The Vermont Housing and Conservation Trust Fund: A Unique Approach to Developing Affordable Housing

by James M. Libby, Jr.

I. Introduction

The Vermont Housing and Conservation Trust Fund Act (Trust Fund Act)\(^1\) is a unique legislative initiative that established a Citizen Board to provide grants and loans to develop affordable housing for low-income Vermonters and to protect environmentally and agriculturally important land. The purpose of this article is to discuss the development of this board and to evaluate the impact that it will have on the work of legal services advocates and clients in Vermont, and that of the Housing and Conservation Coalition (the Coalition).

During the spring of 1986 a group of conservationists was convened by the Vermont (formerly Ottaquechee) Land Trust (VLT) to discuss the creation of a state trust fund to assist in the protection of natural areas and prime agricultural land and to finance affordable housing projects. Prior to this time, efforts had been made to establish a farmland protection fund by land conservation groups. Rick Carbin, Executive Director of VLT, had been involved in such efforts in 1983 and 1984; however, a state deficit and the perception that the fund was too narrow impeded these earlier legislative efforts. The idea of a dual purpose fund evolved from the farmland protection concept, particularly as the VLT gained experience in limited development but was unable to include affordable housing on its farm projects.

In its initial form, the proposal was to create a fund to finance low-income housing projects and conserve critical natural resource lands for the benefit of present and future generations. It would support the acquisition or construction of affordable housing and the acquisition of recreation lands, farmland, natural areas, and development rights and would be capitalized by an increase in the real estate transfer tax paid by the buyers of commercial and residential property.

Though modeled after relatively large land conservation funds created in other New England states, notably Massachusetts and New Hampshire, this proposal was unique, because it addressed the dual goals of housing and conservation and because it was conceived and presented to the Vermont General Assembly by an innovative and creative coalition of experienced activists from the housing, conservation, farming, and low-income communities. Moreover, since the state legislature had recently passed a comprehensive residential landlord/tenant law and Vermont faced a development boom of alarming proportions, the time was right for a new approach to the preservation of Vermont’s community resources: safe and sanitary housing that Vermonters could afford and agricultural land and natural areas to maintain the state’s economic, social, and environmental integrity.

During the first meeting at the VLT, two housing advocates joined a roomful of environmentalists, conservationists, and rural planners who were on a “first-name” basis. At first, the housing advocates were fearful that affordable housing was being added because of its popular appeal and worried that conservationists, sometimes referred to as the “green sneaker bunch,” would not be able to understand or address poverty and homelessness. At the same time, the conservationists and farmers were afraid that the housing and low-income advocates would be too radical and too dogmatic to join the Coalition. Such opinions and feelings created a lot of tension; however, most of the fears of Coalition members were dispelled after people began to work together, and especially after they identified common ground and began to develop a proposal to chart a course on that common ground. This was the beginning of the Coalition.

Shortly after the Coalition began to refine a draft proposal, Rep. Amy Davenport contacted the Vermont Legal Aid (VLA) Housing Law Project and requested assistance in drafting legislation that would provide affordable housing for very low-income Vermonters.\(^2\) She was well aware of the failure of the federal government’s housing policy, and was concerned about the loss of federally subsidized housing, especially the loss of rental housing units built with assistance from FmHA and HUD. She also wanted to avoid the mistakes made by Congress when it created these rental housing projects and was searching for a new approach as well as a good investment for Vermonters. The trust fund approach was just what she was looking for.

This request from Rep. Davenport became my opportunity to work with the Coalition, particularly the advocates for low-income Vermonters,\(^3\) to create a program to assist in the

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2. The author rendered the requested assistance pursuant to 45 C.F.R. § 1612.6.

3. The Coalition included the Vermont Low Income Advocacy Council, Affordable Housing Coalition, Coalition of Vermont Elders, CAP Directors Association (and individual CAP agencies), Vermont Tenants, Inc., Vermont Farm Bureau, Legislative Committee of Northeastern Cooperative, Rural Vermont, Vermont (formerly Ottaquechee) Land Trust, Nature Conservancy, Vermont Natural Resources Council, Preservation Trust of Vermont, Mad River Valley Planning District, and Vermont Samaritan.
In its initial form, the proposal was to create a fund to finance low-income housing projects and conserve critical natural resource lands for the benefit of present and future generations.

preservation, rehabilitation, and development of affordable housing from an entirely new perspective. Since Rep. Davenport was the lead sponsor of landlord/tenant legislation, I had already worked closely with her in representing the Vermont Low Income Advocacy Council (VLIAC) and had witnessed the high level of commitment with which she would approach the task. Furthermore, as an attorney and former VLIAC lobbyist and VLA paralegal, Rep. Davenport understood poverty issues and would be an effective ally. I just hoped that this effort would be as productive as VLA’s work on the landlord/tenant bill. As it turned out, it was!

