Cohousing: Joining Affordable, Sustainable and Collaboratively-Governed, Single Family Neighborhoods

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COHOUSING: JOINING AFFORDABLE, SUSTAINABLE AND COLLABORATIVELY-GOVERNED, SINGLE FAMILY NEIGHBORHOODS
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For many Americans now, and in decades to come, purchasing a home in a conventional single-family subdivision is and will remain impossible. Credit challenges facing this population mandate rethinking why, where and how we build and occupy dwellings and neighborhoods, and understanding how our choices foster sustainable and supportive communities. If local government officials, planning and design professionals and construction industry leaders fail to respond, sensibly and swiftly, to declining renewable resources and downward-spiraling personal net worth, social and ecological equilibrium will be mightily disrupted. This essay urges new behaviors that challenge persistent urban planning, development and neighborhood governance conventions. It affords one example of new strategies, conjoining themes of affordability, sustainability, safety and rational neighborhood governance, in devising a housing market for a changed dwelling-owner class.

I. Current Climate, and Tomorrow’s Forecast

Millions of foreclosures¹ and many “short sale” workouts² will disqualify many middle-class Americans for debt-financed home ownership. A reporter on National Public Radio on

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¹ See Rod S. Dubitsky, Credit Suisse Foreclosure Update (December 4, 2008), available at http://www.chapa.org/pdf/ForeclosureUpdateCreditSuisse.pdf (last visited July 26, 2010) (estimating 8.1 million foreclosures will be completed by U.S. lenders by December 31, 2012, representing 16% of all mortgages outstanding). The Mortgage Bankers Association reported on February 19, 2010, that the percentage of loans on one-to-four-unit residential properties in the foreclosure process at the end of 4Q 2009 was 4.58 percent—an increase over both 3Q 2009 and 4Q 2008 foreclosure rates; see Press Release, Delinquencies, Foreclosure Stars Fall in Latest MBA National Delinquency Survey, Mortgage Brokers Association (February 19, 2010), http://www.mbaa.org/NewsandMedia/PressCenter/71891.htm (last visited March 10, 2010). Finally, the estimated redefault rate during the next year is estimated by Fitch Ratings Ltd., a credit rating firm, to be 65-75% of those obtaining loan modifications (within one year of the modification’s implementation) under the Home Affordable Modification Program, see James R. Hagerty, High Defaults Seen on Modified Loans, WALL STREET JOURNAL, June 16, 2010, at A2. That percentage may be skewed due to the underachievement of HAMP. Neil Barofsky, the Inspector General of SIGTARP, testified before Congress on January 26, 2011, that HAMP has been a failure due in large part to the dismal performance of mortgage servicers. HAMP was intended to aid as many as four million homeowners, but of the nearly 1.5 million owners who enrolled in that program since spring of 2009, about 522,000 have been making payments on time under loan restructures while 793,000 have dropped out of the program. As a result, three Republican Congressmen introduced a bill on January 28, 2011 to terminate HAMP, see Republicans’ Bill Would End Obama Home-Foreclosure Program, WALL STREET JOURNAL January 28, 2011, available at http://blogs.swj.com/developments/2011/01/28/republicans-bill-would-end-obama-home-foreclosure-program.

² Short sales numbers are difficult to estimate, since there is no obligatory reporting to a regulator of such data. Estimates are that only about 170 thousand American homeowners have succeeded in having their home loans restructure applications completed, and 90 thousand of them dropped out of the program. See Alan Zibel, Mortgages Relief Aid Readies Few Homeowners, ASSOCIATED PRESS, March 12, 2010; of that number, only 55 thousand were aided by the Making Home Affordable Act of 2009. The Mortgage Bankers
Thursday, January 14, 2010, stated that more than 10 million American households have “underwater” mortgages,3 supported by collateral of value less than the mortgage payer’s debt. The insolvent former homeowners of these dwellings with weak credit scores4 will be unable for some while to obtain substantial funds for another home purchase, seemingly regardless of the dwelling’s sales price.

After momentum in the housing resale market resumes, if future would-be buyers cannot invest substantial cash under conservative loan-to-value scenarios, a new definition of affordability5 will emerge. While attached housing will continue to serve basic roof-top needs of most urban populations, the face of single-family, detached housing appears ripe for re-visioning in a challenged borrowing climate. Large lots in urbanized areas featuring large houses will

Association reported February 19, 2010 that the delinquency rate for mortgage loans on one-to-four-unit residential properties fell to a seasonally adjusted rate of 9.47% of all loans outstanding as of the end of 4Q 2009; see the MBA News Release n.1, supra. A new HUD program taking effect on April 5, 2010, is intended to alleviate the stress on homeowners by providing modest financial incentives to have borrowers give up their homes via short sales, concurrently compelling lenders to accept a below-mortgage payoff and forgiving the contract balance, so long as a minimum target price is obtained via the sale. See David Streitfeld, Program Will Pay Homeowners to Sell at a Loss, N.Y. TIMES, March 8, 2010, A1, available at http://www.nytimes.com/2010/03/08/business/08short.html?pagewanted=all (visited July 26, 2010).


4 Credit scores are based upon an 850 point sale; conventional wisdom in the mortgage lending marketplace is that a credit report of a foreclosure reduces a credit score an average of 250 points. That same wisdom suggests that a short sale reduces a FICO score by 75-125 points; however, the damage to credit in part is driven by the amount of accrued late payments during the interval prior to the sale date. See Alvin Clavines, The Effect of Doing a Short Sale on Your Credit Rating (February 15, 2010), available at http://www.articlesbase.com/real-estate-articles/the-effect-of-doing-a-short-sale-on-your-credit-rating-1863151.html (last visited March 3, 2010).

5 Standards of affordability of single family housing typically default to the index published by the National Association of Realtors, http://www.realtors.com. While its index is fundamentally based on the ratio of housing expenditure (including mortgage, utilities and property taxes) to income, other approaches address affordability, within income constraints, considering the balance between the cost of housing and non-housing expenditures. See, e.g., Scott Bernstein, Address to Home Depot Meeting: Redefining Affordability (January 27, 2010) (in the exurbs, among working families with household annual earnings between $20-50 thousand, transportation consumes a higher percentage of resources than housing costs), available at http://www.cnt.org/repository/HomeDepot_Redefining_Affordability.pdf (last visited March 17, 2010). In other words, such a “residual” measure of affordability is based on household income remaining after housing expenditures, instead of calculating a direct ratio. See Michael E. Stone, What is Housing Affordability? The Case for the Residual Income Approach, 17 HOUSING POLICY DEBATE 151-184 (2006). The U.S. Housing and Urban Development’s Secretary, Shaun Donovan, on February 5, 2010, announced that HUD will make available an Affordability Index that measures the costs of where a home is located in relation to jobs, schools and transportation, see Press Release, HUD Secretary Donovan Announces New Office of Sustainable Housing and Communities, available at http://www.realestaterama.com/2010/02/05/ (last visited March 18, 2010). Taxpayer dollars may be saved if the Secretary will coordinate this effort with the Center for Neighborhood Technology, a Chicago non-profit coordinating the H+T Affordability Index, found at http://www.cnt.org/ for more than 300 U.S. metropolitan areas. The mortgage lending community has historically used a housing cost-to-income ratio of 25-28% as a benchmark for whether a loan is affordable, and adds to the intended new mortgage debt amount any existing debt of the borrower in making that calculation. Astoundingly, among those given loan modifications under the federal Home Affordable Modification Program, the median percentage of total debt payments to pretax income is 64%, see James R. Hagerty, supra n.1 at A2.
become the near-exclusive province of the highest 5-10% of wage-earners among the American population. Housing amenities consolidation further will reflect a trend toward reduced scale and increased sustainability, informed by the rising cost of fossil fuels and heightened ecological sensitivity.

