I. INTRODUCTION

We are approaching the fiftieth anniversary of the 1935 Dominion Housing Act, the legislation which introduced the federal government’s on-going presence in the housing sector. On such an anniversary, it is natural to reflect on what has been accomplished by this period of public sector involvement in housing and by the expenditure of many billions of dollars on housing subsidies.

The fact that virtually all Canadians are much better housed today than fifty years ago is not a very significant observation. If this was not the case we would indeed be in serious trouble. What is significant to Canadians, however, is whether the housing quality, quantity, and affordability potential of the nation is being realized. People do not live in the past. Stories about how bad things were in the “good old days” are interesting but unmoving when it comes to consideration of current and likely future conditions. People live in the present and have expectations and hopes for the future. At present, few low and moderate income Canadians see themselves as adequately and affordably housed nor do they see a bright future on the horizon.

In addition to potential, there is the question of legacy. What has the massive investment of public funds over five decades left us with? What are our current housing programs producing in terms of long-term community benefits? When judged on the criteria of whether Canada’s fifty year involvement in housing has helped realize the vast potential of our economic and social institutions to produce an adequate supply of quality housing at affordable prices, it seems that many people could quite justifiably conclude that our efforts have not been very successful. The same pessimistic conclusion can be reached about the long-term benefits -- the legacy -- Canadians have obtained from their housing subsidy dollars through these years. Canadian society has been able to provide nearly unlimited quantities of most goods and services yet housing continues to remain a serious problem.

Part of the reason for the potential and the legacy not being realized is due to the focus of most housing policy on short-term questions of assisting the supply of housing -- housing starts - mainly in the economy. However, the consideration of the
long-term costs and benefits should be the context in which the short-term supply programs are situated. This has not been the case. The history of Canadian housing programs is one of numerous, ad hoc measures, many of which create as many problems as they solve and at great public expense. Recent examples include the high default rates on the Assisted Home Ownership Program (AHOP) and the Assisted Rental Program (ARP), and the virtual lack of even short-term social housing benefits from the private sector rental housing programs, such as ARP, MURBS, and the current Canada Rental Supply Program (CRSP). The major beneficiary of these programs have been the private owners and investors who have had their capital investment in land and building partially paid for by the taxpayer while retaining ownership with very few strings attached.

The ten-year-old social housing programs, the public, private and co-operative non-profit programs, are the Canadian government’s only major social, non-market housing supply programs. Here the beneficiaries of the public subsidies are the residents occupying the units. The major problem with these social programs is their limited size. In recent years the Canadian government has only funded 25,000 to 28,000 units per year. Once these units are divided between the three programs and between the regions of the country, the impact is minimal. The programs do not make much of a dent in the need for assisted housing, especially in the larger metropolitan areas.

In contrast, private sector rental supply programs are relatively well-funded. The Assisted Rental Program subsidized 121,000 units during its 3 and 1/2 year existence, many of which cost the government more than the non-profit units due to the stacking of the direct and indirect (tax system) subsidies.6 The Canada Rental Supply Program is currently subsidizing 20,900 private sector units. The Ontario Rental Construction Loan Program provided subsidies for 15,000 private units in that province during the one-year life of the program. These programs do not directly benefit low- and moderate-income households, provide no long-term controls on affordability, include, at best, only a small component of rent-assisted units, can be sold and refinanced leading to inflated rents, and can eventually be removed from the rental market by condominium conversion. It is primarily the investors who benefit in both the short and long-term. This is not the way to realize Canada’s potential in meeting the housing needs of its citizens nor does it provide a legacy for future generations.

This paper focuses on one way in which housing programs can result in long-term benefits and assist in stabilizing housing and residential land prices. This can be achieved by paying some attention, for a change, to the land component involved in housing subsidy programs. The land issue has not been addressed by Canada’s housing programs. The objective of housing programs has been limited to the supply of housing units. Evaluations of these programs have not included consideration of strategies relating to the cost of residential land or to the ownership of the land under the housing units subsidized. Including land policy with housing policy would not result in any spectacular immediate gains but is one example of a practical means by which long-term benefits can be realized from housing subsidy programs.

