communications with the surrounding neighborhood and broader municipality. Long before mosque representatives enter the public hearing stage of a land use review, the faith community should hold open sessions in a neutral location such as a local community center or another religious institution. Invitations should be extended to neighbors and other parties likely to oppose the mosque proposal. Mosque representatives should be prepared to answer questions about Islam; perhaps members could even invite attendees to observe prayer rituals. Most importantly, the session should demonstrate the local Muslim community's diversity. Mosque leaders should enlist a variety of members to attend and interact with guests—men and women, young and old, immigrants and those born in America. If there is to be a speaker, the community should select a recognized figure if possible—perhaps a well-known doctor or a popular public school teacher. Ideally this representative, the “face” of the proposed mosque project, will be an American-born member who “sounds like a local.” By presenting familiar faces, the Muslim community will demonstrate itself to be a thread already woven into the local fabric.

It is essential that conceptual drawings (viz. sketches that communicate a design in preliminary form) for the mosque project be made available for public review during the education session. Additionally, the Muslim American community should present ideas for how the mosque will be used for activities other than prayer. Soliciting comments on ideas will help to identify problem areas before the faith community invests too much time and money pursuing them. More importantly, it will give the broader community a sense that they are part of the mosque's planning and not just being handed a fait accompli. This does not mean that the Muslim American community needs to compromise its ideals or cherished plans; rather, community leaders should agree in advance on which elements of the plan are non-negotiable and which ones might be open for modification (for example, exterior color palette, lighting configuration, and dumpster placement). Being willing to meet opponents' needs through flexibility will

In advance of public hearings, Muslim leaders should reach out to likely allies and seek their support.

demonstrate the Muslims community's commitment to cooperation and neighborliness. In the case of particularly vociferous opponents, Muslim American leaders might consider extending invitations to meet privately with those parties to address their particular concerns.

As a faith community considers ways to reduce conflict with opponents, however, it should approach them with an open mind and not assume that their position is simply the result of the anti-Muslim racial and political climate. Not all opponents are bigots or are driven by fear—sometimes parking concerns are just parking concerns. The Muslim American community should begin working with their local critics under the assumption that their land use concerns are legitimate and meaningful. If mosque leaders address legitimate land use problems, critics whose opposition is based on them should be assuaged. If parties keep returning to the table with new complaints, however, they may have underlying, bias-based motivations. In many ways, such nuanced opponents can be more challenging than openly bigoted protestors, and, in attempting to meet their shifting needs, the Muslim community may expend precious time and financial resources.

Build a Supporting Coalition

In advance of public hearings, Muslim leaders should reach out to likely allies and seek their support. These might include other religious communities of all denominations, local chapters of the American Civil Liberties Union (ACLU), good government watchdog groups, and professional associations and civic groups with which mosque members have affiliations. Such allies could assist the development proposal by reviewing conceptual plans for the mosque and providing feedback on areas of concern. In the public hearing phase, they might participate in comment periods and perhaps write letters to the editor. And, should arbitration between parties be required, supporting coalition members might effectively serve as mediators.

Given the national political context that has evolved for mosque developments, it may be wise for mosque leaders to meet with standing government officials and candidates for office to seek their support for a civil, objective review process that protects the due process rights of Muslim Americans. If despite the best efforts of the mosque leadership the conflict escalates, the community can reach out to Muslim American advocacy groups such as the Council for American Islamic Relations (CAIR) and the Islamic Society of North America (ISNA) for public relations and legal support.

Getting Through the Public Approvals Process

Hearing Management

In advance of public sessions, it may be helpful for Muslim leaders to request a private meeting with the municipal attorney, as well as with lead planning staff and chairs of the review boards that will adjudicate their development application. If the Muslim community has a land use attorney or other legal support, he or she should attend as well. In a respectful, non-confrontational way, mosque representatives can ask what procedures are in place to manage board discussion and public comment. They should communicate their expectations that the ensuing discussions will focus solely on issues over which the board has purview, and that personal attacks or derogatory statements about Islam and Muslims by board members or the public will not be allowed. It might be helpful to ask about how violators of established ground rules will be addressed and removed if necessary, and whether police officers will be made available to provide security if needed. Again, this and all private meetings and their outcomes should be documented in some way.