Unless extensive fixed-rail, metropolitan transit systems linking remote outskirts become standard in major American metropolitan areas, suburbia is likely to get browner as urban cores move to greener massing. Conurbation will hug transit corridors, while development sprawl, radiating outward from “the end of the line,” will lose traction. In the desert southwest, concerns for potable water supplies will hasten this trend. If urban lands in this scenario become increasingly unaffordable to a majority of individual American households, pressure to develop alternate communities emerges, impacting the anthropology of neighborhood governance. Sustainability concerns of self-appointed stewards of the environment will lead to a gradual compaction of residential projects into efficient, environmentally self-sufficient community models.

During the next 60 years, the public should anticipate growing momentum in “purposeful” communities called “cohousing” projects. A cohousing community is a

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6 See Section IV, infra.

7 Sustainability is defined here as the use of materials and technologies in the construction of dwellings and their neighborhood contexts, and the exploitation of the surrounding environments, that does not overtax the relevant ecosystem’s regenerative capacity. E.g., WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE ix (1987) (sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs).

8 See URBAN LAND INSTITUTE, EMERGING TRENDS IN REAL ESTATE 2010, 32, 48 (2009) (“ULI 2010”), available at http://www.uli.org/~media/Research And Publications Emerging Trends/Americas/2010/2010 EmergTrends.aspx; this report anticipates that housing and development patterns will be more urban-focused, and that developers will construct more affordable housing options featuring “European-scale layouts,” so that extra bedrooms, family rooms, recreation rooms and three-car garages, like two hour commutes, recede into obscurity. Id. at 54.

9 See, e.g., ULI 2010, supra n.8, at 12

10 See, e.g., CAMBRIDGE SYSTEMATICS, INC., MOVING COOLER: AN ANALYSIS OF TRANSPORTATION STRATEGIES FOR REDUCING GREENHOUSE GAS EMISSIONS (2009).


13 By cohousing, the author posits a community that collaboratively pursues four jointly-held goals. First, private ownership of some portions of the residential project, ensuring an element of individual control; second, promoting group interactions with neighbors, primarily through shared use of certain community facilities and open spaces;
deliberately conceived neighborhood composed of private homes with full features, supplemented by extensive common facilities managed by dwellers desiring more interaction with their neighbors. Common facilities vary, but include a full central kitchen and dining room facilities where residents can take turns cooking for a larger segment of the dining-in community. Other joint-use facilities may include a laundry, pool, child care facilities, offices, Internet access facilities, guest rooms, game room, TV room, and workshop or gym. Through calculated spatial design and shared social and management activities, cohousing facilitates multi-level interactions among neighbors, enhancing social, economic and environmental benefits through sharing resources, space and goods. The real property within the neighborhood need not be divided among its dwellers. A single person or entity, perhaps the original developer or the association controlled by the dwellers, may own the land.

third, persistent upgrading the sustainability of the community, albeit incrementally; and fourth, optimizing the affordability of the neighborhood by seeking economies of scale through endeavors such as implementing self-sustaining technologies (e.g., solar or wind-power generation), group purchasing, community childcare and limiting housing amenities redundancy. This is not a utopian endeavor; it is more akin to social entrepreneurialism on a small scale, advancing the economic and social interests of a known group of like-minded individuals. In his New York Times article, Andrew Jacobs perhaps unintentionally illustrates the difficulty of applying some rigid standards-set to the philosophy of cohousing, other than reporting (in describing Staten Island’s Ganas community) that the underpinning of an “intentional community” is that most members want more intense relationships than found in the average neighborhood, including daily dialog. But even in Ganas, many members are essentially “boarders,” not seeking to participate in group activities; so the “visionary” aspect of cohousing as relationship-intensive is not universally held. See Andrew Jacobs, Yes, It’s a Commune. Yes, It’s on Staten Island, N.Y. TIMES, November 29, 1998, at 141.


When land value is the main cost component peaking and troughing, and the improvements’ costs appreciate or depreciate comparatively modestly (assuming enduring construction materials), two propositions arise. First, the likelihood of devastating economic circumstances from a housing inventory glut and sinking prices diminishes significantly if dwellers do not own the land occupied by their residence. Second, mobility of one’s primary residence is not confined to rental housing inventory. If future buyers are not landowners, they may nest, perhaps serially, in various neighborhoods while retaining their dwelling units. What thinking advances these outcomes?

II. Affording the Dream

Tom Sugrue’s article in the Wall Street Journal on Saturday, August 14, 2009, called “The New American Dream: Renting” suggests that Americans need to reconsider the rewards of single-family dwelling occupancy. Sugrue reflects: “If there’s one lesson from the real-estate bust of the last few years, it might be time to downsize the dream, to make it a little more realistic. . . . Home should be a place to build a household and a life, a respite from the heartless world, not a pot of gold.”

Sugrue contrasted attitudes abroad toward home investment: “Some countries—such as Spain and Italy—have higher rates of home ownership than the U.S., but there, homes are often purchased with the support of extended families and are places to settle for the long term, not to flip to eager buyers or trade up for a McMansion. In France, Germany, and Switzerland, renting is more common than purchasing. There, most people invest their earnings in the stock market or squirrel it away in savings accounts. In those countries, whether you are a renter or an owner, houses have use value, not exchange value.”

Since land (and public-use infrastructure like curb, gutter, hydrants and sidewalk) increases home prices, those occupying land without owning it reduce their up-front housing expense, creating a viable economic alternative to renting. Ownership and use are not synonymous. Zoning restrictions do not invariably require fee title ownership of a legally-created lot accommodating each residential dwelling unit. While single family developments

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19 Id. at W2.

20 Id. at W1. Compare Richard Florida, Homeownership is Overrated, WALL STREET JOURNAL, June 7, 2010 at A17 (federal government should “encourage the transition to more and better rental housing”).