2. PROPOSAL: LINK HOUSING SUPPLY PROGRAMS TO A COMMUNITY LAND TRUST

The proposal put forward here is simple though the implementation mechanism would have to be legally and financially sophisticated. Quite simply, the federal government should obtain long-term benefits from its housing supply programs by requiring that the land be placed into a non-profit, co-operative community land trust. The land trust would own the land and the housing development would lease the land. This should apply to all programs providing deep subsidies, including the private sector programs such as the former ARP and the current CRSP. Locking the land component into a community land trust means that the one key and lasting element of the public investment, the purchase of the land, is held for the long-term common good whereas the housing units are held for the immediate use of the particular individuals and families occupying them.

The aim of such a trust is to balance individual and community interests in land. A community land trust is a non-governmental organization created to hold land for the benefit of the community. It is a democratically structured non-profit corporation, with a board of trustees elected by the membership.
The land trust holds the land, providing long-term leases. Leaseholders must use the land in an environmentally and socially responsible manner, but the land trust may not interfere with their personal beliefs, associations, or activities. The individual and community interests can only be balanced if the community has the right to make the basic decisions about the use and re-use of land. A community's interests cannot be protected when land is treated as a market commodity, subject to the sole criteria of the economic "highest and best use" for the individual owner.

The community's interests in land fall into three categories: community access; community equity; and community legacy. The Community Land Trust Handbook defines these interests as follows:

1. COMMUNITY ACCESS. Increasing numbers of communities are suffering from a lack of access to their own lands and therefore a lack of security for present and future generations of residents. For many communities, access is severely limited by high rates of absentee ownership. This has long been true for communities with a substantial base of valuable resources. It is increasingly true for agricultural communities. It is true for urban neighbourhoods where a high percentage of the housing stock is owned by absentee landlords, or sometimes city governments...

what they invest as individuals, but they may not claim or remove for themselves what belongs to the community as a whole.

3. COMMUNITY LEGACY. Every community has a legitimate interest in its development over time and in the preservation of its natural environment for both present and future generations. At present, many critical land-use decisions are made by individuals and interests outside the local community, by people who are leaving the community, and by the operations of the commercial market. Through a Community Land Trust, while leaseholders have secure tenure and considerable freedom in their use of the land, decisions about redistribution and long-term community planning and development are made by the community.

This approach to land is precisely the one supported by the 1976 United Nations Conference on Human Settlements. Among the set of recommendations for action adopted by the Habitat Conference are the following related to land:

land, because of its unique nature and the central role it plays in human settlements, cannot be treated as an ordinary asset, controlled by individuals and subject to the pressures and inefficiencies of the market;

private land ownership...may be a major obstacle in the planning and implementation of development schemes;

and is made unavailable or unaffordable for neighbourhood residents. Alas, it is low-income communities whose needs are most consistently neglected and denied.

2. COMMUNITY EQUITY. No element of a local economy is more basic than the community's land and natural resource base. On this land, and from this land, the wealth of the community and most of its individual members is produced. The community's land is the original "commonwealth". Yet present patterns of landownership and transfer often render land and resources and their economic value unavailable to the communities that occupy them. In these situations, the economic benefits of community development are continually captured by a privileged few or drained away by outside interests. In other words, the community is deprived of its equity.

The community's claim to this equity rests on two principles: that the inherent value of the land is not of human creation and that cannot rightfully be regarded as personal income for any individual, and that the appreciated value of the land (as opposed to the value of improvements made to the land) is the result of the activity and efforts of individuals, organizations, and public agencies throughout the community, and economic forces outside the community. By holding land permanently in trust, a Community Land Trust preserves for the community both the original, inherent value of the land and any value that is added to it by the efforts of the community or larger economic forces. Individuals who use the land may retain the value of

public control of land use is...independent to its protection as an asset and the achievement of the long-term objectives of human settlements policies and strategies; and

the unearned increment resulting from the rise in land values...must be subject to appropriate recapture by public bodies (the community), unless the situation calls for other additional measures such as new patterns of ownership.

