



Joseph W. Tovar
FAICP

MEMORANDUM

DATE: April 8, 2016
TO: Bainbridge Island Planning Commission
FROM: Joseph W. Tovar, FAICP
RE: Housing Element

The April 14 Planning Commission meeting is the first of three sessions where you will review the Housing Element. The focus of this first meeting should be on conveying the information in this packet and answering questions you may have. We expect that there may be questions that we cannot answer that evening, but could be prepared to answer at the meeting of April 28.

Once the Commission has digested the background information, the comment to date, and the choices presented in Attachment A, it would then be appropriate for you to deliberate and reach conclusions about what you would like to see in the Housing Element. We have prepared a draft Housing Element (Attachment B) for your review. As you reach conclusions about the options to address the Island's housing, we would then work with the Drafting Committee to bring back revisions for your consideration at the meetings of April 28 and May 12.

The background information on this subject is considerable. A 2004 Affordable Housing Task Force Report, a 2007 Community Housing Coalition Final Report, and a 2015 Housing Needs Assessment all provide useful background. A link to those documents appears [here](#). Housing, and particularly the need for more affordable housing on the Island, was a topic that was frequently mentioned at the Listening Sessions held in early 2015, as well as the Housing Workshop hosted by the Planning Commission on December 3. A table of the comments from the December workshop is Attachment C to this memorandum.

I. GMA duty

The primary GMA requirements for the Housing Element are set forth on pages 16 and 17 of the draft Housing Element (Attachment B). In addition, the City is required to have sufficient capacity in its updated Comprehensive Plan and implementing regulations to accommodate the 20-year growth target assigned by Kitsap County. As we have previously stated during the review of the draft Land Use Element, the Island has sufficient zoning capacity to accommodate the assigned targets of an additional 5,635 people by the year 2036. This means that there is no need to increase densities in

order to satisfy the population target for 2036. However, as outlined in the draft Housing Element and options described in Attachment A, there may be reasons for the City to consider increasing localized densities to help achieve such objectives as attracting development to designated centers and achieving a greater percentage of affordable housing in the future.

II. Framework of Guiding Principles and Land Use Element

Every element of the comprehensive plan is given substantive direction by the Guiding Principles and Policies that appear in the Introduction of the Plan. The Guiding Policies most relevant to the Housing Element are set forth on pages 17 and 18 of the draft Housing Element (Attachment B).

The draft Housing Element must also be consistent with and supported by other Plan elements. A citation of the most relevant portions of other draft Plan elements appears on pages 18 and 19 of the draft Housing Element.

Of particular importance to the questions of what type of housing we are planning for, and at what density and form that housing should take, is the question of where. A key organizing principle in the Land Use Element is the Island-Wide Land Use Concept which fundamentally divides the Island into two very different future land use patterns: designated centers (e.g., Winslow, Island Center, Rolling Bay and Island Center), and a broad conservation landscape everywhere else.



That is why the goals, policies, and options for addressing housing objectives, is very distinct in these two parts of the Island. As the details of the Planning Commission's recommended Housing Element emerge, we may be looking again at the Land Use, and other Elements, to make appropriate adjustments and refinements.

III. Profile, Trends, Needs and Options

Following are excerpts from the background documents, some of which also appears in the draft Housing Element.

A. Profile

- Bainbridge Island's 2015 population is 23,300.
- 91% of the Island's population is white.
- The median household income is \$92,558, about 1.5 times the county average
- 58% of Island residents have occupations in management, business, science and arts.
- The median wage for financial analysts, lawyers, and marketing managers ranges from \$100,457 to \$122,618.
- 32% of Island residents have occupations in service, sales and office occupations.
- The median wage for waiters, cashiers, and retail sales people ranges from \$27,703 to \$30,972.
- Approximately 80% of housing units on the Island are single-family homes, primarily located in a very low-density land use pattern of large lots.
- The average single-family home price in 2014 was \$696,519.
- About 16% of the housing units are multifamily, located primarily in the denser development patterns of Winslow and Lynwood Center.
- Rental apartments make up less than 7% of total housing units on the Island.
- The vacancy rate for apartments is 1.5%, which is well below the 5% rate that is typical of well-functioning rental markets.

B. Trends

- Between 2000 and 2010, the 3% annual population growth of the previous decades slowed to an approximate 13.5% increase in population for the whole decade.

- The “young adult” cohort (18 to 34 years old) makes up less than 10% of the Island’s population, which is a decline from 15% in 1990.
- The Island’s senior population (60+ years old) increased from 17% in 2000 to 26% in 2010.
- Population growth between 2010 and 2013 has slowed even further to below 1% percent growth (0.72%).

C. Needs

The City’s Housing Needs Analysis presents several indicators of housing need on Bainbridge Island.

- Almost 34% of individuals and families at all income levels who live in owner-occupied housing units are **cost burdened**, meaning that they spend over 30% of their income on housing.
- Almost 40% of individuals and families at all income levels who live in renter-occupied housing units are cost burdened. The majority (around 28%) of these residents have an annual income between zero and \$34,999. This means that as of 2012, 569 renters on the Island that have an income of \$34,999 or less are housing cost burdened. This is concerning as lower income cost burdened households are more likely to have to choose between housing costs and other necessities.
- The HNA analysis of Workforce Housing Affordability indicates that there is a gap in housing affordable for the Island’s workforce in service professions (e.g., restaurant workers, bank tellers, retail clerks, school bus drivers). Many of those workers are obliged therefore to commute from less-expensive off-island housing, which increases their transportation costs, congestion on SR 305 and greenhouse gas emissions.
- Bainbridge Island’s jobs/housing balance is .59 jobs for every housing unit, making it a “bedroom community.” The Puget Sound Regional Council suggests that housing rich neighborhoods add employment in order to increase economic opportunities for current residents.

D. Options for addressing Housing Needs on Bainbridge Island

Many ideas have been suggested by the public and the prior housing reports prepared for the City. From those many suggestions, we have culled a list of sixteen tools or strategies that the City could consider to address the identified needs. Those options are detailed in Attachment A, with specific illustrations and explanation of those options in supplementary Attachments A1 through A6.

Included in the table in Attachment A is a summary of what objectives each tool could help address, where on the island that approach might be most appropriate, some description of the approach and rationale, and a somewhat subjective judgment about how effective the approach might be in addressing the housing objectives identified. For example, an action such as making public land available is a much more direct and immediate way to facilitate new affordable housing than, say, a tiny house demonstration project.

Finally, it should be remembered that no one or two actions are likely to make a significant impact on achieving the City's housing objectives. The fact that no one approach will "solve" the affordable housing problem is not a sound reason for rejecting it. The experience in most cities has been that a multi-faceted strategy, with many actions, is the most promising way to address this serious issue.

Attachments

A - Housing Tools Table

A1 - City-owned and church properties in Winslow

A2 - Ronald Commons affordable housing project

A3 –Multi-Family Property Tax Exemption article

A4 – Cottage Housing examples

A5 - Growing Greener Conservation article

A6 - Tiny Houses report

B - Draft Housing Element and Glossary additions

C – Housing Workshop Comment Table

Attachment A - Potential Tools to increase supply of diverse housing types and affordable housing

#	TOOL	WHERE	POLICY OBJECTIVES	WHAT	POTENTIAL SCALE OF IMPACT ON SUPPLY OF HOUSING	MORE  LESS 
1	Surplus public land to write down the cost of development in partnership with affordable housing providers	Winslow	<ul style="list-style-type: none"> Increase the affordable housing supply 	<ul style="list-style-type: none"> The City Council's recent decision regarding the Suzuki property is an example of using surplus city owned property to achieve affordable housing objectives. The details of the project are yet to be negotiated, but they will result in 50+ units of housing with an affordable housing component, on a 13+ acre property in Winslow. There may be other opportunities to include affordable housing in the airspace over future public facilities such as a police headquarters, post office or municipal parking garage. <p>See Attachment A1. ACTION: adopt criteria and process</p>		
2	Explore interest of Island churches regarding potential for affordable housing on church property	Winslow and NSCs if allowed by Subarea Plan	<ul style="list-style-type: none"> Increase the affordable housing supply 	<ul style="list-style-type: none"> Churches in a number of cities have dedicated a portion of their properties for use as affordable housing or other social services. Those churches see such purposes as consistent with their religious mission. There are a number of churches within Winslow who may have some interest in such a possibility. See Attachment A1. One example, from the City of Shoreline, the Ronald Methodist Church has partnered with non-profit housing providers to build "Ronald Commons" a 60 unit affordable housing project in the Town Center. See Attachment A2. ACTION: outreach to churches 		
3	Multifamily Property Tax Exemption (MFPTE)	Winslow and NSCs if allowed by Subarea Plan	<ul style="list-style-type: none"> Increase # of housing types Increase the affordable housing supply 	<ul style="list-style-type: none"> Many cities, including Everett, Covington, Shoreline, Seattle and Tacoma, have effectively used the MFPTE tool to incent the building of 100s of units of affordable housing. State law permits cities to exempt new projects for up to 12 years from paying property taxes on the value of improvements, provided that a percentage of the units are set aside as affordable housing. The Puget Sound Regional Council has highlighted the MFPTE tool as an effective way to incentivize affordable housing. <p>See Attachment A3 ACTION: draft ordinance to adopt program</p>		

4	Cottage Housing Ordinance	Island-wide	<ul style="list-style-type: none"> • Increase # of housing types • Increase # of smaller units 	<ul style="list-style-type: none"> • The 2007 Community Housing Coalition Final Report included and recommended adoption of a draft cottage housing ordinance. • Cottage housing, at a typical density of 11 units to the acre, addresses a specific niche in the market for empty-nesters and young singles. • The Ericksen Ave Cottages are an example of this type in Winslow. See Attachment A4. ACTION: craft and adopt new regulation 	
5	Conservation Villages Ordinance	Outside Centers	<ul style="list-style-type: none"> • Increase # of housing types • Increase # of smaller units • Conserve lands outside centers 	<ul style="list-style-type: none"> • The City's regulations for cluster subdivisions have produced controversial and unsatisfactory results. • A new approach could be explored to better achieve the City's conservation objectives, while also creating the opportunity for small houses (900 to 1500 square feet) and/or on small lots (3,000 to 5,000 square feet). • A "Conservation Villages" ordinance could be drafted to avoid the flaws in present subdivision regulations and build upon the principles in the "Growing Greener" movement in other states. See Attachment A5 ACTION: craft and adopt new regulation 	
6	Extend and clarify Housing Design Demonstration Projects (HDDP) Process	Winslow and NSCs if allowed by Subarea Plan	<ul style="list-style-type: none"> • Increase # of housing types • Increase # of smaller units • Increase the affordable housing supply 	<ul style="list-style-type: none"> • The GROW community and Ferncliff Village are two projects that have been developed using the HDDP process. • The HDDP is presently the only tool the City has to incent the provision of affordable housing and green building practices. It does so by providing for density increases and modification of dimensional standards. • The HDDP expires at the end of 2016. The City should consider clarifying the HDDP process and making it a permanent option for innovative housing. ACTION: adopt ordinance extending 	
7	Increased Floor Area Ratio (FAR) to incent affordable housing as part of mixed use projects	Winslow	<ul style="list-style-type: none"> • Increase # of housing types • Increase the affordable housing supply 	<ul style="list-style-type: none"> • Increasing the FAR in Winslow could be tied to the provision of affordable housing. A sliding scale of FAR could be established tied to specific levels of affordable housing as part of the mix. • Any increase in FAR would have to be accompanied by appropriate revisions to maximum building height and floor plate in order to accommodate the increased building envelope. • The most appropriate location for increased FAR and larger building envelopes would be the High School Road, Madison, Ferry Terminal and Erickson District ACTION: craft and adopt code amendment 	

8	Adopt Tiny Houses regulations	Island-wide	<ul style="list-style-type: none"> • Increase # of housing types • Increase the affordable housing supply 	<ul style="list-style-type: none"> • Much interest has been expressed in “tiny houses” as a specific housing niche. Generally, these are quite small (under 600 square feet or less) which lowers the cost for materials and construction, but likewise limits the household size that can be accommodated. See Attachment Attachment A6. • The City could make available a small parcel in Winslow for a demonstration project. ACTION: refer to staff for study. 	
9	Reduce or eliminate required parking where alternative transportation modes are available	Winslow	<ul style="list-style-type: none"> • Increase # of housing types 	<ul style="list-style-type: none"> • A key obstacle to infill development is the high cost of parking. Surface level parking is very land intensive and structured parking can cost \$40,000 per stall. • A significant Increase in the supply of apartments would be facilitated by reducing or eliminating parking requirements. • The degree of reduction could be tied to the availability of alternative modes of transportation (e.g., transit, walkable distances to services, bicycles, etc.) ACTION: craft and adopt code amendment 	
10	Reform Accessory Dwelling Units (ADU) standards	Island-wide	<ul style="list-style-type: none"> • Increase # of housing types • Increase the affordable housing supply 	<ul style="list-style-type: none"> • Over 200 ADUs have been permitted since 1992. • One way to reduce the cost of ADUs would be to enable the sharing of utility meters between the ADU and the larger house. ACTION: craft and adopt code amendment 	
11	Revisit Zoning requirement for affordable units as a % in new multifamily	Winslow	<ul style="list-style-type: none"> • Increase the affordable housing supply 	<ul style="list-style-type: none"> • Requiring the provision of affordable housing for detached housing subdivision was problematic. It resulted in very few units and was an administrative burden on the City. • Bainbridge’s unsuccessful inclusionary zoning ordinance was repealed. ACTION: refer to staff for study 	
12	Explore a future housing levy to fund construction of affordable housing	Island-wide	<ul style="list-style-type: none"> • Increase the affordable housing supply 	<ul style="list-style-type: none"> • Engage a community discussion of the merits and costs of an affordable housing levy on the Island. • COBI should participate in and support conversations about a Kitsap County levy or tax for affordable housing. • Both Seattle and Bellingham have passed affordable housing levies. King and Pierce County are now considering levies. ACTION: initiate study of options, merits and costs 	

13	Increase resources to the Housing Trust Fund	Island-wide	<ul style="list-style-type: none"> Increase the affordable housing supply 	<ul style="list-style-type: none"> The Housing Trust Fund is the only existing source of public funding to support housing projects on the Island. Consider a special transfer of funds from the General Fund, to better capitalize new affordable housing projects. Identify new sources of funding to keep the HTF as a viable means of supporting projects. <p>ACTION: refer to staff to prepare options</p>	
14	Streamline the permit process for projects with an affordable housing component	Island-wide	<ul style="list-style-type: none"> Increase # of housing types Increase the affordable housing supply 	<ul style="list-style-type: none"> Two of the greatest impediments to the viability of any development, including affordable housing projects, are uncertainty and delay. Increase the viability for affordable housing projects by reducing uncertainty. Adopt clear standards so that a developer can rely on unambiguous requirements, not the vagaries of a discretionary permit process Eliminate advisory meetings by the planning commission and appeals to the council. Limit appeal to a single open record hearing before the hearing examiner. <p>ACTION: craft and adopt code amendment</p>	
15	Waive development and utility fees for projects that have 100% affordable housing	Island-wide	<ul style="list-style-type: none"> Increase the affordable housing supply 	<ul style="list-style-type: none"> The margin of viability for some affordable housing projects is thin, so that any reduction in cost can make an important difference. Some communities have either waived or reduced planning and development fees and/or water & sewer fees for projects that provide 100% affordable housing. Bainbridge Island should consider expanding fee waivers to include these costs. <p>ACTION: refer to staff to prepare program</p>	
16	Establish annual targets for addition of market rate and income eligible affordable housing units to the Island supply	Island-wide	<ul style="list-style-type: none"> Increase # of housing types Increase the affordable housing supply 	<ul style="list-style-type: none"> Numeric targets should be developed for new units built, number of affordable housing units built, vacancy rates, etc. An annual or semi-annual report should monitor progress, analyze reasons for success or lack of it, and recommend revisions to existing measures or adoption of new measures. <p>ACTION: refer to staff to prepare program</p>	



City of Bainbridge Island Public Lands and Churches

Attachment A1 - City owned and Church owned properties in Winslow

Legend

-  Churches
-  Publicly Owned Property
-  Winslow Urban Area

Yeomalt
Pt.