21 See, e.g., City of Phoenix Planning Department Staff Report Z-TA-20-07 on Zoning Ordinance Text Amendment, March 5, 2008, infra n.23. See also Feins v. Town of Wilmot, 919 A.2d 788, 792-94 (N.H., 2007) (State Supreme
implicate subdivision laws and ordinances, these can be maneuvered around, among other approaches, by creating occupancy rights through a pattern of exclusive (building pad) and non-exclusive (drives/parking areas) easements within a single lot.\textsuperscript{22} Zoning ordinances must (and will) increasingly allow flexibility in density and form, rewarding urban residential innovation, especially in infill residential sites.\textsuperscript{23} Particularly if the dwelling unit is detachable from its moorings upon the property and transportable elsewhere without compromising its structural integrity, by remaining its owner, a dweller can still have a long-term, perhaps modestly appreciating, asset while avoiding the continuing expense and other burdens of land ownership.

III. Modular Housing Alternatives

Prefabricated dwellings combine affordability with the potential for mobility. They remain the tiny minority of residences in most metropolitan areas\textsuperscript{24} because large-scale

\textsuperscript{22} A system of easement definition maximizes the control available to each exclusive easement grantee (since each easement can be different based upon agreed-to restrictions contained in the instrument) without a project-wide development structure being imposed at the inception of the project’s completion other than establishing a single, non-exclusive easement in gross granted to each of the occupants of the project’s dwelling improvements with respect to the areas of the project that are joint-use assets (e.g., the community garden or open spaces). The exclusive easements in gross can be three-dimensional with respect to a building site where vertical construction above a single story is intended. Three dimensional legal descriptions are the subject of writings by surveyors, see, e.g., Jantien Stoter and Peter van Oosterom, \textit{Cadastral Registration of Real Estate Objects in Three Dimension}, 15 URISA J. 47 (2003), available at http://www.gdmc.nl/publications/2003/3D_real_estate_objects.pdf, as well as by title underwriting counsel, see Richard F. Bales, \textit{Practical Aspects Concerning the Creation of Air Parcels}, 45 \textit{REAL PROPERTY, I ILL. B.J.} (2000). If indeed it is practical for multi-story cohousing projects to legally describe the “air plane” occupied by improvements above the “ground level,” then the air plane (analogous to a layer of a rectangular wedding cake, seen in three dimensions) occupancy rights are subjects of title insurance coverage, to the degree that such insurance is desired either by the occupant or her lender. \textit{See}, e.g., Michael Wolff, \textit{Real Estate Property Rights}, in \textit{RIGHT OF WAY} at 12-21 (2005), available at https://www.irwoonline.org/EWEB/upload/0105c.pdf.

\textsuperscript{23} \textit{See}, e.g., \textit{JAMES H. KUNSTLER, THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA’S MAN-MADE LANDSCAPE} 259 (1993). The City of Phoenix, Arizona, Zoning Ordinance (the “PZO”) affords one illustration of flexibility since the City’s adoption of Ordinance G-5137, a text amendment effective May 2, 2008, which established Section 671 of the Zoning Code, available at http://www.municode.com/content/3849/13534/HTML/ch006.html. Like Chicago, Denver and San Francisco, the PZO maintains conventional districts with prescribed, Euclidean-based prescriptive zoning standards such as lot coverage, building heights, floor-area ratios and yard setbacks, while affording a Planned United Development option. Within heavily suburbanized municipal boundaries, such zoning standards are incompatible “with contemporary urban design principles.” City of Phoenix Planning Department Staff Report Z-TA-20-07, Zoning Ordinance Text Amendment, March 5, 2008, available at http://phoenix.gov/PLANNING/Z-TA-20-07-R.pdf, p. 3. But PUD zoning will accommodate a variety of development scales and types, tailoring each proposal to the designated parcel’s context. \textit{Id}. Through a project narrative, proposed zoning regulations are articulated for a parcel’s permitted uses, development standards, design guidelines and phasing schedule, specifying deviations from conventional zoning standards through the entitlement process and describing the amenities to be exchanged in consideration of flexibility in the entitlement. \textit{Id}. A PUD applicant may propose any use permitted in the PZO, including mixed use development; however, particular uses undesirable to the surrounding neighborhood may be prohibited or curtailed during the approval process by consent. To be sure, local government land use policies will be crucial to the velocity of cohousing projects’ affordable development. Historically, many local government zoning decisions have shrunk residential land development opportunities by adversely affecting vacant land prices. \textit{See} THOMAS SOWELL, \textit{APPLIED ECONOMICS} 98-109 (rev. ed. 2009).

\textsuperscript{24} Modular homes, prefabricated in sections at factories for trucking to, and mounting on, a foundation, constitute only two to three percent of the homes built in America as of 2009, see Francesca Lyman, \textit{The Rise of “Green”}
conventional builders, until 2007, operated efficiently enough to reduce the price advantage of manufactured housing. Times are changing.

Four types of manufactured homes in wide circulation are: Modular (site assembled, in pre-built sections); panelized (featuring walls with pre-installed windows, doors, wiring and siding, assembled at the home site); pre-cut (kit, log and dome-style houses); and classic mobile homes, trailered to the home site where wheels and axles are removed. Their manufacturers are working on increased sustainability and energy efficiency to afford the homeowner greater return on investment. But durability remains the Achilles’ tendon of this product type. Watching video footage of tornado devastation discourages use of manufactured home products. The industry responds that most manufactured homes are built to withstand sustained winds in the range of 70 miles per hour. Estimates are that approximately 40 percent of all tornadoes have winds exceeding 112 miles per hour, while “killer” tornadoes reach 200 miles per hour. Current uniform building codes and practices seldom require dwellings to withstand winds exceeding 110 miles per hour, and a structure’s direct hit from a Category F2 tornado (113-157 mph) guarantees wreckage, construction materials notwithstanding.


26 See, Manufactured Housing Institute statement, available at http://www.manufacturedhousing.org/lib/showtemp_detail.asp?: “Each manufactured home must be designed according to the federal Manufactured Home Construction and Safety Standards at 24 CFR § 3280, commonly called the “HUD Code.” The HUD Code stipulates, at § 3280.305(c)(1) and § 3280.305(c)(2), that the home shall be designed and constructed to conform to one of three wind load zones. The appropriate wind zone used in design is dependent on where the home will be initially installed. Homes designed and constructed to a higher Wind Zone can be installed in a lower Wind Zone (a Wind Zone III home can be installed in a Wind Zone I or II location). However, a Wind Zone I home cannot be installed in either a Wind Zone II or III area. Wind loads (a lateral load) must be resisted by the home. The home must be capable of transferring these imposed lateral loads to the home’s stabilizing devices without exceeding the allowable stresses and other deflection requirements. Wind Zone I, Wind Zone II and Wind Zone III are identified on the basic wind zone map. The manufactured home producer designs the home to resist the wind load, which is measured in pounds per square foot. Wind Zone I equates to a 70-mph fastest-mile wind speed. Wind Zone II equates to a 100-mph fastest-mile wind speed. Wind Zone III equates to a 110-mph fastest-mile wind speed.”

