

**STAFF REPORT:** Director of Special Projects (Sustainability)



**REPORT TO:** Council  
**MEETING DATE:** August 30, 2010  
**REPORT NO.:** SPS.10.12  
**SUBJECT:** Community Land Trust  
**PREPARED BY:** Peter Tollefsen for  
The Housing Committee

#### **A. Recommendation**

**THAT** Council receive Report No SPS.10.12 entitled "Community Land Trust" dated August 30, 2010 from the Housing Committee and;

**THAT** Council request Staff to prepare a report on a "Community Land Trust" complete with legal advice to develop the land trust concept in more detail including recommendations on how to proceed prior to approval of the 2011 Budget and;

**FURTHER THAT** Council authorize the unbudgeted expenditure of approximately \$10,000 for the preparation of the report.

#### **B. Background**

The Housing Committee has for a number of years been exploring ways to implement affordable and attainable housing opportunities for the citizens of The Blue Mountains. The publication of the draft Housing Needs Study emphasizes the need for an overall housing strategy and our committee agrees completely with this.

The Housing Needs Study states:

"In developing a housing strategy, we recommend the following overriding principles be considered:

- The resort area of the Town of The Blue Mountains is unique in Ontario, catering to the needs of vacationing affluent visitors, seasonal residents and empty nesters. However, the lack of community services and conflicts between the lifestyles of visitors and permanent residents make this area less suitable for families. For example, children living in the resort area and attending high school would be required to bus to Meaford, rather than Collingwood. Compared to the resort area, Thornbury offers a broader set of community services that are necessary to attract families and younger residents. We suggest that

initiatives aimed at developing affordable housing, with the exception of some employee housing and other specifically targeted groups, such as volunteer firefighters, be largely focused within the community of Thornbury

- Any strategy must work within the capabilities and capacities of the Town of The Blue Mountains.
- Any strategy should leverage the skills and participation of the private sector.
- The strategy should be multi faceted and flexible; and,
- The strategy must focus on longer term goals and objective. The possibilities for "quick fixes" are limited.

The strategy for affordable housing provided can be described in five basic but inter-related steps including;

- establish housing policies, including a sustainability framework, that is designed to achieve long and short term objectives;
- establish a housing delivery structure;
- establish funding mechanisms;
- establish housing programs: and,
- create a five year work program.”

About the Housing Delivery Structure the Housing Needs Study continues

“The Town of The Blue Mountains will need to determine what resources are required and how those resources will be deployed internally to administer and monitor the programs. There are several options to consider.

- Municipal Staff - housing initiatives of the Town could be managed through a designated Town staff person(s). The Town would have to determine whether this function could be undertaken within its existing staff complement or will require additional staff. The key advantage of this approach is that it provides maximum control. However, within a municipal structure, staff priorities and assignments, as well as spending and resources, can easily be shifted from year to year. Understanding that a long term approach is required to resolve the shortage of affordable housing options, it must be recognized that shifts in political, policy or time imperatives could be a significant threat to the

success of a housing program.

- Housing Corporation - a separate municipal corporation could be created by the Town with the mandate to create a supply of affordable housing. This would create an entity that has a clear focus and mandate to develop and operate an affordable housing inventory. However, a corporation such as this requires staffing and resources that may not be scalable to the needs of the community. It's likely that the overhead associated with a housing corporation would not be supportable unless significant funding and housing projects could be identified in the near-term.
- Community Housing land Trust - A land trust is a non-profit organization that assembles and manages land upon which affordable homes can be built and maintained. The homes are rented or sold but the underlying land is retained by the Trust. They act as long term stewards of land, protect affordability and preserve public grants, subsidies and donations. Our study recommends that Council consider the creation of a Town owned Community Housing land Trust, with support from municipal staff, which would hold lands provided to it through government transfers and future land acquisitions, in trust for perpetuity, for housing purposes. The land trust has several advantages:
  - land owned by a land trust is held in perpetuity for housing purposes;
  - A land trust can accept charitable donations and fundraise;
  - A land trust operates separately from the Municipality but can have direct reporting as a requirement to funding;
  - A land trust draws heavily from experienced volunteers.
- A business plan and legal advice are recommended to develop the land trust concept in more detail.
- The delivery structure could be composed of two or more of these vehicles but an overall co-ordinating role is required at the Town staff level.”