0 0.075 0.15 0.3 0.45 0.6 Miles

Eagle

Ronald Commons

A New Shoreline Community

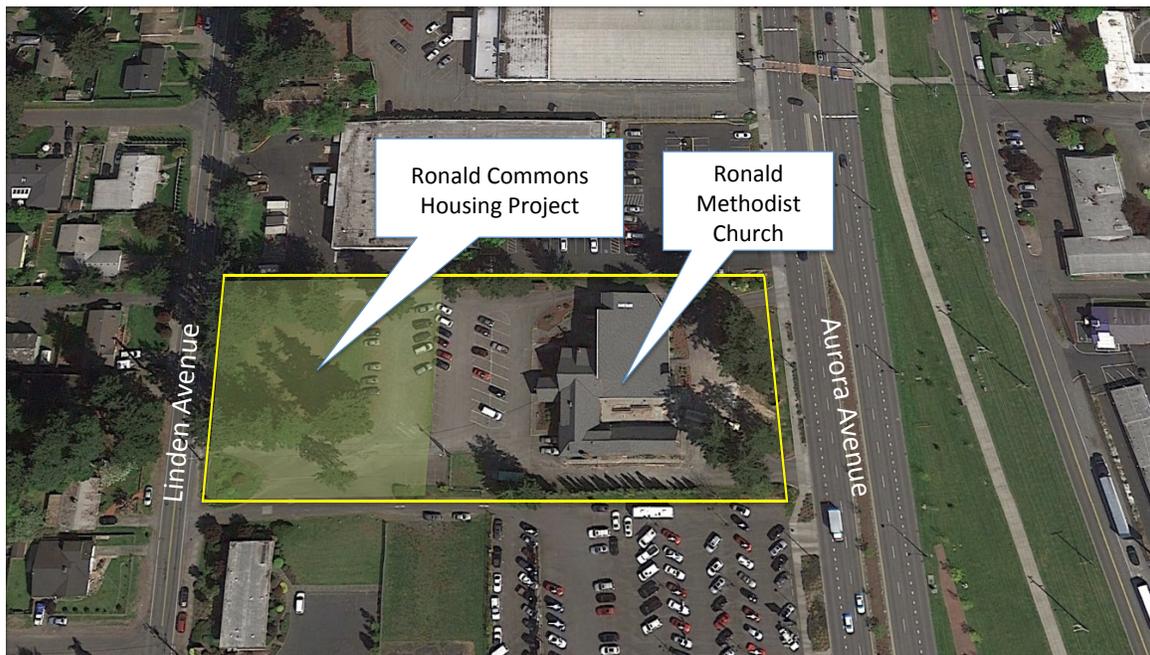


Ronald Commons will feature :

60 affordable apartments, including 12 for veterans and their families, owned and operated by Compass Housing Alliance.

A 12,000 square foot integrated service center with support programs and a food bank, owned and operated by Hopelink.

A remodeled Ronald United Methodist Church, offering and expanded presence and a wider range of resources to the community.



Attachment A3 - Multifamily Property Tax Exemption Article

Puget Sound Regional Council



Featured Tool: Multifamily Tax Exemption*

A state law (RCW 84.14) helps cities attract residential development. Cities may exempt multifamily housing from property taxes in urban centers with insufficient residential opportunities. The city defines a residential target area or areas within an urban center; approved project sites are exempt from *ad valorem* property taxation on the residential improvement value for a period of eight or 12 years. The 12-year exemption requires a minimum level of affordable housing to be included in the development (at least 20% of the units or 100% if the building is solely owner-occupied). The eight-year exemption leaves the public benefit requirement—in both type and size—to the jurisdiction’s discretion. The eight-year exemption carries no affordable housing requirement. Cities must pass an enabling ordinance to enact the MFTE and to allow applications for the exemption.

What issue does a multifamily tax exemption address?

This tool encourages multifamily development and redevelopment in compact mixed-use districts (urban centers) where housing and affordable housing options are deficient. Through the multifamily tax exemption, a jurisdiction can incentivize dense and diverse housing options in urban centers lacking in housing choices or affordable units. MFTE can also apply to rehabilitating existing properties and redeveloping vacant or underused properties.

Where is the multifamily tax exemption most applicable?

Cities planning under the Growth Management Act (RCW 36.70a) that have designated urban centers with a deficiency of housing opportunities are eligible to implement this tool. In King, Pierce, Snohomish and Kitsap counties, cities must have at least 5,000 in population. Cities must designate eligible areas that contain urban centers. Urban centers—in the context of the MFTE-enabling legislation—have a particular meaning:

“...a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

- (a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;
- (b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and
- (c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use.” (RCW 84.14.010)

Based on the state law, designated districts are commercial or business districts with some mix of uses. Such areas may exist in downtowns, commercial corridors, or other intensively developed neighborhoods. Examples of designated districts throughout the central Puget Sound region are listed in the model policies, regulations and other information section below.

MFTEs have been effective in producing multifamily units in the region’s larger cities. Since its inception, the MFTE law has been expanded to include smaller cities. The effectiveness of this tool in larger jurisdictions could make it an attractive tool for smaller and moderate-sized cities that meet the population threshold.

Tool Profile

Focus Areas

- [Urban Centers](#)
- [Transit Oriented Development](#)
- [Expensive Housing Markets](#)

Housing Types

- Multifamily
- Ownership
- Rental
- Market Rate
- Subsidized

Affordability Level

- 80 to 120% AMI
- Less than 80% AMI

Goal

- Affordability

** Tool considered very effective for producing units at less than 80% AMI.*

Case Studies

- [Burien Multifamily Tax Exemption](#)
- [Lynnwood Multifamily Tax Exemption](#)
- [Tacoma Multifamily Tax Exemption](#)

Multifamily tax exemptions can encourage relatively dense attached flats or townhomes, in mixed-use projects or residential complexes, which means this tool is particularly useful in urban centers and transit-oriented developments. Dense development is also economically efficient in expensive housing markets, and can reduce housing costs.

What do I need to know about using or developing a multifamily tax exemption?

The MFTE implementation process is guided by state law in RCW 84.14. In general, the process includes preparing a resolution of intent to adopt a designated area, holding a public hearing and adopting and implementing standards and guidelines to be utilized in considering applications for the MFTE. Among other criteria, the designated area must lack “sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center, if the affordable, desirable, attractive, and livable places to live were available” (RCW 84.14.040). A property owner applying for an MFTE must meet the criteria (per RCW 84.14.030) summarized here:

- The new or rehabilitated multiple-unit housing must be located in city-designated residential target areas within the urban center.
- The project must meet local government requirements for height, density, public benefit features, number and size of proposed development, parking, income limits for occupancy, limits on rents or sale prices, and other adopted requirements.
- At least 50% of the space in the new, converted or rehabilitated multiple-unit housing must be for permanent residential occupancy. Existing occupied multifamily developments must also provide a minimum of four additional multifamily units.
- New construction multifamily housing and rehabilitation improvements must be completed within three years from approval.
- The applicant must enter into a contract with the city containing terms and conditions satisfactory to the local government.

The exemption is recorded with the County Assessor. Developments that violate the terms of the exemption are required to pay back the exempted tax amounts, plus interest, and a penalty fee.

Cities considering the program need to weigh the temporary (8-12 years) loss of tax revenue against the potential attraction of new investment to targeted areas. MFTE projects could be catalysts for other private investment if they help prove an area is desirable. Pairing the MFTE with other tools that affect density and cost reductions may help the city achieve higher density and affordable housing in designated mixed-use and commercial areas. These tools include:

Featured Tools:

- [Density Bonuses](#)
- [Transit Oriented Development Overlays](#)
- [Parking Reductions](#)

Other Tools:

- [Mixed-Use Development](#)
- [No Maximum Densities](#)
- [Planned Action EIS](#) (see in particular the SEPA residential and mixed-use exemption option)

Creating a Multifamily Tax Exemption Program

A typical planning process (gathering information, conducting public outreach and considering ordinances), together with the specific requirements of state law, will guide the development of an MFTE program:

Determine Residential Target Areas. Cities will need to consider the state law’s “urban center” definition which addresses existing commercial businesses, mixed uses and infrastructure.

Analysis. To support the urban center and residential target area designations, a jurisdiction should map or collect data on current uses, services and capital facilities. The data and analysis should demonstrate that the area lacks sufficient residential housing, including affordable housing. Estimating the tax revenue and other cost-benefit implications of the MFTE program can help to determine whether the program would help achieve housing goals. For example, prior to adopting an MFTE ordinance, the City of Lynnwood prepared an analysis of tax revenue that would be foregone should the ordinance be adopted. In terms of other cost-benefits, jurisdictions can calculate the short-term construction and sales tax revenues and employment gains that stem from the development. (See case studies below.)

Conduct Public Outreach. The MFTE statute suggests that a jurisdiction considering an MFTE program issue a resolution of intention to designate an urban center and residential target area(s). The resolution should also identify the time and place of a hearing. Cities must hold a public hearing on the proposed MFTE ordinance and follow notification schedules listed in the statute. While crafting the ordinance, cities will also want to involve stakeholders, including developers of multifamily and condominium housing, affordable housing developers and advocacy groups, and major land owners and businesses in the residential target areas. See [Citizen Education and Outreach](#) for strategies to involve the public and stakeholders.

Determine Standards. The state affords jurisdictions wide latitude to design their MFTE laws to meet local planning goals. Proposals must meet local zoning and development standards and any affordability and occupancy criteria the jurisdiction sets. Based on the intent of the MFTE, key decisions to shape the ordinance include:

- **Encouraging more versus less participation from developers.** The threshold number of units to qualify for the exemption and public benefit requirements could influence the level of participation by developers. A low threshold and limited public benefit requirements, for example, might make the program more accessible to developers, but yield a smaller return in public benefit for foregone revenue. A high threshold and demanding public benefit requirement, however, might make the program unattractive to developers. Striking a balance between requirements, goals and attractiveness is essential to a successful MFTE program.
- **Encouraging affordable housing versus market-rate housing.** RCW 84.14 allows cities to provide a bonus for affordable housing provision by allowing 12 years of tax exemption, versus the eight years offered for market-rate developments. Cities could further encourage developers to opt for the 12-year exemption by setting a threshold number of units or public benefit to attract development. Offering other incentives (e.g., [density bonuses](#), [flexible single family development regulations](#)) along with the MFTE can strengthen interest in affordable development in the city.
- **Encouraging more rental or ownership housing.** The law provides incentives for affordable multifamily rental housing where the whole development is eligible for the tax exemption if at least 20% of the units are affordable to low- and moderate-income households. To receive the 12-year exemption, buildings intended to be entirely owner-occupied must price all of their units affordably for moderate-income households. Setting a threshold number of rental versus ownership units could influence the type of tax exemption applications received in favor of a particular tenure.
- **Ensuring that affordability endures.** Affordable units may be at risk of losing their affordable status both at the end of the MFTE time period and during its existence if a developer decides to opt out of the program. Requiring [affordability covenants](#) for these units is one method for preserving affordability.

Implementation. State law requires an application process and procedures. Cities will need to allocate staff and resources to reviewing applications. A fee may be charged for the request. The agency has 90 days to approve or deny the application.

Monitoring. The law requires regular reporting by applicants and by cities. Upon construction and annually thereafter, the property owner must file reports containing information such as occupancy, vacancy, and other

items required by the city. Cities will also want to make sure that these requirements are not too onerous. In some cases, partnerships between non-profits and for-profits to ensure secure income certifications and monitoring may be helpful.

Cities must report to the State of Washington Department of Commerce annually by December 31 regarding certificates granted, unit types, monthly rent and sales costs, and other information. Cities could use these regular reports to monitor the success of the program and build supporting data for future program goals. Some cities establish a sunset clause by which time the city may re-adopt or let expire the tax exemption program.

Model Policies, Model Regulations, Other Information

State of Washington: [RCW 84.14](#)

See adopted ordinances of the following cities at: <http://www.mrsc.org/codes.aspx>

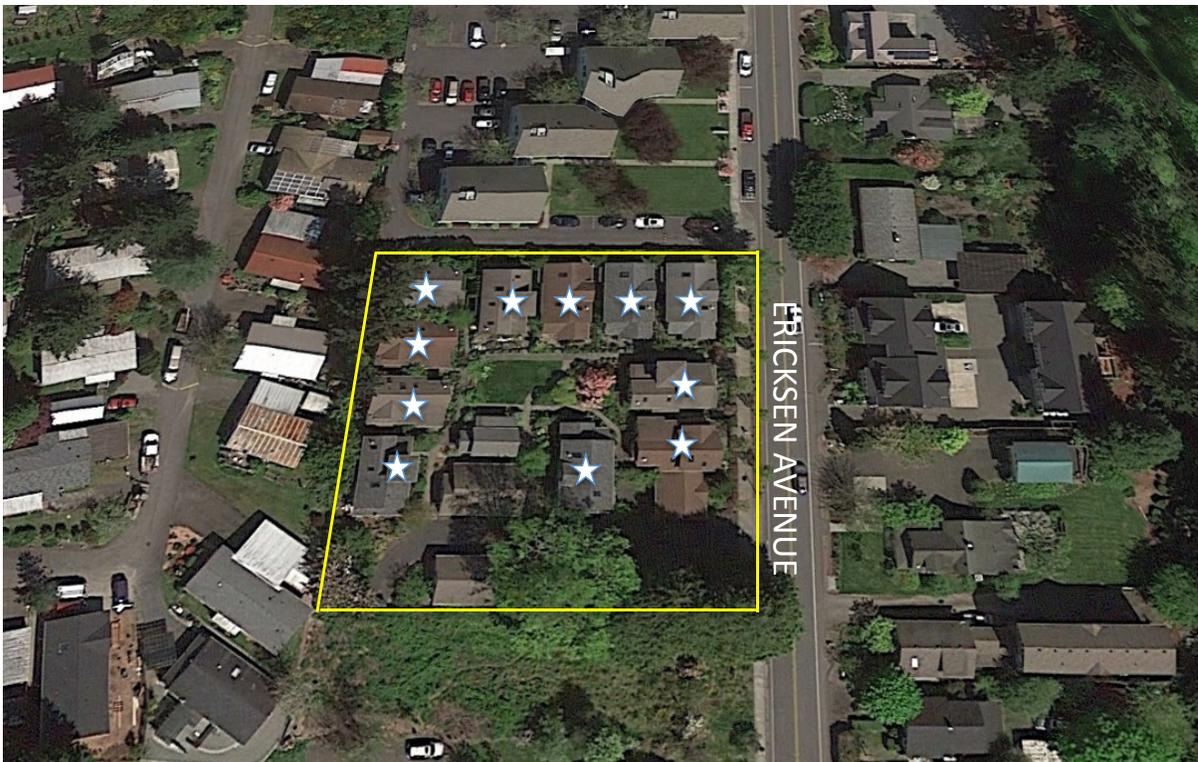
- Bremerton: Downtown Core and Multiple Residential Zones
- Burien: Downtown Commercial Zone
- Everett: Downtown and vicinity
- Kirkland: Central Kirkland/Houghton; Totem Lake and North Rose Hill; Juanita; and NE 85th Street
- Lynwood: City Center
- Puyallup: central business district (CBD) and certain areas south of the CBD
- SeaTac: 154th Street and SeaTac/Airport Station Areas
- Seattle: 39 neighborhoods or districts
- Shoreline: Ridgecrest District
- Tacoma: 17 mixed-use centers designated on the Generalized Land Use Plan and in the Comprehensive Plan

Attachment A4 – Two Cottage Housing Examples

ERICKSEN AVENUE COTTAGES



Ericksen Avenue Cottages Bainbridge Island, WA	
Site Size	.91 Acre
Dwelling Units/Acre	12
Number of Homes	11
Square Footage Range of Homes	1,049 to 1,099 Sq. Ft.



GREENWOOD AVENUE COTTAGES



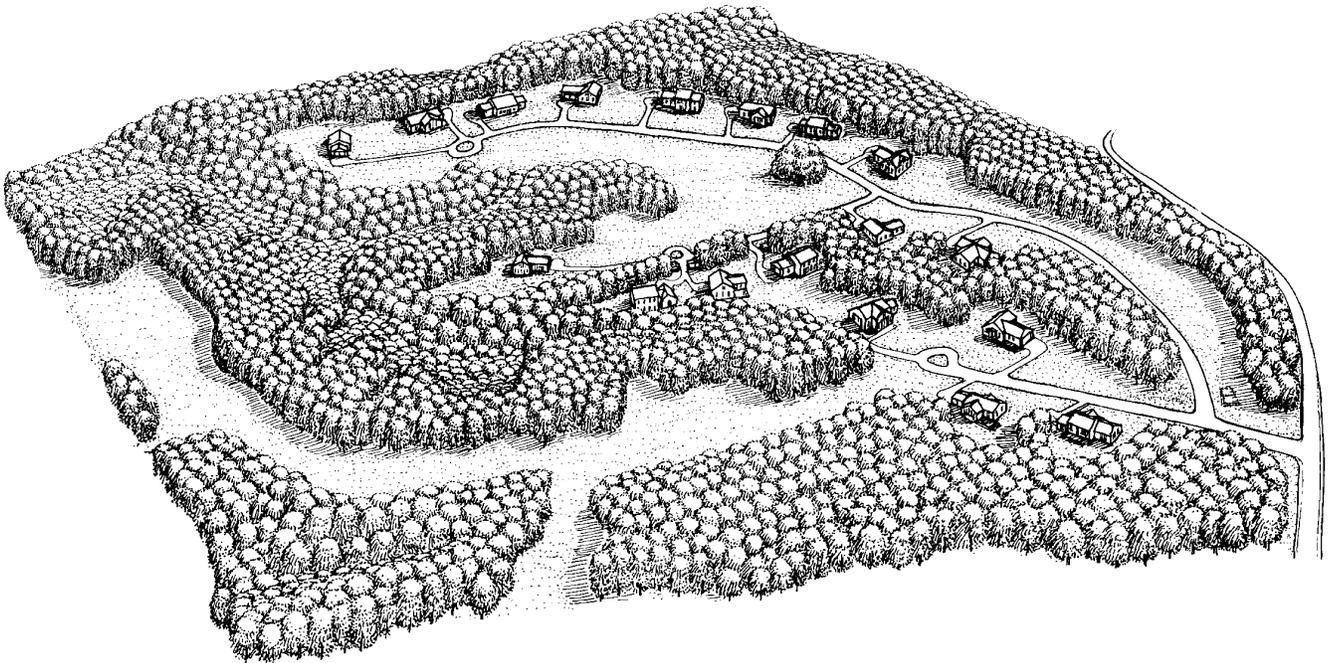
Greenwood Avenue Cottages Shoreline, WA	
Site Size	1.25 Acres
Dwelling Units/Acre	10
Number of Homes	8
Square Footage Range of Homes	768 to 998 Sq. Ft.