The “basic wind zone map” indicates that Wind Zone III includes only the State of Hawaii, the southerly border of Alaska and the lands within approximately 10 miles of the coasts of the Atlantic Ocean and the Gulf of Mexico. Wind Zone II adds another 60 miles inland along those latter two coasts. Therefore, the vast majority of the United States falls within Wind Zone I, including the well-established tornado corridors in the Middle West and the Southeastern sections of the country.

27 See the Fujita Scale (sometimes known as the Fujita-Pearson Scale) regarding tornado wind velocity and its accompanying expected “type of damage done.” See The Tornado Project Online, http://tornadoexperience.com, then click on “The Fujita Scale” (last visited March 11, 2010).

28 The Uniform Building Code and the other three major model codes used in U.S. building provide formulae for calculating wind loads; these rely on Chapter 6 of ASCE 7 Minimum Design Loads for Buildings and Other Structures. The wind loads portion of that standards set, Chapter 6, can be found at the American Society of Civil Engineer’s Web site, https://secure.asce.org/files/estore/896/40809_40809.pdf.
Anchorage is critical; when a dwelling is securely attached to its foundation and is produced from sufficiently solid materials, gravity will save the superstructure from all but the most savage wind storms or storm-water surges. The typical manufactured home’s walls are susceptible to being ripped apart because the walls are fastened together, and to their moorings, with something weaker than mortar. Steel-built boxes known as “shipping containers”\(^\text{29}\) present a viable alternative to manufactured housing for strength and sustainability. A vast inventory is available, cheaply, from every port community in America and abroad.\(^\text{30}\) Consider the shipping container-built house videos on Bob Vila’s Web site, viewable at http://video.bobvila.com. Vila’s series\(^\text{31}\) shows a remarkable transformation of bare steel containers into a strong, weather-proof shelter.

Several recent books display ISO usage in contemporary housing design.\(^\text{32}\) Websites, such as www.fabprefab.com, illustrate designs and highlight kit manufacturers. In 2009, the American Institute of Architects awarded a Texas architectural firm a prize for use of ISOs in the residential development of a “retreat.”\(^\text{33}\) These ISO characteristics are highly desirable for single family housing superstructures:

**Availability:** Hundreds of thousands of ISOs are sitting idly in American port cities; estimates are as high as 700,000 units being stored, empty, in 2010.\(^\text{34}\)

**Affordability:** An ISO with the dimensions of 10x20 feet may be purchased, as of the first quarter of calendar year 2010, for as little as $1,000 per unit.\(^\text{35}\) With a likely survival rate of 100

\(^{29}\) Nomenclature for steel storage boxes is vast, but irrelevant to the basic steel design of intermodal storage containers, or (alternatively) ISOs, ISBUs and cargo storage containers. For a comprehensive overview of ISO types, sizes and features in summary, see Eurans Ltd., http://www.eurans.com.ua/eng/faq/containeroverview/ (last visited March 11, 2010). For an exhaustive lexicon and encyclopedic dissertation on the container as a construction element of a larger structure, see J.D. SMITH, SHIPPING CONTAINERS AS BUILDING COMPONENTS, (V.19.0, updated April 30, 2006), available at http://www.cityzen.biz/containerresearch.pdf.


\(^{31}\) See Vila’s discussions on his Web site http://www.bobvila.com, beginning with the posting Converting Shipping Containers for Housing, www.bobvila.com/HowTo_Library/Building_a_Container_House-Building_Systems-A2413.html (last visited July 26, 2010). There are also sets of plans for container housing on his Web site, together with descriptions of homes built in Rhode Island and Florida (states with widely disparate seasonal climates) from containers.


\(^{33}\) The project known as “Cinco Camp” is described at American Institute of Housing Award Winners, http://www.archdaily.com/20157/american-institute-of-architects-housing-award-winners/ (last visited March 11, 2010). The prize was awarded to Rhotenberry Wellen Architects, designers of the Brewster County, Texas, project that cost less than $200,000 to transport, construct and outfit for use. See also the Rhotenberry Wellen Architects page at http://www.rwarchitects.com/residential/ranchshelter.htm (last visited March 11, 2010) for another treatment of an ISO shelter at a ranch. Cinco Camp is a five unit development.

\(^{34}\) See www.isbu-info.org note 29, supra.

\(^{35}\) Prices for a basic ISO vary by location at which purchased and physical condition of the container. The twenty foot-long variety in new condition cost between $1,000 and $4,000 according to 360MobileOffice.com, a vendor on-line of such containers, which claims that used containers are between 30%-50% less expensive than their new
or more years, the container-based house is an asset that can be paid off in full by its original owner during its useful life and, if desired, passed along to heirs and successors. An ISO requires relatively little maintenance of a non-decorative sort, since its “insole” is steel.

Strength: ISOs are unlikely targets for destruction, absent a “direct hit” by a substantially-heavier object; they are far more likely to withstand hurricane force winds or tornados than any other form of modular construction or frame-constructed, permanent houses.36 If the January, 2010, Haiti earthquake had caused landslides of container housing, soft-tissue injuries, not crushed bodies, would have dominated news coverage of the human cost.

Rectilinear shape, weight and dynamic-configuration potential: ISOs are boxes; with that geometry, boxes can be stacked in multiple tiers,37 or turned on their sides or ends, rendering them adaptable for rectilinear design.38 ISOs lack the weight of a structure made of block; therefore, they can be transported, ready for final, exterior assembly and erection, on an 18-wheeled tractor-trailer. ISOs are metal and therefore may be cut with a blowtorch for windows and doors, or “fitted” together with additional ISO units or other materials by a dwelling’s erector,39 marginally compromising the strength of the remainder of the structure.

Height Potential: ISOs are stackable yet can be carefully anchored due to their design feature incorporating big holes for “marrying” posts.40 Stacked units can be moved into position in developments quickly, using cranes or block and tackle.

Utilities attachment convenience: Because the sub-floors of an ISO are steel, they can be set in place upon posts, elevating them above ground level where they can be “wired and plumbed” at minimal cost (avoiding saw-cutting a slab) to utilities connections, installable through holes drilled in the base of the floor without weakening it.41 This feature enables ISOs to be raised in areas with storm water and flood water drainage challenges (consider their potential application in the 9th Ward neighborhoods in New Orleans, Louisiana; by raising them in areas of lower mean elevation, they would withstand wind and “storm surge” dangers that area faces).

