Land Tenure Innovations for Sustainable Communities

Marena Brinkhurst and Mark Roseland

Communities everywhere, including those in urban landscapes, are underpinned by layers of formal and informal property rights and land tenure arrangements. Land tenure arrangements exert surprising influences on land use and development in industrialized nations, influences that become particularly apparent when the interests of private-property owners conflict with those of the wider community. Given that community land-use planning involves identifying and supporting both individual and community-development goals, it must often contend with conflict between individual and collective interests. Increasingly, collective interests in environmental and social sustainability are facing opposition from private interests. At the local level, those advocating for the public interest often find themselves in a contest with the owners of private property.

Our research focuses on the role that land tenure innovations and new forms of ownership could play in resolving conflict between private interests and community sustainability. In this chapter, after reviewing several models of land tenure innovation, we consider the possibility that local governments could support these innovations and assess the effectiveness and feasibility of this option in the context of sustainable planning in Canadian communities. On the basis of this assessment, we turn our attention to land readjustment, voluntary easements, and community land trusts. A number of land tenure innovations and alternative land ownership arrangements have the potential to be useful to local governments and planners, but much uncertainty exists regarding the use of such tools. While this review examines already recognized alternative tenure arrangements, it encourages further investigation of other, less familiar forms of shared tenure,
as well as the question of how local governments, or perhaps other actors, can use and support these as tools for sustainable community development.

**BACKGROUND AND RATIONALE**

A vast literature exists concerning the nature of private land ownership, its advantages and weaknesses, and its protection or reform. A comprehensive review is not within our scope, but for clarity and justification, we define the key terms and explain the need for examining the role of land ownership arrangements in planning for sustainable communities. Land tenure refers to the arrangement of the “rights and obligations of the holder” (Bruce 1998, 1). There are many forms of land tenure that can be contained within any given land tenure system, ranging from private control to leasehold, shared common land, or state-controlled lands. Different land tenure arrangements are often illustrated as a “bundle of rights” because specific rights over land can be combined to create different degrees of control. For example, an individual may have the right to use or access a piece of land but lack the right to manage it or sell it. Lai (2006, 74) explains private property ownership as a bundle of rights that includes (1) an exclusive right to use the resource; (2) an exclusive right to derive any income from the resource; and (3) the exclusive right to alienate, combine, and divide the first and second rights. To this may also be added the exclusive and effective right to manage the use of the resource (Schlager and Ostrom 1992).

As James Karp (1993, 741) observes, the existence of private property limits the government’s “ability to promote the public good,” and for this reason, the institution produces “an unrelenting tension . . . between the protection of an individual’s private property and the fostering of community rights.” Public agencies or governments are typically involved in land tenure systems through protecting property rights and also through land-use management responsibilities. Land management by public agencies can take many forms; however, in urban communities, and for the purpose of this chapter, the role of the public agency is considered to be through planning, specifically through regulation of land use and development. Arno Segeren and colleagues (2007, 10) classify government approaches to planning as either “passive”—that is, based on rules that restrict and regulate individual actions—or “(pro-)active,” in the sense that government is “actively involved in working with the land owner to change the land use.” This active involvement can entail: encouragement of certain actions or investments; provision of information or financial help to land owners; coordination the actions
of land owners; or construction of public infrastructure that influences how land owners decide to use their land (Segeren et al. 2007, 10). Planning in Canada is the jurisdiction of provincial and local governments, which generally use largely passive planning methods (Grant 2008, 339).

In contemporary North American communities, planning is increasingly focused on promoting development that is proactively sustainable in terms of economics, society, and the environment (Roseland 2012). Within the growing literature on sustainable development and community planning, attention is turning to the institutional factors that shape the challenges to and supports for sustainable development, including the design of land tenure systems (Godschalk 2004; Staley 2006a; Williamson et al. 2009). Land tenure systems have always passively shaped land-use planning, but there is renewed interest in how to use that influence more actively in order to encourage the development of sustainable urban communities (Ho 2006, Ingerson 1997; Staley 2006a, 2006b). Many researchers and planners now stress that patterns of land ownership and the structure of property rights should be integral to any community planning strategy (Buitelaar and Needham 2007) and that there is great potential for innovations in land tenure that would support sustainability goals (Heisler 2009; Lai 2006; Roseland 2006).

DOES PRIVATE LAND OWNERSHIP WEAKEN PLANNING FOR SUSTAINABLE COMMUNITIES?

Private land ownership is accompanied by many community benefits, such as the creation of incentives for private land management and protection of land values, participation in land-management processes, and innovative resource use (Gilbert, Sandberg, and Wekerle 2009; Lai 2006). In fact, many researchers argue that private property systems can support sustainability goals, sometimes more effectively than government initiatives (Buitelaar and Needham 2007; Karp 1993). In addition, in the context of North America, private property interests are well entrenched and protected by law, which means that any planning initiative must respect individuals’ property rights (Grant 2008, 339). While these factors should not be discounted or overlooked, many researchers also argue that private land ownership, as currently understood and legally defined, frequently results in obstacles to community sustainability (Blomley 2008; Daniels 2009; Godschalk 2004; Lee and Webster 2006; Staley 2006a).