Independently the Housing Committee has been investigating a number of delivery models such as a Non Profit Housing group or a Housing Authority. A number of them require a larger critical mass or size of community to be cost effective and affordable for The Blue Mountains to operate. Our conclusions on the options mentioned in the Housing Needs Study for delivery systems areas follows:

#### Municipal Staff

With the demands placed on staff time and the budget restraints anticipated for many years it would be difficult to add sufficient staff to handle the issues related with managing attainable housing programs.

#### Housing Corporation

Housing Corporations or Authorities are typically established to build and manage housing stock primarily for social assisted rental. This approach tends to be found in larger communities where there is a larger stock of properties to be managed. Although there is demand for socially assisted rentals in The Blue Mountains we don't feel that this would be a sustainable approach until the population increases significantly.

#### Community Housing Land Trust

While land trusts go back to the 1800's the recent interest in Smart Growth initiatives has fostered an awareness of the Community Land Trust and the potential it holds for implementing Smart Growth and Sustainable Path objectives. Land trusts look at housing as a fundamental human right rather than a market good and create an environment that permits people to own or rent housing in an environment where housing would normally be beyond their means.

A Community Land Trust (CLT) is defined as "a private, non-profit corporation created to acquire and hold land for the benefit of a community in order to provide secure affordable access to land and housing for community residents. A CLT can provide a range of options from single-family, rental and special needs housing that are affordable, attainable, sustainable and are a result of community participation and ownership.

In addition to establishing a Community Land Trust as a delivery structure, an effective strategy will require updated housing policies and a process by which a regular supply of funds can be raised. Once these are addressed the Board of the CLT can address specific housing programs and develop a longer term work program. There would be an appointed Board of Directors including member(s) of Council.

We, the Housing Committee, believe that the community land trust model (CLT) is a solution to the problem of permanently creating and maintaining affordable and attainable housing in The Blue Mountains.

Items to be investigated include costs to set up and operate, who sits on the Board and how are they appointed, how to impose the Trust obligations in a way that they cannot be easily varied, sources of funding, types of by-laws, legal agreements and contracts required to set up a community land trust.

### **C. The Blue Mountains' Strategic Plan**

A community land trust is aligned with the goal of – *Managing growth to ensure the ongoing health and prosperity of the Community.*

### **D. Environmental Impact**

None at this time

### **E. Budget Impact**

The initial investigation and report will require staff time as well as solicitor time to bring back a report to Council. This report should detail the anticipated budget impacts and possible funding vehicles in setting up and operate a Community Land Trust. This could cost approximately \$10,000 in legal fees and would be a 2010 unbudgeted expenditure.

Start up costs for a Land Trust in 2011 should include funds to cover office expenses, printing, communications plan, community engagement and legal fees all projected to be under \$15,000. Funds for land acquisition, staff support and related expenses for having programs will be required in the 2011 Budget and subsequent budgets.

### **F. Attachment**

1. E-mail from Bill Chapman, December 3, 2009 re “Burlington Busts the Affordable Housing Debate” by Daniel Fireside.
2. E-mail message from solicitor David Tang, July 16, 2010

Respectfully submitted,

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Peter Tollefsen  
Director of Special Projects (Sustainability)

For more information, please contact  
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[ptollefsen@thebluemountains.ca](mailto:ptollefsen@thebluemountains.ca)  
519-599-371-3131 ext. 247

**Attachment 1**  
**Staff Report – Community Land Trust**

**From:** Bill Chapman [mailto:billchapman@fbcthornbury.ca]  
**Sent:** December 3, 2009 9:27 PM  
**To:** Peter Tollefsen  
**Subject:** Land Trust

Peter I found this very helpful in understanding the concepts. Can you please forward it to the Affordable Housing Comm.

Thanks

Bill

## **Burlington Busts the Affordable Housing Debate**

### **The Burlington Community Land Trust's radical 20-year experiment in affordable housing.**

BY DANIEL FIRESIDE

This article is from the March/April 2005 issue of *Dollars and Sense: The Magazine of Economic Justice* available at <http://www.dollarsandsense.org/archives/2005/0305fireside.html>

"Housing used to be an opportunity ladder in our country. You started out in a rental and began to save. Then you bought a small home, and eventually you moved up. Today, housing prices are so high that if you're renting an apartment, you can't possibly save," says Brenda Torpy, executive director of the Burlington Community Land Trust.