The Face(s) of the Mosque

Ideally, the team of professionals supporting a Muslim community—lawyers, architects and consulting planners—would prepare the written submissions related to its mosque development application, present the application in public sessions, and respond to questions from review board members. As previously mentioned, however, communities may not be able to afford such intensive representation. In that case, their leaders will need to make careful decisions about who will be the public face(s) of the mosque, and in which capacities.

It is likely that a president, board chair or equivalent leader will represent the mosque in public hearings and in the press. In Muslim American communities these individuals are often respected male elders. Depending on the particular circumstances of an application and the likelihood that the proposal will draw opposition, an elder immigrant may not be best person for the job, or at least not the only one. The faith community should consider whether they want one or several people to present the mosque application. A separate spokesperson(s) who interacts with the press may be advisable, as well. The public face(s) of the mosque should consist of strong public speakers who can face confrontation calmly and keep a cool head,

Maghrib (sunset) prayers in the Muslim American Community Association, Voorhees, New Jersey.



manage details well and think creatively on his or her feet. Ideally, they will be American-born and speak with a local accent. They should demonstrate the Muslim community’s diversity and its reflection of the American melting pot—consider women (both those who wear hijab and those who do not) as well as members of different ethnicities and ages.

Member Participation in Public Hearings

It can be helpful for other mosque members to attend public sessions as audience members. The more visible the faith community is, and particularly the more visible its diversity is, the better. It is critical to offer an image of Muslims that differs from the media’s bearded, angry young man in ethnic dress. Mosque leaders should be sure that the elderly, women and, when appropriate, older children are in the audience. As with advising professionals, Muslim leaders should carefully consider who will speak in support of the proposal during public comment periods. Encourage well-spoken members who will stay on message with issues of purview to participate. Leaders should reinforce with potential meeting participants exactly what is expected of them—respectful, civil engagement that is free of personal attack and proselytizing.

Translating Faith: Use Familiar Language and Terms

The majority of Americans have had only limited exposure to Islam, and most of that has been through the lens of the mainstream media and negative political events. As such, their familiarity with the religion, as well as its practices and related vocabulary, is limited. Mosque representatives should always start with the assumption that the professionals with whom they are working, the municipal officials who will review the mosque proposal, and the public who will respond to it know nothing of Islam. The faith community’s respectful guidance and teaching can help reduce potential misunderstandings and resulting conflicts. Muslim Americans should limit their use of Arabic terms when referring to elements of their building and requirements of their religion. For example, use “mosque” rather than masjid, “call to prayer” rather than adhan, “congregational prayer” rather than jum’ah, “pulpit” rather than minbar and “sermon” rather than khutbah. Terms that impart commonality will help offset perceptions of Islam as foreign or incompatible with the predominantly Judeo-Christian American culture.



The traditionally transitory nature of mosque affiliation can be difficult for non-Muslims to understand. In Muslim-majority societies, where mosques are common and conveniently situated, an individual may attend several different congregational mosques or musallahs without considering himself or herself a “member” of any of them. In the United States, where mosques are few and far between, Muslims tend to affiliate more strongly with a single mosque and identify with it as a “family” mosque. Still, in my research, individual Muslims, particularly those of immigrant origin, often chafed at the terms “member” or “membership.” They struggled in public meetings for terms to describe their faith community and to explain the fluidity of attendance. Alas, in listening to hearing recordings, it is clear that their attempts to accurately represent the fluidity of attendance patterns only created confusion and made them appear shifty, as if they were trying to hide something. To avoid this pitfall, a mosque’s speaking representatives should use terms commonly applied to Christian and Jewish communities like “member” and “congregation.” Muslims understand that the meanings of these words in their usual context do not exactly fit Islam. However, their familiarity to a larger segment of the public will assist their understanding and ease misgivings; this is far more important than any nuances that may be lost in translation.

Mosque representatives should use terms commonly applied to Christian and Jewish communities like “member” and “congregation” in land use hearings.

How Much to Present Regarding Islamic Practice

A land use attorney should provide religious communities with a specific assessment of appropriate public discussions of their faith and its requirements. The following paragraphs represent observations from the case studies presented above and do not constitute legal advice.