These barriers can include: resistance from land owners against environmental regulations or sustainability initiatives, such as building high-density
urban centers around public transit infrastructure (Godschalk 2004, 10); competition between local governments “to expand their property tax bases, often at the expense of environmental quality and social cohesion” (Daniels 2009, 190–191); private control over lands critical for achieving sustainable development goals (Roseland 2006, 10–11); or the enclosure of the urban commons or shared/unclaimed property, which are often used by economically disadvantaged residents of a city (Blomley 2008, 322, 326; Lee and Webster 2006, 29). A variety of tools are used to address many of these challenges, such as changes in tax policy (Löhr 2010, 75–77) or provision of public parks and infrastructure. However, government-led sustainability initiatives may appear to be at odds with interests of private property owners and can face stiff opposition if imposed. This leads us to ask, are there other mechanisms that might be more effective?

**USING MARKET MECHANISMS TO ADDRESS MARKET FAILURES**

Local governments have found that some market mechanisms can be used to guide, reward, monitor, and penalize private sector involvement in planning decisions and development projects. Roseland (2006) suggests that new approaches are needed to orient these influences toward sustainable community development:

In order to achieve specific land-use planning goals, there is a need for more flexible economic evaluation processes and a broader range of market-based approaches than currently exist. These new approaches need to be responsive not only to the market but also to proactive community participation, since local social structures are powerful forces in the determination of urban processes.

Community economic development and social economy approaches are two means of working toward sustainable development at the community level: that is, sustainable community development (SCD). To fulfill the potential contributions of SCD initiatives to community planning, the private sector must engage with proposals and initiatives that advance sustainability. In most cases, however, we are missing a market actor to function in this capacity.

SCD requires that we go beyond the notion that land is a mere commodity. Even in conventional economic terms, land is a peculiar commodity in that its supply cannot increase, no matter how high the price. Roseland (2006) explains the implications of this for SCD:
As demand for land grows, the wealth of landowners tends to grow regardless of how well or how badly they use the land. In his 1879 classic, *Progress and Poverty*, Henry George proposed a solution to this dilemma: taxing the value of land produced by anything other than private efforts. Such a land-value tax would keep private landowners from unfairly capturing the benefits of natural resources, desirable locations, and public services. George also believed that this tax would force landowners either to put their land to its “highest and best” use themselves or to make it accessible to someone who would. While such comprehensive public approaches are essential, it is clear that other complementary and nimble approaches must be developed and employed as well. The market works well enough (beautifully, some would say) for private purposes, but when we are talking about the common good, its failings become readily apparent. While the land market generally functions well for individual property owners, it responds to price signals that reflect conventional understandings of “highest and best” use. Therefore, if left solely to its own devices, the market will substitute financial capital for other forms of capital, resulting in such actions as converting agricultural land to shopping centres (depleting natural capital) or developing on sacred sites (depleting cultural capital). Its more egregious failings will be rectified by protected area designations, parks, agricultural land reserves, and so on. However . . . there are more subtle market failures that have a huge impact on community sustainability—for example, by influencing the amount of private (automobile) versus public transportation or the amount of local employment and wealth creation versus economic leakage.

Roseland (2006) further argues that while,

sustainability requires comprehensive public sector engagement with regard to factors such as planning, taxation, and services, it also requires complementary private sector approaches that are more entrepreneurial. Unless they are big players worrying about reputation management, private sector actors do not generally concern themselves much with the common good, since the return on investing for the common good is rarely as high as the return on investing to maximize profit. If the market sent the right signals (e.g., through shifting to green taxes, carbon taxes, etc.), we could expect more sustainability-oriented private initiatives, and therefore, that type of policy shift is an extremely critical public agenda item. However, waiting for the day when the tax system rewards sustainable behaviour could be a very long wait, and in the meantime, we are rapidly losing
natural and other forms of capital (e.g., ecologically and culturally significant parcels of land) to unsustainable development.

We therefore need a private actor with a sustainability outlook to use market approaches for the common good. Since the public sector does not seem to have the necessary resources, inclination, or will to strengthen community capital for sustainable development, we need to develop an actor who does have those qualities. Such an actor would quietly, quickly, and aggressively seek to control strategically significant land for sustainable purposes using market mechanisms (e.g., ownership).

While no such actor has yet appeared on the local stage, we have some valuable social economy models that we can learn from, as discussed below.

CAN LAND TENURE INNOVATIONS HELP ADDRESS SUSTAINABILITY CHALLENGES?