Growing Greener

PUTTING CONSERVATION INTO LOCAL CODES

Communities across Pennsylvania are realizing that they can conserve their special open spaces and natural resources **at the same time** they achieve their development objectives. The tools? Conservation zoning and conservation subdivision design, an approach we're calling *Growing Greener*.



These *Growing Greener* tools are illustrated in the above subdivision, where the developer builds the maximum number of homes permitted under the municipality's zoning, while at the same time permanently protecting over half of the property. The open space is then added to an interconnected network of community greenspaces.

If you want your community to take control of its destiny and ensure that new development creates more livable communities in the process, the *Growing Greener* approach might be right for you.

Introduction

This booklet summarizes how municipalities can use the development process to their advantage to protect interconnected networks of open space: natural areas, greenways, trails and recreational land. Communities **can** take control of their destinies so that their conservation goals are achieved in a manner fair to all parties concerned. All that is needed are some relatively straight-forward amendments to municipal comprehensive plans, zoning ordinances, and subdivision ordinances. These steps are described in the sections that follow.

Growing Greener is a collaborative effort of the Pennsylvania Department of Conservation and Natural Resources, Natural Lands Trust, Pennsylvania State University Cooperative Extension and an advisory committee comprised of officials from the Department of Community and Economic Development, Center for Rural Pennsylvania, Lycoming County Planning Commission, Pennsylvania Environmental Council, Pennsylvania Planning Association and Department of Environmental Protection.

During 1997, Natural Lands Trust conducted

three *Growing Greener* pilot workshops hosted by the Centre County Planning Commission, Centre Region Planning Agency, Tri-County Regional Planning Commission and the Union County Planning Commission. Our focus during 1998 will be helping county planning agencies and other planning organizations build their capacity to help the communities they work with realize their conservation goals. In order to assist them, Natural Lands Trust has developed multi-media educational materials available for use by community planners across the state. We invite county planning agencies and interested planning consultants and conservancies to join us as *Growing Greener* partners.

How do I learn more?

For more information contact:



1031 Palmers Mill Road
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Growing Greener
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The Conservation Design Concept

Each time a property is developed into a residential subdivision, an opportunity exists for adding land to a community-wide network of open space. Although such opportunities are seldom taken in many municipalities, this situation could be reversed fairly easily by making several small but significant changes to three basic local land-use documents—the comprehensive plan, the zoning ordinance and the subdivision and land development ordinance. Simply stated, Conservation Design rearranges the development on each parcel as it is being planned so that half (or more) of the buildable land is set aside as open space. Without controversial “down zoning,” the same number of homes can be built in a less land-consumptive manner, allowing the balance of the property to be permanently protected and added to an interconnected network of community green spaces. This “density-neutral” approach provides a fair and equitable way to balance conservation and development objectives.

Four Keys to Conservation

Communities protect open space because it protects streams and water quality, provides habitat for plants and animals, preserves rural “atmosphere,” provides recreational areas, protects home values and reduces costs of municipal services. In short, land conservation makes your community a better place to live. Four basic actions underlie the *Growing Greener* process:

1 Envision the Future: Performing “community audits.” Successful communities have a realistic understanding of their future. The audit projects past and current development trends into the future so that officials and residents may easily see the long-term results of con-

tinuing with current ordinance provisions. Communities use this knowledge to periodically review and adjust their goals and strategies for conservation and development.

2 Protect Open Space Networks Through Conservation Planning. Successful communities have a good understanding of their natural and cultural resources. They establish reasonable goals for conservation and development—goals that reflect their special resources, existing land use patterns and anticipated growth. Their comprehensive plans document these resources, goals and policies. The plan contains language about the kinds of

ordinance updating and conservation programs necessary for those goals to be realized. A key part of the Comprehensive Plan is a *Map of Potential Conservation Lands* that is intended to guide the location of open space in each new subdivision as it is being laid out.

3 Conservation Zoning: A “Menu of Choices.” Successful communities have legally defensible, well-written zoning regulations that meet their “fair share” of future growth and provide for a logical balance between community goals and private landowner interests. They incorporate resource suitabilities, flexibility, and incentives to require the

inclusion of permanent conservation lands into new subdivisions. The five zoning options summarized in this publication and described in detail in the *Growing Greener* manual respect the private property rights of developers without unduly impacting the remaining natural areas that make our communities such special places in which to live, work, recreate and invest in.

4 Conservation Subdivision Design: A Four-Step Process. Successful communities recognize that both design standards and the design process play an important part in conserving community resources. Such communities adopt subdivision codes which require detailed site surveys

and analyses identifying the special features of each property, and introduce a simple methodology showing how to lay out new development so that the majority of those special features will be permanently protected in designated conservation areas or preserves. To a

considerable extent, those preserves within new subdivisions can be pre-identified in the Comprehensive Plan so that each such area will form an integral part of a community-wide network of protected open space, as noted above.



Figure 2
A matching pair of graphics, taken from an actual "build-out map," showing existing conditions (mostly undeveloped land) contrasted with the potential development pattern of "checkerboard suburbia" created through conventional zoning and subdivision regulations.

1 Envisioning the Future

Performing "Community Audits"

The "community audit" visioning process helps local officials and residents see the ultimate result of continuing to implement current land-use policies.

The process helps start discussions about how current trends can be modified so that a greener future is ensured.

Sad but true, the future that faces most communities with standard zoning and subdivision codes is to witness the systematic conversion of every unprotected acre of buildable land into developed uses.

Most local ordinances allow or encourage standardized layouts of "wall-to-wall houselots." Over a period of decades this process produces a broader pattern of "wall-to-wall subdivisions" (see Figure 1). No community actively plans to become a bland suburb without open space. However, most zoning codes program exactly this outcome.

Municipalities can perform audits to see the future before it happens, so that they will be able to judge whether a mid-course correction is needed. A community audit entails:

Numerical Analysis of Development Trends.

The first step involves a numerical analysis of growth projections, both in terms of the number of dwelling units and the number of acres that will probably be converted into houselots and streets under present codes.

Regulatory Evaluation.

The second step consists of an evaluation of the land-use regulations that are currently on the books, identifying their strengths and weaknesses and offering constructive recommendations about how they can incorporate the conservation techniques described in this booklet. It should also include a realistic appraisal of the extent to which private conservation efforts are likely to succeed in protecting lands from development through various nonregulatory approaches such as purchases or donations of easements or fee title interests.

"Build-Out" Maps.

The third step entails mapping future development patterns on a map of the entire municipality (see Figure 2). Alternatively, the "build-out" map could focus only on selected areas in the municipality where development is of the greatest immediate concern, perhaps due to the presence of special features identified in the comprehensive plan or vulnerability due to development pressures.

The following parts of this booklet describe practical ways in which communities can take control of their destinies so that conservation goals will be achieved simultaneously with development objectives, in a manner that is fair to all parties concerned. Three interrelated documents—the Comprehensive Plan, Zoning Code and Subdivision and Land Development Code, stand together like a three-legged stool providing a balanced footing for achieving a municipality's conservation goals.

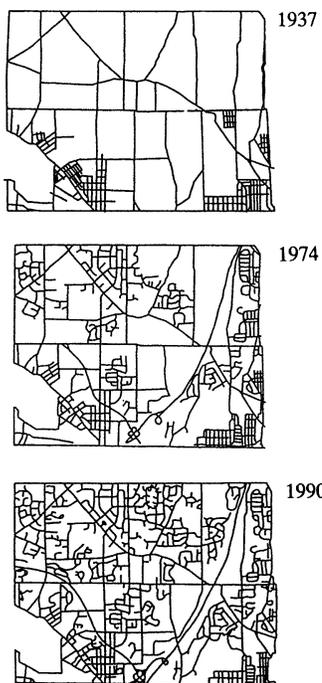


Figure 1
The pattern of "wall-to-wall subdivisions" that evolves over time with zoning and subdivision ordinances which require developers to provide nothing more than houselots and streets.

2 Protecting Open Space Networks Through Conservation Planning

Although many communities have adopted either Comprehensive Plans or Open Space Plans containing detailed inventories of their natural and historic resources, very few have taken the next logical step of pulling together all that information and creating a *Map of Potential Conservation Lands*.

Such a map is vitally important to any community interested in conserving an interconnected network of open space. The map serves as the tool which guides decisions regarding which land to protect in order for the network to eventually take form and have substance.

A *Map of Potential Conservation Lands* starts with information contained in the community's existing planning documents. The next task is to identify two kinds of resource areas. *Primary Conservation Areas* comprise only the most severely constrained lands, where development is typically restricted under current codes and laws (such as wetlands, floodplains, and slopes exceeding 25%). *Secondary Conservation Areas* include all other locally noteworthy or significant features of the natural or cultural landscape—such as mature

woodlands, wildlife habitats and travel corridors, prime farmland, groundwater recharge areas, greenways and trails, river and stream corridors, historic sites and buildings, and scenic viewsheds. These *Secondary Conservation Areas* are often best understood by the local residents who may be directly involved in their identification. Usually these resource areas are totally unprotected and are simply zoned for one kind of development or another.

A base map is then prepared on which the *Primary Conservation Areas* have been added to an inventory of lands which are already protected (such as parks, land trust preserves, and properties under conservation easement). Clear acetate sheets showing each kind of *Secondary Conservation Area* are then laid on top of the base map in an order reflecting the community's preservation priorities (as determined through public discussion).

This overlay process will reveal certain situations where two or more conservation features appear together (such as woodlands and wildlife habitats, or farmland and scenic

viewsheds). It will also reveal gaps where no features appear.

Although this exercise is not an exact science, it frequently helps local officials and residents visualize how various kinds of resource areas are connected to one another, and enables them to tentatively identify both broad swaths and narrow corridors of resource land that could be protected in a variety of ways.

Figure 3 shows a portion of a map prepared for one Chester County township which has followed this approach.

The planning techniques which can best implement

the community-wide *Map of Potential Conservation Lands* are *Conservation Zoning* and *Conservation Subdivision Design*. These techniques which work hand in hand are described in detail below. Briefly stated, conservation zoning expands the range of development choices available to landowners and developers. Just as importantly, it also eliminates the option of creating full-density "checkerboard" layouts that convert all land within new subdivisions into houselots and streets.

The second technique, "conservation subdivision design," devotes half or

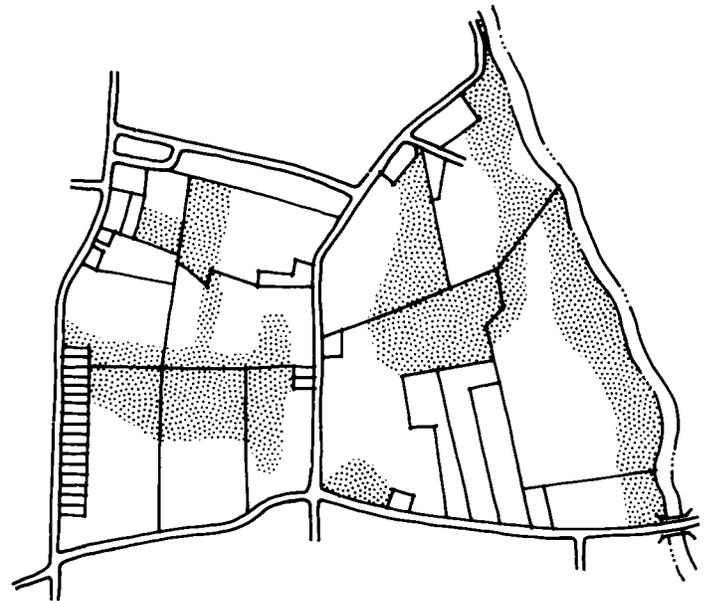


Figure 3
Part of a *Map of Potential Conservation Lands* for West Manchester Township, York County. West Manchester's map gives clear guidance to landowners and developers as to where new development is encouraged on their properties. Township officials engaged a consultant to draw, on the official tax parcel maps, boundaries of the new conservation lands network as it crossed various properties, showing how areas required to be preserved in each new development could be located so they would ultimately connect with each other. In this formerly agricultural municipality the hedgerows, woodland remnants, and the riparian buffer along the creek were identified as core elements of the conservation network.

more of the buildable land area within a residential development as undivided permanent open space. Not surprisingly, the most important step in designing a conservation subdivision is to identify the land that is to be preserved. By using the community-wide Map

of Potential Conservation Lands as a template for the layout and design of conservation areas within new subdivisions, these developments help to create an interconnected network of open space spanning the entire municipality.

Figure 4 shows how the open space in three adjoining subdivisions has been designed to connect, and illustrates the way in which the Map of Potential Conservation Lands can become a reality.

Figure 5 provides a bird's-eye view of a land-

scape where an interconnected network of conservation lands has been gradually protected through the steady application of conservation zoning techniques and conservation subdivision design standards.

3 Conservation Zoning A "Menu" of Choices

The main reason subdivisions typically consist of nothing more than houselots and streets is that most local land-use ordinances ask little, if anything, with respect to conserving open space or providing neighborhood amenities (see Figure 6).

Communities wishing to break the cycle of "wall-to-wall houselots" need to consider modifying their zoning to actively and legally encourage subdivisions that set aside at least 50 percent of the land as permanently protected open space and to incorporate substantial density disincentives for developers who do not conserve any significant percentage of land.

Following this approach, a municipality would first calculate a site's yield using traditional zoning. A developer would then be permitted full density *only* if at least 50 percent of the buildable land is maintained as undivided open space (illustrated in

Figure 7: "Option 1"). Another full-density option could include a 25 percent density bonus for preserving 60 percent of the unconstrained land (Figure 8: "Option 2"). Municipalities might also consider offering as much as a 100 percent density bonus for protecting 70 percent of that land (Figure 11: "Option 5").

It is noteworthy that the 36 village-like lots in Option 5 occupy less land than the 18 lots in Option 1, and that Option 5 therefore contributes more significantly to the goal of creating community-wide networks of open space. The village-scale lots in Option 5 are particularly popular with empty-nesters, single-parent households, and couples with young children. Its traditional layout is based on that of historic hamlets and villages in the region, and new developments in this category could be controlled as Conditional

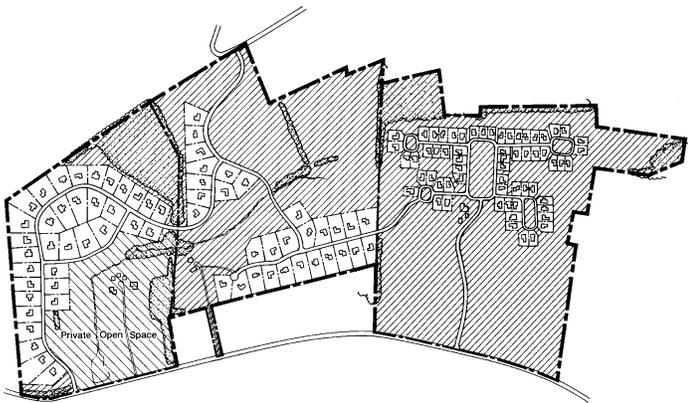


Figure 4
The conservation lands (shown in gray) were deliberately laid out to form part of an interconnected network of open space in these three adjoining subdivisions.