II. Background: Vermont’s “At Risk” Affordable Housing Projects

In 1985, with the rapid appreciation in the value of real estate and the total departure of the federal government from the provision of affordable housing, 142 units of deeply subsidized housing in two Vermont communities were converted to market-rate rentals and condominiums. Though some units built with low-interest FmHA loans had been prepaid earlier, this was the first time that residents, housing advocates, legal aid lawyers, and public officials were forced to deal with displacement of this magnitude. When families with children were forced to leave their homes and school systems because of the prepayment of government-subsidized loans, a diversity of persons and interests came together to help the families and to denounce the human and financial cost of the failed federal program. In Vermont, it was front-page news.

The loss of these projects and the large amount of publicity generated by residents and organizers involved in administrative hearings to block the conversions compelled housing advocates to inventory all of the “at risk” projects, to develop plans to preserve the true affordability of the units, and to identify the resources needed to compete with private developers operating in a hot real estate market. Organizers, residents, and housing advocates succeeded in bringing this issue to the village greens and the state legislature, and it was time for action.

Since the conversion of Indian Brook Apartments was initiated while the legislature was debating the Landlord-Tenant Act, residents decided to bring their case to the legislature and to fight the conversion in Act 250 hearings. With help from some experienced organizers at the local Community Action Agency, the residents came out for two public hearings and worked with the lobbyist for VLIAC on a bill that provided protection to residents of apartments converted to condominiums. Primarily due to their persistence, the Landlord-Tenant Act was expanded to include a chapter on conversions. Ironically and sadly, the families who fought for this amendment were not protected by it because their apartments were eventually converted to market-rate rentals, not condominiums. Tenants throughout Vermont owe a great deal of thanks to the families who joined in this fight.

As state officials began to size the affordable housing crisis (fueled by real estate appreciation, speculation in land and buildings, the silence of HUD and Congress, and the increasing “health” of the Vermont economy), they also began to realize that approximately 1200 units of affordable rental housing (elderly and family) would be eligible for prepayment in the next five years. Included in this number were six large projects built under early HUD programs located all over the state and housing over 878 low- and moderate-income families. The first public housing project eligible for prepayment of the HUD-insured mortgage was Northgate, in Burlington, Ver-


5. Vermont Legal Aid represented low-income residents before District Environmental Commissions and argued that conversion violated the terms of state permits required by Act 250, Vermont’s land use law.

6. Fifteen percent (75,000) of Vermont’s population read the two newspapers that covered the conversions.

7. The first two apartment complexes were Thorn Hill Apartments in Moretown, Vermont, and Indian Brook Apartments in Essex Junction, Vermont.

8. Neither District Commission blocked the conversion. At Thorn Hill, the residents appealed an adverse decision and successfully renegotiated an open-ended relocation plan during the six months that the administrative hearings were pending. The plan guaranteed all members of the tenants association “comparable” housing in a community of their choice with the same level of subsidy (30 percent of adjusted income for rent plus utilities) and $100 in moving expenses. At Indian Brook, the project sold to a landlord who converted it to market-rate housing. However, the District Commission did issue one jurisdictional ruling that recognized the validity of the residents’ arguments.


10. Two different organizers had been working with the residents at the two projects as they formed tenants associations and developed legal positions for the contested administrative hearings.


12. These projects were built by private developers with HUD-insured loans and Section 8 rental subsidies under the Section 221(d)(3) and Section 236 programs. Prepayment of loans at some of these projects is now controlled by the Emergency Low Income Housing Preservation Act of 1987, 12 U.S.C. § 1715, which was recently extended by Congress.
The Coalition established a working group to help the staff develop legislation. It was necessary to meet regularly during the fall to develop a dialogue among Coalition members, reach consensus on some very complicated substantive and structural issues, convert that consensus into a bill, and redraft the bill for sponsorship and introduction in January. While the internal discussions and debates were taking place, the Coalition was beginning the public and legislative education process and attempting to convince the governor that she should support the proposal. Though the staff coordinated all of these efforts, Coalition members were available for countless hours of meetings and trips all over the state to spread the word and expand membership. This was painstaking, but it was another part of the glue that held the project and the players together.

Contrary to the approach of most federal agencies developing affordable housing, the Coalition's proposal was to provide a nonregulatory approach to the preservation of farmland and affordable housing and one that would not require annual payments to maintain the viability or affordability of a project. Instead, the state of Vermont would provide loans and grants to cover the "gap" and insist that recipients develop mechanisms to assure that projects would succeed without additional state revenues. Given the human misery and loss of public subsidies resulting from the prepayment of HUD,FmHA mortgages, this approach made sense to the Coalition and complemented the philosophy adopted by the legislature when it passed the condominium conversion law. Stewardship, a practice that is part of the fabric of the conservation movement, became part of affordable housing discussion. Actually, as these discussions continued, "perpetual affordability" and "no displacement" became synonymous with the trust fund. Housing advocates were listening to conservationists and heeding the lessons of a tattered federal housing policy.

As the legislative session drew closer, the Coalition wrestled with the specifics of draft legislation. There were dozens of structural issues to deal with, including eligible applicants, eligible activities, board composition and function, allocation of funds between housing and conservation, and the question of whether to target assistance on a categorical basis. In late December, the Coalition had a number of long and difficult redrafting sessions and the Affordable Housing Coalition had a number of emergency meetings. One issue that was particularly bothersome to some housing advocates was that a near final draft had been released to some potential sponsors and legislative council staff without prior approval of the entire membership. The housing advocates' discussions ranged from changing the process used by the Coalition to introducing separate housing trust fund legislation and withdrawing from the Coalition. Even with this dissent, the Coalition entered 1987 with strength, vitality, and an excellent bill.