Integration with sustainable technologies: Raising an ISO-based structure on piers facilitates wiring, plumbing and solar-powered apparatus configurations beneath the dwelling unit. The exterior walls are sufficiently strong to support solar panel integration if roof counterparts. See http://www.360mobileoffice.com/storage_container_options.htm/. Dimensions of ISO types are described in SMITH, supra n.28, at 29.

36 The steel specifications are described in SMITH, supra n.28, at 27. On March 20, 2006, Cyclone Larry, a category 5 storm with wind gusts to 283 k.p.h. (approximately 170 m.p.h.) struck a research center that was built from shipping containers in a dense tropical Queensland rainforest; the housing suffered damage only to the built-up roof area that was not welded to the container sides. See Building a Shipping Container Home, http://earthsci.org/education/fieldsk/container/container.html (last visited March 11, 2010).


38 See, e.g., id. (Tempohousing makes a 20’ container staircase module).

39 SMITH, supra n.28, at 35-49, catalogs combinations of ISO “assemblies” pictorially.

40 With devices like “stacking cones” and bridge pieces, containers are locked together and thus are stackable; see www.eurans.com site at n.28, supra.

41 Id.
placement of panels is inconvenient.\textsuperscript{42} Indeed, a container-built house defines sustainability, being recycled metal.

Insulation properties: Some existing ISOs, originally designed for refrigeration, are manufactured pre-insulated, enabling the structure’s interior to withstand seasonal temperature\textsuperscript{43} extremes without substantial additional expense to the contractor. Floors of container boxes typically are wooden, insulating one’s feet from burning or freezing. Indoors, the issue becomes maintaining consistently the interior air circulating at the desired temperature for the season. Solutions are forthcoming. ‘Forroplac’, an ecological product that substitutes for wood and is made of recycled plastic packs, is used for framing and inside coverings. It is 100\% recyclable and impermeable, has high mechanical resistance, is reportedly mold and fungus-free, auto-extinguishable and paintable—and is cheaper than wood.\textsuperscript{44}

IV. Consolidating Amenities

The cohousing dweller abandons exclusive control of a swimming pool, recreation room, 3-vehicle garage, yard boundary walls, exterior storage unit, segregated lawn and separate driveway. None of these items contributes greatly to the greening of her community. Common landscaped spaces curb redundancy and minimize gas, electricity (grass/shrubbery maintenance propulsion) and both water consumption and fertilizer soil contamination. Cement driveways separately connecting each garage or dwelling entrance add heat. Garages have become glorified storage units, increasing the building mass within a project. Consigned to a single area or sheltered facility in a cohousing project,\textsuperscript{45} joint-use parking facilities store vehicles.

A cohousing environment may incorporate a multi-purpose building with flexible design and ample storage space used variously for meetings, social gatherings, physical workouts, crafts, manual-arts workshops—even, perhaps, adult or child day-care. The roof of such a multitasking structure can be integrated into the community garden space or solar cell collection points for the project. Under central management, multi-purpose buildings economize community maintenance and repair expense. To share amenities with a minimum of friction, there must be a sense of community and mutual respect among dwellers. This need implicates revisiting how neighborhoods can live in harmony, and considering the organization and

\textsuperscript{42} See, e.g., Tassos Gioia, Low Cost Emergency Earthquake Proof Housing Structure From Common Shipping Container 3 (January 26, 2010), http://www.earthgrav.com/HAITI_RESCUE_1_26_2010_Low_Resolution.pdf (last visited March 11, 2010).

\textsuperscript{43} See, e.g., R.D. Heap, Design and Performance of Insulated and Refrigerated ISO Intermodal Containers, INTERNATIONAL JOURNAL OF REFRIGERATION, at 137-145 (1989); calculations and schematics are provided by SMITH, supra n.28, at 81-86.


\textsuperscript{45} See, e.g., the community site plan for Milagro, a cohousing community in Tucson, Arizona, at Milagro Community Site Plan, http://www.milagrocohousing.org/milagro_010.htm (last visited March 11, 2010), where the surface parking field lies on the periphery of the development, away from the living quarters; and FrogSong community in Cotati, California, which has 45 shared parking spaces available for 30 residential units (some of which are 3 and 4 bedroom townhouses) and seven commercial tenants in that mixed use project, see FrogSong Frequently Asked Questions, http://www.cotaticohousing.org/faq.shtml (last visited March 11, 2010).
maintenance of the community as a loose unit comprised of individuals of diverse ages, backgrounds and agendas.

V. Sustaining a Community’s Neighborly Culture

Neighbors in the U.S. beginning in the late 1890s decided to address community issues through private associations. Too often in these organizations, direction by inflexible autocrats supplants benevolent rule. Devotion of resources to enforcing community regulations diverts funds that more productively could be applied to enhancing a neighborhood’s sustainability or quality of life. In a community valuing harmony among the dwellers, avoiding overbearing and inefficient “self-governance” requires galvanizing group behavior at its inception, through a constitutional convention leading to a Charter’s adoption. In town-hall fashion, cohousing owners decide initial community values, recognizing that some change is inevitable. Such community governing requires revisiting its Charter at regular intervals of a few years after its adoption, recognizing that a development mutates its core virtues. A properly devised cohousing Charter is an organic document, so the project is not undermined by mutual distrust but uplifted from common respect. The community that desires survival in a context of affordability and group participation will emphasize these “virtues”:

(a) The urgency of continual gains in sustainability within the community’s “reserves” budget, thereby encouraging social entrepreneur thinking promoting “doing good while doing well” for themselves as well as the community,

(b) Encouraging youth to address the periodic community meetings (town halls); they are both more intuitive than adults and less nuanced in expression, qualities promoting truth-telling, creative but impractical ideas, and the moment of pure innovation that advances the community’s sustainability while reinforcing the thought process development in (a) above,

(c) Allowing the Charter’s amendment by a less-than 100% affirmative vote (but more than a majority plus one of the voting community members), and

(d) Articulating a dispute resolution process with these steps:

1. Foes meet face to face, in an unsupervised conciliation meeting. Conciliation occurs when the parties agree on concessions on each side, adopting changes

46 The earliest homeowners’ associations for planned communities commenced in the late 1890s and early 1900s in Baltimore (Roland Park, 1891) and Long Island (Kensington in Great Neck, 1909), see WAYNE S. HYATT, CONDOMINIUM AND HOMEOWNER ASSOCIATION PRACTICE: COMMUNITY ASSOCIATION LAW 10 (2d ed. 1988). But when 28 lot owners recorded an agreement to maintain the private park in the center of Louisiana Square in Boston in 1844, the Committee of Proprietors became the first American homeowners association. See, EVAN MCKENZIE, PRIVATOPIA: HOMEOWNERS ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT 34 (1996).

