



TOOLS AND PRACTICES FOR LAND TRUSTS SERVING URBAN NEIGHBORHOODS:

INITIAL FINDINGS AND RECOMMENDATIONS

Prepared for:

HELP ORG INC, as incorporators of Westside Atlanta Land Trust (WALT) Program

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WORKING DRAFT

Foreword

Professor John Marshall and the students in his spring 2014 Land Use class are pleased to provide this report to organizers and supporters of the Westside Atlanta Land Trust (WALT). We hope that this initial research project might be followed in future semesters by additional research projects that will enable WALT to reach its important goals of neighborhood preservation and development. As a class, we are deeply grateful to WALT's supporters and organizers for setting aside time and organizational resources on multiple weekdays and weekends to provide the class with an in-depth introduction to Atlanta's Vine City and English Avenue neighborhoods.

The information contained in this report represents a partial response to the critical research areas outlined in the *WESTSIDE ATLANTA LAND TRUST (WALT) RESEARCH PROJECT: SPRING 2014 WORK PLAN* and subsequent revisions to that work plan. As discussed at the March 6, 2014 meeting and preceding conference calls, the research objectives outlined in the original Work Plan have been pared down to reflect our smaller class size and time constraints for the students' research. The exact scope of this report is defined in the following introduction.

Professor Marshall is not licensed to practice law in the State of Georgia. As discussed at the outset of the semester, this means that there are limitations associated with the assistance the class has provided to WALT. Two important limitations are that we cannot provide legal advice to WALT and Professor Marshall is not being able to provide WALT with certain protections that it would have were it engaged to receive legal advice from a Georgia attorney. These

protections include the ability to protect information disclosed to the students and me under the attorney-client privilege.

Professor Marshall looks forward to working with WALT in ensuing semesters to help complete research not covered in this report.

1. **Introduction**

Gentrification and the ensuing displacement of largely low-income and/or minority populations are urban health issues. Migration is a shift in population that results in community members being permanently or semi-permanently relocated away from their home. This “complete displacement of the individual’s activity space, expos[es] the person to a new set of risks”.¹ The negative health effects of gentrification and displacement on vulnerable individuals are exacerbated by a lack of affordable housing in cities. As populations shift, so do their cultural foundations and unique cultural elements. The cultural elements of these displaced communities can be lost forever.

One of the ways grass roots neighborhood revitalization organizations can advance their goal of transformative neighborhood development is by working with residents, non-profit and philanthropic partners, and local and state governments to acquire abandoned and persistently vacant properties within the organization’s footprint or territory. In other words, one of the ways WALT can serve as an effective advocate and change-maker for the Vine City and English Avenue neighborhoods is by taking advantage of tools to assemble or otherwise positively engage neighborhood properties.² WALT has indicated that it would like to provide

¹ Cromley, E. K. (2011). *GIS and Public Health*. (2nd ed.). New York, NY: The Guildford Press.

² Excerpt from, Marshall, J. (Feb. 22, 2014). *WESTSIDE ATLANTA LAND TRUST (WALT) RESEARCH PROJECT: THIRD REVISED PROPOSED SPRING 2014 WORK PLAN*.

transformative neighborhood development in the Vine City and English Avenue neighborhoods through the utilization of a Community Land Trust (CLT) model.

The organization has articulated that its goals are to nurture neighborhood-driven assembly, repair, maintenance, and redevelopment of vacant and abandoned properties, and to foster local resident development and skills. WALT understands that there may be a number of potential legal and policy tools available to the organization that will help its leadership and membership pursue the organization's goals. The objective of this research project is to help WALT identify legal and policy tools currently available to it, and to help WALT identify legal and policy tools successfully used by other similarly situated land trusts. In so doing, this research project will help WALT identify methods it can use to potentially carry out its objectives.³

In this white paper, *Tools and Practices for a Land Trust Serving Urban Neighborhoods: Initial Findings and Recommendations*, we seek to provide WALT with strategic information that will help support successful formation of a CLT to serve English Avenue and Vine City: (1) identify potential best practices for the structure and operation of an effective land trust in order to achieve WALT's mission of creating affordable housing for current residents and community empowerment opportunities; (2) identify and explain available tools used for land acquisition and assembly; (3) identify potential sources of grant or loan funds for WALT's community development initiatives; and (4) suggest organizational policies and procedures to support WALT's community development goals and objectives.⁴

³ Id.

⁴ Id.

2. *Community Land Trusts: Examples of Best Practices*

For residents of economically vulnerable and distressed communities, neighborhood stabilization is often of utmost importance. This is an especially difficult challenge in places where the local government is unable to provide the necessary resources to support neighborhood preservation and development initiatives. To counteract this disinvestment, it is often up to local citizens and nonprofit organizations to step in and take action. One of ways that local communities can help preserve their neighborhood is through the creation of a Community Land Trust (CLT).

Community Land Trusts – Best Practices from Boston, Durham, and Athens

A CLT is a dual ownership model of property: one party holds the deed to a parcel of land; another party holds the deed to a residential building located upon that land.⁵ Under the analogy of property as a “bundle of sticks”, a typical purchase of a piece of property conveys the full “bundle of sticks” to the purchaser. But, under a CLT model of ownership some of the property rights are severed from the “bundle of sticks” because the full property is not being conveyed. The CLT holds the land in perpetuity and provides the owner of the building with exclusive use of the land. This land is typically conveyed to the property owner through a ninety-nine year ground lease (which is renewable and inheritable).⁶ This model allows the CLT to take a portion of the housing stock out of the real estate market and capture the equity gain for

⁵ John Emmeus Davis, *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing*, National Housing Institute (2006).

⁶ *Id.*

the benefit of the community rather than the individual property owner.⁷ By capturing the gain for the community, the CLT can help preserve affordability and stabilize the neighborhood if it can acquire enough properties.