IV. Political Process

While the Coalition was debating the contents of draft legislation, staff and members were beginning a campaign to inform the public, elected and appointed officials, and the media that it intended to introduce a trust fund bill in January.

13. Northgate was purchased by a limited partnership partially composed of a subsidiary of the Northfield Greenfield Tenants Association (NGTA) on December 27, 1989.
Due to the size of the state, Coalition members were able to talk to just about every one of the 180 legislators who would be arriving in Montpelier, the state capital, after the New Year. Thus, most legislators knew about the proposal and the Coalition long before the session began and were genuinely excited about legislation that would address the dual goals of affordable housing and land conservation. Additionally, members representing the four major components of the Coalition (housing advocates, low-income persons, farmers, and conservationists) held press conferences and got the word out to the Vermont media. The media and public were supportive of the trust fund idea; however, there were two questions that people asked frequently: (1) Does it make sense to have one fund for affordable housing and land conservation? and (2) Where will the state find the resources to capitalize this fund? Coalition members could answer the first question and had some pretty good ideas about the second.

Another important player in the political process was Governor Kunin, particularly because she would set the financial framework for the legislative session when she presented her annual budget message. Fortunately, in early October she announced that she would seek legislation creating a Land Conservation and Housing Trust Fund. Even though she called the affordable housing component an “experiment” and limited the portion for housing to 25 percent, Coalition members viewed this as a victory. Though disappointed in the size and allocation contained in the governor’s proposal, most Coalition members knew that support was growing in the General Assembly.

Ironically, the one member of the governor’s cabinet who was most reluctant to make a commitment to state funding for affordable housing was Secretary of Administration John Dooley, who was the former Executive Director of VLA and is now an Associate Justice of the Vermont Supreme Court. John Dooley was not against affordable housing for low-income Vermonters; however, he knew how expensive the federal housing programs had been and worried that the state of Vermont could not foot the bill. The Coalition also understood that the “solution” to the affordable housing and land conservation crisis in Vermont would be enormous, probably millions of dollars a year. However, instead of concentrating on the totality of resources needed, the Coalition suggested that a housing and conservation fund would be the first major step, hopefully followed by major investments by other public and private sources.

V. Legislative Session

By the time of the legislative session, the VLIAC had become an active member of the Coalition and identified the trust fund bill as one of its priorities for the year. As Director of the Housing Law Project at VLA, I responded to Rep. Davenport’s request for input on this bill and was retained by VLIAC to work with its lobbyist. My role was to review drafts prepared by Coalition staff and testify about the need for affordable housing and how a housing and conservation trust fund would address the need. Based on my experience as a legal aid attorney, it was easy for me to testify about both the need and the opportunity embodied in the Coalition’s proposal. Furthermore, my work with the Coalition and VLIAC on the trust fund bill (H.95) gave me a chance to discuss affordable housing and poverty issues with legislators who rarely heard about anything other than Vermont’s natural environment (farmland, forestland, waterways, acid rain, etc.) and the economic woes of Vermont dairy farms. This was a great opportunity.

Due to the scope of the bill, the legislative leadership decided that H.95 would be reviewed by all of the committees in both chambers who would normally review housing, agriculture, and conservation bills. This meant that the Coalition had to organize oral presentations to eight different committees and secure the approval of a majority on each committee for the bill to advance. Since the plan was to conclude this effort before the legislature adjourned in April (and not reconvene until January 1988), this was a major organizing challenge for the Coalition. However, the staff facilitated the committee presentations and the Coalition’s executive committee took primary responsibility for testimony.

In each committee, three or four representatives from the different groups (housing, low-income, farming, conservation) testified and talked briefly about the incredible market pressures threatening Vermont and the role that a housing and conservation trust fund would have in the solution. Most presentations included a drawing of a hypothetical 350-acre farm subdivided by a corporation like Patten in the typical fashion of a second home development, and another drawing showing how the trust fund would enable a farmer, working with a nonprofit like the VLT, to continue to operate a dairy farm and still receive market value for the land. Instead of selling to a second home developer, the landowner could sell the development rights to the VLT and continue as a working farm, preserve important natural areas and open space, and provide affordable housing in a limited development fashion. This was the vision that the Coalition presented to the legislators and most were very excited about it.

As a legal services lawyer specializing in housing and community development law during all of the Reagan years, it was exciting to join Coalition members to discuss the need for affordable housing. Everything that I said was based on experiences of my clients and their families as they lost their housing and entered a market that was absolutely hostile to their needs. During one of the public hearings on the prepayment of the FmHA mortgages at Indian Brook Apartments, where over 100 families were displaced, State Senator Sally Conrad called the situation “immoral,” and my clients understood what she meant.