47 See, MCKENZIE, supra n.45, at 15, 41. This inflexibility persists due to a combination of factors, chief among them the desire of individuals to be recognized as community leaders and the humankind desire to avoid direct confrontation between individuals; these factors led eventually to the interposition of boards or management companies to enforce rules and sanctions without employing informal communication leading to resolution through mutual understanding.

48 An illustration of a “Statement of Community Values” is found at www.pugetridge.net, supra.
in behavior of a party or specific actions of the foes. If concessions sufficiently address grievances, the process ends here. Personal or community resources are conserved by training community members in conciliation processes.

2. Foes meet in a mediation hosted by a person from outside the community. The objective is segregating resolvable from irresolvable issues. If sufficient resolvable issues are mediated to a reasonably satisfactory result, the next stage of the disputants’ conversation may take the form of additional conciliation or arbitration.

3. Remaining disputes are arbitrated by a neutral and at the conclusion of this stage, one party has prevailed in its position concerning each issue not earlier resolved. The decision of the arbitrator is final.

4. In the “aftermath phase,” a party may elect to meet with the Trustee of the land trust to discuss the terms under which the griever will sell back to the Trustee her possessory interest in the community. This meeting does not review the disputants’ positions in the now-resolved dispute, nor the arbitrator’s ruling. The griever is afforded the opportunity to depart the community if unable to continue her daily interactions with her former adversary(ies) or other persons aligned with the preceding viewpoint. Since an irreconcilably disgruntled community dweller “poisons the community well,” the Trustee will inquire about purchasing the griever’s possessory interest to preserve harmony. At this juncture, the issue is the value of the owner’s property interest in the community and the terms and timing of buyout by the Trustee.

The land title holder gains little from high dweller-turnover rates (unless that landowner imposes and collects some kind of breakage fee upon each departing dweller) or vacancies caused by warring individuals or factions within a community. Vacancies either redistribute the tax, insurance, common amenity maintenance and utility costs among the remaining dwellers, or compel the fee holder to shoulder those unreimbursed costs. If professional management collects assessments and enforces the Charter and rules dispassionately and professionally, maintaining an air of neutral detachment, hostilities are minimized, particularly if regulations for dwellers balance conflict-avoidance with individual freedoms.

VI. Rethinking Land Ownership Schemes

Many cohousing communities of some magnitude will be owned by individual investors holding land essentially for generating long-term profits. Of course, there is no single “perfect”

49 This definition of conciliation varies from many other explanations of the process; in some, a neutral “conciliator” is tasked to meet separately with each party, and the parties do not meet across the table. This strikes the author as not being much different from common forms of mediation. Face to face conciliation in a neutral location, coupled with joint apologies, can be an effective means of identifying the key issues in dispute without engaging an expensive mediator, if training in the technique is available. See, e.g., Michael B. Rainey, Characterized by Conciliation: Here’s how business can use apology to diffuse litigation, 26 ALTERNATIVES TO LITIGATION (2008). With sufficient, mutual intention to behave both humbly and practically, most neighbors’ disputes should be resolved at this stage without the oppression of board or management company intervention.

50 See Section VI, infra.
mechanism for a community’s cohousing land title ownership; there are many alternatives. Condominium ownership affords ownership of “air space” between each coat of paint within the living structure and an undivided interest in common elements. Buildings and other vertical condominium structures frequently belong to the association of owners. Cooperative apartments are multi-unit buildings whose residents own stock (as shareholders) in the fee-owning corporation but lease their occupied units. Individual dwelling “pads” with utilities connections to a central service, identified with a unique legal description, may be ground-leased or licensed by a single fee-title owner. Installment contracts for land transfer permit gradual vesting of legal title (a device to secure the seller’s payment stream) but the immediate conveyance of equitable ownership. A less widely-recognized ownership model is the land trust, invented for Chicago downtown development and later used as a residential development financing mechanism called a “subdivision trust.”

Land is deeded to a Trustee (the fee owner) of the trust, who answers to one or more beneficiaries/investor(s). The Trustee typically will (i) pay taxes, common amenity utilities and insurance premiums from dwellers’ monthly fees, (ii) negotiate terms of occupancy with new community dwellers, (iii) pay some fees to the beneficiary(ies), plowing the balance back into the community, and (iv) deal with dwellers’ representatives, if the Charter and rules are enforced by dwellers instead of the Trustee.

In a community subject to a land trust-type ownership scheme, dwellers pay periodic “occupancy fees” unburdened from ownership-based burdens like payment of taxes and obtaining and maintaining homeowner’s insurance, mowing and pruning the vegetation and cleaning the swimming pool. The land trust model of ownership is remarkable for summary forfeiture of the interest of the Trustee by the control party and potential anonymity of its beneficial ownership. That latter fact attracts absentee and corporate ownership of land. While consolidated ownership among wealthy landowning enterprises is a possible trend, another is the growth of land trusts (or like cooperatives for joint land ownership) for land conservation, respectively.

51 See, e.g., Milne, supra n. 17 (describing, contrasting and critiquing community land trusts and limited equity cooperatives).
52 See Hart v. Seymour, 35 N.E. 246 (Ill. 1893), the common law foundation for the land trust. Chicago Aldermen realized (so goes the tale) that the land trust could conceal their land holdings, useful since they were precluded from voting on certain city building projects if they owned neighboring land. The community land trust, a non-profit device intended to encourage affordable home ownership, developed in the 1960s, see Milne, supra n. 17, at 275.
53 Regardless of its nomenclature, whether land trust, Massachusetts business trust or subdivision trust, the essential principle of the land trust is that the beneficiary enjoys all the incidents of land ownership although its interest is a personal property interest only; the trustee is a passive fee title holder who/which acts upon the instructions of the beneficiary; politely stated, the beneficiary or beneficiaries hold the “power of direction.” See Eric T. Fregoyle, Land Trusts and the Decline of Mortgage Law, 1988 U. ILL. L. REV. 67, 70 (1988).
54 Of course, when the personal property interest of the lenders or investor has been acquired by full performance of the financial obligations to all applicable parties who are beneficiaries, then the trust has no further purpose for existing, unless the personal property interest was “taken out” by a successor investor or lender, who will substitute as beneficiary for the party “taken out”.
56 The rapid growth of the Land Trust for Tennessee is one illustration; in only 11 years, the acreage subjected to that non-profit corporation’s easement rights has grown from 460 acres (as of September 1, 2000) to over 51,000 acres. Compare http://www.landtrusttn.org. (current figures) with the report in The Tennessee Conservationist http://www.tennessee.gov/environment/tn_cons/archive/landtrusts.htm (first year’s conservation total) (last visited March 11, 2010).
where groups of individuals pool funds to purchase and preserve the character of communities, or of open space or other low-density development. Land trusts often are formed to preserve, for example, scenic landscapes or properties featuring historic heritage; these trusts have more in mind than generating profit from leasing. Here is how a cohousing development may arise on economic grounds without profit motive.