The basic model for purchasing or securing affordable housing is:⁸

Step 1: A community land trust purchases land on the open market within a designated community. The goal is to buy land at bargain prices to ensure affordability and the maximum use of funds.

Step 2: Once the homes meet the CLT's quality standards, the home structures are then either sold or rented to individuals who meet their affordable housing resident requirements. The homes are sold as little above the cost to rehabilitate or build as possible.

Step 3: A ground lease (usually for 99 years) is executed simultaneously for a nominal value and governs the relationship between the CLT and the residents. The CLT retains title to the land and the home owner gains title to the house.

Step 4: When the resident decides to sell the property, the ground lease provisions usually stipulate a restriction on the sale of the home, such as the CLT having the first right of refusal, to ensure that the home stays affordable and outside of the free market.

Step 5: Instead of getting the entire equity from the sale (equity = sale price – purchase price – selling costs – remaining debt), the resident gets a limited amount of equity based on a formula stipulated in the ground lease.

While the basic model for acquisition is relatively simple, the strategy for targeting and purchasing properties by a CLT, and the amount of property that can be acquired by a CLT, can vary greatly from CLT to CLT. The variation in the capabilities of a CLT can likely be attributed to the availability of resources and the capital available to a CLT.

⁷ Brian E. Thomas, Community Land Trusts and the Impact on the Free Market (December 2013). Final paper for City and Regional Planning Community Development class at Georgia Institute of Technology.

⁸ Pastel, S. J. (1990). Community Land Trusts: A Promising Alternative for Affordable Housing. *Journal of Land Use and Environmental Law*, 293.

For example, the Dudley Street Neighborhood Initiative (DSNI) in Massachusetts sought to accomplish two main goals: (1) empower Dudley residents, and (2) organize, plan for, create, and control a vibrant, diverse, and high quality neighborhood that had been ravaged by disinvestment, arson fires, and dumping.⁹ Shortly after its creation in 1984, DSNI created a comprehensive master plan for the neighborhood. This master plan led to the creation of Dudley Neighbors Inc. as DSNI's housing development arm.

In the fall of 1988, the Boston Redevelopment Authority (BRA) approved DNI's request to become a Massachusetts 121A Corporation.¹⁰ In Massachusetts, a 121A Corporation has the power of eminent domain for a specified project.¹¹ This allowed DNI to acquire privately-owned vacant land in the Dudley Triangle (as outlined in the master plan). DNI combined the vacant lots acquired via eminent domain with City-owned parcels. DNI then leases these parcels to private and nonprofit developers for the purpose of building affordable housing consistent with the community's master plan.¹² Through its ability to quickly acquire large numbers of vacant parcels, DSNI was able to stabilize and revitalize its neighborhood and provide itself with enough capital to continue with its goals.

While DSNI is often looked at as the model for CLT success, not every CLT has had the benefit of eminent domain powers. In Durham, North Carolina, residents created the Durham Community Land Trustees, Inc. (DCLT) in 1987, as a way to clean up houses that attracted crime, increase the stock of affordable houses, and help residents gain a stake in their community

⁹ <http://www.dsni.org/urban-village>. See also Dudley Street Initiative Annual Report July 1, 2012 – June 30, 2013.

¹⁰ Id.

¹¹ Black's Law Dictionary (9th ed. 2009) defines eminent domain as: the inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking. See also Massachusetts 121A description.

¹² <http://www.dsni.org>.

through homeownership.¹³ DCLT to date has established over 200 units of affordable housing by focusing its efforts on the renovation of existing housing and following a strategy of developing property in target areas and where property has become available.¹⁴ The Land Trust's property portfolio includes homeownership, special needs rental housing, tax-credit rental housing, and commercial properties.¹⁵ Part of DCLT's can be attributed to its part in The West End Collaborative, a development partnership that includes DCLT, Habitat for Humanity, and Self-Help CDC.¹⁶ Further, DCLT's work is supported in large part by the City of Durham, the Duke-Durham Partnership, and charitable contributions from individuals and corporations who understand that Durham is only as strong as its neighborhoods.¹⁷

One current CLT model being used successfully in Georgia is that of the Athens Land Trust (ALT). In addition to following the traditional CLT model, ALT has worked with the local Land Bank to acquire properties. Additionally, ALT partners with local developers to provide affordable rental housing.¹⁸ ALT, in partnership with local contractors and federal funding from Athens-Clark County, has built EarthCraft certified homes (which can save residents up to 75% on energy costs) for families making 80% of area median income (AMI).¹⁹ ALT has also received HOME funding from Athens-Clarke County's Department of Human and Economic Development (HED), Community Development Block Grants (CDBG) from the U.S.

¹³ See <http://www.dclt.org/aboutDCLT.cfm>.

¹⁴ See <http://www.dclt.org/aboutDCLT.cfm>.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Athens Land Trust, 2012 Annual Report. Available at: <http://www.athenslandtrust.org/about/publications/>.

¹⁹ Id.

Department of Housing and Urban Development (HUD), and various grants from local banks, businesses, and nonprofit foundations.²⁰

As has been highlighted above, there are many different roles that CLTs can play in their communities. Further, there are many different strategies CLTs can use to acquire and develop properties within the community. The strategies used to acquire and develop properties by a CLT will vary depending on what acquisition tools are currently allowed in the jurisdiction, and the support the local jurisdiction can give to the CLT. The basic strategies of acquisition by CLTs highlighted in our research are: fee simple acquisition from Land Banks and property purchases;²¹ negotiations with current residents to donate their land to the CLT; partnerships with developers; and donations from banks or other nonprofits. Our research to date has found only one instances of CLTs being given the power of eminent domain. Some of the money available to purchase property may come from public and private grants, nonprofit funds, and donations to the nonprofit. Because the properties purchased by many CLTs may have clouded title, administrative costs can be high. Some CLTs have benefited from partnerships with *pro bono* legal services as a way to keep costs down.