When I spoke to legislators about H.95 I shared both the misery of my clients and the statistics about the number of “at risk” units throughout Vermont, many of them housing elders who thought that they would be secure in their last affordable home. On behalf of VLIAC, I also supported the bill because it presented a new way to house low- and moderate-income Vermonters and one that would guarantee that no one would ever be displaced without good cause. If H.95 passed and was adequately funded, we would all be keeping track of the number of affordable units preserved, rehabilitated, or developed and residents would have a guarantee that those units would

14. Vermont is sometimes referred to as a large town with a population of approximately 500,000.
Instead of selling to a second home developer, the landowner could sell the development rights to the VLT and continue as a working farm, preserve important natural areas and open space, and provide affordable housing in a limited development fashion.

never be converted to market rate rentals, condominiums, or office space for doctors and lawyers. Perpetual affordability, with all of its novelty and complexity, really appealed to me. What a great way to fight displacement. Florence Roisman would love it!15

When I was not asked to testify, members of the Affordable Housing Coalition or the Burlington Community Land Trust (BCLT) addressed the committees to share their experience and expertise and to discuss the legal mechanisms used by BCLT, working with a model developed by the Institute for Community Economics in Greenfield, Massachusetts. The community land trust approach assures that single-family homes and duplexes can be made affordable to families otherwise locked out of the housing market and that such homes will remain affordable to future generations of Vermonters. Each advocate who spoke about affordable housing presented a somewhat different perspective; however, all agreed that it was important to address both housing and conservation and that H.95 was the way to begin.

While the housing advocates were talking about the need for affordable housing, Coalition members from the Farm Bureau, the Nature Conservancy, and the VLT were discussing the importance of preserving agricultural land for farming and saving important natural areas and public recreation areas from development or “privatization.” While staff at housing agencies were creating a list of “at risk” affordable housing, farm advocates and naturalists were counting dairy farms and loon habitats and trying to find the resources to take advantage of the opportunities. Just about every week, Nature Conservancy staff received a call from someone who knew about a natural area that was for sale; the problem was that even the Vermont chapter of one of the biggest landowners in America could not keep up with the developers. The same story was told by staff at the Farm Bureau and VLT; farmers were calling on a daily basis to ask whether there was any way to avoid sale to a developer. After all, most had spent all of their lives working this land and wanted to see it remain in agriculture. These Coalition members also testified that the trust fund would be a great start and emphasized that it should support both conservation and affordable housing.

This cooperation and solidarity was the result of hard work and commitment and it was unique; as Senator Scudder Parker, chairperson of the Finance Committee, said, “it was the first time I’ve seen a low-income advocate and a farmer supporting the same bill.” The cooperation also energized legislators. They wholeheartedly passed H.95 and approved a $3 million appropriation from the state’s surplus. Though the Coalition celebrated passage of the Trust Fund Act (Steve was given a bottle of good champagne with affordable housing buttons and farmland slogans stuck to it), there wasn’t much time to rest. The governor had to appoint the public members of the Board created by the bill, the Board had to adopt rules and hire staff, and potential applicants had to start developing housing and conservation projects that would need assistance. The Coalition had helped create a wonderful program and now it was time to get to work on it.

VI. Housing and Conservation Board

Under the Trust Fund Act, the Housing and Conservation Board consisted of four officials from the state departments of housing, development, agriculture, and natural resources and five public members, appointed by the governor, who are “experienced in creating affordable housing or conserving and protecting Vermont’s agricultural land, historic properties, important natural areas or recreational lands.”16 Additionally, at least one member must be a representative of low-income Vermonters and one member must be a farmer. One of the first work sessions that the Coalition held after passage of the Act was to develop a list of potential members for the governor’s consideration. On June 11, 1987, Governor Kunin signed H.95 and shortly thereafter she appointed the first Board, including some of the people on the Coalition’s list. In order to keep the momentum going, and not allow the Board to get lost in the state bureaucracy, the Coalition had to establish a good working relationship with the Board—and quickly.

The Coalition worked with the Board to promulgate Emergency Rules so that it could exercise its authority to provide grants and loans to applicants who came forward with worthy projects. Given the good relationship between the Coalition and certain Board members, this offer of assistance was accepted and the Board adopted Emergency Rules in early August 1987, which would allow it to operate for 90 days. Aside from momentum, housing and conservation advocates were really in need of the Board’s assistance; specifically, three nonprofits needed to secure Purchase and Sale Agreements on three critical projects involving a dairy farm bordering the Green Mountain Forest, a loon habitat in Newark, and an “at risk” FmHA rental housing project, Dogwood Glen, in Northfield, Vermont. In the fall, the Board provided the missing financing piece for each of these projects and the Housing and Conservation Trust Fund went from theory to reality. Dairy farmers, loons, and low-income Vermonters were benefiting from the same fund.

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15. Florence Roisman is an attorney with the National Housing Law Project in Washington, D.C., who continues to inspire legal services staff throughout the country. She is also coauthor of How to Fight Displacement, a handbook on how to represent clients faced with loss of housing even if it looks as if they have exhausted all of their options.