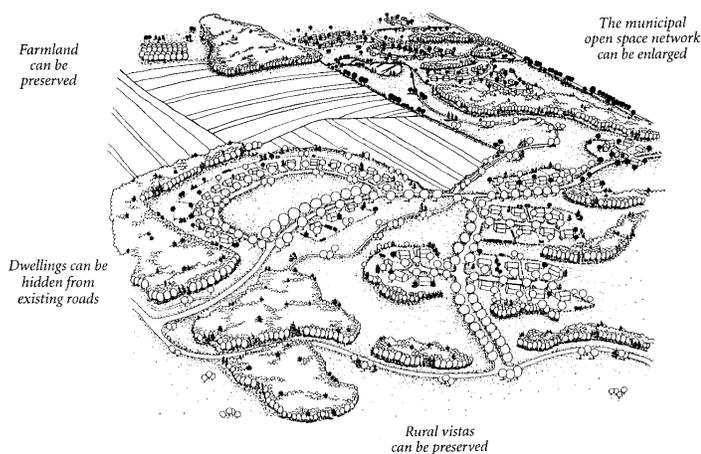


Figure 5
This sketch shows how you can apply the techniques described in this booklet to set aside open space which preserves rural character, expands community parkland and creates privacy for residences. (Source: Montgomery County Planning Commission)

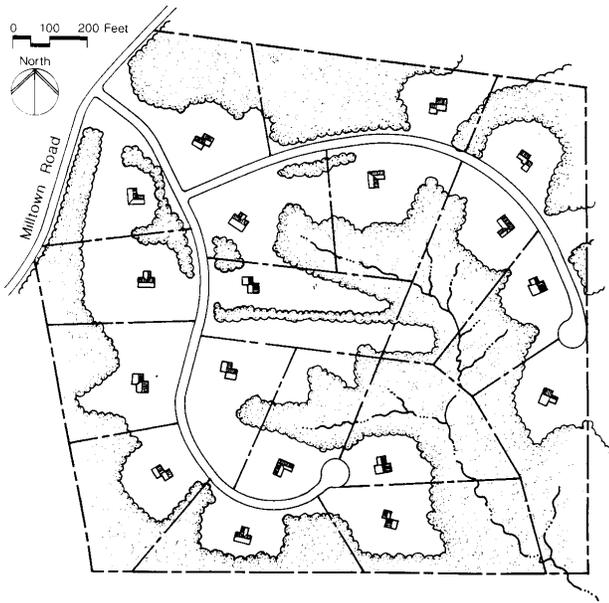


Figure 6 YIELD PLAN

The kind of subdivision most frequently created in Pennsylvania is the type which blankets the development parcel with houselots, and which pays little if any attention to designing around the special features of the property. In this example, the house placement avoids the primary conservation areas, but disregards the secondary conservation features. However, such a sketch can provide a useful estimate of a site's capacity to accommodate new houses at the base density allowed under zoning—and is therefore known as a "Yield Plan."

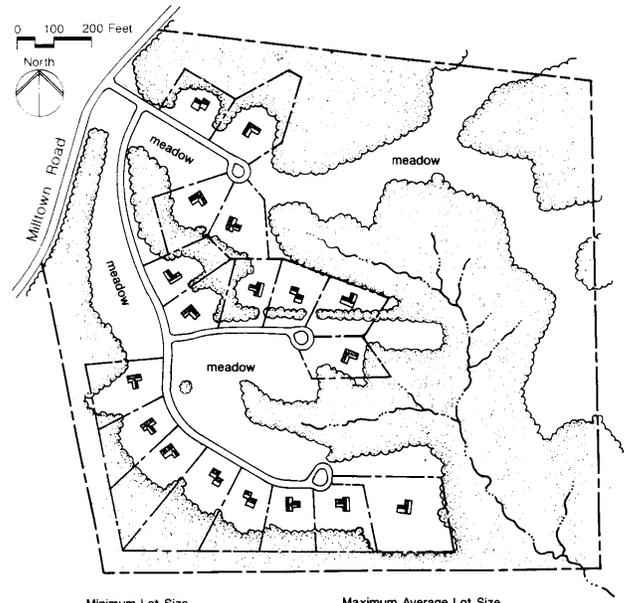


Figure 7 OPTION 1

Density-neutral with Pre-existing Zoning
18 lots
Lot Size Range: 20,000 to 40,000 sq. ft.
50% undivided open space

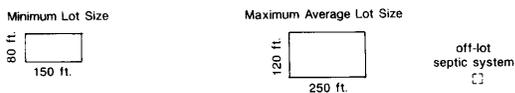
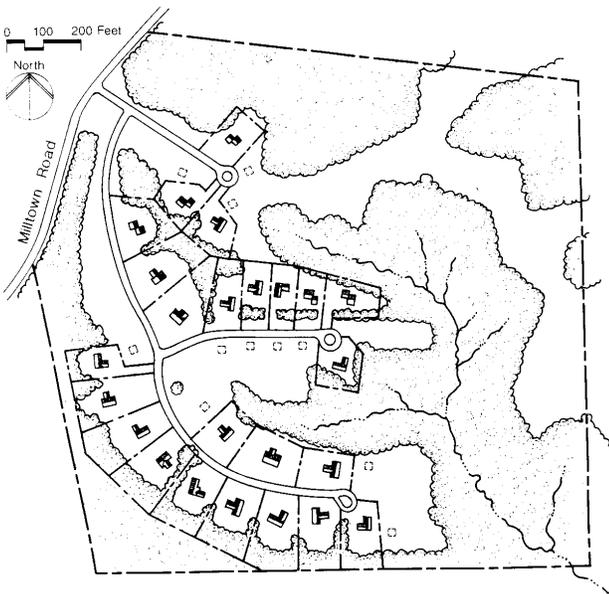


Figure 8 OPTION 2

Enhanced Conservation and Density
24 Lots
Lot Size Range: 12,000 to 24,000 sq. ft.
60% undivided open space

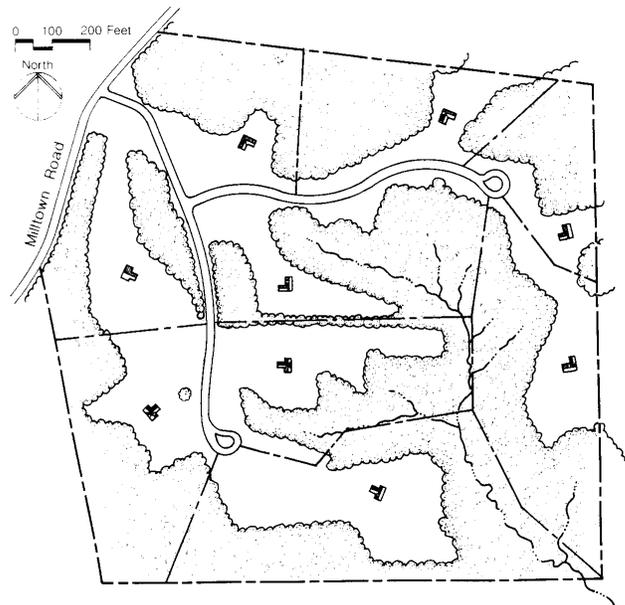


Figure 9 OPTION 3

50% Density Reduction
9 Lots
Typical Lot Size: 160,000 sq. ft. (4 acres)
Estate Lots

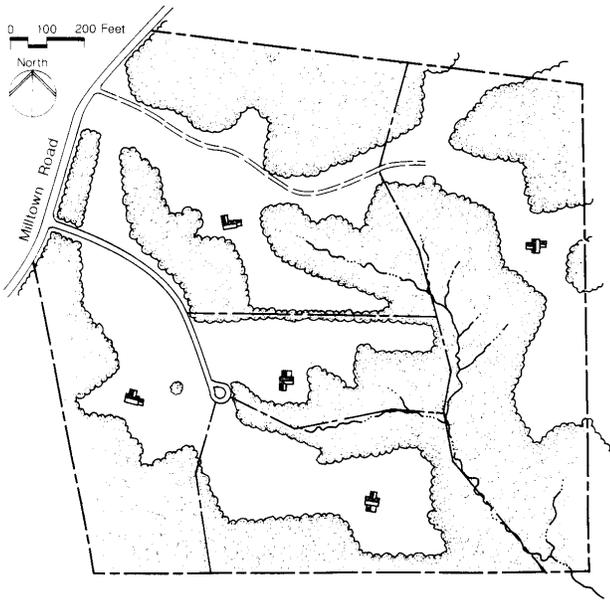


Figure 10 OPTION 4
Country Properties
5 Lots
Maximum Density: 10 acres per principal dwelling
70% density reduction

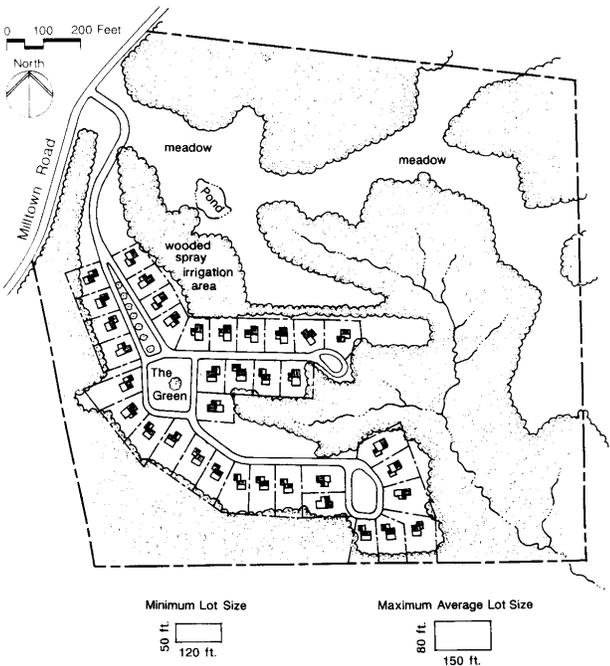


Figure 11 OPTION 5
Hamlet or Village
36 Lots
Lot Size Range: 6,000 to 12,000 sq. ft.
70% undivided open space

Uses subject to a set of extensively illustrated design standards.

Developers wishing to serve the “estate lot” market have two additional options. One involves lots containing at least four acres of unconstrained land (Figure 9: “Option 3”). The other is comprised of “country properties” of at least 10 acres, which may be accessed by gravel drives built to new township standards for very low-volume rural lanes (Figure 10: “Option 4”). An additional incentive to encourage developers to choose this fourth option would typically be permission to build up to two accessory dwellings on these properties. Those units would normally be limited in size, subject to architectural design standards to resemble traditional estate buildings, and restricted from further lot division.

Two or more of these options could be combined on a single large property. One logical approach

would combine Options 4 and 5, with the Option 4 “country properties” comprising part of the required greenbelt open space around an Option 5 village (see Figure 12).

Conspicuously absent from this menu of choices is the conventional full-density subdivision providing no unfragmented open space (Figure 6). Because that kind of development causes the largest loss of resource land and poses the greatest obstacle to conservation efforts, it is not included as an option under this approach.

For illustrative purposes, this booklet uses a one dwelling unit per two acre density. However, conservation zoning is equally applicable to higher density zoning districts of three or four units per acre. Such densities typically occur in villages, boroughs, urban growth boundary areas and TDR receiving areas where open space setbacks are critical to the residents’ quality of life.

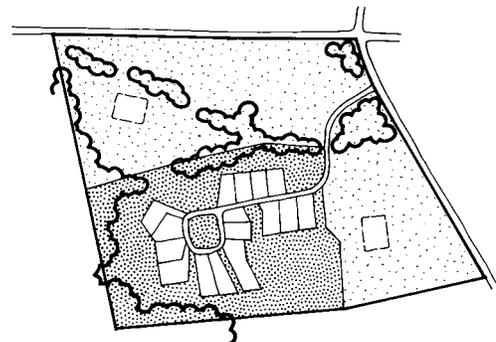


Figure 12
An Option 5 village surrounded by its own open space and buffered from the township road by two “country properties” (Option 4).

4 Conservation Subdivision Design

A Four-Step Process

Designing subdivisions around the central organizing principle of land conservation is not difficult. However, it is essential that ordinances contain clear standards to guide the conservation design process. The four-step approach described below has been proven to be effective in laying out new full-density developments where all the significant natural and cultural features have been preserved.

Step One consists of identifying the land that should be permanently protected. The developer incorporates areas pre-identified on the community-wide *Map of Potential Conservation Lands* and then performs a detailed site analysis in order to precisely locate features to be conserved. The developer first identifies all the constrained lands (wet, floodprone, and steep), called *Primary Conservation Areas* (Figure 13). He then identifies *Secondary Conservation Areas* (Figure 14) which comprise noteworthy features of the property that are typically unprotected under current codes: mature woodlands, greenways and trails, river and stream corridors, prime farmland, hedgerows and

individual free-standing trees or tree groups, wildlife habitats and travel corridors, historic sites and structures, scenic viewsheds, etc. After “greenlining” these conservation elements, the remaining part of the property becomes the *Potential Development Area* (Figure 15).

Step Two involves locating sites of individual houses within the Potential Development Area so that their views of the open space are maximized (Figure 16). The number of houses is a function of the density permitted within the zoning district, as shown on a *Yield Plan* (Figure 6). (In unsewered areas officials should require a 10 percent sample of the most questionable lots—which they would select—to be tested for septic suitability. Any lots that fail would be deducted and the applicant would have to perform a second 10 percent sample, etc.)

Step Three simply involves “connecting the dots” with streets and informal trails (Figure 17), while **Step Four** consists of drawing in the lot lines (Figure 18).

This approach reverses the sequence of steps in laying out conventional subdivisions, where the

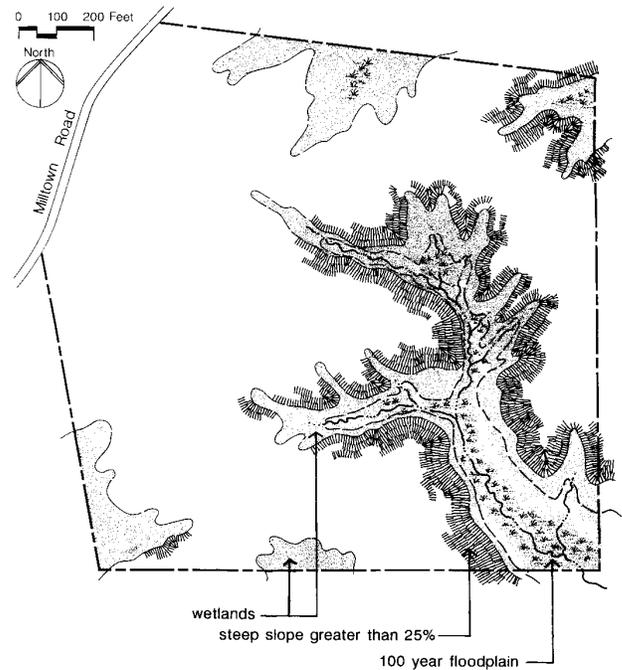


Figure 13 STEP ONE, Part One Identifying Primary Conservation Areas

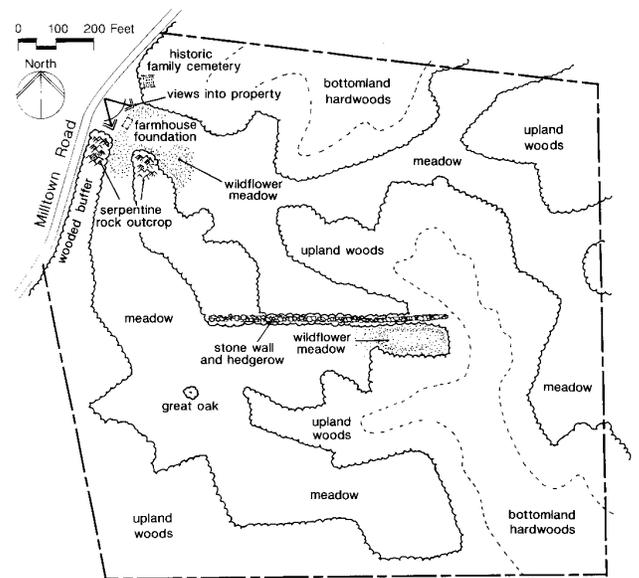


Figure 14 STEP ONE, Part Two Identifying Secondary Conservation Areas

Typically unprotected under local codes, these special features constitute a significant asset to the property value and neighborhood character. Secondary conservation areas are the most vulnerable to change, but can easily be retained by following this simple four-step process.