Given the negative influences that private land ownership can have on government-led efforts to plan and develop sustainable communities, attention should be directed toward ways of addressing or overcoming these challenges. Conventionally, discord between private and public interests is addressed through passive planning tools such as land-use regulation, zoning, bylaws, or development controls, and occasionally through active planning tools such as offering incentives for developments perceived to be in the public interest. However, these tools have limitations, and their effectiveness at promoting sustainable development is sometimes questionable (Booth and Skelton 2011; Buitelaar and Needham 2007; Grant 2008; Hodge and Gordon 2008; Roseland 2012). In addition, as James Karp (1993, 744) explains, “piecemeal chipping away at private property interests by state and local governments through layer upon layer of land use regulations to protect the environment seems only to have antagonized individuals into strong anti-government feelings.” One proposed alternative to conventional planning tools is land tenure innovation. Forms of land ownership other than private or public property arrangements, as well as tools that modify or regulate tenure arrangements, might offer ways to ameliorate the conflicts between public and private interests concerning land and thus to support community sustainability.
Nelson, British Columbia: Market Failure and Community Sustainability
Mark Roseland and Marena Brinkhurst

In 2001, a 1.1-hectare parcel of lakefront property located on the central waterfront of Nelson, BC, was placed on the market by BC Buildings Corporation. Some of the proposed bids for the property included developing the land for big-box retail purposes. A group of local residents recognized the significance of this property, not only for its value as a prime development site but also for its ability to influence the design and function of future development on Nelson’s waterfront as a whole. Ultimately, the group was successful in purchasing the property, and their purpose as owners was not to develop the land themselves, but to ensure its development in accordance with a long-term vision compatible with community values and Nelson’s Official Community Plan (City of Nelson 2015).


In her comprehensive review of alternative land tenure models, Karen Heisler (2009, 3) defines land tenure innovations as arrangements that redefine the rights associated with land tenure” and adopt “specific practices to work within or around the traditional land tenure system.” Heisler’s review explores specific examples of land tenure innovations and changes to existing land ownership to explain how such strategies can be used to support environmental, social, and economic goals. The examples and strategies considered provide evidence that land tenure innovations can advance the goals of community sustainability, and yet land tenure and ownership have not been widely used as leverage points by local governments or planners. Reasons for this may include a lack of awareness of land tenure alternatives and changes, public opposition or reluctance to change property rights arrangements, limited legal or administrative feasibility, or perceived ineffectiveness, as is seen in several of the approaches reviewed.
While land tenure innovations may not yet be commonplace, they still raise important questions for local governments and planners. As Alice Ingerson (1997, 3) points out, “experiments with property rights and responsibilities raise questions that few researchers . . . have yet addressed. For example, should local and state officials help to remove regulatory barriers to group ownership of land, or support new criteria for mortgage financing of group-owned land?” Following Ingerson, our work conducts a preliminary evaluation of various land tenure and sustainability strategies, their feasibility and effectiveness, and potential roles for local government within the context of Canadian communities.

MODIFICATIONS TO URBAN LAND TENURE: EXAMPLES AND PRECEDES

Analysis of academic and community-produced research yields a wide range of examples of policies, planning tools, and grassroots initiatives that modify urban land tenure, ranging from coercive to voluntary and from large-scale to site-specific. In this section, strategies and examples deemed relevant to the context of Canadian communities are synthesized into three categories, following the classifications proposed by Segeren et al. (2007) and Gerber et al. (2009).

Changing the Distribution of Private Property and/or the Provision of Land

The first three approaches that we explore—land swaps, land banking, and land readjustments—involves a local government facilitating or forcing changes to the distribution of private land holdings. Note that land expropriation and forcible land redistribution are not included, since neither is considered relevant to this chapter given their limited use in the context of contemporary Canadian communities, except for major infrastructure projects (Gerber et al. 2009).

Public-private land swaps. In a land swap (or land exchange), a local government trades a parcel of public land for a privately owned parcel in order to further an economic, social, or environmental goal. The use of a land swap to reach a community sustainability goal is based on “the fundamental belief . . . that government ownership will provide greater protection for environmentally sensitive lands” (Hanna et al. 2007, 344) and will be more effective at advancing social, economic, or environmental goals than the private land market.

Kevin Hanna and colleagues (2007) provide an example of a successful land swap used to further sustainable planning goals. In the rapid-growth setting of the Greater Toronto Area (GTA), efforts to protect the environmentally sensitive Oak
Ridges Moraine included a land exchange. Property owners negatively affected by the area’s conservation plan, which included “development firms and speculators,” were compensated by exchanging their land in the moraine area for parcels of provincial land in another area on the edge of the GTA (Hanna et al. 2007, 344). In a similar case, the City of Saint John, New Brunswick, developed a policy to exchange city-owned lands for privately owned parcels within the city’s two watersheds, with the intention of providing better protection for environmentally sensitive and ecologically valuable watershed lands through municipal ownership (Chilibeck 2009).

Land swaps have also been used by cities seeking to secure strategic locations for municipal infrastructure or facilities. For example, the City of Snellville, Georgia, negotiated a land swap in 2000 in order to secure a privately owned abandoned supermarket so as to renovate it into a municipal complex. The goal of this land swap was to “revitalize vacant retail space” and the city centre, while also addressing concerns that the abandoned big-box store was decreasing the value of neighbouring properties (Ippolitto 2000). While land swaps are currently used by municipalities in North America, they are not always feasible: the local government may lack suitable lands to exchange, the area sought may be extremely valuable and therefore difficult to acquire, or there may be pronounced public opposition.