3. Community Land Trusts – Examples of Best Tools

As for the development of the land once acquired, some CLTs assume major responsibility for the comprehensive redevelopment of a targeted locale;²² other CLTs may take sole responsibility for developing, marketing, and managing many types and tenures of

²⁰ Id.

²¹ Fee simple acquisition from the purchase of the property may originate from a homeowner, or from a foreclosure sale.

²² John Emmeus Davis, *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing*, National Housing Institute (2006).

housing;²³ and some may leave most of these tasks to others, and confine their effort to assembling land, leasing land, and preserving the affordability of any housing located upon it.²⁴ “Between the extremes of the CLT-as-developer and the CLT-as steward lies a variety of roles, with every CLT deciding for itself what it should do and can do, given its mission, constituency, and capacity.”²⁵

Because our talks with WALT and community members have indicated that time is of the essence, the CLT model may not be the best short-term solution. Further, the CLT model presents an untraditional model of homeownership that may be unfamiliar to, and thus unattractive to, some residents. So, while the CLT is establishing itself, or as an alternative to the CLT, WALT or Help Org. Inc., may be able to use Low-Income Housing Tax Credits (LIHTC), Deed Restricted Housing, or partnership in a Land Trust Collaborative as a mechanism for stabilizing the neighborhood and preserving affordability. While these three alternatives may not accomplish all of the goals WALT wants to accomplish, they do present WALT with the capability of more quickly and inexpensively accomplishing some goals. Further, these alternatives may present WALT with a less intensive model than that of a CLT.

Examples of Best Tools: Low Income Housing Tax Credits

Our research and talks with housing scholars suggests that in addition to traditional Low-Income Housing Tax Credits (LIHTC) for multi-family residential, LIHTC are also being used

²³ John Emmeus Davis, *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing*, National Housing Institute (2006).

²⁴ *Id.*

²⁵ *Id.*

for scattered site housing.²⁶ Talks with the Georgia Department of Community Affairs also indicate an interest and willingness to try and use LIHTC for scattered sight housing in Atlanta neighborhoods.²⁷ Further, it appears that Columbia Residential has successfully done scattered site LIHTC developments.

LIHTC is the only active federal program that subsidizes the construction and rehabilitation of low-income rental housing.²⁸ Each year, states are authorized \$1.25 to \$1.75 per resident in tax credits, which the state then allocates to projects.²⁹ Developers then bid for credits subject to requirements for projects outlined in the state's Qualified Allocation Plan (QAP).³⁰ Further, within each state, qualified non-profit organizations are entitled to at least 10% of the tax credits.³¹ LIHTC developments tend to be complex, but a basic overview of the LIHTC requirements are as follows:³²

The maximum amount of credits that a project may receive depends on the type and cost of development, the percentage of low-income units involved, and the building's location. For new construction and rehabilitation, the tax credit rate is approximately 9% per year over ten years. For building acquisition, minor

²⁶ Interview with Dan Immergluck. See also Jean L. Cummings and Denise DiPasquale, *Building Affordable Rental Housing: An Analysis of the Low-Income Housing Tax Credit*, City Research (1998). Retrieved from: www.cityresearch.com/lihtc/cr_lihtc.pdf.

²⁷ "To receive consideration, applicants must propose rehabbing single-family homes in a neighborhood that meets the federal Neighborhood Stabilization Program definitions or be in a neighborhood where at least 30 percent of the single-family housing stock is vacant," says Joe Collums, a policy analyst in the Office of Affordable Housing at DCA. "Developers must rehabilitate at least 20 single-family homes where no more than half of the homes are contiguous. They must also provide evidence that the targeted neighborhood is part of a larger community revitalization plan, along with evidence of local government financial support and/or financial support from private institutions or foundations. Applicants need to have a plan for acquiring site control for 100 percent of the proposed sites by the date of application. However, they would only need half of the sites under site control where the remaining 50 percent is under the control of a local land bank." See Donna Kimura, *Georgia Updates QAP: DCA moves address foreclosed homes, preservation*, Apartment Finance Today (March 2012). Available at: <http://www.housingfinance.com/economic-development/georgia-updates-qap.aspx>

²⁸ Id. See also The requirements for LIHTC in 26 U.S.C. § 42 attached

²⁹ Id. See also National Development Council, *HD 420 Rental Housing Development Finance Textbook*, Version January 2006. Edgewood, KY: National Development Council. Chapters 5 & 6

³⁰ See Georgia DCA 2014 QAP attached.

³¹ See Georgia DCA 2014 Nonprofit Assessment Form attached.

³² Jean L. Cummings and Denise DiPasquale, *Building Affordable Rental Housing: An Analysis of the Low-Income Housing Tax Credit*, City Research (1998). Retrieved from: www.cityresearch.com/lihtc/cr_lihtc.pdf.

rehabilitation, and federally subsidized buildings receiving below-market rate loans, the building can qualify for a 4% per year credit. Further, a project receiving tax credits must qualify as low-income each year of the 15- to 30-year compliance period or risk recapture of some of the credits. To qualify, a building must meet one of two tests concerning rents and tenant incomes:

- 20% or more of the residential units are both rent-restricted and occupied by individuals with income 50% or less of the area median gross income (AMI), or
- 40% or more of the residential units are both rent-restricted and occupied by individuals with incomes 60% or less of the AMI.

Because LIHTC developments are complex and often built by niche developers, they can pose special risks. One of these risks is management of the property. LIHTC projects may serve special-needs populations that require substantial social services.³³ Further, tax-credit projects must be managed to maintain the required number of income-eligible tenants and to ensure that the appropriate documents are filed and kept current.³⁴ Scattered site housing potentially makes the management risk even higher, if simply because the tax credit housing units are dispersed throughout a neighborhood and thus not as easy to monitor and maintain.