As an institution, community land trusts are relatively new to North America. Over the past fifteen years a number of local land trusts and housing trusts have been developed in Canada and the United States. Some examples are:

* Turtle Island Stewardship Society, British Columbia: a land conservancy organization which owns approximately 640 acres of land as a land trust, including agricultural areas, wildlife habitat, historic areas, social and recreational lands, as well as housing for intentional communities.

* National Second Century Fund of British Columbia: a conservancy land trust organization which holds title to over 8,000 acres of land as an ecological reserve.

* Community Land Co-operative of Cincinnati, Ohio: Incorporated in 1980 to buy houses within the
inner city areas of Cincinnati where the threat of gentrification looms.

* New Communities, Inc., Georgia: an agricultural land trust incorporated in 1968 by people involved in the civil rights movement, holding some 4,400 acres.

* H.O.M.E. Co-op/Covenant Community Land Trust, Maine: two organizations which operate together in rural Maine in an attempt to solve housing and employment problems.

The largest and oldest land and housing trusts have existed for some time outside North America. For example:

* The Jewish National Fund of Israel: a non-governmental land trust on a national scale established in 1901 which currently owns most of the productive land of Israel and considerable additional land in both rural and urban areas, leasing the land while allowing the leaseholders to own the improvements.

* Notting Hill Housing Trust, London: established in 1963 as a charitable organization with the object of preserving affordable housing in Inner West London; currently owns about 6,000 housing units.

* London Incorporated Trust, London: the largest of the post-war British housing trusts with over 8,000 housing units for lower income households.

* Sutton Housing Trusts, London: established in 1900 to provide good quality housing to the poor; currently owns about 11,000 housing units.

In Mexico and Tanzania, government land reform policies have given trusteeship of local land to village communities, which grant use rights to individuals but retain a degree of control, so that individuals cannot sell the land and wealthy individuals cannot acquire large holdings.7

While these organizations vary extensively in their particulars, they are similar in their basics. They began with social goals and used the mechanism of control over land, in particular, removal of land from the market, to help achieve their goals and to ensure that the long term benefits are retained socially. They also share a degree of similarity in their understanding of land tenure relationships. All have attempted to develop innovations in their contemporary land holding system, all have looked at some degree of collective ownership for the common good, and all have recognized the need for long term security of tenure for the land users.

3. WHY A COMMUNITY LAND TRUST? WHY NOT GOVERNMENT OWNERSHIP?

A community land trust offers a number of distinct advantages to government ownership. A land trust is responsible and accountable to the specific community and set of principles it is established to serve. Governments represent the more general interests within its jurisdiction and has a mandate to provide certain services. In Canada, these services have not included removal of housing and land from the speculative market. All levels of government in Canada have a notorious record of selling off to the private sector publicly owned stocks of housing and land. After WW II, for example, the federal government sold its very large stock of housing built by a Crown corporation, Wartime Housing Inc. The City of Toronto sold off the first examples of social housing in Canada, two projects developed in the 1910's, which have since been repurchased by the co-operative housing sector (the Bain Avenue and Spruce Court housing co-operatives in Toronto's east end). About a year ago the Ontario government proposed selling off ("privatizing") at least some of its public housing stock. Most of the local and provincial land banks which were established have been sold off either when a more conservative government comes to power or when there is change in the economic climate. In England there is the current example of the Conservative government selling council housing units.8

A land trust is able to enshrine and protect a set of principles governing the land under its control, whereas a government simply cannot do this until there is an overwhelming majority of the population sharing these same beliefs. A good example is the societal attitude towards major urban parks, such as Stanley Park. Any proposal to sell portions of the park are simply seen as outrageous by the majority and are easily defeated. Certain principles about the "sanctity" of this form of legacy are by now fully entrenched in our culture. The benefits of removing increasing amounts of residential land, as opposed to park land, from the status of a speculative commodity are not widely enough held in Canada to prevent any particular set of elected officials from selling the public stock of housing and land.

Canadian governments have in fact trapped themselves by their near total reliance upon individual home ownership as the ideal form of tenure. By promoting
individual home ownership, government becomes more heavily embroiled in the financial and institutional arrangements of the private sector and is more often called upon to resolve problems which arise in connection with private ownership. We have, therefore, seen in recent years the demand for very expensive programs which in no way assist those who most need housing assistance, through such measures as mortgage interest rate subsidies, mortgage tax deductibility, assisted home ownership programs, and cash grants and tax incentives for first time buyers. None of these produce a long term social legacy and the very ideology of home ownership excludes serious consideration of other forms of land and house tenure.