VII. Dogwood Glen Apartments

In August 1986 the residents of Dogwood Glen received notice from their landlord that their apartment would be converted to market-rate rentals when he prepaid the FMHA mortgage in October. When he received this letter, one of the residents, Bill Parker, organized his neighbors and asked the VLA Housing Law Project to represent the residents. Initially, my work with these residents consisted of advising them of their rights under state and federal law and working with a community organizer to keep them informed of new developments. Given the novelty of their claims under the National Housing Act, the residents were happy to learn that Congress had placed a moratorium on the prepayment and had instructed FMHA to issue rules on prepayment. FMHA issued Interim Rules on the last day of the moratorium and the residents postponed litigation and pursued negotiations with the owner.

While the residents were working with me to prepare a lawsuit against the owner to be filed in federal district court, three local groups were negotiating with the owner around a nonprofit purchase of Dogwood. These groups got the support of the local selectmen and the regional planning commission and the green light from the residents, found a nonprofit to own and manage the complex, and secured low-interest financing from FMHA and a grant from the state CDBG program. However, in October 1987 they were still about $200,000 short and needed $25,000 immediately to sign a Purchase and Sale Agreement with the owner. The Board made the necessary commitment to the nonprofit purchaser, and the residents cheered on the sidelines.

In March 1988 Housing Foundation, Inc. closed on Dogwood and purchased a total of 52 units of subsidized housing, thereby preventing displacement and protecting residents for a long time. Nonprofit ownership and the perpetual affordability required by the Act give Dogwood residents a lot of security and Bill Parker feels that they really accomplished something. However, the last time I spoke to him, he told me that his rent had just been decreased (which made him very happy) but that there were many complaints about the resident manager. I guess perpetual affordability does not guarantee happiness or even good management. It’s a lot better than displacement, though.

Since the Act contains a priority for “at risk” housing, the Board will see a lot of applications like the one on Dogwood. However, since most of the other projects are larger and much more expensive, the residents of those projects will probably not enjoy the same satisfaction as the Dogwood residents. For them it must have seemed like an eternity, but within a little more than a year from the proposed date of prepayment, a Purchase and Sale Agreement had been signed.

VIII. Planning Act 200 and the Trust Fund

During the year following enactment of the Act, a number of legislators and the governor concentrated on another aspect of the development boom in Vermont: the absence of comprehensive local, regional, and state planning. Based on an Oregon state model, legislators, planners, and advocates formed a group called Vermonters for Vision and Choice and began to prepare legislation that would encourage local and regional officials to plan for development based on cooperation with neighboring communities and goals established by the General Assembly. In the full the governor appointed a Special Commission to hold public hearings throughout Vermont to determine the type of development that citizens wanted. The overwhelming response to the commission was that there was a need for affordable housing and for preservation of farms and important natural areas. In its report, the Commission recommended certain guidelines for growth, which the governor included in her comprehensive growth bill, and recommended that the state provide continuous support for the trust fund. The Commission’s report was the basis for the governor’s address to the General Assembly and provided the focus of the 1988 legislative session: land use planning and dairy farming. But the trust fund also stayed on center stage, since it was already implementing

17. In Gillanders v. Smith, Civ. No. S-86-867 EIG (D. Conn. 1986) (Clearinghouse No. 41,556), tenants of a FMHA Section 515 project sued both the owners of the development and officials of FMHA to enjoin the prepayment of the Section 515 mortgage, to set aside loan prepayment already accepted, and to prevent any evictions from the project during the pendency of the action. The parties stipulated to freeze the status quo on the date of the TRO hearing and the district court granted a Preliminary Injunction and issued a Memorandum of Decision on November 26, 1986. In so doing, the court found that the case raised serious, litigable issues as to whether FMHA has the discretion to refuse prepayment of the loans and whether tenants were denied due process by FMHA’s failure to provide them with any notice or opportunity to be heard before deciding to accept prepayment. The court placed special emphasis on the fact that the Section 515 program is “part of a comprehensive national housing policy, on which Congress has made itself rather clear.” 42 U.S.C. § 1471(g) says that the programs authorized that “the program authorized by this subchapter shall be carried out, consistent with program goals and objectives, so that the involuntary displacement of families and business is avoided.” To read these provisions as requiring FMHA to exercise its limited discretion only in favor of allowing prepayment and the resultant withdrawal of low income housing would be to treat the Congressionally declared policies therein as no more than meaningless rhetoric.” Gillanders, Civ. No. S-86-867 EIG (Memorandum of Decision at 7).

18. Effective July 1, 1987, FMHA changed 7 C.F.R. § 1965.90 (Payment in full) to require borrowers to submit a prepayment request 180 days in advance of the anticipated prepayment date and instructed FMHA not to process the request before the end of this period unless (1) the tenants have been given a 30-day comment period; (2) FMHA verifies that no tenant displacement or other adverse effects on tenants will occur; and (3) the District Office determines that there is time to prepare an accurate prepayment report in a shorter period of time. Further, another provision of the regulations required borrowers to offer the projects to community or regional nonprofits before completing the prepayment process.
its dual goals and could become a tool for municipalities to provide affordable housing and preserve farmland.

