


David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Director, City Planning Commission
Janese Chapman
Director, Historic Designation
Advisory Board

John Alexander
Roland Amarteifio
Megha Bamola
LaKisha Barclift, Esq.
Nur Barre
Paige Blessman
M. Rory Bolger, Ph.D., FAICPF
Eric Fazzini
Christopher Gulock, AICP

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Derrick Headd
Marcel Hurt, Esq.
Kimani Jeffrey
Edward King
Jamie Murphy
Kim Newby
Analine Powers, Ph.D.
Laurie Anne Sabatini
Rebecca Savage
Ryan Schumaker
Sabrina Shockley
Renee Short
Thomas Stephens, Esq.
Timarie Szwed
Dr. Sheryl Theriot
Theresa Thomas
Ashley A. Wilson

TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: May 11, 2022

RE: **Community Land Trusts**

On April 21, 2022, Council Member Johnson asked whether LPD can provide a comparative analysis report of case studies from various municipalities regarding the development of Community Land Trusts; study the impact that Community Land Trusts will have on Property Tax Reduction, and Property Taxes overall; and draft a resolution and ordinance supporting community land trusts.

In brief preliminary response, LPD can presumably provide such a comparative analysis report, study impact of community land trusts specifically on property taxes, and draft appropriate resolutions and ordinances, if necessary. Such studies would be expected to require significant time to complete, and LPD's staff resources matched to the precise scope of what sounds on its face like a major research project leading to potentially far-reaching social reform legislation.

LPD notes that the issue of Community Land Trusts is not a new one in Detroit or elsewhere. For example, LPD's files contain the attached report dated March 20, 2015, arising out of community land trust discussions with the Detroit Land Bank Authority and intended to orient interested readers to issues involved in these innovative, but recognized real estate ownership tenure arrangements.¹

¹ Review of LPD's files cannot confirm the attached report was in fact publicly released and circulated to Council Members. That would be a rare, if not unheard of event. In any case, the report speaks directly to many of the same questions now raised by Council Member Johnson.

While comparative analysis and fiscal impact studies (depending on assumptions about how widespread community land trust tenure is likely to become in Detroit, among many other assumptions), could have real value, to LPD's understanding the keys to community land trust developments are mainly capital to purchase the property, aligned with legally binding real estate, bylaws and articles of incorporation and the other formal incidents of creating and governing these trust entities as described in the attached 2015 report (presumably including favorable public subsidy and market competitive success, as with any residential land ownership plan), to support affordable housing. LPD will deepen and continue research into the comparative, tax impact, and a supportive City Council resolution or ordinance, we are taking this opportunity to provide the 2015 report for general circulation and public education.

If we can be of further assistance regarding these issues, please feel free to call upon us and LPD will be glad to provide further research and analysis upon request.

David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Senior City Planner

LaKisha Barclift, Esq.
M. Rory Bolger, PhD, AICP
Timothy Boscarino, AICP
Kemba Braynon
Elizabeth Cabot, Esq.

City of Detroit CITY COUNCIL

LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Janese Chapman
George Etheridge
Derrick Headd
Anne Marie Langan
Analine Powers, PhD
Sabrina Shockley
Thomas Stephens, Esq.
David Teeter
Theresa Thomas
Kathryn Lynch Underwood

TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: March 20, 2015

RE: **Community Land Trusts**

On Wednesday, March 4, 2015, the Budget, Finance and Audit Standing Committee, in the course of discussing the Memorandum of Understanding between the City and the Detroit Land Bank Authority, directed LPD to provide a report – and ultimately, if necessary, an ordinance – regarding Community Land Trusts. The current working draft Memorandum of Understanding between the Land Bank and the City, under negotiation as of March 2015, at the request of Council Member Castañeda-López, has recently been revised to state that “The Detroit Land Bank will facilitate the sale or lease of land for community land trusts or cooperatives, should the City adopt such a policy.” (¶ 9)

This is LPD’s preliminary report in response to this referral.