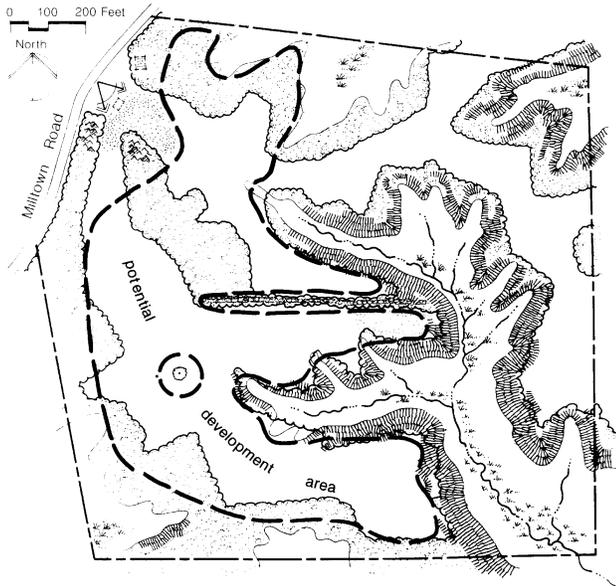


Figure 15 STEP ONE, Part Three
Potential Development Areas
for Options 1, 2, and 5

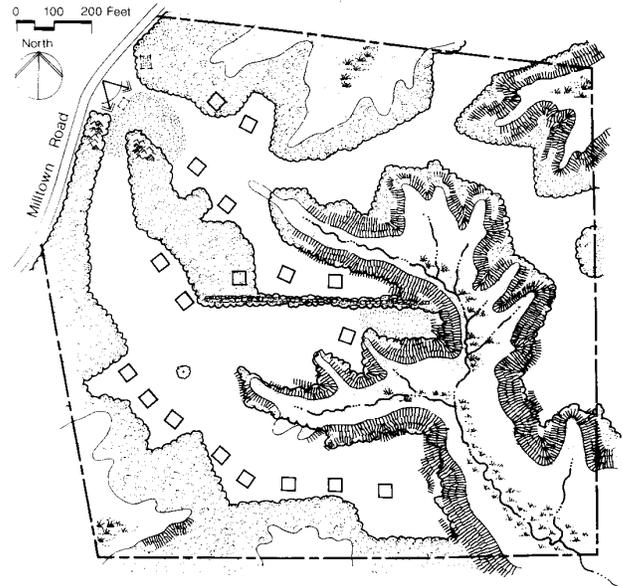


Figure 16 STEP TWO
Locating House Sites

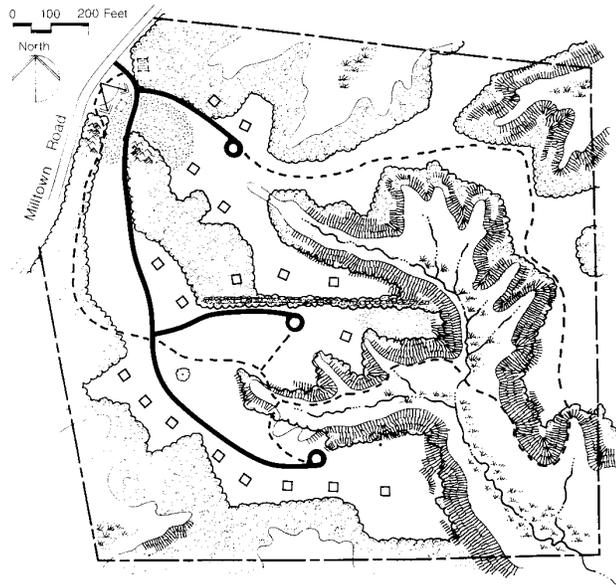


Figure 17 STEP THREE
Aligning Streets and Trails

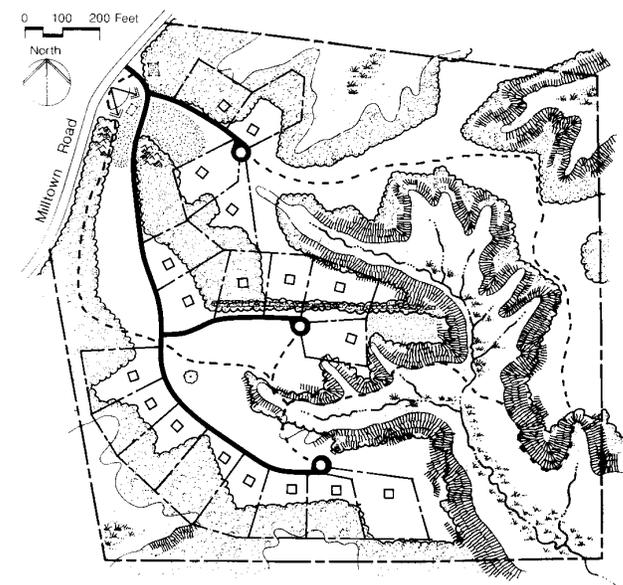


Figure 18 STEP FOUR
Drawing in the Lot Lines

street system is the first thing to be identified, followed by lot lines fanning out to encompass every square foot of ground into houselots. When municipalities require nothing more than “houselots and streets,” that is all they receive. But by setting community standards higher and requiring 50 to 70 percent

open space as a precondition for achieving full density, officials can effectively encourage conservation subdivision design. The protected land in each new subdivision would then become building blocks that add new acreage to community-wide networks of interconnected open space each time a property is developed.

landowner or developer wants it to be. In the vast majority of situations, municipalities themselves have no desire to own and manage such conservation land, which they generally feel should be a neighborhood responsibility. In cases where local officials wish to provide township recreational facilities (such as ballfields or trails) within conservation subdivisions, the municipality must negotiate with the developer for the purchase of that land on a “willing seller/willing buyer” basis. To facilitate such negotiations, conservation zoning ordinances can be written to include density incentives to encourage developers to designate specific parts of their conservation land for public ownership or for public access and use.

A legal analysis of the *Growing Greener* workbook, by Harrisburg land use attorney Charles E. Zaleski, Esq., is reprinted on the last page of this booklet.

How can a community ensure permanent protection for conservation lands?

The most effective way to ensure that conservation land in a new subdivision will remain undeveloped forever is to place a permanent conservation ease-

ment on it. Such easements run with the chain of title, in perpetuity, and specify the various conservation uses that may occur on the property. These restrictions are separate from zoning ordinances and continue in force even if legal densities rise in future years. Easements are typically held by land trusts and units of government. Since political leadership can change over time, land trusts are the most reliable holder of easements, as their mission never varies. Deed restrictions and covenants are, by comparison, not as effective as easements, and are not recommended for this purpose. Easements can be modified only within the spirit of the original agreement, and only if the co-holders agree. In practice, while a proposal to erect another house or a country club building on the open space would typically be denied, permission to create a small ballfield or a single tennis court in a corner of a large conservation meadow or former field might well be granted.

What are the ownership, maintenance, tax and liability issues?

Among the most commonly expressed concerns about subdivisions which conserve open space are questions about who will

Frequently Asked Questions About Conservation Subdivision Design

Does this conservation-based approach involve a “taking”?

No. People who do not fully understand this conservation-based approach to subdivision design may mistakenly believe that it constitutes “a taking of land without compensation.” This misunderstanding may stem from the fact that conservation subdivisions, as described in this booklet, involve either large percentages of undivided open space or lower overall building densities.

There are two reasons why this approach does *not* constitute a “taking.”

First, no density is taken away. Conservation zoning is fundamentally fair because it allows landown-

ers and developers to achieve full density under the municipality’s current zoning—and even to increase that density significantly—through several different “as-of-right” options. Of the five options permitted under conservation zoning, three provide for either full or enhanced densities. The other two options offer the developer the choice to lower densities and increase lot sizes. Although conservation zoning precludes full-density layouts that do not conserve open space, this is legal because there is no constitutional “right to sprawl.”

Second, no land is taken for public use. None of the land which is required to be designated for conservation purposes becomes public (or even publicly accessible) unless the

own and maintain the conservation land, and who will be responsible for the potential liability and payment of property taxes. The short answer is that whoever owns the conservation land is responsible for all of the above. But who owns this land?

Ownership Choices.

There are basically four options, which may be combined within the same subdivision where that makes the most sense.

• *Individual Landowner*

At its simplest level, the original landowner (a farmer, for example) can retain ownership to as much as 80 percent of the conservation land to keep it in the family. (At least 20 percent of the open space should be reserved for common neighborhood use by subdivision residents.) That landowner can also pass this property on to sons or daughters, or sell it to other individual landowners, with permanent conservation easements running with the land and protecting it from development under future owners. The open space should not, however, be divided among all of the individual subdivision lots as land management and access difficulties are likely to arise.

• *Homeowners' Associations*

Most conservation land within subdivisions is owned and managed by homeowners' associations

(HOAs). A few basic ground rules encourage a good performance record. First, membership must be automatic, a precondition of property purchase in the development. Second, zoning should require that bylaws give such associations the legal right to place liens on properties of members who fail to pay their dues. Third, facilities should be minimal (ball fields and trails rather than clubhouses and swimming pools) to keep annual dues low. And fourth, detailed maintenance plans for conservation areas should be required by the municipality as a condition of approval. The municipality has enforcement rights and may place a lien on the property should the HOA fail to perform their obligations to maintain the conservation land.

• *Land Trusts*

Although homeowners' associations are generally the most logical recipients of conservation land within subdivisions, occasionally situations arise where such ownership most appropriately resides with a land trust (such as when a particularly rare or significant natural area is involved). Land trusts are private, charitable groups whose principal purpose is to protect land under its stewardship from inappropriate change. Their most common role is to hold easements or fee simple title on conservation lands

within new developments and elsewhere in the community, to ensure that all restrictions are observed. To cover their costs in maintaining land they own or in monitoring land they hold easements on, land trusts typically require some endowment funding. When conservation zoning offers a density bonus, developers can donate the proceeds from the additional "endowment lots" to such trusts for maintenance or monitoring.

• *Municipality or Other Public Agency*

In special situations a local government might desire to own part of the conservation land within a new subdivision, such as when that land has been identified in a municipal open space plan as a good location for a neighborhood park or for a link in a community trail network. Developers can be encouraged to sell or donate certain acreage to municipalities through additional density incentives, although the final decision would remain the developer's.

• *Combinations of the Above*

As illustrated in Figure 19, the conservation land within new subdivisions could involve multiple ownerships, including (1) "non-common" open space such as cropland retained by the original farmer, (2) common open space such as ballfields owned by an HOA, and (3) a trail

corridor owned by either a land trust or by the municipality.

Maintenance Issues.

Local officials should require conservation area management plans to be submitted and approved prior to granting final subdivision approval. In Lower Merion Township, Montgomery County, the community's "model" management plan is typically adopted by reference by each subdivision applicant. That document identifies a dozen different kinds of conservation areas (from woodlands and pastures to ballfields and abandoned farmland that is reforesting) and describes recommended management practices for each one. Farmland is typically leased by HOAs and land trusts to local farmers, who often agree to modify some of their agricultural practices

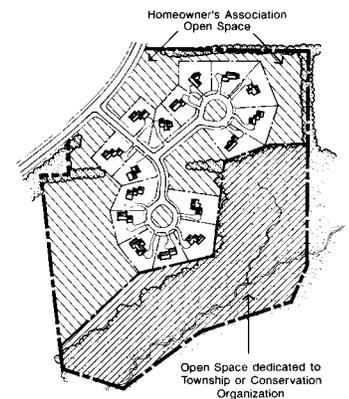


Figure 19
Various private and public entities can own different parts of the open space within conservation subdivisions, as illustrated above.

to minimize impacts on nearby residents. Although ballfields and village greens require weekly mowing, conservation meadows typically need only annual mowing. Woodlands generally require the least maintenance: trimming bushes along walking trails, and removing invasive vines around the outer edges where greater sunlight penetration favors their growth.

Tax Concerns. Property tax assessments on conservation subdivisions should not differ, in total, from those on conventional developments. This is because the same number of houses and acres of land are involved in both cases (except when part of the open space is owned by a public entity, which is uncommon). Although the open space in conservation subdivisions is taxed low because easements prevent it from being developed, the rate is similar to that applied to land in conventional subdivisions where the larger houselots are not big enough to be further subdivided. (For example, the undeveloped back half of a one-acre lot in a one-acre zoning district is subject to minimal taxation because it has no further development value.)

Liability Questions. The Pennsylvania Recreation Use of Land and Water Act protects owners of undevel-

oped land from liability for negligence if the landowner does not charge a fee to recreational users. A tree root or rock outcropping along a trail that trips a hiker will not constitute landowner negligence. To be sued successfully in Pennsylvania, landowners must be found to have "willfully or maliciously failed to guard against a dangerous condition." This is a much more difficult case for plaintiffs to make. Even so, to cover themselves against such situations, owners of conservation lands routinely purchase liability insurance policies similar to those that most homeowners maintain.

How can on-site sewage disposal work with conservation subdivisions?

The conventional view is that the smaller lots in conservation subdivisions make them more difficult to develop in areas without sewers. However, the reverse is true. The flexibility inherent in the design of conservation subdivisions makes them superior to conventional layouts in their ability to provide for adequate sewage disposal. Here are two examples:

Utilizing the best soils. Conservation design requires the most suitable soils on the property to be identified at the outset, enabling houselots to be arranged to take the best advantage of them. If one end of a property has deeper, better drained soils, it makes more sense to site the homes in that part of the property rather than to spread them out, with some lots located entirely on mediocre soils that barely manage to meet minimal standards for septic approval.

Locating individual systems within the open space. Conventional wisdom also holds that when lots become smaller, central water or sewage disposal is required. That view overlooks the practical alternative of locating individual wells and/or individual septic systems within the permanent open space adjacent to the more compact lots typical of conservation subdivisions, as shown in Figure 20. There is no engineering reason to require that septic filter beds must be located within each houselot. However, it is essential that the final approved subdivision plan clearly indicate which parts of the undivided open space are designated for septic disposal, with each lot's disposal area graphically indicated through dotted lines extending out

into the conservation land. These filter beds can be located under playing fields, or conservation meadows in the same way they typically occupy positions under suburban lawns. (If mound systems are required due to marginal soil conditions, they are best located in passive use areas such as conservation meadows where the grass is cut only once a year. Such mounds should also be required to be contoured with gently sloping sides to blend into the surrounding landscape wherever possible.)

Although maintenance and repair of these septic systems remains the responsibility of individual lot owners, it is recommended that HOAs be authorized to pump individual septic tanks on a

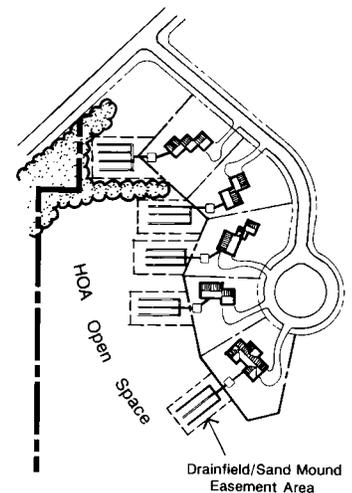


Figure 20
A practical alternative to central water or sewage disposal facilities are individually-owned wells and/or septic systems located within conservation areas, in places specifically designated for them on the final plan.

regular basis (every three or four years) to ensure that the accumulated sludge never rises to a level where it can flow into and clog the filter beds. This inexpensive, preventive maintenance greatly extends the life of filter beds.

How does this conservation approach differ from “clustering”?

The *Growing Greener* conservation approach described here differs dramatically from the kind of “clustering” that has occurred in many communities over the past several decades. The principal points of difference are as follows:

Higher Percentage and Quality of Open Space. In contrast with typical cluster codes, conservation zoning establishes higher standards for both the quantity and quality of open space that is to be preserved. Under conservation zoning, 50 to 70 percent of the unconstrained land is permanently set aside. This compares with cluster provisions that frequently require only 25 to 30 of the gross land area be conserved. That minimal open space often includes all of the most unusable land as open space, and sometimes also includes undesirable, left-over areas such as

stormwater management facilities and land under high-tension power lines.

Open Space Pre-Determined to Form Community-wide Conservation Network. Although clustering has at best typically produced a few small “green islands” here and there in any municipality, conservation zoning can protect blocks and corridors of permanent open space. These areas can be pre-identified on a comprehensive plan *Map of Potential Conservation Lands* so that each new development will add to—rather than subtract from—the community’s open space acreage.

Eliminates the Standard Practice of Full-Density with No Open Space. Under this new system, full density is achievable for layouts in which 50 percent or more of the unconstrained land is conserved as permanent, undivided open space. By contrast, cluster zoning provisions are typically only optional alternatives within ordinances that permit full density, by right, for standard “cookie-cutter” designs with no open space.

Simply put, the differences between clustering and conservation zoning are like the differences between a Model T and a Taurus.

How do residential values in conservation subdivisions compare to conventional subdivisions?

Another concern of many people is that homes in conservation subdivisions will differ in value from those in the rest of the community. Some believe that because so much land is set aside as open space, the homes in a conservation subdivision will be prohibitively priced and the municipality will become a series of elitist enclaves. Other people

take the opposite view, fearing that these homes will be smaller and less expensive than their own because of the more compact lot sizes offered in conservation subdivisions.

Both concerns are understandable but they miss the mark. Developers will build what the market is seeking at any given time, and they often base their decision about selling price on the character of surrounding neighborhoods and the amount they must pay for the land.