With housing prices skyrocketing beyond the means of the average worker, rents eating up a greater share of household income, and HUD funding on the chopping block, local governments have few tools at their disposal to create affordable housing. Too often, mayors are reduced to offering tax breaks to big developers in exchange for a few token "below market rate" apartments. In the old debate between supply-siders and government interventionists, it's clear who has the momentum.

Undaunted by these grim trends, community leaders in Burlington, Vt., are continuing to carry out a 20-year experiment in affordable housing based on the radical precept that housing should not be treated as a market commodity. The Burlington Community Land Trust (BCLT)

represents an altogether different approach to housing security--and one that holds important lessons for community organizers around the country.

## **BCLT is Born**

In the early 1980s, wealthy out-of-town speculators began driving up the cost of housing in Burlington. Harried New York City yuppies saw the bucolic college town of 40,000 as an ideal place for their vacation homes, and longtime working class residents were being rapidly priced out of their own neighborhoods. Housing prices in Burlington were rising at twice the national rate.

Frustration over housing issues came to a boiling point when the political establishment cut a deal with big-time developers to put an upscale apartment complex on the city's scenic waterfront. Voter disgust with this plan to privatize public space led to an upset victory in the mayoral race by Socialist gadfly Bernie Sanders and his ragtag Progressive Coalition in 1981.

Sanders and the Progressive Coalition quickly sought to develop institutions and programs that would have a lasting impact on the community. The Progressives decided to make affordable housing a signature issue. Things got off to a rough start when their proposal for rent control was voted down after a coalition of property owners and establishment politicians hired a professional consultant to defeat it. With rent control off the table, and federal funding in short supply, the Progressives had to turn to more creative measures to address the housing crisis.

In 1983, they created the Community and Economic Development Office (CEDO), a permanent community-development office that would set development goals and initiate creative projects. CEDO initially focused on three areas of housing policy: protecting the vulnerable, preserving affordable housing, and producing affordable housing. While these goals sound typical of many municipal development authorities, CEDO's strategy was distinctive. It sought to decommodify residential property, ensure its housing projects would be permanently affordable, and actually empower residents. Its most important initiative, and the key to all of these goals, was the Burlington Community Land Trust.

## **Rethinking Private Property**

In the late 1970s, Vermont environmentalist Rick Carbin had formed the Vermont Land Trust (VLT) in an effort to preserve open space as developers bought up farms. Instead of buying and holding land, as some land trusts do, the VLT used its resources to buy undeveloped properties at the edge of urban areas and resell them, often at a profit, but with strict conservation easements that prohibited future development. (For more on easements, see "Land Trusts Ease Control of U.S. Farmland Away from Developers," p. 16.) The VLT's successful track record paved the way for Burlington's housing land trust program.

The Institute for Community Economics, a thinktank based in Springfield, Mass., approached CEDO planners with a proposal to use the land trust model as a tool to address Burlington's housing crisis. Much as the VLT program "unbundled" the ownership of property from its function in the future, the housing land trust separated the ownership of a house from the land it

sits on. As Brenda Torpy summarizes, "Conservation land trusts take land out of the market to protect the natural environment. Community land trusts take land out of market to protect the urban environment including the people who live there."

CEDO established the Burlington Community Land Trust as an independent nonprofit corporation in 1984, with official backing from the Burlington City Council and \$200,000 in seed money. The trust was viewed as an integral part of the city's affordable housing program. Even traditional politicians came to see the land trust model as an acceptable compromise between a flawed free market approach and heavy-handed government intervention, especially as it promoted the popular concept of home ownership. Democratic and Republican politicians have found it difficult to oppose a program that offered life-long renters a "piece of the American Dream."

At its founding, the BCLT was the first municipally funded community land trust in the country. Today it is the nation's largest community land trust, with over 2,500 members.

## **Housing Trust 101**

Buying land through a housing trust involves several steps. To start, the trust acquires a parcel of land through purchase, foreclosure, tax abatements, or donation, and then arranges for a housing unit to be built on the parcel if one does not yet exist. The trust sells the building but retains ownership of the land underneath. It leases the land to the homeowner for a nominal sum (e.g., \$25 per month), generally for 99 years or until the house is sold again.

This model supports affordable housing in several ways. First, homebuyers have to meet low-income requirements. Second, the buying price of the home is reduced because it does not include the price of the land. Third, the trust works with lenders to reduce the cost of the mortgage by using the equity of the land as part of the mortgage calculation. This reduces the size of the down payment and other closing costs and eliminates the need for private mortgage insurance. In all, the trust can cut the cost of home ownership by at least 25%.