Act 200, the Growth Management Act of 1988, is a comprehensive, complicated, and controversial law that monopolized the time and energy of many legislators during the second year of the session. It was further complicated by the fact that it was part of a package that contained a property transfer tax increase, a municipal and regional planning fund, impact fees, tax exemptions, working farm tax abatement, dairy industry income stabilization, agricultural land development rights, and an appropriation of $20 million to the housing and conservation trust fund. The bill also dedicated a portion of the revenues raised by the transfer tax increase to the trust fund, starting in July 1989. The appropriation to the trust fund from the state surplus was the most popular part of the package and some legislators believe that it, with the dairy program, carried Act 200 to the governor’s desk.

The Coalition stayed active during 1988, working with nonprofits and municipalities on applications to the Board and working with the Board staff to develop policies and guidelines around grants and loans. It also maintained its legislative presence and testified with the Board’s Executive Director Gus Seelig on the performance of the fund during the first year and the tremendous need for additional funding. By the end of January, $1,243,254 had been committed or reserved for ten projects: three involved land conservation only, two involved housing only, and five met the dual goals of the Act. During these first few months of operation, the majority of applicants were nonprofits, even though municipalities, housing co-ops, and certain departments of state government are also eligible to apply.

The state of Vermont formally invited municipalities and regions to plan for affordable housing with the following policy contained in the law:

A decent home in a suitable living environment is a basic need of all Vermont citizens. It is in the public interest that new or rehabilitated housing should be: safe and sanitary; available in adequate supply to meet the requirements of all Vermont’s residents; and coordinated with the provision of necessary public facilities and in accordance with municipal plans. The housing requirement for Vermont’s expanding resident population, particularly for those citizens of low or moderate income, must be met by the construction of new housing units and the rehabilitation of existing structures.

In order to preserve, rehabilitate, or develop affordable housing, municipalities needed both the trust fund and the nonprofit housing development corporations and community land trusts that were springing up all over the state. The same was true for farmland and natural area preservation: local and state government depended on the expertise, experience, and responsiveness of nonprofits like the Nature Conservancy and the VLT and community groups working with them.

With Act 200 and the initial success and popularity of the trust fund, Vermont took a major step toward restoring control over its community resources to Vermonters. Since Act 200 had an effective date of July 1, 1989, it is still too early to measure the law’s true effectiveness in addressing the affordable housing crisis in Vermont. However, the trust fund is an essential part of the solution and towns that plan for affordable housing will undoubtedly need assistance from the trust fund to implement them.

IX. Nonprofit Ownership and Perpetual Affordability

Perhaps the most significant aspect of the Vermont housing and conservation trust fund is that it requires an applicant to produce housing that will be affordable to lower-income persons in perpetuity. The number of units built and acres of land saved from development are very significant. But the fact that these community resources will be freed from the market and preserved for our children and grandchildren is equally significant and is an exciting departure from the federal housing policies of the last 25 years.

Federal housing programs have housed millions of low- and moderate-income persons in decent, safe, and sanitary housing. However, in 1989 millions more are homeless or still live in unsafe or unaffordable housing and we remain millions of miles and dollars away from the promise contained in the National Housing Act:

It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of lower income. . . .

By creating the trust fund, Vermont has made a substantial commitment to the development of affordable housing that is community based and community controlled and that legally cannot be bought and sold on the speculative real estate market. The consequences of this policy decision are that it is sometimes more difficult to use existing resources, both public and private, to develop the housing and that residents may be

24. Gus Seelig was the Director of Central Vermont Community Action Council (CVCAC) and an active member of the Coalition. At CVCAC, he played a significant role in facilitating the rehabilitation of substandard houses and the creation of a community land trust in Central Vermont.
25. The first two affordable housing projects were the 32 units at Dogwood Glen in Northfield and a two-unit co-op project sponsored by the City of Winooski.
26. The dual goal projects included five farm projects that included feasibility studies for developing affordable units—usually new construction of single-family homes.
29. In 1989, the Board began to file housing subsidy covenants in the land records that require units to remain affordable (30 percent of income for housing costs) to a certain income level or mix. Such covenants ensure long-term affordability but are viewed by some lenders as unnecessary, complicated, and controversial. However, no projects have been jeopardized because of the Board’s insistence on perpetuity.
By creating the trust fund, Vermont has made a substantial commitment to the development of affordable housing that is community based and community controlled and that legally cannot be bought and sold on the speculative real estate market.

required to forego the right or privilege to sell real estate for profit. However, the lesson that many residents of federally subsidized housing have learned is that housing should not be a commodity, to be bought and sold on the open market. Rather, it is a bundle of rights and values that reflects the contribution of both the occupant and the residents of the larger community. As such, it should be shared with future residents and treated as a community resource. The trust fund embodies this principle.

X. Housing and Conservation Coalition, 1989

As the nonprofit capacity to preserve affordable housing and farmland grows, the demand for trust fund resources increases and community-based projects of tremendous diversity and promise appear on the horizon. The Coalition’s goal for 1989-90 is to provide support and cohesion to the nonprofit movement in Vermont and foster a grassroots campaign to convince the legislature that the trust fund is a great success and that it needs a significant infusion of new revenue to sustain its activities.