In conservation subdivisions with substantial open space, there is little or no correlation between lot size and price. These developments have sometimes been described as “golf

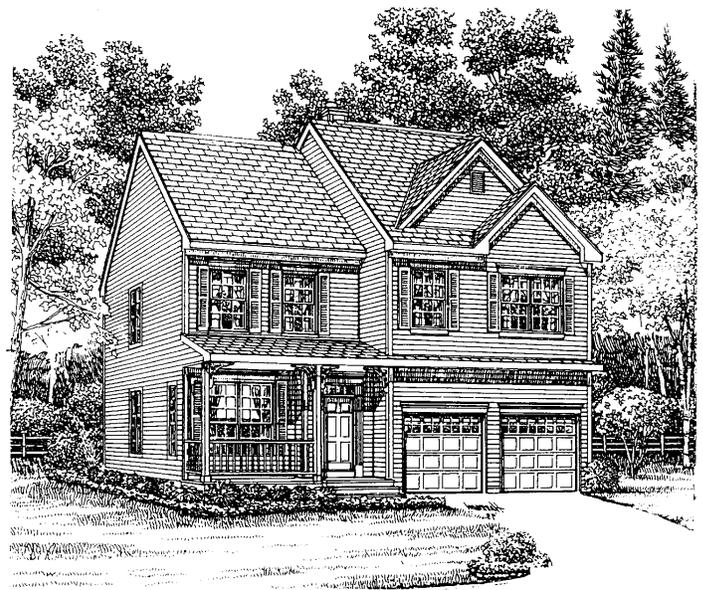


Figure 21 This house design fits comfortably on lots 45 to 50 feet wide, demonstrating that homes with 2,400 sq. ft. of floorspace and a two-car garage can be built within the village-scale lots featured in the “Option 5” zoning alternative. (Courtesy of Hovnanian Homes, Fox Heath subdivision, Perkiomen Township, Montgomery County.)

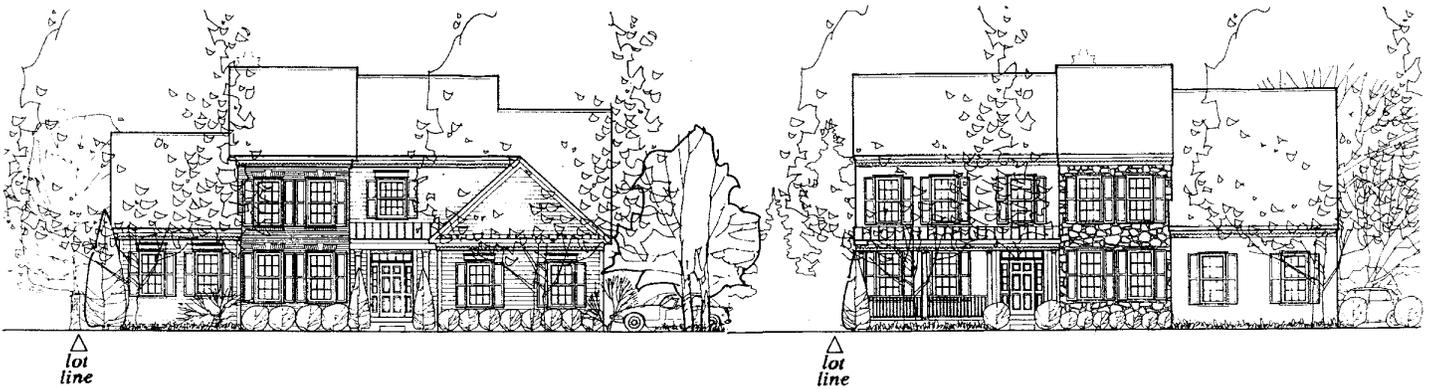


Figure 22

Developers who wish to build larger homes will find this example interesting. Although it contains nearly 3,000 sq. ft. and features an attractive side-loaded garage, it fits onto lots just 100 feet wide. This has been achieved by positioning the homes off-center, with 30 feet of side yard for the driveway and five feet of yard on the opposite side. This ensures 35 feet spacing between homes. (Courtesy of Realen Homes, Ambler)

course communities without the golf course,” underscoring the idea that a house on a small lot with a great view is frequently worth as much or more than the same house on a larger lot which is boxed in on all sides by other houses.

It is a well-established fact of real estate that people pay more for park-like settings, which offset their tendency to pay less for smaller lots. Successful developers know how to

market homes in conservation subdivisions by emphasizing the open space. Rather than describing a house on a half-acre lot as such, the product is described as a house with 20 and one-half acres, the larger figure reflecting the area of conservation land that has been protected in the development. When that conservation area abuts other similar land, as in the township-wide open space network, a further marketing advantage exists.

involving density shifts among contiguous parcels. Other techniques can be effective, but their potential for influencing the “big picture” is limited. The *Growing Greener* approach offers the greatest potential because it:

- does not require public expenditure,
- does not depend upon landowner charity,
- does not involve complicated regulations for shifting rights to other parcels, and
- does not depend upon the cooperation of two or more adjoining landowners to make it work.

Of course, municipalities should continue their efforts to preserve special properties in their entirety whenever possible, such as by working with landowners interested in donating easements or fee title to a local conservation group, purchasing development

rights or fee title with county, state or federal grant money, and transferring development rights to certain “receiving areas” with increased density. However, until such time as more public money becomes available to help with such purchases, and until the Transfer of Development Rights mechanism becomes more operational at the municipal level, most parcels of land in any given community will probably eventually be developed. In that situation, coupling the conservation subdivision design approach with multi-optioned conservation zoning offers communities the most practical, doable way of protecting large acreages of land in a methodical and coordinated manner.

Relationship of the *Growing Greener* Approach to Other Planning Techniques

Successful communities employ a wide array of conservation planning techniques simultaneously, over an extended period of time. Complementary tools which a community should consider adding to its

“toolbox” of techniques include the purchase of development rights; donations of sales to conservancies; the transfer of development rights; and “landowner compacts”

tot lot and an informal picnic grove provide additional amenities to the residents. At *Farmview*, 137 acres of productive farmland were permanently protected, in addition to most of the woodlands. This subdivision prompted the township to revise its conventional zoning so that the developer's creative design could be approved. Since that time over 500 acres of prime farmland has been preserved in this community through conservation subdivision design representing a \$3.5 million conservation achievement (at an average land value of \$7,000) and these figures continue to grow as further subdivisions are designed. The potential for replicating this and achieving similar results throughout the Commonwealth is enormous.

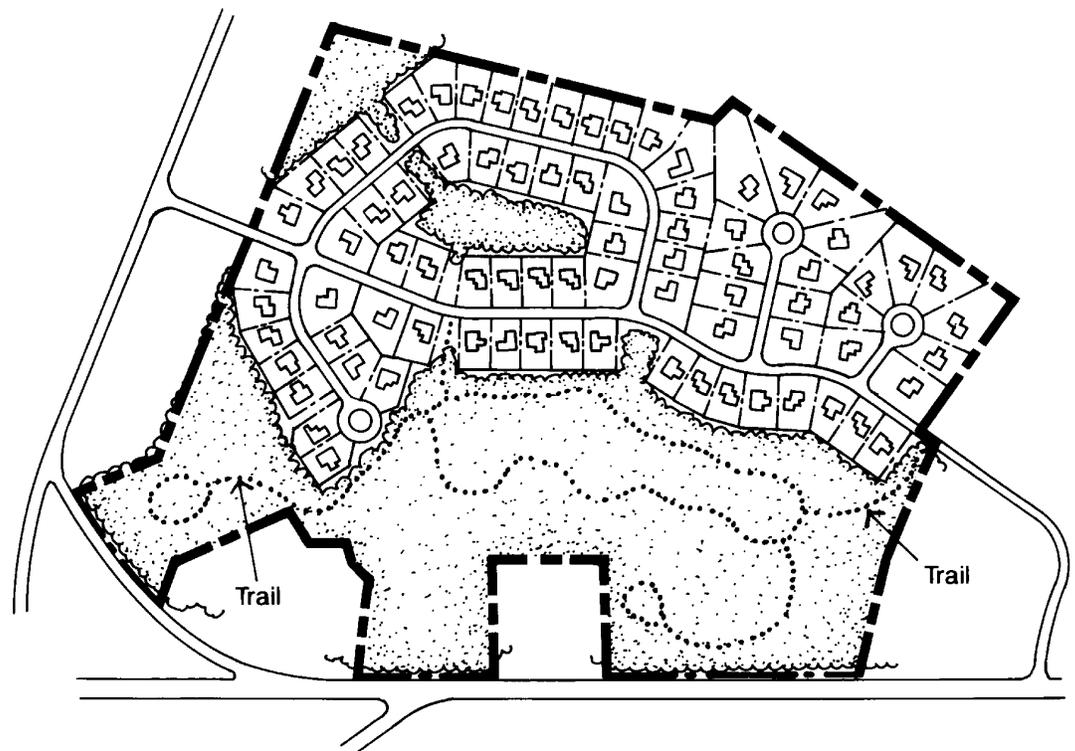
Garnet Oaks

Foulk Road, Bethel Township, Delaware County

Developer: Realen Homes, Ambler

Development Period: 1993-94

Just over half of this 58-acre site has been conserved as permanent privately-owned open space through the simple expedient of reducing lot sizes to the 10,000-12,000 sq. ft. range (approximately 1/4 acre). The developer reports that these lot sizes did not hinder sales because about two-thirds of the lots directly abut the densely wooded open space, which gives them the feel and privacy of larger lots. In fact, the evidence indicates that the open space definitely enhanced sales in two ways: increased absorption rates and higher



prices (through premiums added to the prices of lots which abut the conservation areas).

The locations of these conservation areas were carefully selected after a comprehensive analysis of the site's natural and historic features had been conducted. Those secondary features that were identified for preservation included a line of mature sycamore trees along an existing farm lane, a stone wall and springhouse, and several areas of healthy deciduous upland woods, in addition to the site's delineated wetlands. Based on information received from post-sales interviews in its previous developments, Realen's staff learned that today's

homebuyers are considerably more discerning than they were 10 and 20 years ago, and now look for extra amenities not only in the houses but also in the neighborhood setting. This knowledge led Realen to take special measures to protect trees on individual houselots and within the street right-of-way. Their approach included collaborating with the Morris Arboretum in preparing a training manual for subcontractors and conducting training sessions in tree conservation practices, attendance at which was required of all subcontractors.

The centerpiece of Garnet Oaks' open space is the near mile-long wood-

land trail which winds its way through the 24-acre conservation area, connecting a well-equipped playground and a quiet picnic grove to the street system in three locations. Where the trail traverses areas of wet soils it is elevated on a low wooden boardwalk. This trail, which was cleared with assistance from a local Boy Scout Troop, features numerous small signs identifying the common and botanical names of the various plants and trees along the trail. Realen's staff also designed and produced an attractive eight-page trail brochure that illustrates and de-

scribes the flora, fauna, environmental areas, and historic features along the trail. The guide also explains the developer's creative use of low-lying woods as a temporary detention area for storm-water runoff, a naturalistic design that helped avoid a more conventional approach in which many trees within the preserve would have been removed to provide for a conventionally engineered basin. Realen's sales staff reported that prospective buyers who picked up a copy of the trail brochure and ventured out onto the trail typically decided to make their home purchase in Garnet Oaks.

Farmview

Woodside Road and Dolington Road, Lower Makefield Township, Bucks County

Developer: Realen Homes, Ambler

Development Period: 1990-96

Located on a 418-acre site, Farmview is a 322-lot "density-neutral" subdivision whose layout was designed to conserve 213 acres of land (51 percent of the property), including 145 acres of cropland and 68 acres of mature woods. While 59 percent of the original farmland was needed for development, 41 percent categorized as prime agricultural and farmland of statewide importance was able to be

preserved in addition to nearly all of the wooded areas.

The 145 acres of farmland that have been saved were donated by the developer to the Lower Makefield Farmland Preservation Corporation, a local conservation organization whose members include local farmers, township residents and an elected official liaison. This cropland is leased to farmers in the community through multi-year agree-

ments that encourage adaptation of traditional farming practices to minimize impacts on the residents, whose yards are separated from their operations by a 75-foot deep hedgerow area thickly planted with native species trees and shrubs.

Realen Homes also donated the 68 acres of woodland to the township to support local conservation efforts in creating an extended network of forest

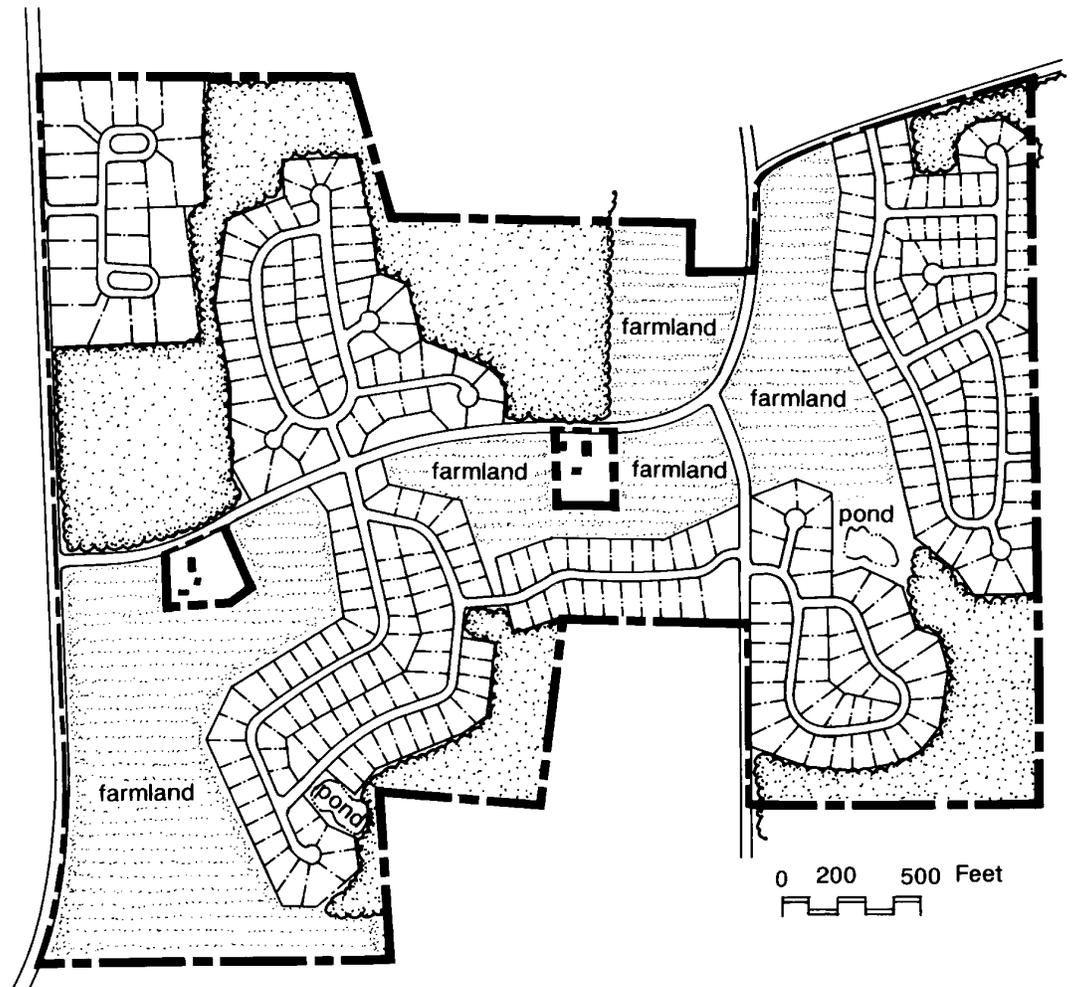
habitat and wildlife travel corridors. These areas also offer potential for an informal neighborhood trail system in future years. (The developer's offer to construct such trails was declined by the supervisors, citing liability concerns, despite the fact that other townships in the region actively encourage such trails in new subdivisions and also on township conservation lands.)

Had it not been for the developer's initiative and continued interest, this subdivision would have been developed into the same number of standard-sized one-acre lots, which was the only option permitted under the township's zoning ordinance in 1986 when Realen purchased the property. After 18 months of discussing the pros and cons of allowing smaller lots in exchange for serious land conservation benefits, the supervisors adopted new zoning provisions permitting such layouts specifically to preserve farmland when at least 51

percent of a property would be conserved. These regulations target the most productive soils as those which should be "designed around."

Although other developers were at first skeptical of Realen's proposal to build large homes (2,600–3,700 sq. ft.) on lots which were typically less than a half an acre in a marketplace consisting primarily of one acre zoning, the high absorption rate helped

convince them that this approach was sound. Contributing to the project's benefits to both the developer and the township were reduced infrastructure costs (for streets, water, and sewer lines). Premiums added to "view lots" abutting the protected fields or woods also contributed to the project's profitability.



