

Community Land Trusts: Is Profiting on Land a Natural Right?

Robert Swann

It took only thirty years, from 1930 to 1960, to increase the world's population from two to three billion people. It took only fifteen years to increase it another billion. At current annual growth rates of 1.7 percent, the world's population will double once again to eight billion by the year 2015, and sixteen billion by the year 2055. At the same time, the amount of available land on the earth's surface is not increasing. In fact, if anything, available land for cultivation is decreasing as a result, in part, of overgrazing, drought, and soil erosion, with resulting desertification in Africa and other parts of the world. Is it any wonder, then, that land in practically every part of the globe is under increasing pressure, and that where land is privately held the price for it is rising dramatically?

In our American culture, with its emphasis on individualism, and where the private holding of land has been a tradition from the European colonization of the country, it would seem that everyone who can afford it should buy a piece of land and hold it until the price significantly increases, and then sell it for a profit. In fact, this is what many people are doing. That is, those *who can afford to*. But there's the rub. Fewer and fewer people can afford to. The result is that the majority of land in the U.S. is held by an ever-smaller and smaller minority of people. An increasing number of people are beginning to question the right of a very small minority of people (or large corporations) to monopolize land, without which—in one form or another (housing, farming, etc.)—no one can survive. The Community Land Trust is an active approach to try to provide access to land on a local level, whether for housing, farming, etc, on a more equitable basis.

At the same time, an increasing number of people are becoming concerned with the environmental dangers of uncontrolled growth leading to the proliferation of poorly planned and unaesthetic housing overrunning wild lands, wetlands, open space, and so on. In response, many groups have formed private Land Conservation Trusts either to buy land, or to hold development rights on land in order to ensure that development does not overtake all the land in their towns. To date, there are some 700 such Land Conservation Trusts in the U.S., with the number growing rapidly. Generally, Land Conservation Trusts are organized as nonprofit corporations and are recognized by the IRS as "charitable" organizations, which means that donations of land or money are deductible from income taxes. A board of trustees, usually consisting of some of the donors, is appointed and is self-perpetuating.

A Community Land Trust, while also incorporated as a nonprofit corporation, is not usually (unless its sole purpose is to serve low-income people) a "charitable" organization in the eyes of the IRS and therefore cannot offer tax deductibility to potential donors (however, as I will explain later, this limitation may be overcome). While providing access to land is the primary purpose of a Community Land Trust, it is also concerned about the environment and good land-use planning that does not overcrowd the land, that protects wetland, wild areas, etc.).

A Community Land Trust, under its lease agreement, limits the use of certain portions of the land that may be protected for environmental reasons. The lease agreement includes a land-use plan that delineates those portions of the land to be kept “forever wild, “ for wetland protection , or recreational use. Any change in land use from the designated use in the land-use plan would have to be agreed upon, not only by the lessees on the land, but also by the board of the Community Land Trust. In this way, both the broader community, as well as the lessees, are protected from any land-use change that might be harmful or merely profitable to some individual. Nevertheless, there may be important reasons for making some changes in land use, and the Community Land Trust, unlike land set aside under acquisition by Land Conservation Trusts, provides an important degree of flexibility.

The organizational structure of a Community Land Trust is basically different from most Land Conservation Trusts in that membership is open to anyone in an area or region, and this membership as a whole elects at least one-third of the board of trustees. Another third of the board is elected by the people living on the land, and a final third is appointed by the first two-thirds jointly in order to ensure professional support (lawyer, land-use planner, etc.) for the board. Presently, there are sixty-five or more Community Land Trusts across the country, and probably more who call themselves Conservation Land Trusts but would not meet the criteria described here.

The purposes behind this structure with open membership are several: (1) The Community Land Trust is designed to serve the broader community with the emphasis on the *productive* use of the land. For this reason it is necessary to have as much participation as possible from the broader community in decisions about land use. (2) The Community Land Trust is concerned with providing access to land for families, farmers, etc. who otherwise may be unable to gain such access. Such people need representation on the board of the Trust; otherwise there is a danger that those who are already on the land will vote to change the purpose of the Trust and revert to private holding of the land. Historically, this has happened many times where such enclaves of cooperative land holding existed. (3) The Community Land Trust, therefore, is designed to serve the common good—not simply to hold land in common. Ideally, a Community Land Trust will actively undertake to acquire land by gift or purchase for whatever purpose serves the needs of the broader community.