VII. Affordability Illustrated

Ten friends in a college graduating class propose to realize some economies in living costs through a cohousing arrangement, locating an urban infill parcel zoned for multi-family development and otherwise sufficient to build 10, 2-story container clustered housing units. A residential builder estimates she can install the infrastructure for common amenities and build 10 dwellings approximating 1,900 square feet each, for a per-dwelling unit cost of $60,000. The friends meet and devise a community Charter and regulations, and engage a surveyor to draw a boundary survey, further identifying easements in gross (personal to each unit’s owner) for 10 building sites and non-exclusive easements for access to parking and common amenities like the community garden and bicycle-parking shed.

The landowner accepts a $60,000 down-payment and agrees to take a second position, carry-back lien against the tract for the $300,000, interest only at 4%, for two years with a balloon. The group secures a $600 thousand, 5-year development loan at 5% interest; that lender will be the first beneficiary with the seller becoming the second beneficiary under a land trust arrangement. The group of 20 incoming dwellers (including significant others and “roomers”) scrape together from their parents and their student loans enough to cover the $60,000 down payment, triggering the installation off and on-site infrastructure. This takes about 3 months to complete; the containers, fabricated off-premises while the infrastructure work is underway and delivered upon obtaining a final inspection certificate for the site work, are connected within hours to the conduits, water and sewer piping and to the solar-powered, central electrical generating facility. This facility produces enough wattage to power fixtures illuminating the buildings’ exteriors and parking lot/driveway lights. This energy solution supports the community’s sustainability goals and reduces each owner’s tax burden. The dwellers move in fewer than 120 days after closing the sale for the tract.

57 Id., see http://www.landtrusttn.org/resources_loinfo.html.
59 See, e.g., SIEGEL, supra n.31, at 67 (Donald Jackson’s e-Hive, featuring a modular system of covered exterior spaces allowing the ISO to be “docked”); TOLLA, LIGNANO & NOBEL, supra n.31, at 81 (LOT/EK’s Mobile Dwelling Unit, designed to fit into a vertical “harbor” where it connects to water, electricity, sewage and data; these harbors are intentionally interchangeable), available at the Master of Architecture Thesis of Mandi M. Hoskins, Vari-Mobile: Variety, Variability, and Mobility in Crisis Architecture (2003), http://etd.ohiolink.edu/send-pdf.cgi/HOSKINS%20MANDI%20M.pdf?ucin1053380997 (last visited March 11, 2010).
Here are the anticipated expenses of the community, expressed monthly:

- $42,000 in annual interest cost/12 = $3,500 interest expense
- Water, sewer, and “dry” utilities = $3,250 utilities expense
- Insurance for common-use amenities = $500 insurance premiums
- Reserves for repair and maintenance = $250 segregated account
- Real property taxes on property = $750 impounded monthly

The total expense estimate for the community is $8,250 monthly. The group decides to set aside an additional $1,000 per month to reserve for loan fees and closing costs for the carryback and development loan takeout. The total expense on a per-dwelling unit basis is $925 monthly, or $11,100 per year. The ten friends must spend 34% of their household annual earnings ($32,500, on average) on housing and associated dwelling costs in the community during its first two years, and in the process will reserve enough funds to cover fees for a permanent financing commitment and other community expenses.

Considering the friends’ probable tax brackets, if the long-term mortgage bears interest at a fixed rate, this scenario is affordable, even if the friends’ fellow dwellers make little contribution toward community expenses. If the costs increase for the community (which should not include many dollars for maintaining steel structures), they should not outstrip the dwellers’ annual compensation, unless the recurring expenses’ inflation rate surpasses salary cost of living raises.

VIII. Cohousing’s Clientele & Financiers

The demand for a cohousing lifestyle will rise from sources additional to the credit-disenfranchised population described in Section I. Cloud computing—where the technology infrastructure supports computing and liberates businesses from the shackles of servers and other bulky equipment—and cohousing are soul-mates. The iGeneration of Americans born after 1999, freed from all physical connection, are tethered only to their mobile devices and Web

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61 This sum is not fanciful; the median U.S. household income as of October 1, 2008-September 30, 2009 for a 4-person family is $70,354, according to the U.S. Census Bureau’s Housing and Household Economic Statistics Division, available at http://www.acf.hhs.gov/programs/ocs/liheap/guidance/SMI75FY09.pdf. The text’s illustration assumes an average of two adults occupying each dwelling unit without taking into account children of recent graduates; such youth likely would make no contribution to the community’s resources. The above-referenced chart also sets forth the 75% of Estimated State Median Income earnings for a 2-person family in each state, and in very few states does that figure fall below $32,500. The 34% compares favorably with the median ratio of total debt obligations to pretax income (64%) of homeowners modifying their loans under HAMP, see Hagerty, supra n. 1, at A2.

62 See LARRY D. ROSEN, REWIRED: UNDERSTANDING THE IGENERATION AND THE WAY THEY LEARN, 13, 20 (2010); Larry Rosen, Generation “Text”: FB me, CNN OPINION, February 11, 2010, http://www.cnn.com/2010/OPINION/02/08/rosen.texting.communication.teens/index.html (“they know no other world than that of the Web, texting and social networking”) (last visited March 11, 2010). Mini “generation gaps” are described in Brad Stone, The Children of Cyberspace, N.Y. TIMES, January 8, 2010, at WK5; the explosion of technological devices arguably segregates into “generations” persons only a single decade apart in age. Rosen’s so-called Net Generation (born between 1979-99), which the public refers to as “Millenials,” is ready for a wireless age presented by cloud computing, whereas the iGeneration, not being conversant with physical storage in “on-site” or “off-site” environments (thumb drives or server farms, for instance), will understand nothing else but computing
browsers and, fully mobile, will populate wired cohousing communities. A cloud-computing business owner can choose today to live anywhere she/he chooses with broadband or satellite coverage. To these forthcoming generations of homeowners, “connection” is electronic data more than physical proximity, while technology is a byproduct of sentience instead of becoming a set of tools. Neighborhoods for Millennials are increasingly defined by Web-based social networks, not physical locations.63

Succeeding generations of American home-buyers will include significant numbers of persons freed from the moorings of rented workplaces and hard-wired, immobile computer equipment. If affordable and sustainable housing with sufficient design appeal and transportability is available in sufficient quantities, and if debt for residential leveraged purchases remains scarce for large numbers of the population, Americans will gravitate away from conventional subdivisions in the direction of sustainable, intentional neighborhoods with greater environmental sensitivity. Visualize a park-like setting with shared vegetation, a swimming pool or other appealing body of water, a community garden using grey-water together with other common use amenities like barbeque pits, workout facilities and congregate rooms. The family unit visits this project, speaks to the Trustee and discusses the minimum occupancy term, the community regulations and the monthly occupancy fee. Satisfied with the Trustee’s responses, the family’s application is reviewed and approved by the Trustee; the Trustee’s contractor then connects dry utilities to the conduit provided at ground level, the piping for plumbing and sewer lines (solar panels being imbedded in the dwelling’s rooftop) and the homestead is ready.

