

## Comments from the Community Land Trust of the Southern Berkshires

*The following comments were submitted to the Berkshire Regional CHT Committee by Susan Witt and Joyce Scheffey of the E.F. Schumacher Society and the Community Land Trust of the Southern Berkshires on May 2, 2005.*

The Community Land Trust in the Southern Berkshires, as you know, is not a tax-exempt organization, rather just a simple non-profit organization. This is both an advantage and disadvantage.

Most CLTs in this country are organized as tax-exempt charitable entities. The tax-exempt status is granted because these organizations serve the poor. So their policies reflect this mission. They pre-qualify people who purchase CLT homes based on income. They restrict improvements to homes so that they will always be affordable to poor people in the future. New development is designed to minimize housing costs. Ecological considerations, community aesthetics, neighborhood characteristics and mix are secondary to cost because the tax-exempt mission must drive the organization.

Such single issue focus has frequently been the basis of conflict between housing advocates and environmental organizations.

The CLT in the Southern Berkshires, while serving the purpose of creating affordable housing for year round residents in the Southern Berkshires, does not limit itself to the poor. We have not applied for tax-status as a charity. Our philosophy is that the high cost of housing is a factor of land being treated as a commodity. If we are to create a sustainable economy, then no one should speculate in land, not just poor people. So we have created an organization that can hold, develop a land use plan for the site that meets ecological and social criteria, and then lease the land to anyone who wishes to accept the terms of the lease.

### ADVANTAGES

The advantages of this are that the organization can be flexible. For instance, when we built at Forest Row, one of the first purchasers was Dr. Susan Thompson who had moved to the region to be the medical doctor for the Children's Health Program. Her salary was high which would disqualify her as a "poor" person, but her medical school debt was so large, that Forest Row units offered her the only chance to start as a homeowner rather than renter. She later sold, bought a larger home and became a supporter of the Community Land Trust. Because we did not have to meet the narrow terms of a tax-exempt purpose, we could respond to this local situation with appropriate affordable housing opportunity.

Nor do we have to go through a public offering process for units. If a group of neighbors wants to buy a home, donate the land to the Community Land Trust, and sell to the family that cares for their homes when they are away, the CLT can facilitate that transaction and then manage the resale of that home for that neighborhood group. Such an organizational vehicle encourages local initiative and non-governmental solving of community problems.

Regarding farmland and farm buildings: as you are aware, a conservation land trust is discouraged from holding land with buildings and giving equity to farmers in the buildings. Basically, IRS feels that the conservation land trust which has received tax-exempt status for the preservation of natural

resources would be using its tax-status to favor an individual if it gave equity to a leaseholder. So home and farm buildings are normally excluded from conservation land trust holdings. The home adjacent to protected land is often resold at very high prices and unaffordable to practicing farmers.

A CLT is designed to give equity in homes on leased land<this is its major function. The Community Land Trust in the Southern Berkshires holds Indian Line Farm, the Nature Conservancy holds a conservation easement, and Al Thorp and Elizabeth Keen own the buildings and lease the land. Al and Liz definitely qualified as low income people when they entered into the lease, but they are working hard and income is improving. They probably no longer count as low income. Because the CLT in the Southern Berkshires is a simple not-for-profit, rather than tax-exempt as a charity for the poor, we can continue to lease to them without jeopardizing tax-status. When/if they are ready to sell their home and transfer their lease, they can recapture their investment in the buildings, but the land value which is escalating more quickly than building costs in the region, will not be included. The buildings will remain affordable to the next farmer.

Community land trusts organized to serve only the poor often have complicated review processes for any improvements to buildings to keep them affordable to low income in the future. The CLT in the Southern Berkshires only requests that improvements are permitted by the town and meet a land use plan established at the beginning of the lease. At Indian Line Farm, for instance, the land use plan included no expansion of footprint of the buildings, to limit impact on septic system. The improvements to quality of the structure are up to Al and Liz and the local permitting authority.

#### DISADVANTAGES

The disadvantage of not having tax-exempt status is that donors can not take a deduction for gifts which discourages the amount of giving to the organization.

This has meant that the CLT in the Southern Berkshires has had to partner with tax-exempt groups. When we were building at Forest Row, it was clear that we could serve a lower income group if we could subsidize building costs. Joe Wasserman, John James, Chris Blair and I organized a tax-exempt housing trust called "The Fund for Affordable Housing" for this purpose.