ECKERT SEAMANS CHERIN & MELLOTT, LLC

ATTORNEYS AT LAW

October 16, 1997

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Post Office Box 1248
Harrisburg, PA 17108

Randall G. Arendt, Vice President
Conservation Planning
Natural Lands Trust, Inc.
1031 Palmers Mill Road
Media, PA 19063

Re: Conservation Planning Documents and
***Growing Greener* Workbook**

Dear Mr. Arendt:

I have had the opportunity to review the *Growing Greener* workbook and the proposed conservation planning concepts set forth in that workbook for compliance with the provisions of the United States Constitution, the Pennsylvania Constitution, and the Pennsylvania Municipalities Planning Code (the "MPC"). In my opinion, the conservation planning concepts as set forth in the *Growing Greener* workbook are constitutional land use control concepts and the provisions comport with the requirements of the Pennsylvania Municipalities Planning Code.

The subdivision concept which provides for a conceptual preliminary plan and standards for that plan is authorized specifically under the MPC as part of the two-stage planning process allowed by Section 503(1) of the MPC. The Zoning Ordinance concept utilizes a multi-tiered zoning system with options available to the landowner under the Zoning Ordinance. Such a device is specifically authorized under Section 605 of the MPC which specifically encourages innovation and promotion of flexibility, economy and ingenuity in development based upon express standards and criteria. The proposed ordinances contained in the workbook satisfy that specific requirement.

The provisions of both the United States Constitution and the Pennsylvania Constitution require that the land use regulations be reasonable and be intended to benefit the public health, safety and welfare. The concept of providing a variety of options for choices by the landowner meets both the reasonableness and public purpose tests of constitutionality. The benefit of the *Growing Greener* concept is that there will be a greater amount of usable open space, while at the same time the landowners will be able to make reasonable use of their property under the options available as proposed in the workbook.

Individual municipalities within the Commonwealth of Pennsylvania will have to apply the concepts and will have to establish their own densities based upon the unique circumstances in each particular municipality. There can be no guarantee that all such ordinances will be constitutional unless they satisfy the requirements of being reasonable with regard to the locational circumstances of the particular property and community in question. However, it is my opinion that if the concepts and procedures set forth in the *Growing Greener* workbook are followed and that the densities and requirements reflect the unique circumstances of the individual municipality, that the *Growing Greener* concept is lawful and constitutional in the Commonwealth. The concepts set forth in the *Growing Greener* workbook provide a new method of addressing the pressures of growth and development throughout both the urban and rural portions of the Commonwealth of Pennsylvania, and I urge the municipal officials to give full consideration to these exciting new concepts.

Very truly yours,



Charles E. Zaleski

CEZ/ljr

Harrisburg
Pittsburgh
Allentown
Philadelphia
Boston
Fort Lauderdale
Boca Raton
Miami
Tallahassee
Washington, D.C.

ZONING PRACTICE

NOVEMBER 2015



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 11

PRACTICE TINY HOUSES



Tiny Houses, and the Not-So-Tiny Questions They Raise

By Donald L. Elliott, FAICP, and Peter Sullivan, AICP

Where did they come from—those cute little “cabins-on-wheels” that you see being pulled down the road or sitting on a lot?

With wood siding, a pitched roof, gable windows . . . and even a porch with a railing. All that’s missing is the dog in the yard (presumably a small dog in a small yard).

Tiny houses are the latest vehicle/structures to join the small house movement, and are now trending due to television programs like *Tiny House Nation*. Many individuals and couples seem proud to say they live a small but sophisticated lifestyle in less than 500 square feet. Often their stated motivation is to declutter and live a simpler life—maybe even a life “off the grid.”

Cuteness aside, tiny houses raise some interesting questions for planners. Questions like . . .

“Is this a house, or a trailer, or . . . just what is it?”

“Would this qualify as an accessory dwelling unit?”

“Does this meet the residential building code?”

“Where should we allow this to be parked . . . or occupied . . . and for how long?”

This article attempts to answer some of those questions for the types of small, trailer-mounted units described above. The sections below review how these units fit into the general U.S. system of land-use control through building codes, zoning ordinances, subdivision regulations, and private



“Tiny house, Portland” by Tammy (Weekend with Dee), Wikimedia (CC-BY-2.0)

➡ Most localities have no specific provisions in their subdivision or zoning codes to accommodate small trailer-mounted homes outside of recreational vehicle parks.

restrictive covenants. In addition to addressing individual tiny homes, we also address how small communities of tiny homes might be created.

WHAT ARE THEY?

What are tiny houses? The answer is simpler than you think. They’re recreational vehicles (RVs), and a careful read of the manufacturers’ websites makes that clear. One manufacturer, Tumbleweed Tiny House Company, states that their product is “an RV like you’ve never seen before.”

For planners, this makes things simpler. The question then becomes, “Where do we allow RVs to be occupied?” Traditionally, the answer has been campgrounds (for temporary living) and RV parks (for longer-term living). Most communities typically limit temporary RV occupancy (in a campground or elsewhere) to 30 days, and the logic behind this is that RVs are not permanent dwellings. They have electric systems and water tanks and sewage tanks (or composting toilets) that can only operate for a while before they need to be hooked up to support systems or emptied.

But this answer doesn’t satisfy everyone, especially tiny-house proponents and anyone else interested in living smaller, more simply, and (presumably) more affordably (more on that later).

Donald L. Elliott, FAICP, is a director in the Denver office of Clarion Associates, a former chapter president of APA Colorado, and a former chair of the APA Planning and Law Division. As a planner and lawyer he has assisted more than 40 North American cities and counties reform and update their zoning, subdivision, housing, and land-use regulations. He has also consulted in Russia, India, Lebanon, and Indonesia, and served as USAID Democracy and Governance Advisor in Uganda for two years. Elliott is a member of the Denver Planning Board.

Peter Sullivan, AICP, is a senior associate in the Chapel Hill, North Carolina, office of Clarion Associates. His specializations include zoning and comprehensive planning. A Pacific Northwest native, his professional background includes policy and environmental planning and development review. Sullivan is a former officer with Toastmasters International and former member of the University of Washington’s Urban Design and Planning Professionals Council. He is currently a correspondent for Planetizen.com and enjoys speaking as academic guest lecturer, webinar host, and conference presenter. Sullivan’s project work has been recognized by the Washington State Governor’s Office, Puget Sound Regional Council, and the Washington Chapter of APA.



➡ This tiny house is the star of its own YouTube channel, Tiny House Giant Journey.

Here’s why tiny houses are so tricky. Although tiny houses are not generally designed for permanent occupancy, some of them are being purchased by people who intend to use them that way. Most zoning ordinances don’t resolve this tension, because they don’t address where or how tiny houses can be used for long-term or permanent occupancy.

BUILDING AND OCCUPANCY CODES

With the exception of some very rural communities, most cities and counties require that long-term or permanent residential units meet either the locally or state-adopted residential building code (usually some version of the International Residential Code), or the U.S. Department of Housing and Urban Development (HUD) national standards for manufactured housing safety. Since manufactured homes are obviously not constructed like stick-built housing—and since (unlike stick-built housing) they can be moved across state lines in interstate commerce—back in 1974 HUD adopted national safety standards for this type of housing. As a general rule, residential units for long-term occupancy need to meet one of these two sets of standards.

Unfortunately for many purchasers, some tiny houses do not meet these requirements. While tiny houses might meet the Recreational Vehicle Industry Association (RVIA) safety standard for highway travel and temporary living, these standards are not the same as the HUD manufactured housing standards for permanent living. In fact, the website for CAVCO (a manufacturer of “park model” recreational vehicles—which are similar to and sometimes in-

clude tiny houses)—states that these vehicles “are not intended for, nor should they be used for, anything other than recreational camping or seasonal use. They are not permanent residences and should not be used as such.”

For those intending to live in their tiny house full time, the trick is to find a tiny house that not only meets the RVIA standards but also the residential building code or manufactured housing standards.

For those intending to live in their tiny house full time, the trick is to find a tiny house that not only meets the RVIA standards but also the residential building code or manufactured housing standards. Or to look for a community that has adopted a building code allowing long-term occupancy of tiny houses. Some communities have done this, and in many communities the ability to use a tiny house for long-term occupancy turns on whether it will be mounted on a permanent foundation and connected to utilities.

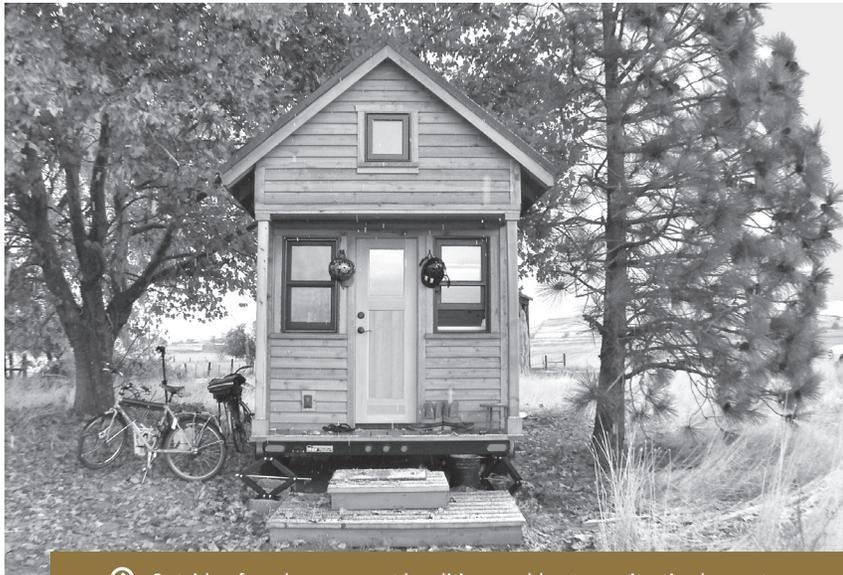
FOUNDATIONS MATTER

Let’s assume a potential buyer doesn’t want to install a tiny house in a campground or RV park, but rather a traditional residential lot. Some communities allow this if the owner removes the wheels (and sometimes the axles); installs the unit on a permanent foundation (or at a minimum uses secure tie-downs); and connects the unit to public water, sewer, and electric systems.

The logic behind these requirements is that they convert a mobile housing unit into a stationary unit, protect against “blowovers” and other wind-related damage (to the occupants and to neighboring property owners), and make the utility systems safe for long-term operation.

As an example, the small community of Spur, Texas, (population 1,245) has marketed itself as the “First Tiny House Friendly City.” Spur permits tiny houses to be used as permanent, primary dwellings by creating an exception to the general building code/manufactured home standard compliance requirement. However, even in this deliberately welcoming community, wheels must be removed, a foundation must be constructed, and the unit tied to the foundation with “hurricane straps,” and the unit must be hooked up to local sewer, water, and electric systems. In one well-documented case the cost of the foundation and connections came to about \$5,700 (McCann 2015). In some Spur zoning districts, tiny houses are permitted by right, but in others a variance is required.

Again, there are exceptions. A tiny-house owner might be successful living an off-the-grid lifestyle in areas that are literally far from the grid. In some very rural communities, stick-built



"Fall and winter, side by side" by Tammy Strobel, Flickr (CC BY 2.0)

➡ Outside of rural areas, most localities would not permit a tiny house to serve as a primary dwelling unit unless it was mounted on a permanent foundation and connected to local utilities.

homes do not need to connect to water and sewer systems (i.e., they permit well and septic systems) or electric systems (i.e., they allow off-the-grid power), and those communities would presumably allow the same exceptions for tiny houses.

NOW, ABOUT THOSE ZONING RULES

So, if a buyer doesn't want to live in an RV park, *and* is willing to remove the wheels, install a foundation, and connect to utilities, *and* the local government allows long-term occupancy of tiny houses under those conditions, where can the unit be located? The answer depends on local zoning regulations. Most zoning ordinances do not list tiny houses by name; they simply treat them like other housing uses.

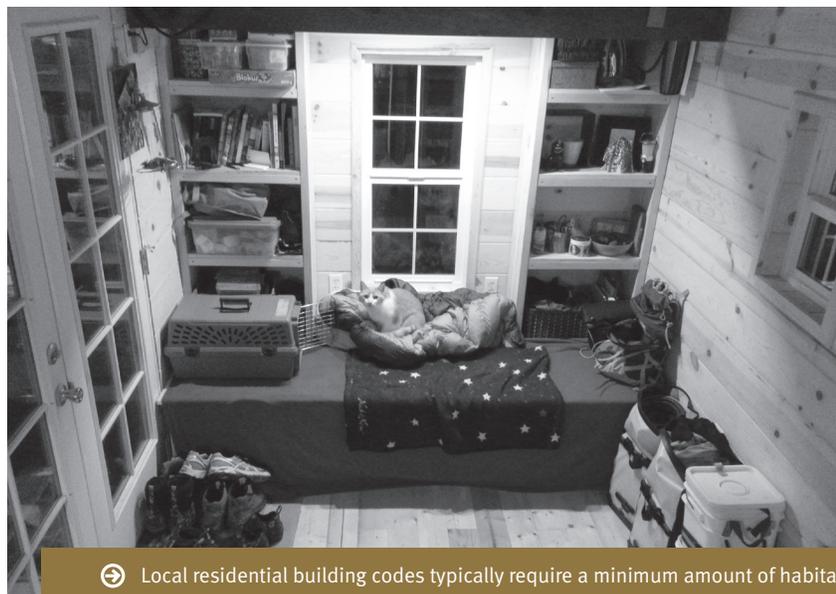
For a tiny house to be used as a primary dwelling unit (i.e., there is no other house or primary use on the property), the question is whether the lot is zoned for single-family homes and whether the tiny house meets any minimum size requirements for houses in that zone. Most zoning codes across the U.S. do not include minimum floor space requirements for single-family homes. But some do, and that can be a barrier to installing tiny houses. Generally this occurs when a residential neighborhood has been developed for—or with—large homes, and some of the lots already have large homes on them. In those circumstances, the local government or neighborhood residents may want to protect against the remaining lots being

occupied by smaller homes that they fear will reduce the neighborhood quality or character. Some communities, for example, have adopted minimum width or length-to-width requirements for single-family homes in an attempt to keep "single-wide" manufactured homes out of neighborhoods where the housing stock is of a different character. Those requirements would likely prohibit the installation of a tiny house, despite their charming appearance.

Whether this is fair to the tiny-house (or manufactured home) buyer, and whether it represents sound land-use policy, are emerging issues for debate. Minimum residential size limits are already in poor repute these days because they tend to drive housing prices up; however, these types of requirements are generally not illegal.

One work-around for the eager tiny-house buyer may be to install a tiny house as an accessory dwelling unit (ADU) (i.e., a second housing unit on a lot that already has a primary housing unit or another primary use of land). While ADUs are a fairly recent development, an increasing number of zoning ordinances now address where and under what conditions an ADU can be installed. Again, since most zoning ordinances do not address tiny houses by name, the question is whether your tiny house meets the requirements applicable to other forms of ADUs. One threshold question is whether the community allows detached ADUs or only allows internal ADUs constructed within the building envelope of an existing home. If the latter is true, a tiny house ADU will not be allowed. If the community allows detached ADUs, they often attach conditions like the following:

- Either the primary housing unit or the ADU must be occupied by the owner of the land.
- The ADU must not exceed a maximum size (generally 400 or 600 or 800 square feet).
- An extra on-site parking space for the ADU occupant may be required.



"Tiny house" by Tomas Quinones, Flickr (CC BY SA 2.0)

➡ Local residential building codes typically require a minimum amount of habitable space per occupant, which may prevent legal habitation of tiny houses by more than one person.

- The ADU may not be allowed to have its entrance door facing the street.
- The part of the lot containing the ADU cannot be carved off and sold as a separate lot.
- If the tiny house can meet these requirements, it may be acceptable as an ADU, even if it would not be approved as a primary home on the same lot. In some cases, however, ordinances that allow detached ADUs limit them to existing structures like carriage houses, garages, or barns, which would prohibit tiny-house ADUs.