Public land banking. As described by Heisler (2009, 34), land banking is “a systematic acquisition of often large pieces of land, normally land that is pre-development.” Both public and private sector actors can practice land banking, but for the purpose of this chapter, only acquisition and banking of previously private lands by local governments is considered. Land banking provides a way for local governments to remove parcels of land from private ownership and “control the market speculation and development of land” in order to provide for the public interest, such as “to provide public services, control urban sprawl or provide affordable housing” (34). The local government can choose to develop these lands itself or to allow other developers to use the land while retaining ownership and ultimate control of the land (Segeren et al. 2007).

Heisler’s land tenure literature review identifies a spike of research interest in public land banking in the 1970s and 1980s, followed by a sharp decline as direct government interference in land markets fell out of favour. However, Heisler urges further, contemporary research into this model because of its effectiveness at securing land, an aspect of land tenure innovation that can prove challenging for other approaches.
An example of public land banking is the City of Vancouver’s Property Endowment Fund (PEF), created by City Council in 1975 to hold and administer all the City’s long-term land holdings, apart from park lands and those intended for municipal purposes in the near term (Antrim 2011; City of Vancouver 2004). The PEF functions to generate revenue for the City and “support the City’s public objectives” (City of Vancouver 2004). While the PEF draws opposition from private developers, it is justified on the basis that “citizens should share in the profits from any increase in land value” rather than transferring that benefit to private interests (Davis, n.d.). The PEF model has been widely admired by other municipalities, including the nearby City of Langley, which proposed the creation of a similar entity (Claxton 2011).

Land readjustment. Land readjustment (also known as land pooling, replotting, reassembly, parcellation, or repartition) is a legal instrument for facilitating the redevelopment of land that has been fragmented into many private parcels. It is frequently used internationally—the Japanese term is *kukaki seiri*, the German is *Umlegung*—but lacks extensive recognition in much of the English-speaking world (Home 2007, 459). Landowners in a targeted area who stand to benefit from redevelopment “transfer voluntarily and at existing use value the property rights over land . . . temporarily to the municipality” in order to facilitate redevelopment (Van der Krabben and Needham 2008, 661). The land parcels are temporarily pooled together and then, based on the original agreement, re-divided among the original owners following development, with the municipality retaining ownership over land that the various parties agreed could be dedicated to public use.

Land readjustment can be used to support sustainable community development in instances when existing land patterns present obstacles to projects, such as public transportation networks, or when the costs of a redevelopment cannot be fully borne by the local government. Robert Home (2007, 463) suggests several potential applications of land readjustment, including the following:

- Town expansion into peri-urban areas of fragmented ownership that lack planning or infrastructure
- Multi-level or vertical replotting of urban areas to achieve higher densities
- Regeneration sites within urban areas where land assembly may be difficult
- Antiquated subdivisions where smaller plot sizes or higher densities are sought
• Environmental protection areas (such as coastal regions or waterfronts where, for instance, a rearrangement of frontage ownerships is sought)

Joachim Thomas (2011) highlights the use of land readjustment in rural development projects to ensure that land is used efficiently and waste of land is prevented, and Ling-Hin Li and Xin Li (2007) describe the application of land readjustment to urban renewal projects in China. Land readjustment also has potential in the underdeveloped areas around railway stations: these areas are central to urban intensification and redevelopment goals, but their redevelopment is plagued by obstacles when undertaken exclusively by a private or public redeveloper (Van der Krabben and Needham 2008).

For development projects that require land assembly, land readjustment provides an alternative to purchase by a public entity (voluntary or compulsory). Instead, land readjustment facilitates redevelopment by combining and reparcelling land, and sharing financial costs and benefits of redevelopment between landowners and the development agency, which is often the local government (Home 2007). This approach has several advantages over the public purchase of lands, especially when public funds are limited or when neighbouring landowners stand to benefit substantially from public interest developments (Home 2007; Van der Krabben and Needham 2008).\(^1\)

**Legal Redefinition or Modification of the Institution of Property**

Legal redefinition or modification strategies involve either legal changes to the scope, value, and/or content of private property arrangements (Gerber et al. 2009) or the legal creation of new forms of property. Of the many approaches that fall within this category, we will consider two here: transferable development rights and shared-ownership arrangements established in law. Worthy of mention, however, is the modification of the institution of property through regulatory tools that are familiar to planners, such as building standards, bylaws, zoning, and development controls (Gerber et al. 2009). All of these tools modify, restrict, or specify aspects of the bundle of rights attached to private land ownership. In this sense, local governments routinely shape and modify the institution of private property in their locale by determining what uses of land and property rights are permissible (Segeren et al. 2007). Since these tools are already well used by local governments and planners, the focus here is on two less familiar approaches.

\(^1\) See Home (2007) for details on the process of land readjustment using an applied example.
Transferable development rights. Transferable development rights (TDRs), also referred to as tradable or purchasable development rights, is probably one of the more familiar land tenure innovations reviewed in this chapter. While conventionally used as a tool to “shift density potential from one area to another” in terms of building envelopes and density measures, TDRs are increasingly being used as an innovative tool for agricultural land preservation and ecological planning (Hodge and Gordon 2008, 266, 345). Using TDRs involves detaching the right to develop lands within a designated “sending area” and allowing that right to be traded with other landowners within a designated “receiving area” (Curtis et al. 2008). If landowners within a receiving area desire to develop their lands beyond what is permitted by zoning or density controls, they can purchase TDRs from landowners in the sending area. The lands that have their associated TDRs sold are no longer developable; this ban on development is typically passed on to new owners through deed restrictions or easements (Hanly-Forde et al. 2014). By redirecting development away from rural or undeveloped land, TDRs can support urban intensification goals and agricultural or ecological land conservation (Hanly-Forde et al. 2014; Stoms et al. 2009).