For these and related reasons, where government does own or purchase land for development, there is no guarantee that social needs will be served. Here we simply need to contrast the City of Vancouver’s residential development of the south shore of False Creek where two thirds of the housing is either non-profit or co-operative, with the Provincial government’s proposed development of the north shore of False Creek, where the land is being sold at the highest prices to the private sector in order to finance major commercial infra-

structure, such as the domed stadium. Those who know the history of the False Creek south shore neighbourhood realize that it was only a couple of votes on city council which prevented even this land from being put to non-residential uses.

Land owned by a community land trust is removed from the market, whereas land owned by government is subject to the wishes of the specific individuals in authority at the time. In a practical political vein, community land trusts are able to avoid the sort of “public versus private” debate by settling that question in advance for the land under its control. Once it has a large enough stock of land, it can also diminish the amount of “community versus owner” or “owner versus government” controversies that often paralyze attempts to establish or implement public policies affecting land use in neighbourhoods. In planning the use of land held by a community land trust, community members are more likely to come together as equals, rather than adversaries, to do what is best for all concerned.

4. THE LAND COMPONENT OF CANADA’S CO-OPERATIVE HOUSING PROGRAM

Current government housing programs do not pay any attention to who the final owner of the land is in the various private, public and non-profit housing subsidy programs. The assumption is, of course, that the land will continue as a market commodity after the term of the agreement with CMHC is over. This is very clear in the case of private sector programs in which the term of the agreement is usually not very long. The assumption in the current Canada Rental Supply Program is that the units will very shortly become privately owned condominiums. In the case of public non-profit housing an agency of the local, regional or provincial government is the owner and each of these individual governments will decide what to do with the housing and land it owns. The situation isn’t much different with the private and co-op non-profit programs. The difference here is that a non-profit institution is the decision making body but non-profit does not necessarily mean non-market. Thus, not even the co-operative housing program addresses the issue of the long term legacy of housing programs.

This inadequacy is not due to any lack of technical know-how but is simply an implicit aspect of housing policy. The mechanisms relating to the initial development of the land and housing are in fact reasonably adequate and have evolved into a fairly workable and efficient system over the ten year history of the program. This is an example of the housing delivery mechanism being adequate and relatively sophisticated but not the long term social and economic issues relating to the ownership and control of this heavily subsidized investment.

In the case of the decision to purchase a specific piece of property, for example, there is an adequate system of checks and balances in place. A group acquiring land has to comply with the requirements of the mortgage lender, mortgage insurer, and CMHC. At the local level the Co-operative Housing Foundation, the co-op housing resource group and the local CMHC office play a facilitating role to ensure that the group takes into account all the necessary interests when purchasing property. In the area of land use, density and structural design, there is the system of checks and balances in place through provincial and municipal land use regulations, national and provincial building codes, and CMHC site
planning requirements. Finally, during the term of the mortgage agreement with CMHC, usually 35 years, there is a system of checks and balances in place that deal with disposition and alienation, since CMHC’s permission is required prior to sale or encumbrance of the project. This system of checks and balances, however, does not exist with regard to the period after the agreement with CMHC is over or if the mortgage is paid. The group owning the co-op and its land are legally free to do as they please.

Furthermore, there are even occurrences during the term of the CMHC agreement which could result in the disposition or loss of the land. These include:

1. If a co-op defaulted on a mortgage, on or taxes, and the land and buildings were seized either by CMHC or the lender, or the municipality, and rented or sold outside the co-op sector;

2. If a co-op’s land was in an area which was rezoned so that the land was no longer suitable for housing;

3. If a co-op’s buildings had deteriorated so much that they were not fit for housing and the co-op did not have the funds to rehabilitate them;

4. If a co-op’s lease with some level of government (usually municipal) runs out;

5. If a co-op’s membership obtained CMHC’s permission to sell the land and buildings and distribute the proceeds to themselves.