Overview

A generic definition of a “Community Land Trust” (CLT) is: “a nonprofit corporation that develops and stewards affordable housing, community gardens, civic buildings, commercial spaces and other community assets on behalf of a community. “CLTs” balance the needs of individuals to access land and maintain security of tenure with a community’s need to maintain affordability, economic diversity and local access to essential services.”¹ Community Land Trusts are somewhat different from cooperatives, condominiums and other forms of ownership of land and/or housing that can be partly collective, depending on the terms of the individual entity’s bylaws, lease and other defining legal documents.

¹ http://en.wikipedia.org/wiki/Community_land_trust (Visited March 5, 2015)

An informative place to study and learn more about Community Land Trusts is the extensive web site of the Community Land Trust Network.² They identify “three core principles that embody the values of community land trusts”:

- **Perpetual Affordability and Sustainability**

We will create access to land and affordable homes for people of lower incomes, people of color, and others most marginalized in society. We will ensure durability and ongoing affordability for future generations, and create stewardship programs that support residents in achieving long-term success.

- **Community Stewardship of Land and Assets**

We will steward the land for a variety of purposes that benefit the community, such as affordable homes, community based businesses, community supported agriculture, and preservation of green space.

- **Representative Governance and Community Engagement**

We will serve our communities most effectively by involving key stakeholders and residents in decision making for the organization. We will prioritize residents we serve and community empowerment and provide opportunities for our members, board and staff to engage more fully in their community.

Council may also be interested to know that there was a vigorous discussion of forming a City-wide Community Land Trust several years ago, before the formation of the land bank. The proposals for Community Land Trusts currently under discussion generally seem to be envisioned as consistent with a land bank, rather than as an alternative. The land bank model is statutorily authorized under Michigan law, MCL 124.751 *et seq.* Whatever prospects there may be for Community Land Trusts (CLTs), they do not seem to be advanced today in the way the idea was widely debated years ago in Detroit, as an alternative to a land bank. Rather, the idea of a Community Land Trust, as LPD understand its mention in the draft land bank MOU, is suggested as one option among several potential land bank programs.

Chapter 1 of the Community Land Trust Reader, published by the Lincoln Institute, is available on line.³ It provides a helpful outline of the essential legal features of a Community Land Trust for the lay person. It states that a Community Land Trust (CLT) structures ownership in several distinctive ways:

- Title to multiple parcels of land is held by a single nonprofit owner that manages the land on behalf of a particular community, present and future.

² <http://cltnetwork.org/> (Visited March 5, 2015) There is an extremely voluminous amount of information available on the web site of the Community Land Trust Network alone. In addition, there appears to be a rather large body of literature elsewhere on the topic. In light of the vast literature on this subject, this report only introduces the topic in a general way.

³ https://www.lincolnst.edu/pubs/dl/1766_1243_CLT%20web%20chapter.pdf (Visited March 5, 2015) (not available in 2022)

- Land is removed permanently from the market, and never re-sold by the nonprofit owner. Land is put to use, however, by leasing out individual parcels for the construction of housing, the production of food, the development of commercial enterprises, or the promotion of other activities that support individual livelihood or community life.

- All structural improvements are owned separately from the land, with title to these buildings held by individual homeowners, business owners, housing cooperatives, or the owners of any other buildings located on leased land.

- A ground lease lasting many years gives the owners of these structural improvements the exclusive use of the land beneath their buildings, securing their individual interests while protecting the interests of the larger community. The lease is sometimes said to be “the vehicle within which the interests of individual residents and the long-term interests of the community are sorted out, balanced and respectively protected.”⁴

The same source lists three “organizational characteristics” of “a leased-land arrangement [as] a community land trust”:

1. The landowner is a private, nonprofit corporation with a corporate membership that is open to anyone living within the Community Land Trust’s geographically defined “community”;
2. A majority of the governing board is elected by the membership; and
3. There is a balance of interests on the governing board, where seats are allocated equally among directors representing the leaseholders, directors representing residents from the Community Land Trust’s service area who are not CLT leaseholders, and directors representing the public interest.