For longtime BCLT member Bob Robbins, purchasing a home through the trust "was the only affordable option. We did not have access to money for a down payment on a regular home, and at our income level, we wouldn't have qualified for a mortgage. Through the BCLT, we were able to purchase a \$99,000 home with just \$2,500 down."

Unlike federal programs that only help the initial buyer, the BCLT keeps the property affordable in perpetuity by imposing restrictions on the resale of the house. Specifically, the contract restricts the profit buyers are able to take when they later sell the house. According to the terms of the BCLT leases, homeowners get back all of their equity from their mortgage plus the market value of any capital improvements they made. However, they only get 25% of any increase in the value of the house (which constitutes 75% of the total value of the property), and none of the increase in the value of the land.

Since buyers keep a portion of the housing value appreciation, families do accumulate some wealth through BCLT homeownership. And as time passes, if the surrounding housing prices

continue to rise, the trust prices become even more affordable relative to market housing, and the trust captures more wealth on behalf of the community.

When the homeowner sells, the new buyer must agree to the same terms. If no buyers are interested or the owners default on the mortgage, the BCLT retains the option to buy the property.

This model gives the buyer the benefits of homeownership (including the tax deduction for mortgage interest, wealth accumulation through equity, and stable housing costs) that would otherwise be beyond her means. In return, she gives up the potential of windfall profits if the market keeps rising. BCLT recently published a study of the first 100 trust homes that were sold to a second generation. "The implications were very powerful," says Brenda Torpy. "The initial homebuyers realized a net gain of 29% on the money they had invested. Our homeowners were taking an average of \$6,000 with them. These aren't the sky-high returns that some people have come to expect from the housing market, but these were people who would never have entered it in the first place." That's because most BCLT homeowners "would never have been able to buy homes otherwise, even with existing federal and state programs," explains Torpy. "For many, we are a stepping stone between renting and homeownership."

Urban land is not a normal economic good because it exists in a fixed quantity. (They're not making any more of it, as realtors say.) Since the supply cannot rise to meet growing demand, the price is subject to speculative forces. The housing supply can be increased by building in greater density, but this does not happen quickly. When a normal home is offered for sale on the usual terms, it does virtually nothing to make the overall housing market more affordable. A land trust home, by contrast, creates a permanently affordable property because the land it sits on is removed from the speculative market. Most of the appreciation is retained by the housing trust (and by extension, the community), rather than the individual. In this way the trust model creates a bridge between purely public and purely private property. "We're trying to stop the concentration of land in the hands of a wealthy minority," says Torpy.

The land trust program was designed to outlast any change in city hall. This was an important strategy in the Progressive Coalition's early years. As it turned out, the Progressives hung on to control, with the exception of a single Republican administration in the mid-1990s. As a result, they have been able to expand on the aims of their original programs and establish a broad base of support for their housing agenda.

The BCLT has become an important force in Burlington's housing market. After 20 years, the trust controls almost 650 housing units, including over 270 rental apartments and 370 shared-appreciation single-family homes and condominiums--about 4% of Burlington's total housing stock. The process is "buyer initiated"; the buyer picks out the house and asks the trust to incorporate it. Therefore the units are dotted all over the city. The trust has also built a wide variety of homes in various styles to fit into particular neighborhoods. "Most of them are modest," says Torpy. "We've found that condos are good starter homes. They're something new but are still affordable. But we're also building modular homes and 2- and 3-bedroom homes." The BCLT's programs also include tenant-owned cooperatives, a family shelter, a transitional shelter, and housing for homeless youth, the mentally ill, and people with HIV/AIDS.

The BCLT is remarkable not only for its size, but as an organizing structure that promotes community empowerment. Tenants and owners of BCLT units vote for and serve on its governing board, along with government officials and other residents with technical expertise, such as architects and urban planners. The system is designed so that the BCLT doesn't play the role of landlord to tenants and homeowners. Rather, all interested parties have a voice and a vote. In this way it's also an experiment in democratic self-governance.