Shared-ownership arrangements established in law. Jean-David Gerber and colleagues (2009) highlight the potential to redefine or modify the content or scope of the institution of private property by legally creating property arrangements based on shared ownership. A well-known example of this is the institution of condominium ownership. Condominium ownership, also called strata-title, is one of the “main internal governance systems adopted worldwide in the management of communal private property” (Yiu, Wong, and Yau 2006, 93). In a strata-title arrangement, residents own their individual units as private property but “common areas of a development are held by a corporate body in which each owner has a share” (93). Avi Friedman (1994) considers condominium tenure to be a tool for creating affordable and flexible housing arrangements in the Canadian context.

While condominium tenure is familiar, some researchers promote a variation of it for application to leasehold land. In certain contexts, such as Hong Kong, lands are held as leasehold rather than freehold private property (Ho 2006; Yiu, Wong, and Yau 2006). Within a leasehold context, shared tenure arrangements have developed in which “owners hold undivided shares of a whole development as co-owners together with an exclusive right to use a particular part” and the co-owners’ rights and responsibilities are summarized in “a deed of mutual covenants,” which is binding for all future owners (Yiu, Wong, and Yau 2006, 93).
While Hong Kong’s leasehold land is embedded in the context of its state-owned land system, Eric Ho (2006, 274) argues that “the leasehold land system also serves as a means of ‘planning by contract’” that can support goals of sustainable development. The leasehold model may be of interest for land tenure innovators in the Canadian context because of its combination of secure individual interests, a contract that establishes individuals’ collective responsibilities, and a landowner who holds the ultimate rights to govern the use and management of the property. As Ho explains, each lease is, in effect, a development action plan situated within a wider plan (274). Lawrence Lai (2010) reaches a similar conclusion, positioning “planning by contract” as a model that integrates comprehensive planning, freedom of contract, and public participation.

**Voluntary and/or Grassroots Land Tenure Innovations**

Our final category of innovative urban land tenure possibilities comprises strategies that are optional for landowners and are typically supported by local government programs or non-governmental initiatives. The two strategies examined in depth here are voluntary easements and community land trusts. Within the scope of this chapter, we were unable to give detailed consideration to two additional approaches that fit within this category and that deserve mention:

- **Incentivization.** Incentives such as financial stimuli, coordination measures, or information (Segeren et al. 2007) may not have any direct impact on a landowner’s property rights, but they can be very influential (Gerber et al. 2009). An example of a possible incentive for tenure innovation is a tax break for shared-ownership arrangements. Some incentives that support other approaches are the provision of information on land swap opportunities or on how to establish collective-tenure arrangements.

- **Property management.** Lai (2006) and Yiu, Wong, and Yau (2006) explore the sustainable development potential of property management. As these researchers use the term, property management encompasses various stages of property development: “planning, project appraisal, construction, estate management, and title succession” (Lai 2006). Property management is linked to tenure arrangements because in a strata-title or co-ownership arrangement, “a property owner acquires . . . a right (obligation) to participate in the management of the building” (Yiu, Wong, and Lau 2006, 93).
Voluntary easements. Easements over land, in various forms, have existed for centuries and encompass a wide range of rights of use over property that are held by someone other than the legal owner of the land. Easements are often used to ensure rights of access, in order to prevent conflicts over land use, but they are increasingly being used in land-use planning to protect lands that have ecological, agricultural, or cultural value (Molina 2007; Stoms et al. 2009). Voluntary easement is a legal tool that landowners can use to protect aspects of their land in perpetuity, thus contributing to community sustainability goals by helping to preserve ecologically or agriculturally significant lands or by preserving some strategic or communally valued aspect of a land parcel. Potential applications of property easements are wide-ranging, though there is limited literature on the use of easements outside of more conventional applications.

Community land trusts. Land trusts are most familiar in the context of environmental or agricultural land preservation by government, non-profit organizations, or citizen groups (Hilts and Mitchell 1993; Roseland 2012, 49, 159), but they can also be used in urban contexts as a land tenure innovation that removes land from private ownership and instead manages it as a community or group asset (Heisler 2009). Land trusts change how costs and benefits of land development are distributed without resorting to taxation or regulatory tools (Ingerson 1997, 1). Instead, benefits and costs are shared by a group, and priority can be placed on efforts to “foster or protect specific land uses or groups of users” rather than solely on the generation of private profit (Ingerson 1997, 3).