Occupancy fees offset the community’s cost of maintenance, repair and replacement of its common amenities and buildings (cable and Internet fees are paid directly, addressing each resident’s particular requirements); water, sewer and trash/recycling are designed to achieve community economies of scale. Fees are determined by the space occupied and tenure in the community, favoring longer-term residents. The dweller not remaining the minimum term contracted for pays a “breakage fee,” being a fund to cover common expenses until a replacement dweller arrives. This price is readily paid to escape what the dweller finds to be an undesirable environment. A dweller that repudiates operating rules or cannot tolerate her fellow community members may depart, unfazed by whether the marketplace supports an exiting-moment, target sales price. Unencumbered, she uncouples utilities wiring and plumbing connections, settles up with the Trustee, and heads for hoped-for greener pastures.

The utopian–or real–potential for this vision of America’s housing future depends upon financing practicalities. Will anyone finance mobile housing? If the containers are truly mobile due to chassis integration, the main challenge for lenders is deciding where to file their security

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63 See, e.g., ROSEN, supra n. 62, at 215 (INVOKING MARSHALL McLuhan’S 1964 FORECAST OF THE “GLOBAL VILLAGE,” WHERE COMMUNICATION IS UNCOPLED FROM PHYSICAL DISTANCE); SEE ALSO JENNIFER SIEGEL, MORE MOBILE: PORTABLE ARCHITECTURE FOR TODAY 10 (2008) (the author describes “Generation Mobile” in the forefront of a new nomadic lifestyle, having “a more fluid – and ultimately more authentic – experience of our contemporary cities and our changing culture”), and Florida, supra n. 20, at A17 (the knowledge economy “requires a more mobile work force that can seize opportunities wherever and whenever they arise.”)
Secondly are conflicts regarding repossessing and execution upon the collateral via private sale or public auction, where priority among competing liens may prevent the lender from being repaid. Loan documents can recite that a failure to inform the lender promptly after the dwelling leaves the state of the borrower’s domicile at the loan funding date constitutes a default entitling the lender to commence foreclosure proceedings in any jurisdiction where the borrower has relocated the unit. The most sensible lending approach, however, would be to require the management of a cohousing community to transmit a written notice advising the lender of the location of the unit within a few days of the date the dweller takes occupancy of a plot in the community. For lenders without confidence in management-reporting consistency, the housing modules can be equipped with GPS and RFID tags, using some device (such as a socket) for “mapping” its current location when the modules are connected to the utilities service during the dwelling’s installation.

Another solution to lender anxiety over the transience of a container dwelling unit would be to have a central filing registry for mortgages and titles to such housing types, like the FAA maintains for aircraft. These changes in procedure for financers are not impenetrable. Personal property lenders in the manufactured housing field have financed semi-mobile improvements for decades, an opportunity to receive reasonable returns with a manageable level of losses upon their investments will induce acceptance of a new manufactured product type—even one having greater mobility potential.

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64 See e.g., Mark R. Koontz, Manufactured Homes Under U.C.C. Revised Article 9: A New Conflict Between Certificates of Title and Financing Statements, 80 N.C. L. Rev. 1829 (2002) (U.C.C. § 9-102(A)(53) requires a manufactured home to be “built on a permanent chassis,” thus, the security interest perfection controversy likely does not impact the modular or prefabricated dwellings contemplated in Section III, see id. at 1829). Variety in state laws, and the ambiguity accompanying some of them, has hamstrung manufactured housing financing markets, especially in those states that treat a manufactured home as personal property until it becomes a fixture or until its title covers a real property asset. Nearly every state permits one or both classifications and, in the alternative “dual” classification case, conversion. See Ann M. Burkhart, Bringing Manufactured Housing into the Real Estate Finance System, 37 PEPP. L. REV. 427, 442-43 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1548441.

65 See, e.g., Citizens National Bank of Jessamine County v. Washington Mutual Bank, No. 2008-CA-000155-MR (Ky. Ct. App. 2010) (priority of competing liens in manufactured home classified as personal property addressed), available at http://162.114.92.72/COA/2008-CA-000155.pdf; Burkhart, supra n.64, at 447, 450. In addition to the issue of competing liens, filing is necessary to perfect a purchase-money security interest in a manufactured home to prevail against a bona-fide purchaser of the home, see R. Wilson Freyermuth, Legal and Regulatory Issues in the Creation, Perfection, and Enforcement of Security Interests in Manufactured Homes, ALI-ABA COURSE OF STUDY: COMMERCIAL LENDING AND BANKING LAW 263, 267-68 (2009). Eliminating these snarls in the perfection and realization processes will enhance access to affordable credit for manufactured housing, by classifying all these dwellings as real property from the moment of sale. See Burkhart, supra n. 64, at 457. While this financing method will require future refinement, permanent (stationary) improvements erected in a community land trust project for affordability create a different set of financing challenges, see, e.g., Milne, supra n. 17, at 279-280 (leases have to be structured for financeability).

66 Information about the FAA registry of airframes, engines and propellers and its security interest filing process is found at Aircraft Registration, http://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/ (last visited March 11, 2010); 14 C.F.R. §§ 49.31-49.55 governs recording of aircraft encumbrances against aircraft airframes, engines and propellers in the United States.

67 See, e.g., Wallis, supra n. 25, at 215-18; Kuklin supra n. 25, at 774-82 (“consumer financing has been particularly lucrative for commercial lenders,” id. at 776).
The nature of future owner-occupied shelters, and whether we remain planetary stewards, may refocus our visions of owned housing. It is time to see homeownership as something beyond a perpetually-appreciating investment vehicle. For Americans financially compromised by present economic conditions, isolated from the home and lot—ownership tradition, permanent single family housing without land ownership or individually-controlled exterior amenities, may not seem “downscale.” To these dwellers, an affordable lifestyle has “to scale” dimension. Land can be shared (and the “excess” used more sustainably) without divesting anyone of privacy or individuality. Americans thereby can decrease the numbers of oversized, underutilized “domains.” Tomorrow’s single family residences can be simpler, but comfortable and sustainable, while reducing the owners’ financial risk.

68 See, e.g., Florida, supra n. 20, at A17 (“Owning a home may actually be a drawback given the economic flexibility required to power long-lasting recovery.”)