By looking at housing as a fundamental human right rather than a market good that goes to the highest bidder, and with shrewd political organizing in a hostile environment, housing advocates in Burlington have created a sustainable model for affordable housing that deserves to be emulated across the country. Others are catching on. Since the BCLT published its study, the Fannie Mae Corporation, other city planning offices, and state financing offices have all contacted the BCLT for information about how to use housing trusts in an environment of shrinking funds. Today there are 130 community land trusts in more than 30 states, including in large cities like Atlanta and Cincinnati. The largest growth has been in California and the Pacific Northwest. BCLT itself is expanding into the surrounding counties.

BCLT homeowner Bob Robbins says, "I think every community should have a land trust--not just as a fringe option but as the dominant model to keep housing affordable."

## Attachment 2 Staff Report – Community Land Trust

**From:** Bill Chapman [mailto:billchapman@fbcthornbury.ca]  
**Sent:** July 16, 2010 5:39 PM  
**To:** Peter Tollefsen; John McGee; Gord Skultety; Rob Potter  
**Subject:** Fwd: Draft of Report to the Town Of the Blue Mountains

The initial response from David Tang and some cost estimates are included in the following.

Bill

----- Forwarded message -----

**From:** Tang, David <[David.Tang@gowlings.com](mailto:David.Tang@gowlings.com)>  
**Date:** Fri, Jul 16, 2010 at 1:36 PM  
**Subject:** RE: Draft of Report to the Town Of the Blue Mountains  
**To:** Bill Chapman <[billchapman@fbcthornbury.ca](mailto:billchapman@fbcthornbury.ca)>

Ah, I see.

The use of the term "Land Trust" in this draft report is a little loose. but understandable

The idea of forming a Community Land Trust, which is , as this report would suggest, a not for profit corporation is probably what I would have recommended given the long term nature of the objective. A Land Trust that is a pure common law trust is formed in a different way, but it doesn't look like that is what they are thinking about doing and has some problems when it comes to keeping it active and robust.

I thought that the municipality owned the land that you were hoping would be the basis for the work of the Trust. However, the report doesn't say that or indicate that it would be the municipality that would provide the land or that this is one of the financial impacts.

If a corporation is what we want, it can be made subject to trust obligations. A simple corporation can be subject to "purpose drift" particularly if control of it is not properly set up to ensure that only those with a desire to do exactly what you want now remain in control. That's the problem we need to address.

What we will need to address is how to impose the trust obligations in a way that they cannot be easily varied, particularly by whoever the primary donor of the assets are or whoever in the future becomes the primary source of funding. That's the hard part of the job, balancing the various interests, desire for control, relative economic realities etc. in a way that is legally possible and enforceable by the right people. i expect it will be a mix of restrictions in the Letters Patent, by-law provisions, guarantees for each stakeholder being represented in the membership and Board of the new organization in acceptable proportions, some trust agreements that establish a trust that the Board and members cannot simply change without either going to court or getting consent from the donors and figuring out how to give stakeholders without significant assets to donate a way of getting themselves in a place where they can impose and enforce a trust agreement on the corporation.

We can likely incorporate the organization in a little over six to eight weeks from the time the final decision is made to proceed and these issues are settled. It's the initial discussion that will take the time and I can't estimate how long that will take, in part because I think you will need Council decisions and it may

even be that you won't get one until after the elections. I have assumed that this would not be a charitable trust, which would be more complicated to establish and take significantly longer (registration with the CRA will take months).

I expect that the organizational consultation and discussions will likely take place early on, with me providing some advice on possible structures and arrangements for the stakeholders to discuss and consider. Then we'll likely meet again and we'll develop the final scheme, agreements and corporate documentation. If it goes very smoothly, expect legal fees in the range of \$6500-\$10,000. If there is significant disagreement, the costs are really impossible to determine. Giving yourself some latitude for dissension (there almost certainly will be some), I think you should budget \$10,00 to \$12,500.

Does that give you what you need?

David

**David Tang**  
Partner  
416-862-3547  
[gowlings.com](http://gowlings.com)

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**From:** Bill Chapman [mailto:[billchapman@fbcthornbury.ca](mailto:billchapman@fbcthornbury.ca)]  
**Sent:** July 15, 2010 8:12 PM  
**To:** Tang, David  
**Subject:** Draft of Report to the Town Of the Blue Mountains

David

This is a draft report from one of our Committee members to go to Town Council. It will give you a much better idea of who we are and what we are about .

Bill

Bill, Peter have look and suggest any changes I can make before I leave, then make whatever changes you wish prior to presenting to the committee at next weeks mtg  
John

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