UniverCity: SFU Community Trust
Sean Connelly

The Simon Fraser University (SFU) Community Trust was established to develop a sixty-five-hectare parcel of land into UniverCity, a model sustainable community of about ten thousand residents with a diverse range of housing options, shops, services, and amenities on the university campus. In addition, the development would help make SFU itself more sustainable by serving as a tangible example of sustainability for students, faculty, and staff and by using revenue from the development to create an endowment fund that would support teaching and research. The development is currently home to about 3,600 residents in LEED-certified buildings with a range of housing sizes, tenure options (strata
ownership, rental, and shared-equity); a LEED Gold elementary school for 180 students; and North America’s first “living building” day care that is toxic-free, was largely built with materials from within four hundred kilometres, generates more energy than it uses, and recycles or harvests from rainwater more water than it uses. Residents are also able to purchase a Community Transit Pass at approximately 20 percent of the regular cost, providing additional incentives to reduce automobile use.

Plans are in the works for a neighbourhood energy system that would link all new buildings and would be powered by excess heat from the university’s data centre. The UniverCity development illustrates the kind of development that is possible by taking a proactive role in controlling the land development process. With full control of the land, the SFU Community Trust was able to set specific bylaws and density incentives to ensure that social and environmental objectives were met, resulting in a community that is diverse, ranges in income, and is less auto-dependent (Roseland 2012).


Karen Heisler (2009) provides an excellent overview of community land trusts (CLTs) and the various models used. While there are many types of CLTs, including co-operatives and lease-to-own arrangements, several characteristics distinguish CLTs from other land tenure approaches (CMHC 2005, 2):

- CLTs are non-profit organizations.
- They are democratically controlled by their members.
- They own the land and grant usage rights to third parties through lease agreements. Buildings are owned or leased separately
- They ensure perpetual affordability and responsibility through various constraints.

It is the shared land-ownership arrangement that sets CLTs apart from other models and provides the basis for the governance of CLTs and for their effectiveness in reducing costs and protecting land (CMHC 2005).
Community Land Trusts

Mark Roseland and Marena Brinkhurst

Community land trusts (CLTs) are locally controlled non-profit organizations that acquire, hold, and lease out land for the development of permanently affordable housing. The first CLT in North America, established in 1969 near Albany, Georgia, was an outgrowth of the civil rights movement in the American South. There are now over 240 CLTs in the United States, supported by the National Community Land Trust Network.

The Champlain Housing Trust (CHT), for example, was created in 2006 as a result of the merger of Burlington Community Land Trust and the Lake Champlain Housing Development Corporation. The CHT provides affordable housing and community facilities in the three counties surrounding Burlington, Vermont. It acquires land through purchase, donation, or bargain sale but has also received land and buildings as part of negotiated deals with private developers who must comply with local inclusionary zoning or housing replacement ordinances. If there is not already an existing residential or commercial building on the land, CHT constructs one using government grants and private donations. In the case of CHT's owner-occupied housing, an income-eligible homebuyer purchases the building and leases the underlying land from CHT for a nominal fee (e.g., $35 per month for ninety-nine years). Since the cost of the land is not included in the price of the home, the cost of the home is kept low and the homebuyer saves on mortgage costs. By leveraging government grants and subsidies and by restricting the resale price of every house and condominium in its portfolio, CHT is able to keep the cost of owning a home up to 30 percent lower than a comparable market-rate home (Fireside 2008). CHT is currently the manager and steward for 1,500 units of rental housing, several shelters and single-room occupancies for persons who were formerly homeless, and eight non-residential buildings containing neighbourhood businesses or community services.

Many CLTs in the United States use models similar to those in Canada to advance local social and environmental goals, two celebrated examples being Boston’s Dudley Street Neighbourhood Initiative (Ingerson 1997) and the Burlington Community Land Trust (CMHC 2015; Foldy and Walters 2004; Roseland 2012). Land trusts can be combined with affordable and/or shared housing arrangements, as has been done by the Cooperative Housing Land Trust Foundation in BC (Roseland 2012). Similarly, to provide and protect an affordable housing development, the Cashes Green redevelopment of a derelict hospital complex near Stroud, in England, used a form of shared ownership called “mutual home ownership” to combine donated public land, a community land trust, a mutual home ownership entity, and a social landlord (GLP 2011; Marsden et al. 2010; RUDI 2014). It is specifically because of the apparent advantages that CLTs have for providing affordable housing that the Canada Mortgage and Housing Corporation has expressed interest in this form of tenure innovation (CMHC 2005, 2015).

John Davis and Rick Jacobus (2008) explore ways in which local governments can, and should, support CLT initiatives. In the model they propose, the local government donates ownership or a long-term lease of government-owned land, or the funds to acquire land, to a CLT dedicated to affordable housing; the government may also be involved in helping to establish and possibly even administer the CLT (33). Davis and Jacobus demonstrate how, in the long term, this type of partnership is more cost effective than government subsidies for affordable housing, even when lost property-tax revenue (from forgone conventional development) is taken into account (7). Local governments can also support CLTs through inclusionary or preferential zoning or through regulatory measures that require private developers to contribute to the initiative (Heisler 2009, 26; Roseland 2012). As Ingerson (1997, 3) points out, in some contexts, CLTs may have to “seek special legal exemptions, or even change state property laws” if there are legal constraints on the restriction or sharing of private property rights.