The way a community prays and who prays with its members are not matters of purview for a planning board, zoning board, or any municipal board for that matter. Such information is protected by the First Amendment and segregated from public scrutiny by the separation of church and state. In theory, the “who” and “how” of a community’s faith should have no influence on the outcome of a development proposal. But theory and reality are very different things. Islam is a mystery to most public review board members, as it is to the majority of Americans. Board members are human—their ignorance may contribute to fears they may harbor about Muslims, and may, in turn, influence their review of the proposed development project. It is important, then, without compromising its rights and freedoms, that the community’s representatives provide some basic information about Islam and how it will be practiced in the proposed structure.

Children benefit from educational resources provided at many community centers.



Prayer Times/Numbers of Attendees

In simple terms, Muslims might explain that they are required to pray five times a day, but only once weekly in congregation—Fridays around 12:00 p.m. Speakers should make clear that because Muslims pray mostly at home or in their places of work or school, attendance at prayer sessions will be minimal most days and times. They should stress that the largest regular traffic load and building occupancy will be generated by the Friday congregational prayer and provide attendance averages for that day and time. Similarly, it may be helpful to provide average attendance numbers for typical daily prayers, but speakers should be aware that it may be confusing to explain that some prayer times coincide with sunrise and sunset and therefore shift slightly throughout the year. Speakers should provide that level of detail if asked, but in general they should aim to keep the discussion streamlined and simple.

High Holidays and Other Special Events

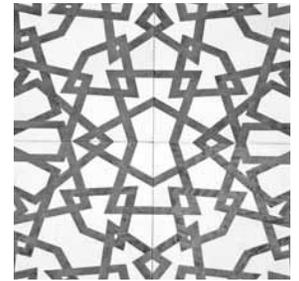
Mosques often host higher capacity events during Ramadan and/or Muharram and on the high holy days of Eid al-Fitr and Eid al-Adha. Faith community representatives should explain that these events are periodic occurrences and describe their plans to manage the related hot button issues of traffic and parking.³⁰ As with prayer times, representatives should explain the impact of the lunar calendar on Eid dates,³¹ but only if that information is requested or might be helpful.

The Question of the Adhan

Perhaps the least understood and most controversial element of mosque review processes is the adhan (the call to prayer). In the case studies and in many other developments reviewed for this research, neighbor concerns that the call to prayer will be broadcast, either immediately or at some point in the future, dominate debate. Most Muslim communities in the United States do not broadcast the call to prayer (including the case study mosques) since it serves little purpose among a largely non-Muslim population. However, Muslims Americans should

³⁰ One successful strategy for managing occasional overflow parking is to approach the owners of nearby, underutilized parking lots and establish periodic rental agreements. Not only does this keep cars off surrounding streets, but Muslim communities can avoid investing money in constructing their own lots which will themselves be underutilized. Additionally, the municipality can avoid having to approve another undesirable swath of impervious surface.

³¹ The Islamic calendar is lunar and shifts ten days earlier in each Gregorian calendar year.



be aware that legal precedent does support the adhan at decibel levels equivalent to those of ringing church bells.³²

If broadcasting the call to prayer is a route that a Muslim community wishes to follow, its leaders should understand that it is likely to increase tensions around their proposal. Representatives should be clear about the community's intentions from the preliminary stages of the proposal's review so that opposition to it can be addressed early. Speakers will need to be clear about what the adhan is—in a number of cases, opponents have called it an attempt to intimidate or dominate the surrounding neighborhood.³³ Explaining its purpose and providing a translation may help ease such fears. Opponents may be quelled if the Muslim community offers to broadcast the adhan only for congregational prayers and on the Eids or other special occasions. As with every other aspect of the development proposal, mosque representatives should emphasize the Muslim community's desire to be good, respectful neighbors who will disrupt the lives of surrounding property owners as little as possible.

Accessory Uses

Christian and Jewish denominations commonly provide programs to their members beyond worship and offer their facilities to the broader community for social activities and charitable purposes (e.g. food pantries, Girl Scout troop meetings, and 12-step group sessions). With that model in mind, review board members and the public may anticipate that Muslims intend to follow this practice and wonder what the impact of those services will be on the surrounding neighborhood. Lack of clarity on the part of mosque representatives regarding the faith community's intentions may jeopardize its credibility and increase conflict. Representatives should speak straightforwardly about what uses beyond worship the Muslim community intends to include in its facility, emphasizing those uses that will be of potential benefit to non-Muslims. This will demonstrate the civic-minded nature of the faith community and its commitment to the broader municipality. Mosque leaders should remember, however, that such accessory uses may not be afforded the same protections under RLUIPA as are those uses directly related to worship.