Therefore, even in this most progressive of federal housing programs, there are numerous loose ends relating to the land component. The self help, non-profit and co-operative nature of the housing produced is fully protected only during the construction and initial occupancy phases. This concern has given rise within the co-operative housing sector to a search for a land trust mechanism protecting the non-profit, co-operatively owned status of the land.

5. THE CURRENT C.H.F. LAND TRUST RESEARCH PROJECT

In February, 1982, the Co-operative Housing Foundation of Canada (CHF), in a joint funding arrangement with CMHC, commissioned a major research efforts with the objective of developing “a legal, economic and organizational framework for a land trust system for non-profit continuing housing co-operatives within the context of Canadian society.” Five problems were initially identified:

1. the potential of losing land from the co-operative sector through the sale of a projects, conversion to condominium, etc.:

2. the potential of losing land through tenure arrangements such as land leases from municipal and provincial governments;

3. the difficulty of acquiring land in the first place;

4. the difficulty in financing co-operative housing and the vulnerability to government financing;

5. the need to better co-ordinate and consolidate the co-operative housing sector to better utilize its potential.

A community land trust could be an institution as simple as a passive body holding title to land or an active body combining the land holding function with a variety of financial savings and loan functions directed as assisting existing co-ops in financial trouble and assisting new co-ops in the acquisition of land.

This research has now entered its second phase involving the investigation of the legal and economic operational details. At the same time a national system of discussion groups have been established to inform CHF members and to seek advice on the many organizational options. The basic goal of the research effort is explained as follows:

Co-operative housing projects in Canada have developed as a type of land holding mechanism different from fee simple ownership, condominium ownership, and rental. Co-operatives act as co-owners of their housing with broad rights to use and enjoy their own housing units, as well as to participate in decisions about the use of the entire project. On the other hand, they have voluntarily and deliberately limited their right to financial gain and right to transfer ownership of control of their property. While some co-ops own and others lease the land on which their houses are built, the land tenure concept common to all seems to be that the whole, in particular the land, is to be held for the common good, while the part, particularly the housing unit, is to be held for the use of the individual. A primary goal of a land trust system would be to create a system
which will ensure the long term continuance
of this type of land tenure.

The Co-operative Housing Foundation's research into
land trusts is focused on the co-operative sector
itself. The proposal here is that this concept be
applied to all housing programs involving deep
subsidies.

The report on the first phase of the CHF land trust
research identifies the following three goals for
their land trust model:

1. LAND TENURE GOALS: a land trust will
increase access to land solely for the purpose
of stable and appropriate habitats, and to
enshrine in a practical land holding system
the concept of holding land for the common
good while use of land is ensured to the
individual household.

2. ECONOMIC GOALS: a land trust will
direct the social increment on land to social
uses, having removed the residential land in
its control from the commodity market, and
thereby enshrining the principle of societal
rather than private use of the long term
economic benefits.

3. SOCIAL GOALS: a land trust will increase
the long term availability of appropriate
human habitats based on a community decision
making process and, in particular, ensure
access by low and moderate income households
to these appropriate human habitats.

Following from this set of broad principles, it is
necessary to identify the priority functions of a
land trust before the legal, financial and admini-
strative operational details can be worked out.
The discussion now taking place is focusing on this
basic policy question. Among the range of options
are the following:

1. Potential Functions Related to the TENURE
OBJECTIVES
   * controlling land acquisition and transfer
   * acquiring title to land and holding the title
     in perpetuity
   * using the land so acquired or controlled
     for the creation of appropriate and stable
     human habitats.

2. Potential Functions Related to the ECONOMIC
OBJECTIVES
   * establishing mechanisms that will allow the
     acquisition of capital
   * establishing mechanisms that will enable
     potential beneficiaries or current benefi-
     ciaries to invest their savings in the
development of appropriate human habitats
   * establishing mechanisms that will enable
     those who support the development of stable
     and appropriate human habitats to donate real
     property or capital for the development of
     such habitats
   * using capital or property acquired to gain
     further access to land
   * using capital or property acquired for the
     stabilization and further development of
     the co-operative housing movement.