If WALT could partner with a LIHTC developer, WALT could accomplish the goal of providing affordable housing in the community and potentially provide job training. WALT could assume the role of the management company and earn money for the nonprofit, while also providing real estate management training to residents in the neighborhood. Further, if WALT became familiar with the LIHTC process, it may be able to develop properties on its own in the future.

Examples of Best Tools: Deed-Restricted Homes

³³ Id.

³⁴ Id.

Another potential tool for WALT is Deed-Restricted Housing. Deed-restricted homes encompass a range of housing. The type of housing subject to deed-restrictions may include detached houses, attached duplexes, row houses, townhouses, and condominiums.³⁵ Unlike the CLT model, the occupants of deed-restricted homes have ownership of both the land and the building. But, similar to the CLT, the owner-occupant of deed-restricted housing foregoes some of the “bundle of sticks”. For example,³⁶

[T]he owners of deed-restricted houses have exclusive use of their property, but they are prevented from using it for anything other than their primary residence. They have the right to resell their property, but they are constrained from conveying it to whomever they wish or for whatever price the market will bear. They may improve their property, mortgage their property, or bequeath their property, but there are usually contractual constraints on these ownership rights as well.

If WALT wanted to pursue deed-restricted housing, the mechanism through which these contractual constraints are typically imposed is an affordability covenant appended to the homeowner’s deed.³⁷ This covenant would require the owner-occupant to resell the property to someone from a specified pool of income-eligible buyers for a specified, formula-determined price.³⁸ This covenant may also contain a right of first refusal for the nonprofit. Unlike some of the other models of shared-ownership that require an active role, the deed-restrictive model would likely only require WALT to monitor and enforce the restriction.

Examples of Best Tools: Partnering with the Land Trust Collaborative

³⁵ John Emmeus Davis, Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing, National Housing Institute (2006).

³⁶ Id.

³⁷ Id. See also OCGA § 44-5-60 for more information of Georgia’s statutory language on covenants; 2 Ga. Jur. Property § 20:3 & 2 Ga. Jur. Property § 20:11 for more insight on interpreting this language.

³⁸ Id.

Finally, a collaborative model of Community Land Trusts may enable smaller, community based land trusts to gain access to more resources and capital. This access is important because of the high costs associated with acquiring a critical mass of properties necessary to stabilize the neighborhood. Further, it may also provide a neighborhood CLT with resources capable of lowering administrative costs (an expense that can take up a large percentage of a small organization's budget). In Atlanta, a Community Land Trust Collaborative exists, however, attempts to contact the Collaborative have been unsuccessful.

The Atlanta Land Trust Collaborative (ALTC) works by combining neighborhood-based, resident-controlled Community Land Trusts (CLTs), with the ALTC. The ALTC functions as a "Central Server" organization that can incubate and support the development and operation of permanently affordable housing initiatives by independent non-profit CLTs, along the BeltLine and throughout the City.³⁹ The ALTC hopes to raise awareness of, advocate for, and implement neighborhood based CLTs.⁴⁰

A potential benefit of the collaborative model for WALT is the opportunity to have an organization with the financial resources and potential connections necessary to pay lobbyist and advocate for stronger tax lien foreclosures by the City of Atlanta and more property acquisition by the Atlanta Land Bank. This model may also provide WALT with financial backing that would allow them to negotiate for properties from banks or the National Community Stabilization Trust.

Examples of Best Tools: Donations

³⁹ <http://www.atlantaltc.org/about-us/>

⁴⁰ Id.

We understand that this spring WALT has been engaged in the process of drafting bylaws and other documents to complete corporate formation and, ultimately, seek federal non-profit [501(c)(3)] status. Insofar as crafting these basic corporate documents requires consideration of basic organizational goals and objectives, this is also an appropriate time to consider the methods of property acquisition, development and disposition that best fulfill those goals and objectives. Now is also an appropriate time for WALT to determine, and then memorialize in formally adopted policies and procedures, its preferred methods for property acquisition, development, and disposition.⁴¹

There are several public, semi-private, and private means through which WALT could assemble land to achieve its purpose of creating neighborhood focused affordable housing at low cost or at no cost to the organization.

Estate Donations

One tool that WALT might consider as it attempts to create a portfolio of properties that meets its affordability goals is creating the capacity to solicit and receive donated properties. As WALT's neighborhood tenure grows, residents will increasingly value its commitment to affordable housing and decide they wish to make sure their home remains affordable for the benefit of future generations of neighborhood residents. Further, to the extent that WALT would not be in position to expand its affordable housing portfolio, donated properties could be sold at market value or leased to generate operating income.

⁴¹ As discussed at the Land Use Class' March 6th presentation to WALT's community supporters and stakeholders, working with WALT's leadership and membership to draft policies and procedures might be an appropriate project for a future GSU College of Law Land Use class or other law class. Professor Marshall would be pleased to discuss possibilities with you.

There are several ways that private citizens can gift their property to community land trusts (CLTs). The types of donation include: the Specific Gift, the Reserved/Retained Life Estate, the Land Donation, the Residuary Gift, the Contingent Gift, and the Bequest. The method of gift or donation that may yield the best results for WALT, due to the limited stipulations on their use that can be issued by donors, are the Specific Gift, the Reserved Life Estate and the Land Donation. Each of these types of gift are described below in detail. They are listed in order of what we perceive to be their usefulness to WALTs stated mission and the ease with which the donation is accomplished.

There are at least six types of real property donations that individuals could make to a CLT:⁴²

(Some excerpts from this list are drawn directly from the source and modified slightly to be more relevant to WALT.)