Typically, a Land Conservation Trust depends upon donations of land or money, and is therefore more likely to rely upon relatively rich members of the community. A Community Land Trust, however, views its primary clientele as low- to moderate-income families with less opportunity for donating. However, a Community Land Trust may become involved in actually developing a tract of land and receive a fee that supports a staff for doing so. An example is the Community Land Trust in the southern Berkshires that presently holds two tracts of land for housing, one in South Egremont (ten acres with four family homes) and one in Great Barrington (twenty-one acres with eighteen family units). While a Community Land Trust may not depend upon donations of land or money to the extent of a Land Conservation Trust, it can only provide lower cost housing or farmland if it can get some financial advantage in acquiring land. It does, in fact, have several potential financial advantages:

- (1) In purchasing large tracts of land, it can buy them at a relatively low cost per acre and, because it is nonprofit, pass these savings along to lower the cost to the individual family.
- (2) Just because it is nonprofit it can attract donations or “better deals” than an individual could in purchasing land. Moreover, a Community Land Trust may unite with a Land Conservation Trust in such a way that the tax deductible donation to the Land Conservation Trust may be used to provide land for the Community Land Trust.
- (3) A Community Land Trust may be able to attract lower cost borrowed money (i.e., lower interest) than a for-profit developer, because many investors today are willing to take a lower interest rate on projects that have an important social value—the so called “social investment” market. For example, the Community Land Trust in the southern Berkshires has attracted some \$200,000 in loans at below-market interest rate for its project in Great Barrington.

While a Community Land Trust’s primary objective is to acquire and hold land, it may take on the role of nonprofit developer. There are many nonprofit housing developers across the country. An example is the Enterprise Foundation, which is responsible for low-income housing developments in a number of cities in the U.S. A Community Land trust, however, differs from nonprofit developers in that it never sells the land, whether to a group or to an individual. Rather, it holds the land and leases it to individual families or to groups. They build or contract (or the Community Land Trust builds and sells) houses that are owned by the families themselves. In other words, the Community Land Trust separates the land and the buildings, with the buildings (or improvements on the land) owned privately. In some ways this is similar to a condominium where an apartment is held privately, the land is owned jointly. In the case of the Community Land Trust, however, a ninety-nine year lease, automatically renewable and inheritable, provides security at least equal to holding private title, but also permits the Community Land Trust to retain control over the land in case of either misuse or resale.

In case of resale the Community Land Trust holds an option to purchase the building at its replacement value. In this way the Community Land Trust acts to prevent the resale value from being based on land appreciation as would normally be the case. While this restriction is a limitation on the potential market for buildings on Community Land Trust land, it represents a financial “trade off” for families who are able to purchase houses at a significantly lower price in the first instance. And it guarantees that houses built at affordable prices remain affordable over time, and thus serve the growing portion of the population that otherwise cannot hope to own their own home. In fact, unless such restrictions are placed on resale value, it becomes difficult to justify the subsidy, either public or private, that has made the initial low cost possible.

In the long run the Community Land Trust model, once it is more fully recognized for its social and economic value by towns and governments, may be given greater encouragement and support through such means as tax advantages,

use of land owned by towns and governments, and direct subsidies to Community Land Trust families with lower interest rates. Presently, some governments are already appropriating funds for Community Land Trust use. The Connecticut Legislature, for example, appropriated several million dollars this year for Community Land Trust use (such as land purchase, financing, etc.). The State of Massachusetts has a bill pending in the Legislature that will permit towns to enact a transfer tax (1-2%) on all real estate sales. According to the bill, funds from this tax must be used to provide “affordable housing” and to purchase land for environmental protection. Community Land Trusts would, naturally, be in a good position to receive these funds. However, it is up to the towns to decide whether or not to utilize such a local property transfer tax.

If such help is forthcoming in the future, along with increasing private gifts of land or money at the local level, Community Land Trusts may be able to act as a stabilizer of land prices at the local level. In other words, if sufficient land becomes available for housing and farming to meet local needs through the Community Land Trust, then of necessity all land prices will tend to drop to comparable levels.

From an economic point of view, the Community Land Trust is attempting to remove capital (or restrict it) from the land so that it does not become tied up in the land where it remains unproductive. Money that is used for speculation on land is “unearned” money and results in the coagulation of the economy because it produces nothing useful. From an economic point of view, money is best used for productive work—otherwise it tends to choke the economy and push all prices up. It is true that speculation in land is assumed to be a perfectly legitimate activity and is widely practiced in the U.S. But when it is understood in its true economic reality, it should be understood as detrimental to society as a whole.

Originally published in The Threefold Review, Summer 1990 (Issue No.3), ©1990 The Margaret Fuller Corporation

Robert Swann, a professional builder and designer, was president of the Community Land Trust in the Southern Berkshires, and of the E.F. Schumacher Society.