The National Community Land Trust Network published a 481-page updated and expanded technical manual on Community Land Trusts (CLTs) in 2011. It provides a thorough historical review, and is available from LPD upon request. Some notable points include:

- Historically, the Community Land Trust model began to be applied in urban American communities in the 1980s. The first urban Community Land Trust was formed in Cincinnati, followed by Syracuse, New York, and Burlington, Vermont. By 1990, as many as 240 communities in more than 45 states and the District of Columbia had various Community Land Trusts, including Durham, North Carolina; Youngstown, Ohio; Albany and Schenectady, New York; and Worcester, Massachusetts.
- The Community Land Trust model is specifically designed to provide what market-driven models of land use cannot: long-term affordability that protects and preserves affordable

⁴ Alternatively, the National Community Land Trust technical manual states “because deed restrictions are a common method of establishing restrictions on affordable homes that are created through inclusionary zoning programs and are then stewarded by CLTs, there has been a growing interest in deed restrictions within the CLT movement, and a certain amount of debate regarding the relative merits of deed restrictions and leases. ... For a given set of restrictions, the two kinds of documents [leases vs. deed restrictions] will be approximately the same length and will be written in very similar terms.”

housing, both in the “hot” markets created by the recent housing bubble, and in the post-2006 foreclosure crisis.

- “CLTs do not disappear after selling a resale-restricted home. They stand behind the deal: intervening in cases of mortgage default, preventing foreclosures, backstopping the homeownership opportunities they have worked so hard to create. Stewardship is what CLTs do best. True, they also acquire land, develop housing, sell homes, organize communities, and a dozen other things, but so do a lot of other nonprofit housing developers. What the CLT does better than any other organization— its specialized niche in a densely populated nonprofit environment— is to preserve affordability when economic times are good and protect its homes and homeowners when times are bad. In the scorched landscape of the national mortgage crisis, CLTs were almost alone in reporting few defaults and even fewer foreclosures.”
- “As the level of support from local government for CLTs has increased, the role played by municipalities in the life of a CLT has changed. Instead of waiting passively for a CLT to form, municipal officials in a number of cities have taken the initiative in starting one.”
- A Community Land Trust “serves simultaneously as a bulwark against displacement, a tool for development, and a vehicle for the empowerment of communities defined, in part, by their relation to place.”
- “Community land trust programs have been launched by a variety of institutions and groups – including faith-based groups, community organizing programs, existing housing and community development organizations, and local government agencies. Creation of CLTs has also been spurred by a variety of individuals, who may or may not be associated with the groups mentioned here, but who bring the kind of energy and commitment that is likely to be an important part of what makes a CLT happen.”
- “The geographical areas served by CLTs range from single urban neighborhoods, to whole cities or counties, to multi-county regions and entire small states. The typical size of CLT target areas has increased over the years. In fact it is now common to find that CLTs originally established as neighborhood-based organizations have expanded their territories to include whole cities, and sometimes surrounding suburbs as well. This trend toward greater geographical scale is obviously driven by a concern with capturing the efficiencies of scale.”
- “Since the urban neighborhoods where low-income people are concentrated tend to be characterized by disinvestment, absentee-ownership, deteriorated housing, inadequate services, limited economic opportunities, and the social problems that these conditions engender, CLTs that set out to create permanently affordable homeownership opportunities for low-income people in these neighborhoods face a daunting combination of challenges. They not only must deal with the economic circumstances that make it difficult or impossible for a low income family to qualify for the mortgage financing that will open the door to ownership; they must also deal with the surrounding economic circumstances that discourage owner-occupancy in general.

“Such a CLT may purchase and rehabilitate houses and arrange for financing that will allow them to be purchased on affordable terms, but it will be hard to sell those houses – and perhaps harder still to keep them owner-occupied over time – if other properties on the same blocks are deteriorated, abandoned, and boarded up. ... [I]t is usually impossible for a CLT that chooses to work in such a neighborhood to be *only* a housing organization. If it wants to be a successful long term steward of affordable housing in such a community it will almost certainly need to launch – or at least participate in – a broader neighborhood improvement effort that will address the full range of problems that affect the community.”

- “The “classic” CLT model is designed to balance the interests of individual CLT homeowners with the interests of the community as a whole. It entails an independent, community-based membership corporation in which there is specific provision for two equally empowered membership categories – one category including all people who live on CLT-owned land, the other category open to all other people in the community who have an interest in the CLT’s efforts and want to support them. Each of these categories elects one third of the board of directors. The final third, the “public representatives,” may be elected by the total membership or by the board itself to represent the “broader public interest.”