*Representatives
should speak
straightforwardly
about what uses
beyond worship the
Muslim community
intends to include
in its facility*

³² Moore, op. cit, page 132.

³³ In a famously controversial 2004 decision, the Hamtramck, Michigan city council modified its noise ordinance to accommodate the call to prayer at the same decibel level as church bells. See: <http://www.amren.com/news/news04/04/27/hamtramckmosque.html> (accessed 10/3/2010).



After Approvals Have Been Secured

A Muslim community's responsibility for outreach does not end with the approvals process or even with the issuance of building permits. The scrutiny of a mosque development will continue long after public hearings are closed, and therefore outreach activities will need to be ongoing. Mosque members should stay engaged with the facility's immediate neighborhood and the surrounding municipality. Contact information for the mosque's leaders should be made available to surrounding property owners and residents, and those individuals should be encouraged to be in touch with any concerns they may have.

The Muslim community should maintain an open door policy in which observers may come to the mosque and learn more about Islam and Muslims. Such outreach may take the form of open houses and special events, or perhaps arranging private sessions with interested individuals. The mosque's members should be encouraged to engage in local community events such as street cleanups and neighborhood association meetings. Most importantly, members should be encouraged to participate in the local political process as voters and volunteers. Perhaps some will become interested in the public process as part of the mosque review and might consider applying for positions on the zoning or planning board. Regardless of the activity, the goal is to make the Muslim American community a valuable part of the broader community and to demonstrate that its members are good neighbors and good citizens.

Ideally, of course, Muslim Americans will engage in civic matters and social services regardless of whether or not they are involved in a real estate proposal. More regular civic participation will establish them as active partners in the broader community and build relationships that are invaluable to any number of endeavors beyond real estate development. To belong in and be accepted by a local community, Muslims must invest themselves in that community.



Interior courtyard in the Islamic Center of the Northeast Valley, Scottsdale, Arizona.



Conclusion

As anti-Muslim sentiments gain traction in America, it is important to remember that our courts of law are more rational than our court of public opinion. The mainstream media and anti-Islam factions are creating an environment in which Muslim Americans are held to standards that other faith communities do not have to meet—and not just in real estate development. Many Muslim Americans experience the increased scrutiny of mosque development, and indeed over many aspects of their day-to-day lives, as a form of collective punishment for heinous acts committed by a minority of extremists. In many ways, Muslim Americans are paying a collective price for the acts of terrorists. Throughout American history, episodes of national trauma have aggravated xenophobic treatment of immigrants, even citizens—consider the case of Japanese and German internment camps during World War II. Yet time and again, our nation has redeemed itself from these kinds of backlashes by accommodating the panoply of races, ethnicities, and religions that are at the core of our national identity, and by holding fast to our founding principles:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

- Declaration of Independence, 1776



Institute for Social Policy and Understanding

The Institute for Social Policy and Understanding (ISPU) is an independent nonprofit think tank committed to education, research, and analysis of U.S. domestic and foreign policies issues, with an emphasis on topics related to the American Muslim community.

Since its inception in 2002, ISPU has built a solid reputation as an organization committed to objective, empirical research and continues to be a valuable source of information for policy makers, scholars, journalists and the general public. Our research aims to increase understanding of Muslims in the United States while also tackling the many policy issues facing all Americans. We provide cuttingedge analysis and policy recommendations through publications, conferences, government briefings and media commentary. ISPU firmly believes that optimal analysis and treatment of social issues mandates a comprehensive study from several different and diverse backgrounds. As social challenges become more complex and interwoven, ISPU is unique in its ability to bring this new approach to the human and social problems facing our country. Our multidisciplinary approach, in partnership with universities, think tanks and other research organizations, serves to build understanding and effect lasting social change.

Further information about ISPU can be obtained from our website at www.ispu.org.



لَهُ إِلَّا اللَّهُ مُحَمَّدٌ رَسُوْلُ اللَّهِ
مسجد عمر بن خطاب



Institute *for* Social Policy *and* Understanding

43151 Dalcoma, Suite 6, Clinton Twp., Michigan 48038 | 1.800.920.ISPU (4778) | info@ispu.org

www.ispu.org



Institute for Social Policy and Understanding

43151 Dalcoma, Suite 6, Clinton Twp., Michigan 48038 | 1.800.920.ISPU (4778) | info@ispu.org

www.ispu.org