During the winter of 1989, the Coalition began to plan a reorganization and membership campaign to raise consciousness and funds for recapitalization. Philosophically, the Coalition remains committed to one fund for housing and conservation, while attempting to achieve a balance30 between the two, and continues to believe that perpetual affordability must remain the benchmark of the state’s housing policy, at least insofar as it is embodied in the Act.

Since the trust fund is unique31 and successful, public officials in Vermont have a great deal to be proud of. The fund presents an approach to providing affordable housing and affordable farmland that appeals to both Yankee ingenuity and fiscal conservatism: its fills the “gap” left after all available public and private resources have been located and utilizes the wealth of knowledge and experience that Vermonterns can bring to a project. If groups that bring important projects to completion with assistance from the trust fund are successful in educating people involved and the projects really succeed, community residents will judge the value of the fund and share their conclusion with public officials. So far, the judgment is largely positive, and many public officials support recapitalization through bonding or additional tax increases. It will be the Coalition’s job to focus public opinion and shape support into a substantial appropriation or bond.

In addition to growing political support, the hard data is in: the housing and conservation trust fund is protecting Vermont farmland, providing affordable housing to Vermonterns who really need it,32 and protecting public outdoor recreation lands for generations to come. As of June 1989, the Board had made commitments to 30 land conservation projects, 48 housing projects, and 14 dual goal projects. It has provided funding to housing and conservation nonprofits all around the state and plans to continue its mission until the problems are solved or the funds are no longer available. The approach may be a little different, but the results are very impressive.33

XI. The Role of Vermont Legal Aid

As nonprofits start building affordable housing, they enter a familiar category in the legal services world: they become landlords. Nonprofits usually rehabilitate the housing without displacing current residents and attempt to keep rent increases to a minimum. However, nonprofits must still pay the mortgage and the taxes, and consequently must insist that tenants pay rent on time and respect the rights of their neighbors. This presents some real choices and dilemmas to attorneys and paralegals at VLA as they prepare for the 1990s: What role should they play in the development of affordable housing for their clients by community-based nonprofits?

Though there are a number of dimensions to this issue, I believe that the VLA Housing Law Project played a critical role representing VLIAC when the Vermont General Assembly was creating and recapitalizing the trust fund. VLIAC’s active participation in the Coalition, along with groups like the Affordable Housing Coalition and the Coalition of Vermont Elders, was crucial to ensure that a fair share of the affordable housing developed was for very low-income Vermonterns. But I do not believe that VLIAC should become a developer and I do not

30. The Coalition sought for “balance” between the dual goals, Vt. STAT. ANN. tit. 10, § 322(1) (1985), rather than any set aside for housing or conservation. This approach strengthens the Coalition and the Board, since it fosters flexibility and creativity rather than competition. As of August 1989, the Board had committed approximately $16 million with 53.5 percent to housing and 46.5 percent to conservation. [Author’s note: these numbers will change monthly.]

31. As far as I know, no other state has established a trust fund that address the goals of affordable housing and conservation.

32. As of August 12, 1989, the income mix in the 908 units assisted by the Board is: 50 percent of median income or below = 22 percent (199); 60 percent or below = 7 percent (65); 80 percent or below = 46 percent (415); and median = 25 percent (230). Statewide median income is $30,000.

33. As of November 8, 1989, the Board has assisted in the preservation or development of 1139 units and helped protect 22,470 acres of natural areas and agricultural land. A total of 116 projects have been funded (commitments) at a total cost of $18,357,140, with approximately 56 percent of the fund committed to housing projects and approximately 44 percent to conservation projects. Conservation includes agriculture, natural areas, historic preservation, and public outdoor recreation. Some of the projects funded included both conservation and housing components.
believe that VLA should be a nonprofit developer's lawyer. As important as these tasks are, advocates and legal services staff must continue to insist on justice for Vermonters who are poor, elderly, sick, or disabled. They are outside of the system and we must remain by their side. Though legal services staff must support nonprofit housing development, their primary mission is to insist that nonprofits abide by the law and treat residents as partners. Consequently, I believe that VLA lawyers should not represent nonprofits in housing development.

Despite my conclusion about the role of legal services staff in Vermont, I must admit that this conclusion is tied very closely to the fact that Vermont has a private bar that has made a major commitment of time and energy to the housing development network. Specifically, due to the passage and recapitalization of the Trust Fund, Vermont nonprofits have been encouraged to develop affordable housing based on the approach of socially conscious and fiscally conservative private developers: housing that is appropriate for the community and residents, housing that is perpetually affordable, and housing that is planned with adequate predevelopment, development, and operating budgets. With the support of the Trust Fund, this approach has allowed Vermont community groups and nonprofits to receive grants and deferred loans that include the cost of predevelopment and locating other private and public resources.

Consequently, many nonprofits are retaining Vermont's finest private attorneys (some of whom worked at VLA with the author) to represent them in some very complicated real estate transactions, such as Northgate, and budgeting reasonable legal fees into the predevelopment budgets. Many of these attorneys find this work both interesting and challenging and contribute a great deal to organizational and legal development, some of it pro bono. Based on what my legal services friends tell me, this makes Vermont unique and also indicates the level of dedication of the VLA staff.

