

PROPERTY TAXES AND COMMUNITY LAND TRUSTS

Experience to Date

Local taxation of land and buildings within the price-restricted domain of the Community Land Trust is a crazy-quilt pattern of rational innovation, political calculation and irrational expediency. The variability from one state to another, even from one jurisdiction to another within the same state, is extraordinary. These are the key questions for which local assessors have found any number of different and conflicting answers:

- What is the value of the land that is owned by the CLT when it is entered on the tax rolls, considering this land is encumbered with a 99-year ground lease, this land will generate only modest fees for the owner during the term of the lease, and this land will be immediately leased again to another low-income household whenever it reverts to the CLT?
- What is the value of the housing (or other buildings) located upon the CLT's land when entered on the tax rolls, considering that these structures are encumbered with a perpetual restriction on both the equity the owners may earn when the structures are resold and the income the owners may earn if the structures are sublet (assuming the CLT even allows subletting – which most CLTs do not).
- How are these values adjusted over time – i.e., what is the rate of increase in the assessed value – considering that the land is never resold and the buildings are resold at a formula-driven price that is almost sure to be far below their market value?

It should be understood that all property taxes are paid by individual owners of the structural improvements. Regardless of the fact that the CLT holds title to the land, it is the homeowner who has exclusive use of that land for 99 years (or more). And tax bills received by the CLT for lands conveyed through what is, in effect, a perpetual lease are passed along to its lessees for payment. The affordability of housing located on CLT's land is impacted quite directly, therefore – and, in some jurisdictions, eroded quite significantly – by the property taxes a CLT's homeowner/leaseholder must pay.

To illustrate the diversity of CLT experience in dealing with this issue, several cases are cited below. This is merely a sampling of the range of opinions and options; none should be considered a paragon of correct policy or procedure

- ❖ The **Madison Area Community Land Trust** (Madison WI) pays local taxes on the market value of the land. The houses are entered on the tax roll for the value for which they were originally sold to the homeowner by the MACLT. They are then put on a lower curve, when it comes to calculating their increased value over time. In Madison, as in many other towns, the local assessor does an analysis of sales in the neighborhood and then does an overall assessment for that district. Under an interim agreement with MACLT, the assessor will increase property taxes at a rate that is two-thirds of the increase for all other homes in that district.

- ❖ The **Community Land Trust in Orange County** (North Carolina) is presently waging a battle with several town assessors who argue that both the CLT's land and the limited-equity housing located on this land should be taxed at their fair market value. This is already the policy in New Hampshire, where leaseholders of **CATCH** (Concord NH) and **Cheshire Housing Trust** (Keene NH) pay taxes on the market value of their houses and the underlying land.
- ❖ In Albuquerque, the city assessor has concluded that the land held by the **Sawmill Community Land Trust** has no value at all. The buildings upon that land are being put on the tax rolls at the price paid individual homeowners when buying a unit from SCLT. Property values of SCLT homes, for the purpose of local taxation, will increase at the same rate as the values of market-rate homes.
- ❖ In Oregon, the property taxes paid by CLT leaseholders of the **Portland Community Land Trust**, the **Clackamas County Community Land Trust** and every other CLT in the state are no different than the property taxes paid by the owners of market-rate residential property. Because state law has placed limits on residential property taxes for everyone, however, CLT homeowners have not been disadvantaged. Land is generally assessed at 75% of the price that was paid by the CLT in purchasing it. Housing is assessed at 75% of the price that the homeowner/leaseholder paid in purchasing it from the CLT. Increases in assessed value, by state law, cannot rise by more than 3% per year.
- ❖ In Vermont, state law requires the assessment ratio of appraised value to assessed value to be 1:0, but local assessors are also required to take into consideration any covenants restricting the resale value (or the income stream) of residential property. The law does not specify, however, what constitutes a "consideration" – i.e., how much the assessed value should be lowered. This has resulted in every town coming up with its own idiosyncratic formula for assessing the value of CLT land and buildings. The city assessor for Burlington VT, for example, independently (and rather arbitrarily) decided that the assessed value for the land and buildings in the **Burlington Community Land Trust's** portfolio should be assessed at 95% of its market value.
- ❖ On Orcas Island (Washington), the local assessor acknowledged the presence of a 99-year lease on the land owned by **OPAL Community Land Trust** by deciding that the encumbered value of OPAL's land was 40% lower than their market value. The assessed value of the buildings located upon its land is based on the actual selling price of the CLT's homes, a price that is restricted by the resale formula embedded in the ground lease.