3. Potential Functions Related to the SOCIAL
OBJECTIVES
   * creating a system that will enable participa-
     tion at a local level in defining and develo-
     ping stable and appropriate human habitats
   * participating in the development of govern-
     mental social policy and programs that ensure
     access to low and moderate income Canadians.

Together with decisions about these and related
options, the basic decision about the level of
operation has to be made. Should there be one
national or several regional land trusts? Over the
coming months the membership of the Co-operative
Housing Foundation will be making recommendations
on these basic policy options and the researchers
will be proposing legal and organizational methods
by which a co-operative housing land trust could
be implemented.

6. SUMMARY

The proposal outlined here starts with the basic
recommendation that Canadian housing policy should
not be treated separate from land policy considera-
tions. The federal government, in fact, pays very
little attention to urban land issues. This
prevents any long term social gains from being
achieved from the huge public investment made
annually in the housing sector. The first modest
step towards co-ordinating housing and land policy
is the establishment of a community land trust which,
if organizationally feasible, should be beyond the
present proposal being developed by the Co-operative
Housing Foundation. All housing programs involving
major subsidies should be structured so that the
land component is owned by a national land trust.

This land trust should be a third sector institu-
tion, that is, neither a public or private sector
responsibility, but the responsibility of Canada's
co-operative sector. Canada has a very extensive
network of co-operative organizations in many key
sectors of the economy. Aside from housing, these
include: the Canadian Co-operative Credit Society
and the many credit unions; dairy co-operatives;
grain co-operatives; insurance co-ops such as The Co-operators; a national trust company, Co-op Trust; and many very large marketing and supply co-operatives.

It seems that a national land trust with regional branches would be most desirable. The broadest policy issues would be dealt with by the Board of Trustees of the national organization, with the affiliated regional bodies, composed of representatives from the land users, making all other decisions. The trustees for the national level could be composed of equal numbers of people drawn from three groups: representatives from the land users; representatives appointed by government; and representatives of Canada's Co-operative movement. The government presence acknowledges the direct role of public investment in the creation and growth of the land trust and the on-going relationship between government and the trust in terms of improving existing housing programs. The representatives of the co-operative sector would bring the financial and management expertise of these very large third sector institutions to the land trust while also bringing to policy decisions their set of broader social and co-operative principles. The representatives from the land users could be drawn democratically from the regional bodies, which should in turn be established democratically by the land users in each region. The land users should be in a minority position on the national body as a means of protecting the land trust from efforts by a particular group of users who might try to control and modify the broad policies and/or the basic principles.

This approach to a land trust structure provides for an on-going democratic management of the day-to-day activities while providing long term protection for the basic principles.

The impact of such a land trust would not be felt immediately. It would take, perhaps, up to ten years before the trust is large enough to have accumulated enough financial resources to actively assist in the purchase and holding of land for social housing development. However, its fundamental purpose, that of holding all land purchased as part of federal housing subsidy programs, would begin as soon as the trust is established. This will provide at least a start in the process of preserving for the public domain a part of the government housing investment. It also begins to address the community interests in land -- the community access, community equity, and community legacy concerns -- which have thus far been absent from the Canadian urban land tenure system.

NOTES AND REFERENCES


3. In addition to the direct housing subsidies, there are the numerous indirect subsidies to both private rental and to homeownership housing through the tax system. For a good review of these, see: R.G. Dowler (1983) Housing Related Tax Expenditures: An Overview and Evaluation, University of Toronto, Centre for Urban and Community Studies, Major Report No. 22, February.

4. See, for example: Toronto, City Housing Department (1980); and D. Hulchanski (1982).


7. Descriptions of these and other land and housing trusts can be found in: The Institute for Community Economics (1982), ibid.; and Communities, Inc. (1983) Land Trusts for Continuing Housing Co-operatives, Ottawa: Co-operative Housing Foundation of Canada.


11. Information about the Co-operative Housing Foundation's land trust research is from four reports prepared by CHF's primary consultant on the land trust research project, Communities Inc. of Edmonton: Land Trusts for Continuing Housing Co-operatives, January, 1983; and three Land Trust Dialogue Focusers: #1, April, 1983; #2, May, 1983; and #3, July, 1983.