The board was self-appointed from the banking, architecture, engineering, and land use planning communities. Through various initiatives (including moving a donated home to a new site, revamping, landscaping, and then selling it) the Fund raised money which allowed it to build a five bedroom home at Forest Row that Joe designed. Chris oversaw construction. The home now houses a family from Central America who moved to the region, work hard, and are now homeowners. The Fund did not want to manage the home over the long term for affordability. The board was structured to design and build efficiently and at low cost and then get out. So the home sits on CLT land and the CLT manages that it is owner-occupied and will oversee any future resale so that the land value is excluded from the sale and that it is sold to a year round resident.

The Fund for Affordable Housing has not been active since that construction. It still sits as a potential entity with tax-status in place. With Joe now passed on and Chris active on the board of the Community Land Trust<I know we

would be willing to pass on the organization to the Housing Committee if so desired.

With Indian Line Farm, the partnership with The Nature Conservancy was essential to the public fund raising for that project. But The Nature Conservancy was also grateful because the Community Land Trust fulfilled a niche that they could not do because of their tax-status<namely encourage farmers to work with all their strength because they would be building equity in the buildings, soil, fencing, perennials on the leased land.

#### SUMMARY

It seems essential to have a combination of organizations in a community or in a region to address and work together to solve the multitude of land use issues in a region. We have a very strong land conservation community in the Berkshires represented by BNRC and the many individual town land conservation groups. Berkshire Regional Housing Authority are wonderful developers of affordable housing and experts at securing state and federal funding for programs. Construct, in South County, is serving the needs of the poorest and most disenfranchised through subsidized rental units.

What is the role of a community land trust? The CLT in the Southern Berkshires is a flexible partner for conservation land trusts, affordable housing developers, and small scattered site neighborhood initiatives. The CLT is primarily the manager of resale agreements of units and overseer of compliance with site specific land use plans. The CLT could easily assume the management of additional long-term leases of land with owner-occupied homes. It could manage specific leases on behalf of a conservation land trust, a developer, a neighborhood group, a school, an arts group, etc.

The CLT in the Southern Berkshires is not set up to manage rental housing, nor to be a developer of additional housing stock. Those roles are wonderfully fulfilled by Construct and Berkshire Housing.

The CLT in the Southern Berkshires is not equipped to manage leases outside of its narrow region of South County. Oversight depends on local information and visual familiarity with properties. We were in discussion with Williamstown Rural Lands Foundation about temporarily holding the land and managing the lease at Caretaker Farm, but only if an initiative were in place to create a "Community Land Trust in the Northern Berkshires" to hold the land in the long term.

The strength of a CLT is in local knowledge, local membership, local board elected from the membership<all working together to solve local problems with local initiatives.

#### FOR THE COMMITTEE

It seems appropriate to form such a flexible (not tax-exempt) community land trust for Central and Northern Berkshire County to work with tax-exempt organizations in those areas.

How does Berkshire Housing see its role in the future and how can the committee help them meet this role? The same question applies to Construct and for the Habitat groups.

Berkshire Regional Planning could play an advocacy role for partnership relationships between different organizations. It is wonderful that Tad, Leslie, and Kathy are part of the committee. In their roles with conservation land trusts they see where the pressure is on land and have insights of how to control that pressure. Billie Best from her perspective as a new planning board member in Alford brings a fresh perspective of needs for housing for local people and the very real imitations to growth in her small rural community. She is looking for a place appropriate solution, which is most likely not the same solution for an urban or suburban area.

These new approaches would benefit from active community education. The CLT in the Southern Berkshires has struggled to get banks and towns familiar with ownership arrangements on leased land. Because none of the existing units on CLT land received state or federal subsidies, the 18 units in Gt. Barrington, the four homes in Egremont, and the farm do not now qualify towards the state's quota of affordable housing for the towns. How can this be changed? How can we move citizens from thinking that solutions to community problems must be government solutions to involvement in creative local solutions?

Best wishes to all of you as you take on this challenge.

Susan Witt  
Administrator  
Community Land Trust in the Southern Berkshires  
[www.clandtrust.org](http://www.clandtrust.org)

P.S. I urge a review of the legal documents used by the Community Land Trust in the Southern Berkshires, all of which are at our web site.