“The bylaws of some but not all classic CLTs specify that the public representatives (or a certain number of them) are to be public officials. ... The rationale for this structure is based on the recognition that all CLT residents have a common interest in the organization that owns the land they live on and should therefore have a degree of control over that organization, but that, unlike such common interest organizations as co-ops and condominiums, CLTs are not limited to single properties that exist as “islands” in the larger community.”

- In order to maintain its ownership and purposes, the Community Land Trust has a preemptive right to purchase the home of a ground lessee for a price limited by a specified “resale formula”. The right of repurchase alone, even without the price limitation, is important because it permits the Community Land Trust to see that the new purchaser is one of the groups it was created to serve. Nonetheless, in some circumstances, the preemptive right would have little real effect without the price limitation. If a Community Land Trust were forced to repurchase a highly appreciated home at a market price, it could be unable to make the home affordable for another lower income person. In rapidly appreciating real estate markets, the Community Land Trust may not be able to achieve its goal of preserving affordability, unless the preemptive right can be enforced at the limited price.

The many potential roles of local government in partnerships with Community Land Trusts are directly addressed by the Lincoln Institute in a 2008 publication entitled “The City-CLT Partnership; Municipal Support for Community Land Trusts”.⁵ The possibilities are too numerous even to list here. As it states: “How much separation a CLT should have from its supporting municipality and how accountable a CLT should be to local residents relative to local government are open questions.” The report further states:

⁵ Provided courtesy of the Detroit Community Land Trust Working Group, and available from LPD upon request.

“Municipal support comes in a variety of forms, depending on how well established the CLT is. For example, local governments may offer administrative or financial support during the planning and startup phase, followed by donations of city-owned land and grants or low interest loans for developing and financing projects. They may help a CLT acquire and preserve housing provided by private developers to comply with inclusionary zoning, density bonuses, and other mandates or concessions. As the CLT builds its portfolio, municipalities may provide capacity grants to help support its operations. Finally, local jurisdictions may assist CLTs by revising their tax assessment practices to ensure fair treatment of resale-restricted homes built on their lands.”

However, it cautions: “As welcome as their support has been, local governments may inadvertently structure CLT funding and oversight in ways that undermine the effectiveness of the very model they are attempting to support. The challenge lies in finding the most constructive ways of putting municipal resources to work in pursuit of common objectives.”

Clearly, if this type of entity is to be a part of future land use policies in the City, the nature of local government (and land bank) involvement and support will require serious and detailed attention, more sustained and with more diverse input from all relevant stakeholders, than is possible within the context of the essentially introductory overview provided in this report.

Status of Community Land Trust Development in Detroit

As Council may know, a number of Detroit residents have recently been exploring the possibility of establishing one or more Community Land Trusts in the City.

While Community Land Trusts may be regarded by some activists as innovative legal solutions to problems involving affordability of urban land, economic inequality and collective, collaborative development of land use policies, they are essentially based on existing state property law. In Detroit today, a nonprofit or cooperative organization could establish such a Community Land Trust, and purchase, develop and occupy real property under existing law. The Detroit Land Bank Authority, in the current draft Memorandum of Understanding under negotiation with the City, recognizes the possibility of allocating City-owned land to Community Land Trusts, if it is consistent with the City’s land use policies. The main obstacle to such Community Land Trusts, to LPD’s understanding, is not any lack of legal authority; it is lack of capital with which to purchase the property. And as noted in the sources relied on in this report, the process of setting up the organization, documenting and organizing the Community Land Trust and its collective ownership vehicle, and negotiating the local government’s role, if any, can be time-consuming (especially the first time it is used in a community).

To the hypothetical extent the City was to be directly involved in a given Community Land Trust, the City’s interests would presumably be protected by enforceable contractual requirements, without the necessity for local legislation. Unless specific policy interventions or obstacles that can be addressed via an ordinance arise in the course of future discussions, LPD is at this time unaware of any specific need for a new Community Land Trust ordinance, or how such local legislation would effectively support the creation of one or more Community Land Trusts in the City of Detroit at this time.

If Council has any additional questions or concerns regarding these matters, LPD would be pleased to provide further research and analysis and report back regarding same.