- Specific Gift: gives a land trust title to a property (or another specific asset) after a resident's death. This gift is generally made through a homeowners will
- Reserved/Retained Life Estate: allows homeowners to donate their home and receive immediate tax benefits. Under this donation method, the homeowners keep their homes until death. Following donation, the homeowner continues to bear responsibility for maintenance of the property, but the CLT is allowed to review the condition of the property periodically.

⁴² Human Society Wildlife Land Trust. (2013). *Donating With Retained Life Estate*. Retrieved April 6, 2014 from <http://www.hswlt.org/how-you-can-help/protect-your-land/donating-with-retained-life.html>; Iowa Natural Heritage Foundation. (no date). *Landowner's Options: Protection Options*. Retrieved April 6, 2014 from <http://www.inhf.org/protection-options.cfm>

- Land Donation: this is the easiest type of gift for WALT to receive. The title of the land is transferred from the current owner to the CLT. The CLT then owns and maintains the property and may add it immediately to WALT's affordable housing portfolio.

- A Residuary Gift: this type of gift occurs when one leaves the remainder of the value of her estate to a CLT after specific gifts to others have been satisfied. (Example: A resident owns a 10-acre parcel. Two acres are left as a specific bequest to the donor's daughter and 1 acre to a lifelong friend. The CLT receives the remaining 7 acres.)

- Contingent Gift: what is a local resident's primary concern is taking care of his or her spouse or children's need for a home. A contingent gift occurs only in the event that some other bequest fails for some reason. (Example: a neighborhood resident leaves her entire estate to CLT in the event her spouse fails to survive her.)

- A Bequest: this type of gift is very similar to Land Donation or Specific Gift in how it is transferred, however, in a Bequest the land owner can permanently dictate the properties' usage, e.g., for low and moderate income housing.

As WALT considers whether to solicit and/or receive gifts from private citizens there are considerations and consequences that must be evaluated. Nearly 80% of gifts made by private citizen donors are rejected because the donee organizations do not feel prepared to manage the property.⁴³ Organizations that reject property donations report that they fear that the acquisitions

⁴³ CCIM Institute. (2013). *Real Estate Gifting Realized*. Retrieved April 6, 2014 from <http://www.realestategifting.org/>

of new properties will drain already strained staff resources. Staff capacity is just one concern. Additionally, organizations must have certain baseline policies and procedures in place to accept donated properties: legal procedures to evaluate and resolve title issues (liens, judgments, outstanding mortgages) as well as federal and state tax issues that come with donated properties, property evaluation processes to determine repairs and improvement necessary to stabilize properties or ready them for sale or rental, including remediation of environmental conditions such as lead abatement, mold, and asbestos removal. In short, it is easy to understand that some of the fears related to donation rejection are grounded in the “perceived complexity of due diligence efforts and removal of encumbrances” and the potential holding costs including maintenance, entitlements and market futures.⁴⁴

The fears about receiving donated property are reasonable, especially for a new CLT. Burlington Associates, operators of the successful Champlain Land Trust, identify several key issues in “Starting a Community Land Trust: Organizational and Operational Choices”. In accepting donations, Burlington Associates strongly recommended having any property assessed prior to accepting a donation to avoid hidden costs or repairs that can drain CLTs limited resources. They also recommend that the CLT create bylaws that enable it to receive and sell land that is out of its service area. This is also known as the strategy of land divestment, which is an important strategy to consider including in WALTs bylaws. Selling land or property at market rate would allow WALT to generate income and thus conserve its valuable financial and staff resources for pursuing its essential mission.⁴⁵

⁴⁴ Id.

⁴⁵ Davis, J.E. (2013). *Starting a Community Land Trust: Organizational and Operational Choices*. Chapter 1, 16-17. Retrieved from http://community-wealth.org/_pdfs/tools/clts/tool-8-special-topics.pdf

4. ***Community Land Trusts – Potential Partnerships: Fulton County/City of Atlanta Land Bank Authority***

One of the questions asked of the class was to distinguish between the land trusts operating in Fulton County. During our March 6th presentation, we inadvertently referred to the Atlanta Land Bank Trust. The Fulton County/City of Atlanta Land Bank Authority is called the Atlanta Land Bank by some authors documenting Atlanta-area land trusts. Inconsistent references to that land trust may make it difficult to paint a clear picture of this particular property acquisition tool. For consistency's sake, we refer herein to Fulton County/City of Atlanta Land Bank Authority as the LBA.

The LBA was created to preserve affordable housing units as Atlanta's population increases and the demand for housing increases. It has been in operation for nearly two decades. Its mission is to redevelop neighborhoods with high vacancy rates and increase affordable housing stock by enabling community development corporations (CDCs), or in this instance CLTs, to acquire tax-delinquent properties at below market rate prices. The LBA has facilitated the transfer of 50-100 properties per year since it was created.⁴⁶

The LBA is authorized by state legislation that grants a local land bank authority the power to "acquire, clear title, and dispose of tax delinquent properties" to agencies creating affordable housing. That same legislation grants land bank authorities the power to forgive delinquent county taxes, city taxes, and with the consent of the school board, school district taxes. The LAB is also allowed to bid on tax foreclosed properties or notify the Tax Commissioner when it intends to acquire a tax-delinquent property that may have already been

⁴⁶ HUD Office of Policy Development and Research. (August, 2009). *Revitalizing Foreclosed Properties with Land Banks*. 16-18. Available at <http://www.huduser.org/publications/PDF/landbanks.pdf>

scheduled for foreclosure.⁴⁷ These are critical powers for an agency with jurisdiction over the Vine City and English Avenue neighborhoods, which suffer from significant levels of vacancy and abandonment that are paired with tax delinquency.