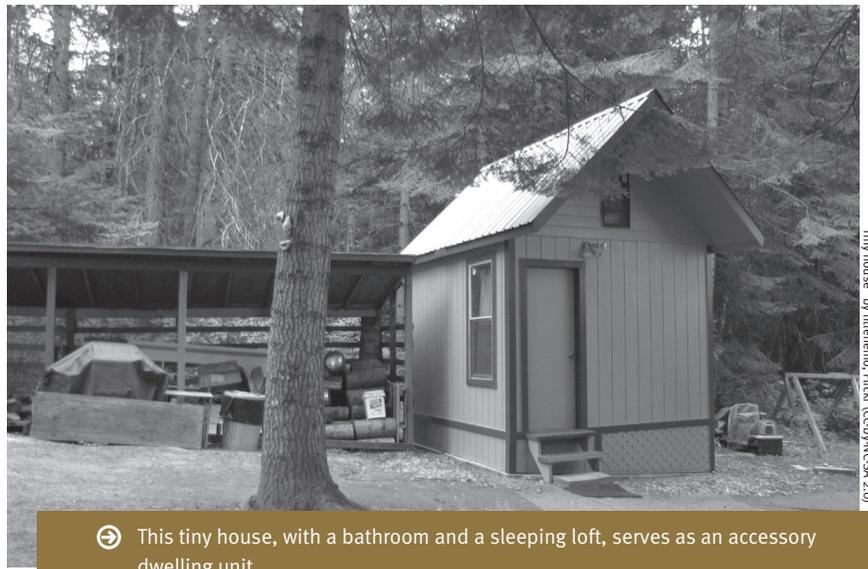
Finally, it is important to realize that most communities apply the same building, foundation, and utility requirements to ADUs that they do to primary structures. So if the question is, “can I park my tiny house in my parents’ backyard and live in it without installing a foundation or hooking up to utilities?” the answer is probably *no*. Long-term occupancy of a recreational vehicle in a residential zone district (say, for more than 30 days) is usually illegal regardless of whether you have the property owner’s consent or you are related to them.

So tiny-house owners need to be thoughtful about where they intend to install the unit, and need to read the zoning ordinance carefully to ensure it is allowed in the area where they want to live. The good news (for planners) is that it is fairly easy to review the existing zoning code and see whether the code permits tiny houses as primary units or ADUs in those locations where the community wants to allow them. Planners might also want to promote more permissive regulations if the community is ready to remove a potential housing barrier.

OTHER POTENTIAL BARRIERS

OK. So you have decided that your community wants to allow long-term occupancy of a tiny house, and you have modified the zoning ordinance to clarify where they are allowed. There are still three other potential barriers to think about.

First, unless you want to install the tiny house in a very rural area, the parcel of land where the tiny house will be located generally needs to be a subdivided lot. Subdivision regulations ensure that each parcel of land that will be developed with something other than open space or agriculture has access to a street and has utilities in place (if utilities are required in that location). This could be an issue if the tiny-house owner wants to buy 1,000



“Tiny house” by Hitenemo, Flickr (CC BY-NC-SA 2.0)

➔ This tiny house, with a bathroom and a sleeping loft, serves as an accessory dwelling unit.

Tiny-house owners need to be thoughtful about where they intend to install the unit, and need to read the zoning ordinance carefully to ensure it is allowed in the area where they want to live.

square feet of land from a property owner—just enough to accommodate the tiny house and a “livin’ small” lifestyle—but the subdivision regulations require a minimum lot size of 5,000 square feet. Or it could be an issue if the tiny house must be connected to utilities but the land in question does not yet have utilities in place to connect to.

Second, the community should probably advise the tiny-house owner to check that private restrictive covenants attached to the land do not prohibit tiny houses in that area. Again, *tiny house* will probably not be listed by name, but it is not uncommon to find private covenants that contain minimum house size requirements even if the zoning ordinance does not. While it is generally not the city or

county planner’s job to check on the existence of private covenants when issuing a zoning approval or a building/installation permit, and local governments are generally not responsible for enforcing those covenants, advising the tiny-house owner to check on this is just good customer service. In the end, the fact that the city or county issues a permit to install a tiny house with a foundation does not protect the owner against a suit from other property owners pointing out that the tiny house does not meet restrictive covenant minimum-size requirements.

Third, even if neither the zoning ordinance nor private restrictive covenants prohibit the tiny house because of its size, many communities have residential occupancy codes to prevent overcrowding. While occupancy codes vary, it is not uncommon to find a requirement that the unit contain 125 square feet of living area per occupant, or that it not contain more than two occupants per bedroom. That could be a problem if the owner intends to house his or her family of four in a 400-square-foot tiny house, no matter how well they get along. Since occupancy of the unit may change in the future (the owner’s out-of-work cousin may move in), it is hard to ensure against overcrowding when the installation permit is issued, but making the owner aware of these requirements is good customer service.

WHAT ABOUT A TINY HOUSE COMMUNITY?

What about a whole group of folks (or a developer) who want to create an entire neighbor-

hood of tiny houses as a source of affordable housing, or just to accommodate a different lifestyle?

That is a bit tougher. While the Internet has many stories of individuals or property owners intending to create tiny house communities, it seems that few if any have been created to date. And some of the existing communities have been created for unique reasons and through “one-off” procedures.

For example, places like Opportunity Village in Eugene, Oregon, or Quixote Village in Olympia, Washington, have been created as alternatives to homeless camps in or near the same location. In both cases, it appears that the local government adopted a contract or resolution approving the use of land for tiny houses without requiring it to comply with some standard utility or construction requirements precisely because it would house very low-income households under better living conditions than the occupants had previously. While inspiring as initiatives to address the challenges of housing affordability and homelessness, both of these examples required individualized negotiations and agreements to vary from normally applicable public health and safety standards—flexibility that might not have been approved for a market-rate housing development.

However, there are at least three different ways in which a tiny-house community for the general public could be created—each modeled on an existing form of land-use approval. The choice of an appropriate tool turns heavily on the question of whether you intend the occupants to be able to sell the house and the piece of land it occupies to someone else in the future.

A Tailored Zoning and Subdivision of Land

If tiny-house owners are going to be able to sell their lots and homes to others, then the community will need to be subdivided into individual lots, and those lots will need to meet the minimum size and dimension requirements of the zone district where they are located. If you want to allow tiny house community developers to create very small lots (say 1,000 to 2,000 square feet), it is likely that your city or county does not have a residential zone district allowing lots of that size. So the local government will have to create a zone district allowing that type of lot. If the roads within the community are going to be narrower or more lightly constructed than those in stick-built



Andrew Heben

➡ Quixote Village in Olympia, Washington, provides housing for 30 previously homeless adults. Photo from *Tent City Urbanism: From Self-Organized Camps to Tiny House Villages* by Andrew Heben.

subdivisions, then the community will have to adopt subdivision standards (or exceptions to the current standards) allowing those types of construction. In many cases, the local government is only willing to allow “lower-than-normal-standard” infrastructure if the property

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owners agree to own and maintain it over time (i.e., the city or county will not accept it as dedicated infrastructure for public maintenance), so the developer will likely have to create a home owners association to do so. These types of specialized standards have been adopted before, however, for unique forms of housing like manufactured home subdivisions or cottage

home subdivisions, and those types of standards are good places to look for guidance.

A Planned Unit Development

If the community expects that there will be only one of these communities or it does not want to create a new zone district or subdivision regulations to address tiny houses in general, the tailoring of zoning and subdivision standards described above could be accomplished through a planned unit development (PUD) tailored to a single development and a single developer. While single-project PUDs are relatively easy to adopt, they often reflect a very specific picture of the approved development that is hard to amend over time as conditions change. A PUD for a tiny-house community should be drafted assuming that conditions will change in the future, and to avoid locking in an overly specific development plan. For example, it may not be wise to require a community building of a certain size, or a park or storage area of a specific design in a specific location, because those items may need to be moved or resized in the future.

Similarly, if the home owners association is responsible for roads and utilities, it may be wise to offer some flexibility to relocate or resize those facilities in the future as needs change. The Greater Bemidji Area of Minnesota has thought through these issues and adopted a PUD approach for tiny-home subdivisions (§1101.F).

A Condominium or Cohousing Development

If the occupants of tiny houses in the community do not need to have the right to sell individual lots to others in the future, then a tiny house community could be structured as a condominium or cohousing development. Under this model, the land remains unsubdivided. Instead, a development plan is approved allowing many tiny houses, and perhaps support facilities like community buildings or shared parking areas, to occupy a single parcel of land. Instead of owning individual lots, residents own shares in the development as a whole. If structured as a condominium, each resident's share includes the exclusive rights to occupy their individual tiny house and a parking space, and also a proportionate share in the land, community buildings, roads, and infrastructure serving the area. As with a nontraditional subdivision described above, the local government may well require that the roads and utilities be owned and maintained by the condominium association. Under this approach, residents who decide to sell their tiny house in the future are actually selling their package of rights in the development (and the maintenance obligations that go along with them)—they are not selling the land. Again, it is usually wise to avoid overregulating or “zoning to a picture” in ways that may require additional governing body approval for minor changes in the future.

CONCLUSION

At this point, most city and county zoning and subdivision ordinances are unprepared for tiny houses. Answers to questions about what tiny houses are, where they can be installed, and under what conditions can be found if you search hard enough—but they are not clear or obvious. The good news is that there are several examples of how land-use controls can

be developed or modified to accommodate new and creative forms of housing and land development. RV park, manufactured home park, and subdivision, cohousing, and cottage development standards provide a deep pool of content from which tiny-house regulations can be tailored and developed.

As with most land-use questions, however, the appropriate tools cannot be crafted until some policy questions have been answered. To prepare for the arrival of tiny-house owners and community developers in the future, local governments should be prepared to answer these questions:

- Do we want to allow the installation of tiny houses for long-term occupancy, and if so, in what parts of our community?
- Do we want to accommodate only those tiny houses that meet our current building code or the federal manufactured home standards, or do we want to create exceptions for other tiny houses that can be made safe for long-term occupancy in other ways?
- Do all tiny houses need to be installed on foundations and with connections to our electric, water, and sewer systems, or are there some areas (maybe rural areas) where we would allow them under other circumstances?
- Are there areas of the community where they should be permitted as primary dwelling units?
- Are there areas of the community where they should not be permitted as primary dwelling units, but would be acceptable as accessory dwelling units?
- What changes to our building code, zoning ordinance, and subdivision regulations need to be made to achieve those results?

- With a little forethought, you can be prepared for the day a tiny-house owner shows up with some or all of the questions discussed above—and avoid that “deer-in-the-headlights” look that so annoys the town council.

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Bainbridge Island Key Issues and Public Comment
12/3/15 HOUSING ELEMENT WORKSHOP

PUBLIC COMMENTS (1,2,3, etc.)		Commenter
1	<p>Comp Plan isn't entirely lacking but can be improved, implementation and regulation is needed. Imbalance of owner vs rental, and somehow the Plan needs to change that course. Land Use Policies that we proposed should be addressed. The Housing Design Demonstration Project (HDDP) program should be made permanent as the only current affordable housing program. The Neighborhood Service Centers (NSC) are grossly under-zoned. Increased density should be allowed in NSC, and tie it to providing affordable housing.</p>	<p>Charlie Wenzlau</p>
2	<p>As a public housing agency, Housing Kitsap serves whole county, 900 units total, including housing for residents with Special needs, seniors, and housing built using low-income tax credits. Many tools that can be used. The Holla study done for the City of Seattle is a good resource. The Housing Element is broad and even-handed, but not easy to determine implementation measures. It needs to be more clear about what you are trying to accomplish. The market will take care of high-income folks.</p> <p>Think about what do you want to accomplish, and make it clear in the Element. It is hard to build affordable housing. All the tools still make for a difficult project to pull off. Connection between having a safe place to live, and overall well-being of kids and other residents with challenges. Bainbridge Island should speak up about funding or state laws and how to change them. Housing Kitsap has subsidized housing, seniors, disabilities, and some rentals that go up to 80%AMI. The helping hands program is another long-term home ownership because of the sweat equity that the resident puts in.</p>	<p>Stuart Grogan, ED Housing Kitsap</p>

PUBLIC COMMENTS (1,2,3, etc.)		Commenter
3	<p>Submitted ideas about land use that spoke to housing needs. High School Rd. district urban village concept mixed use, increase the FAR to spur residences and pedestrian connections. The Safeway property seems ripe for redevelopment. Perfect place for affordable housing multifamily project, easier to support with greater density.</p> <p>Compact rural communities- small homes in the less dense zones outside Winslow, density bonus will bring the cost of the land down and conservation easement. Smaller home size increases affordability. The cost of construction and land continues to rise, makes affordable housing very hard to do. How can you create homes that support affordability? Can we create funding, or do a bond, to build some affordable housing. HRB and Housing Kitsap struggle to afford projects.</p>	Jonathan Davis
4	<p>I've worked in the commercial real estate business in Seattle. The number of Islanders below 80% AMI is high. Affordable housing on Bainbridge means that we need more rentals. Modestly increasing density is one way to increase affordability. Core district FAR and height is too low- can't pencil out a mixed use project at the vacant building in the middle of Winslow Way. Workforce housing is the real problem. More supply in rental market will bring costs down. Rental housing can't pencil out with low densities</p>	Dale Sperling
5	<p>I represent a home-owner perspective. The City needs to figure out how much growth can the Island support before we change affordable housing requirements. We know that the Island has limited resources, and the sewer on the south end is over capacity. Make development pay for itself with impact fees. Many people have left because of higher taxes. BI is a small city, and we cannot support as many types of people as east-side cities like Seattle. The City shouldn't make any changes to development regulations until we figure out where aquifer conservation zones are. There are no HDDP metrics- where are the studies to say that HDDP is successful? NSC can't be built anymore because there is not sewer. We are an Island, we aren't Seattle or Kitsap County.</p>	Melanie Keenan

PUBLIC COMMENTS (1,2,3, etc.)		Commenter
6	<p>The affordable housing discussion has been going on for a long time, it used to be affordable, but now it is not. It's a nice place, and people with money will always gravitate to nice places. The cost of land is prohibitive. The Quay Apartments were affordable, and the City Council almost approved \$4Million of councilmatic bonds to ensure that it remained. We can't count on another gift of land, such as the Curtis property to HRB, for a righteous cause. We really need to do something, or is it just platitudes. The City needs to change its will to act on it. If we want affordable housing, then we need to pay for it, because if we don't pay for it, we won't get it.</p>	Ed Kushner
7	<p>What are incentives we can offer to keep people here? Rising taxes and bonds are a real concern by those on fixed income. Density clusters in rural parts of Island would violate special character and degrade environment. We need to have an ongoing discussion about this. This is really a social justice issue. Can't forget about stewardship, and be realistic about what we can really do.</p> <p>We keep hearing how more density will increase affordability, but the Island has grown denser, and gotten less affordable.</p> <p>We create unrealistic expectations when we talk about making room for all types of residents. Making accessory dwelling units (ADUs) larger will make them less affordable. If we are going to talk about these things, then we need to be realistic. We have miserably failed at accomplishing what is in the existing Element. Many people moved away to take advantage of increase value.</p>	Ron Peltier
8	<p>Can't comprehend why we would even consider building density in the rural areas when commercial projects like Visconsi have no housing- all commercial projects even new police station should have housing.</p>	Doug Rauh
9	<p>Important to try and maintain existing affordable housing stock. Policy H2.3 is about livaboard housing, the SMP changes the 25% livaboard potential for marinas reduced to 10%. Livaboard housing is affordable has many types of families</p>	Elise Wright

PUBLIC COMMENTS (1,2,3, etc.)		Commenter
10	In US, 28% of housing stock is 1 person, smaller household size is the new norm, but housing size has dramatically increased. Agree with Jonathan that small home communities and density bonus should be developed. Pocket neighborhoods are being constructed all over the US. NSC zoning is not dense enough. Home sharing is happening- what about 2 ADUs allowed, and consider parking flexibility. The cottage housing work should be restarted. Floating homes are another option.	Russ Hamlet
11	Lives in Indianola in a co-housing development that uses zoning flexibility. Encourage Comprehensive Plan coordination with Poulsbo, and County on housing issues, because they impact each other. Make sure there is some alignment. A broad range of inclusionary zoning rules, carrots and sticks, and policies shouldn't prohibit the use of any tools. Kitsap County is projected to lose over 800 units of affordable units countywide because the 40 year affordability requirement ends, and they go to market rate. Affordable housing allows people to age in their community as they start having on fixed income. 10,000 households in Kitsap severe rent burdened- more than 50% of income on housing. What are the action steps that come out of the Plan the policies need to be clear, that will be the difference from 2004.	Kirsten Jewell
12	We need to be careful about cause and effect choices, because if we create smaller affordable homes, we don't know if the current workforce will choose to live there. I'm in the Commodore neighborhood, and neighborhoods don't often find out about things until it's too late. Current housing element seems to be too developer focused. Maybe market and financial tools need to be used, because doubling density not fair to existing adjacent residents.	Marshall Tappan

PUBLIC COMMENTS (1,2,3, etc.)		Commenter
13	<p>Director of Helpline House. Have been a renter, but have purchased a home thanks to Ed's program. The prices have risen dramatically in the last 10 years. Speaking from community members, donors, and those that use our services. Housing Element needs an overhaul, but it doesn't really reflect reality now. Goals should be achievable and believable. Define affordability, and explain what constituency you are trying to reach.</p> <p>Try to preserve existing housing stock, and integrate new units among existing development. Try to encourage a private/public partnership. Start with small projects that can be successful, and then work on larger projects. What about co-housing promotion, rooming homes, or microunits. Some with a common kitchen. At Helpline House, I see single people and families of all kinds living in shacks and cars, some with children. HH served about over 100 people last year, and are helping people every month move off the Island.</p>	Joanne Tews