At a recent conference on Low-Income Housing Tax Credits sponsored by the Massachusetts Law Reform Institute, I was reminded that legal services staff have a variety of creative ideas on how to represent clients and many different answers to the question of whether they should jump into the development of affordable housing. For me, this translates into another question: What is the role of legal services in the 1990s and should we reassess our primary mission?—especially since there are hundreds of secondary ones. Earlier, I stated that our primary mission is to seek justice for tenants and low-income owners by insisting that nonprofits abide by the law (landlord/tenant, fair housing, National Housing Act, etc.) and treat the residents as partners. Well, individual advocates and programs should discuss this issue and determine whether this can be achieved by participating in the development of affordable housing. If so, and especially where the private bar is not able or willing to fill the void, there is no reason that legal services lawyers and paralegals should not represent community groups interested in the development of affordable housing. One enormous caveat, however, is that those who do will need a lot of time and support to walk the learning curve. And they may want to do so only if adequate technical and professional support is provided by programs and experts in real estate transactions. For example, this is an area where I strongly recommend negotiating a cocounseling arrangement with a private firm.

Aside from the professional, ethical, and substantive aspects of representing groups involved in the development of affordable housing, there are also logistical and personal issues that are not necessarily present in the everyday practice of a legal services advocate. For example, the representation of groups involves a lot of meetings, usually in the evening, where the lawyer seeks direction from the clients and attempts to translate a complicated and technical real estate transaction into terms that they understand. Assuming that the lawyer is successful in both respects, it is then necessary to translate the clients' concerns and decisions into the technical language that the housing professionals—developers, bankers, accountants, contractors, engineers, attorneys, and public officials—understand. This takes excellent communication skills, the willingness to ask questions and listen to answers, and the ability to establish honest and trusting relationships with members of the group and the housing professionals who may be primarily interested in closing the deal rather than closing the deal and addressing the concerns of the residents. However, if the residents are full partners in the deal, a successful project is likely to result in the empowerment and education of the active clients and the success of the project will be limited by the residents' inability to accept this power and education. This is yet another reason to represent groups in housing development work; this type of representation may result in a partnership, first between the group and the advocate and then between the residents and the project developer/owner. This type of attorney-client relationship can be very exciting, both personally and emotionally, and may be different from the norm.

If legal services staff continue to represent clients threatened with displacement, foreclosure, or eviction (or other types of emergency housing problems) and decide not to plunge into the murky water of nonprofit housing development, they can still play a crucial role in the creation of affordable housing projects and programs, including advocating for a program like the trust fund. Also, to the extent allowed by applicable Legal Services Corporation law and regulations, it is essential that legal services staff work with public officials who are looking to define the dimensions of the housing crisis and to forge solutions that include residents, nonprofits, and the larger community. Regardless of the role of legal services, clients must convince government to appropriate substantial funds to bridge the affordability gap for our clients and support the essential role of nonprofits in developing housing for people, not for profit. Whenever possible, legal services should help clients raise their voices.

I also believe that it is vitally important for legal services staff to serve on boards and committees of local nonprofits, such as community action councils, land trust, and community loan funds. Though such volunteer work may be time-consuming, it is valuable to nonprofits and an excellent

34. Community loan funds are nonprofit corporations with tax-exempt status that borrow from socially conscious investors and loan to nonprofit developers of affordable housing at favorable interest rates. Since July 1988 the Vermont Community Loan Fund (P.O. Box 827, Montpelier, VT 05601) has made 18 affordable housing loans to nonprofits totalling $375,000 at an average interest rate of five percent.
complement to the view of poverty that we see in our representation of clients. As I learned in my work with the Dogwood Glen tenants, the best place for a client to find affordable housing may be in the community, not the legal services office. However, if the nonprofit disregards the client’s rights under the National Housing Act, legal services staff can and should provide legal assistance!

XII. Conclusion

One progressive solution to the crisis in affordable housing and homelessness is the gradual expansion of an alternative form of housing provision and tenure.35 Two benchmarks of this alternative are to expand the amount of housing under social ownership and resident control and to expand the amount of housing produced by socially oriented developers and increase democratic control over the housing production process and land use. If nonprofits are to be such developers, they must create affordable units, educate the community, and advocate for decent, safe, and affordable housing for all. This is the challenge and the great opportunity of the 1990s.

The Vermont Housing and Conservation Board and the Housing and Conservation Coalition have taken a significant step toward restoring community and resident involvement in land use decisions and creating a significant amount of affordable housing. Each has taken a broader view of the relationship between the personal and economic plight of Vermonters and the land use decisions that have been made, and both have insisted that community-based organizations help restore local control over decisions affecting affordable housing and conservation. Further, both the Board and the Coalition present an opportunity for advocates to join together and attempt to identify common ground. The legal services community should insist that this common ground encompass the social and economic needs of elderly, poor, and handicapped persons and that coalitions strive for both economic justice and successful projects.


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