The main function of the LBA is to clear titles for affordable housing developers. This important power allows a developer to purchase a tax delinquent property, transfer the property to the LBA, and ask the LBA to clear the title and waive all the back taxes. Clear title is then conveyed back to the developer. The LBA encourages affordable housing developers to acquire property by utilizing Fulton County's searchable database of tax delinquent properties and acquiring them prior to foreclosure.⁴⁸

If a developer works with the LBA to clear title, the developer also assumes an obligation to return the property to commerce in a timely manner. Properties conveyed to developers directly from the land bank must be developed within three years. Otherwise, the title transfers back to the LBA and the taxes are reinstated.⁴⁹

We are aware that WALT, through HELP ORG, INC. has previously partnered with the LBA to obtain title to neighborhood properties. We encourage WALT to continue working with the LBA. Although we suspect the process for obtaining title may unfold at what seems like a slow pace, WALT's willingness and ability to partner with the LBA is an important sign to local and national funders of its capacity for collaboration and tapping locally available resources for assembling property. Further, as WALT's organizers and supporters know from experience, the

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

LBA could be an effective resource from which WALT could acquire housing at low cost and to clear the title of these lower costs properties. A more detailed explanation of the process of acquiring property from the LBA can be found in a flow chart located in the electronic Appendix.

Potential Partnerships: National Community Stabilization Trust

The National Community Stabilization Trust (NCST) is a national nonprofit organization working in coordination with large, nationally-operating banks. The NCST works with local housing providers to facilitate the reclamation of neighborhoods with high levels of foreclosure and abandonment. The goal of the NCST is to make it possible for local housing providers to turn abandoned or distressed properties into viable affordable housing stock. This goal is realized by giving local agencies access to the properties financial institutions acquired during the housing crisis. It also provides flexible financing to support local affordable housing programs with public and private funding.⁵⁰

The National Community Stabilization Trust (NCST) has administered its national Real Estate Owned (REO) Property Acquisition Program to facilitate the transfer of foreclosed and abandoned property from financial institutions to local housing providers engaged in neighborhood stabilization activities since 2008. The NCST maintains established relationships with financial institutions to make REO property listings available to local housing providers

⁵⁰ National Community Stabilization Trust. (no date). *About*. Retrieved April 6, 2014 from <http://www.stabilizationtrust.com/about>

within designated target areas, often tied to the federal HUD-sponsored Neighborhood Stabilization Program (NSP).⁵¹

NCST offers community-based buyers three different programs to access the right kinds of properties to make a positive impact in distressed neighborhoods: First Look, Aged/Listed Inventory, and Donation Property Contributions. There are many participating Financial Institutions, some of which operate locally (the First Look Institutions are in bold): **Bank of America, JPMorgan Chase, Citi**, Deutsche Bank, Fannie Mae, FDIC, **Freddie Mac, GMAC**, HSBC, **HUD/FHA**, Homeward Residential, Minnesota Housing Finance Agency, Nationstar, **Ocwen**, PNC, Quadrant, Service Link/Self Help, SunTrust, **US Bank, US Bank Home Mortgage**, Vericrest, and **Wells Fargo**.⁵² The NCST First Look program gives local developers the priority on inspecting and purchasing foreclosed properties.⁵³

“In addition to requiring local housing providers to meet buyer eligibility requirements, the NCST, through its partnerships with the local governments participating in HUD’s NSP program, has found that the most successful local housing partners meet capability standards in five areas”⁵⁴:

1. Collaboration
2. Concentration

⁵¹ National Community Stabilization Trust. (no date). *Property Acquisition*. Retrieved April 6, 2014 from http://www.stabilizationtrust.com/programs_services/property_acquisition/

⁵² National Community Stabilization Trust. (no date). *Participating Financial Institutions*. Retrieved April 6, 2014 from http://www.stabilizationtrust.com/programs_services/property_acquisition/participating_financial_institutions/

⁵³ National Community Stabilization Trust. (no date) *First Look*. Retrieved April 6, 2014 from http://www.stabilizationtrust.com/programs_services/property_acquisition/first_look/

⁵⁴ National Community Stabilization Trust. (no date). *Eligibility and Participation Requirements*. Retrieved April 6, 2014 from http://www.stabilizationtrust.com/programs_services/property_acquisition/buyer_policy/

3. Comprehensiveness
4. Capacity
5. Capital

As WALT's organizers and supporters are well aware, the mortgage foreclosure crisis continues to impact neighborhoods across the city. The NCST will likely remain an important potential partner for the foreseeable future. We recommend that WALT begin laying the groundwork for future cooperation with the NCST. Mindful that WALT is just now completing corporate formation, we encourage WALT to consider how it meets the five capability standards that the NCST has outlined. WALT is already building a compelling case for satisfying the first three capability standards. WALT's organizers and supporters are currently collaborating with the local community foundation, Georgia State University, and allied neighborhood-based organizations. WALT's territorial focus is also well-defined and currently limited to the Vine City English Avenue neighborhoods. Further, meetings with WALT's organizers and supporters have witnessed their commitment to WALT developing organizational capacity or strategic partnerships that will enable it to manage projects from acquisition, through rehabilitation, to sale, and post-sale or post-lease maintenance. Finally, WALT is acutely aware of the importance of the NCST's fourth and fifth factors – capacity and capital. These are, however, the two factors that will require lead time to develop. If WALT determines that it wishes to accelerate its timeline for participating with the NCST it might consider whether there is a local or national housing development partner with whom it could partner and, thus, satisfy any questions NCST may have regarding capacity or capital.

The NCST website states that it operates in coordination with the Atlanta through the City's Office of Planning and Community Development. Valerie Fontaine is the current NSP Program Manager in the City of Atlanta. If it would be helpful to WALT, Professor Marshall

and the Land Use class would be pleased to participate in a meeting with city staff regarding opportunities to work with the NCST.