**Bringing the Theory and the Practice of Community Land Trusts to North America’s Most Expensive City**

*Michael Lewis*

In 2013, Vancouver was ranked as the second least affordable place to live out of 360 urban centres around the globe. The mayor of Vancouver had already announced an Affordable Housing Task Force in late 2012 as
the price of an average single family home increased 33 percent to $1.6 million that year. Thirty years ago, it took 3.5 times a carpenter’s annual wages to purchase a house; in 2012, it required 33 times a carpenter’s annual wages.

An advocate of community land trusts (CLTs) who was well versed about the success of CLTs in preserving housing affordability in the United States, succeeded in getting a pilot of the CLT model written into the final report of the Vancouver task force. A unique public-social partnership will see the city of Vancouver lease four parcels of their land for ninety-nine years to the Community Housing Land Trust Foundation. A total of 355 units will be built. Market rentals will number 82 co-op units. The remaining units are targeted at specific low-income constituencies (families, seniors and singles, people with disabilities) and will have rental rates between 19 percent and 26 percent lower than the upper limit of low income eligibility in the region. These will be owned and managed by experienced non-profit partners Fraserview Housing Co-operative, Tikva Housing Society, Katherine Sanford Housing Society and HFBC Housing Foundation. The city approved the CLT proposal on 15 May 2013 and construction was to begin in March 2014, with the first residents moving in by November 2015 (Wong 2013).

Taking the land out of the market and putting it into the hands of the trust is the first big breakthrough for Vancouver. The second is a business model design based on multi-stakeholder solidarity; the market rentals cross-subsidize the lower-income units, thus deepening the level of affordability. Third, once all reserves built into the business model are fully funded, the surplus will be split between the city and the CLT on the condition that both parties reinvest it in affordable housing. A progressive mayor and city council created the opening, aided by some effective advocacy. The CLT designed the proposal, ably aided by the Coop Housing Federation of British Columbia, Vancity Credit Union, and a professional housing development company specializing in co-op and non-profit housing. The result is a public-social partnership actively piloting how an alternative form of land tenure and a business model motivated by community benefit and long-term viability can build affordable housing in a city where most citizens no longer thought it possible.

AN EVALUATION OF SIX LAND TENURE INNOVATIONS

Of the seven land tenure innovations described in the above sections, we selected for further analysis six that we believe could support sustainable community goals:

- Land banking
- Land readjustments
- Transferable development rights (TDRs)
- Shared-ownership arrangements established in law
- Voluntary easements
- Community land trusts (CLTs)

Although land swapping, the seventh innovation, is of interest, it does not sufficiently use land tenure innovation or alternative forms of ownership for the purposes of this evaluation.

The six approaches were evaluated based on their capacities in four areas:

- The advancement of environmental sustainability goals. The extent to which the option improves ecological health and integrity (such as biodiversity, water quality, air quality, habitat quality, or species population).

- The advancement of social/cultural sustainability goals. The extent to which the option improves social justice, cultural diversity and vibrancy, and support of individuals within communities.

- The advancement of economic sustainability goals. The extent to which the option improves local economic vitality, resiliency, opportunities, and innovation.

- The alignment of public and private interests. The extent to which the option reduces conflict between private and public interests.
The goal of this section is to evaluate the selected approaches against consistent criteria in order to identify which strategies might be most effective and feasible in the context of Canadian communities. The analysis is qualitative, and a summary of the strengths and weaknesses of each approach, relative to each other, is provided in table 8.1.

**Table 8.1  Strengths and weaknesses of six land tenure approaches**

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Land banking</td>
</tr>
<tr>
<td>Environmental sustainability</td>
<td>good</td>
</tr>
<tr>
<td>Social/cultural sustainability</td>
<td>good</td>
</tr>
<tr>
<td>Economic sustainability</td>
<td>unsure</td>
</tr>
<tr>
<td>Effectively align interests</td>
<td>poor</td>
</tr>
</tbody>
</table>

**CONCLUSIONS AND FUTURE DIRECTIONS**

In this chapter, we have explored ways to use land tenure innovations and alternative land ownership arrangements to further goals of sustainable community development, particularly when conflicts between private and public interests concerning land present obstacles to sustainability initiatives. Based on the analysis of six very different approaches, it is clear that while a number of land tenure innovations and alternative land ownership arrangements are potentially useful to local governments and planners, much remains uncertain regarding the actual application of such tools. Limited awareness of many of these approaches presents a major barrier to their widespread adoption. Based on our review, several
strategies of land tenure innovation appear to be deserving of particular attention from local governments and planners.

- **Land readjustments**: This approach was evaluated favourably for sustainability objectives, yet suffered on conventional policy criteria, primarily because of its unfamiliarity in North American contexts. As an approach used extensively around the world to facilitate co-operative reshaping of the landscape, land readjustment should be investigated further in terms of its potential application in Canada. While it does not result in a permanent alignment of public and private interests, it does appear to be successful in overcoming temporary conflicts so that private landowners and the public can both experience benefits.