Key Issues for Property Taxes

- **AFFORDABILITY.** Since the homeowner/leaseholder pays all property taxes, land and housing that are taxed at their full market value can render a CLT's homes unaffordable over time, regardless of the long-term restrictions on price.

- **POLITICAL NECESSITY.** Affordable housing, in many jurisdictions, is controversial enough without adding a volatile issue like tax exemption to the mix. Most CLTs, even in place where tax exemptions are routinely offered to nonprofit organizations, have chosen not to seek the removal of CLT land and homes from local tax rolls. Nor have many been willing to push too hard or too far on the issue of tax stabilization for property tax that is perpetually encumbered with price restrictions on both subletting and resale. These choices, often made in the middle of heated NIMBY-motivated battles with entrenched opponents of affordable housing and vocal skeptics of the CLT, may result in bad policy by also may be good politics, at least in the short run.
- **VALUE OF LAND.** Ideally – and logically – the assessed value of the CLT’s land should never be more than the “leased fee value” – i.e., the economic value that is retained by the landowner. This amount is essentially the Net Present Value of the income stream which the CLT can collect from a parcel of land in monthly lease fees over the term of the lease, plus any value that the CLT can realize when the land reverts to the CLT at the end of the lease. Nearly all CLTs charge lease fees that are below the land’s fair rental value. Many charge lease fees of merely a few dollars per month. Thus the NPV of these fees, for most CLTs and for most CLT land, is extremely low. So too is the land’s reversionary value. When a leasehold comes back into a CLT’s possession, it is immediately leased again on similar terms to another low-income homeowner. The CLT typically derives no economic value from this transaction aside from the lease fees themselves. In short and in fairness, it makes little sense to put a CLT’s land onto the local tax roll at either its sales price or its “highest and best” market value. Nevertheless, it happens – to the eventual detriment of the low-income homeowners who must pay the rising taxes on this inflated value.
- **VALUE OF BUILDINGS.** Ideally, the assessed value of the buildings that are located on the CLT’s land should reflect the perpetual encumbrance that the CLT’s ground lease has imposed on the uses and value of these buildings. As long as this encumbrance is in place, it reduces the building’s market value. Thus the building’s assessed value – and taxes a town can expect it to pay – should be lower than those for a similar building that is not so encumbered. This was, in fact, the reasoning of the New Jersey Appellate Court in the 1989 case of *Prowitz v. Ridgefield Park Village* (568 a,2d 114). Although long-term control over the resale price was imposed by a deed restriction instead of by a ground lease in the New Jersey case, the Court’s reasoning is “on point” for a CLT. Upholding the lower taxation of resale-encumbered property, the Court stated: “The deed restriction limiting resale price constitutes a patent burden on the value of the property, not on the character, quality or extent of title. It is, moreover, a restriction whose burden on the owner is clearly designed to secure a public benefit of overriding social and economic importance, namely, the maintenance of this State’s woefully inadequate inventory of affordable housing”. The opinion of a New Jersey court is, of course, not binding on the courts of other states. Even so, when CLTs have provided assessors with a copy of the written opinion from *Prowitz v. Ridgefield Park Village* most have agreed that the reasoning is sound. Proceeding from that point, however, there is wide disagreement over what the correct **encumbered** value of the building might be – although most assessors have concluded that the building’s resale-restricted selling price is the value that should form the basis of their assessment.

- **RATE OF INCREASE.** Prices rise, not only for market-rate homes but for resale-restricted CLT homes as well. It follows, therefore, that property tax assessments should also rise. Resale prices for price-restricted CLT homes do not rise as fast, however, which is what limited-equity housing is all about. The first challenge here is to convince the local tax assessor that this restriction on the resale price of CLT homes (and, for that matter, on the rental income that a CLT homeowner could collect from subletting his/her home) is a durable, enforceable encumbrance. The second challenge is to calculate the actual impact of this encumbrance on the property's rising value. Some jurisdictions have merely decided that the assessed value of CLT properties will rise at the same rate as all other residential property in a given city or district. Others have calculated a rate based on actual resales of comparable price-restricted CLT homes. Others have determined that the assessed value of CLT homes will rise at a rate that is 5% lower, 30% lower, or some other percentage lower than whatever the increase might be for market-rate homes. Although these percentages sometimes look suspiciously like a number that was grabbed out of thin air, they at least represent an acknowledgment that the formula-driven price of a CLT home will forever rise on a trajectory that is lower than the market-driven price of homes not in the CLT. This is hardly perfection, but it *is* progress – especially when compared to jurisdictions that turn a blind eye toward the perpetually encumbered, price-restricted character of CLT property.