5. Potential Options for Financing a Community Land Trust's Operations

Community land trusts (CLTs) are non-profit organizations created to preserve and improve the housing stock in areas with poor or insufficient housing resources for low and moderate income families. Although CLTs' community-based, non-profit mission often means that they operate with limited financial capital, their grassroots mission and commitment to serving low and moderate income families living in distressed communities means that they are strong candidates for a range of non-profit, philanthropic and government programs aimed generally at community and economic development. The grassroots movements that ignite local land trusts are started to address community challenges that range from a lack of affordable housing to environmental hazards, such as environmental contamination and flooding. Strategies for facing down these housing and environmental challenges often revolve around increasing local control of vacant, abandoned, foreclosed, or dilapidated properties. CLTs are well-suited to help address these challenges. They often serve as the principal vehicle to attract capital in the form of loans or grants from local government, non-profit and philanthropic grantors and lenders. Sources of capital include but are not limited to, grants or program related investments (PRIs) from local philanthropies, no money down or low money down loans from community loan funds, and federal community development block grants (CDBG). In addition, CLTs have the ability generate their own capital through membership fees or providing services, such as property management and maintenance.

Philanthropic organizations, including the philanthropic arms of local corporations, often provide essential funding for CLTs proximate to their stores or corporate offices. Atlanta provides significant opportunities for WALT to cultivate local businesses. For example, organizations such as The Atlanta Land Trust Collaborative have reached a number of important milestones due to philanthropic donations. Incorporated in 2009, the Land Trust Collaborative has received \$320,000 in funding from Home Depot, NCB Capital, Wells Fargo, and the United Way of Metropolitan Atlanta. Although demand for local philanthropic grant funds always far exceeds the funding available and while we have witnessed that WALT is appropriately sensitive to perceived competition among potential grantee organizations, we believe the list of funders tapped by the Atlanta Land Trust collaborative is illustrative for two reasons. The first is the type of entities from which the Land Trust Collaborative solicited funds, including corporations headquartered in Atlanta (Home Depot), community development financial institutions (“CDFIs”) (NCB Capital), and national financial institutions (Wells Fargo). Atlanta is home or a major market for dozens of such businesses and financial institutions, providing WALT with a broad range of possible targets without competing directly with the Land Trust Collaborative. This touches on the second reason the Land Trust Collaborative’s list is helpful. Although the funders listed immediately above have a past or existing relationship with the Land Trust Collaborative, WALT could consider partnering with the Land Trust Collaborative on a grant application for a project on which the organizations’ respective interests intersect.

The Atlanta Land Trust Collaborative’s success at attracting grants from local funders can also inform WALT’s thinking about possible strategies for articulating its overall objective(s) for seeking grant funds. The Land Trust Collaborative has positioned itself as an agent for implementing an affordable housing solution on the front end of a large-scale urban

redevelopment project – the Atlanta BeltLine, (more information on the Beltline Trust Fund is offered later in this report). The Land Trust Collaborative also highlights its role as a hub of public, private, non-profit and community partner relationships, and it emphasizes its commitment to principles of community empowerment as well as the need for economies of scale and efficiency. Our team has witnessed that WALT’s organizers and supporters are grounded in an ethic of community partnership and community empowerment – the Land Trust Collaborative’s second and third funding strategies. Our team also believes that WALT is aware of the value of tying its efforts to other overarching citywide efforts. To assist WALT in considering opportunities for tying its important neighborhood-based work to other concurrent and overarching citywide initiatives, we note that it critical for WALT to analyze and catalogue special planning districts, taxing districts, other special purpose districts and ascertain whether WALT’s objective intersect with objectives articulated by local government agencies or community-based organizations. Funders often review grant applications to determine whether potential grantees have aligned or are committed to aligning their efforts with other positive initiatives for neighborhood change.

Nationally, CLTs receive more than 25 percent of their annual funding from local and state grant funds. The largest single source of such government grant funds for housing and community development projects are HUD block grant funds, including HOME and CDBG grant funds. The Home Investment Partnership program or “HOME” program was enacted to provide block grants to municipalities and states for affordable housing programs in their jurisdictions. In particular, HOME funds promote the maintenance, rehabilitation, and new construction of low-income neighborhoods. The second – and predominant -- type of block grant funds is, Community Development Block Grant (CDBG) funds. Unlike HOME funds,

CDBG funds may not be used directly for new housing construction. Instead, these otherwise flexible block grant funds are used to purchase land, develop infrastructure, rehabilitate dilapidated homes, and other housing costs that benefit low income communities. There are at least three local sources of these important public grant funds: the City of Atlanta, the State of Georgia's Department of Community Affairs (DCA), and Invest Atlanta.

There is also another potential source of funding for local housing development efforts – local tax allocation districts (TADs). There is one TAD in particular that could supply housing development funds for neighborhood areas adjacent to the Atlanta BeltLine. Specifically, Invest Atlanta works closely with the BeltLine to facilitate the Beltline Affordable Housing Trust Fund (BAHTF). This is a fund created by the Atlanta City Council to encourage distribution of affordable housing around the Beltline. The BAHTF is funded from 15% of Beltline TAD revenues over the 25-year life of the TAD. These funds are combined with other affordable housing programs and city incentives, as well as leveraged with private dollars to construct or renovate affordable housing units in the city. Although BAHTF funding is not currently available, WALT should monitor announcements in the coming months and years to learn when Invest Atlanta opens applications to fund eligible housing development projects.

Another potential funding option for WALT may be a fee-producing programs such as membership fees. Even a nominal membership fee, such as \$25 per year, could generate revenue to fund WALT initiatives or cover WALT expenses. Further, WALT should consider what fees WALT might be able to charge for services provided to the community. This type of fee-for-service programming might include management fees for managing housing units that WALT may lease. Land trusts also charge homeowners fees for furnishing periodic maintenance

services for upkeep of CLT properties. WALT might also consider charging an annual fee to families that purchase their homes.