- **Voluntary easements**: While easements are already a familiar feature of planning in Canadian communities, this assessment demonstrated that they may have several advantages that should be explored further. A main strength of voluntary easements is that they can permanently protect public interests once those interests can be aligned with the interests of a private landowner. Expanding the application of easements for sustainability goals—through, for example, developing a proactive role for the local government as the holder of community sustainability easements—may run counter to some conventional policy criteria (e.g., administrative feasibility or public acceptability) but perhaps not to the extent that easements would be unusable. The familiarity of easements and the ease with which they could be integrated into legal and administrative systems are strengths that could be leveraged.

- **Community land trusts**: Like land readjustments, the CLT approach scored high on objectives-based criteria but its total score was weakened by challenges of uncertainty and a lack of information on its feasibility and acceptability in Canadian contexts. Given the increasing use and success of CLTs in the United States and United Kingdom, and given their apparently strong potential to advance social, economic, and environmental sustainability objectives and to overcome public-private interest conflicts, the development and support of CLTs should be seriously considered by Canadian communities and local governments.

One limitation of this review is the exclusion from consideration of forms of shared ownership other than those that currently have formal and legal recognition.
Such voluntary property arrangements tend to be informal, bending and testing the existing rules concerning ownership, or they are on the cutting-edge of land tenure innovation and are yet to be fully recognized and legally established. Despite the potential of these land tenure arrangements, formal research on them from a planning perspective is sparse and local governments can do little to encourage them, apart from creating a legislative environment that does not unfairly penalize or restrict such arrangements. Like Karen Heisler (2009), who encourages further exploration of commonhold legislation and other tools that may enable the development of new forms of mutual property ownership and co-operative tenure, we would like to see deeper investigation of alternative, less recognized forms of shared tenure arrangements, in addition to further clarification and testing of already recognized alternative tenure arrangements.

Chapter 1 of this volume sets out a framework for exploring the social economy (SE) and sustainable community development (SCD) on a spectrum from weak to strong. Weak SE approaches are characterized as not addressing the need for societal transformation, while strong SE initiatives are focused on community-based actions that incorporate the principles of equity, redistribution, solidarity, and mutuality and that have the primary goal of meeting social needs rather than maximizing profit. For both SCD and SE, we can begin to delineate weak from strong approaches and perspectives based on the general criteria listed in table 1.3 in chapter 1. To summarize, strong approaches strive for structural change; engage in market-based activity in a way that balances economic, environmental, and social needs; focus on building capacity for self-sufficiency and community-based ownership; seek to scale up and scale out; involve strong coalitions and partnerships; and challenge regulatory barriers.

Using these criteria, land readjustments fall toward the weaker end of the spectrum. They do not require or strive for structural change, nor do the individuals or organizations involved work within a network or engage in capacity building for the good of the community. Land readjustments only challenge regulatory barriers to the extent that they are relatively untried in North America, although well-known in other parts of the world. (Stein [2014] notes that seventy-four countries have NGOs dealing in some way with private land conservation). While land readjustments are market based, whether they balance economic, social, and environmental needs depends on the project for which the readjustment is done. Land readjustment does, however, have the potential to operate at scale. Voluntary easements do not strive for structural change, operate as part of a collaborative network, challenge regulatory barriers, or build capacity; they may be
minimally market based, but again, whether they balance the various needs of the community depends on the project involved. Like readjustments, they can, perhaps because of their low score on the previous criteria, operate at significant scale. Community land trusts, unlike land readjustments and easements, fall at the strong end of the continuum. They require structural change, are involved in market-based activity that strives to balance various needs, operate within networks, challenge regulatory barriers, and build capacity. While they have yet to operate at scale, with the newfound interest of municipal governments in CLTs, that could change relatively quickly.

In the context of this volume, a strong/strong approach to social economy and sustainable community development requires that land tenure innovations strive for socio-ecological goals, actions and outcomes that result in scaling up, and policy change that achieves scaling out. The research and cases reviewed here suggest three emergent trends among land tenure innovations for sustainability that satisfy the criteria for a strong/strong approach to social economy and sustainable community development:

- Developing ownership arrangements that combine advantages of individual rights while expanding individuals’ responsibilities to others and the wider community
- Redefining the rights and responsibilities that accompany private land ownership
- Introducing new actors to the land market to further community sustainability goals

These trends should encourage further exploration and innovation with community land tenure arrangements and governance. Opportunities for introducing new actors and entities to the land market should be of particular interest, especially given the challenges faced by local governments and planners when considering most, if not all, approaches to land tenure innovation and alternative forms of ownership. These challenges may indicate that local governments are not ideally situated to take on the role of encouraging land tenure innovation. Perhaps at this stage, exploring the full potential of tenure innovations and alternative ownership arrangements to support sustainable community development requires greater agility, flexibility, and creativity than local governments can currently supply. To echo the call of Roseland (2006), perhaps a necessary next step in sustainable community development is the emergence of new social economy actors with the
capacity to use, combine, and extend the tools of land tenure to advance sustainability goals of both local governments and communities.

REFERENCES


Ippolito, M. 2000. “Snellville May Move City Hall; Mayor Says Deal with Church to Swap Land for Strip Mall Would Allow Reshaping City Center.” *The Atlanta Constitution*, 4 November.