Over the long-term, WALT should also consider whether it can use its political capital to advocate for new sources of funding to support preservation and development of affordable housing. Although not a traditional stream of funding for non-profit organizations, such as a CLT, WALT might consider advocating for ad valorem tax recapture either in favor of community-based housing development organizations, such as WALT, or perhaps more realistically for existing public sector agencies whose community development objectives are aligned with WALT, namely the Atlanta Fulton County Land Bank Authority. Tax recapture returns to land banks a portion of the local property taxes generated by those same properties formerly held by the land banks. Tax recapture thus gives land banks even greater incentive to focus on returning tax delinquent properties to commerce because the land trust stands to realize a return on its efforts in the form of a portion of the properties' tax revenues. At the March 6th community meeting, we shared details with WALT supporters and organizers concerning the publically authorized and funded Genesee County Michigan Land Bank (GCMLB). We promised to perform additional research to determine if the GCMLB tax recapture funding mechanism was being deployed by private non-profit organizations. No explicit precedent could be found among the community-based work of non-profit corporations. However, WALT should consider the value of lobbying local and state authorities to confer this tax recapture right on the Atlanta Fulton County Land Bank. The additional revenue flowing from recapture of even a portion of ad valorem tax revenues from properties sold by the Land Bank for the first five years after sale could allow expansion of Land Bank programming that could greatly benefit the Vine City and English Avenue neighborhoods.

6. ***Organizational Safeguards for Non-Profit Housing Developers – Preliminary Thoughts on Operational Policies and Procedures***

To allow community-based non-profit organizations to focus on pursuing their mission, it is important for the organizations to identify basic policies and procedure to guide their ongoing activities. The purpose of these policies and procedures is to ensure not only that WALT achieves its goal of a strong ethic of fairness, equity, and prudence in its business decisions, but also that it maintains a consistent framework of business practices that will transcend changes in staff, outside contractors, and corporate leadership. In addition, by adopting basic policies and procedures WALT helps demonstrates to third-party funders and potential development partners that it has a proven commitment to, and track record of, sound business practices.

As part of the corporate formation process, corporate organizers draft documents such as Articles of Incorporation and bylaws; however, these documents generally furnish little guidance regarding the tasks that non-profits such as WALT must complete on a day-to-day basis. For instance, Articles and bylaws generally give no guidance regarding the steps that a non-profit corporation must take to retain a professional, such as lawyer, or to procure services, such as appraisal or lawn cutting services. Disagreements over the criteria that organizations should apply when awarding such contracts are common and often deeply divisive. The question of whether or how an organization may enter into an agreement with a family member or relative of an organization's board or its staff is another issue that frequently arises and precipitates internal conflict and distrust. WALT's standards for addressing these and other questions concerning business operations should be fixed so that community members, board members, staff, and vendors can all know the ground rules by which WALT conducts its affairs.

WALT's long range plans for preserving and developing the supply of affordable housing in the Vine City and English Avenue neighborhoods suggest that it will likely have a permanent and growing inventory of affordable housing stock. Managing this housing stock will entail purchasing, selling, and leasing property. Improving and developing this housing stock may involve WALT receiving, spending, and accounting for government and philanthropic grant funds and loans. Each of the real estate acquisition, disposition and development activities will require WALT to take in and disburse large sums of money. As WALT takes greater steps toward achieving its affordable housing goals, it will be increasingly important that it establish basic policies and procedures surrounding the receipt, handling, and disbursement of WALT funds.

In the coming months, as WALT completes task associated with corporate formation and seeking federal non-profit corporation status from the I.R.S., we recommend that WALT's board begin considering whether it would be appropriate to adopt the following policies and procedures:

1. ***Procurement policy for retaining services of professionals as well as service providers.*** A draft template for discussion and study is provided in the electronic Appendix to this Report.
2. ***Financial and accounting procedures for receiving funds and paying vendor invoices.*** A draft template for discussion and study is provided in the electronic Appendix to this Report.
3. ***Property acquisition procedures to guide WALT's board regarding the factors that should be considered in determining when to acquire properties.*** Although

we located generally applicable potential templates, we did not have the opportunity to review and revise the document to a template that would be helpful to WALT. We would be pleased to confer with WALT regarding its key property acquisition principles, so that we might furnish a document that would be helpful in considering appropriate policies and procedures.

4. ***Property disposition procedures to direct WALT's deliberations concerning potential sale of portfolio properties.*** Again, although we located generally applicable templates, we did not have the opportunity to review and revise the document to a template that would be helpful to WALT. We would be pleased to confer with WALT regarding its key property disposition principles, so that we might help prepare a document that would be helpful to WALT's board and staff in considering appropriate policies and procedures.

The policies and procedures that we have reviewed for WALT's use, including the two templates included in the electronic Appendix, were not originally drafted for a neighborhood-based land trust. Thus, it is crucial that WALT review these templates in detail, consider which template protections and safeguards may be appropriate for WALT's current and future activities, and decide which provisions are inapplicable and inappropriate and should be discarded.

7. **Conclusion**

One of the privileges in attending meetings with WALT's organizers and supporters is that we heard candid discussion of the significant challenges facing the Vine City and English Avenue neighborhoods. While we understand that these challenges loom large, we also know

that WALT's organizers and supporters appreciate an even more important fact. That is, in creating WALT, the community has the opportunity to make choices about the tools, strategies, and practices it can use to preserve and transform the neighborhoods.

Although the subject of neighborhood land assembly and revitalization tools and practices is worthy of lengthy treatment, the Land Use class provides here an initial treatment of several topics that are of foundational importance to neighborhood revitalization and land assembly efforts. We envision this report as the beginning of a discussion directed toward supporting WALT's membership's knowledge of available legal and policy tools. We look forward to continuing this important conversation.

Working Draft