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A Tale of Two Trusts: A Case Study of the Consolidation of Two Community Land Trust Affordable Housing Organizations in Vermont

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List of Abbreviations

AMI	Area Median Income
BACLT	Brattleboro Area Community Land Trust
CLT	Community Land Trust
FTE	Full Time Equivalent
HV	Housing Vermont
HLP or LP	Housing Limited Partnership
LIHTC	Low Income Housing Tax Credit Program
MAC	Merger/Acquisition/Consolidation
NGO	Non Governmental Organization
RACLT	Rockingham Area Community Land Trust
RD	U.S. Department of Agriculture, Rural Development
HUD	U.S. Department of Housing and Urban Development
VLTN	Vermont Land Trust Network
VHCB	Vermont Housing and Conservation Board
VHFA	Vermont Housing Finance Agency
WHT	Windham Housing Trust

Abstract

Between early 2010 and May 2011 the Windham Housing Trust conducted a feasibility analysis to study the possibility of merging with or acquiring the Rockingham Area Community Land Trust , a similar community land trust organization providing affordable housing in an adjacent county.

This study analyzes the one year feasibility study and merger negotiation process between the two organizations, and explores the complex set of relationships between financial partners, communities, residents, and funding stakeholders. The methodology for this work included reviewing current literature about nonprofit mergers and acquisitions, funder involvement, and community impact of consolidation of services. In addition the author interviewed five key stakeholders in this merger, reviewed internal and financial documents, and drew on participant observation as a manager with the Windham & Windsor Housing Trust.

The study reveals that more can be learned about the future of the community land trust model of affordable housing in Vermont than the just the technical aspects of the merger. The merger highlights many of the challenges of long term stewardship of an expanding portfolio of affordable housing around the state and extracts key lessons-learned from the merger which may be useful to any small, rural nonprofit interested in merging, but is most likely to be valuable to funding and advocacy organizations who are seeking to maintain networks of providers in their service area in the face of greater need.

Introduction

In May of 2011 the Windham & Windsor Housing Trust was created from the consolidation of the Rockingham Area Community Land Trust (RACLT) and the Windham Housing Trust (WHT). These were two organizations with similar community land trust missions, similar funding sources, and common association within the Vermont Land Trust Network (VLTN). However despite the commonalities, the organizations differed enough that early discussion about the potential to merge in 2009 revealed a number of complications. Each organization served a distinct and separate service area, each had a very different set of financial circumstances, each had excelled in different core specialties, and each organization had a different staffing and board structure. These differences required a great deal of study prior to finalizing a merger.

The precipitous decline of the U.S. economy beginning in October of 2008, and subsequent years of financial instability in global markets, signaled a watershed moment for boards of directors and staff of small non-profit organizations around the U.S. According to the Foundation Center, on average, nonprofits experienced a 30% decline in assets in 2008 alone. Many non-profits were summarily dissolved. Organizations initially surviving the downturn have increasingly been unable to manage the decline in net assets and the resultant declines in charitable revenue and government grants and contracts, and have found it much more difficult to deliver on their respective missions.

Vermont's tiny economy has withstood prior nationwide boom and bust cycles, partly because it has enjoyed neither the extreme peaks of events like the "Dot Com" boom, or valleys of recessionary cycles of the 1980's, 1990's, and 2000-2002. Organizations involved with community land trust type affordable housing development, like WHT and RACLT, would face their most daunting organizational challenge since their founding in the late 1980's, with dramatic changes to both the revenue and expense sides of the balance sheets.   Within the space of several months energy costs nearly doubled. Each organization had hundreds of apartments which required the provision of heat and hot water. Most of the affordable housing of each organization was rent protected, so there was no immediate opportunity to raise rents to cover energy spikes, even if the low and moderate income residents could afford a rent increase. Within months after the October 2008 economic decline each organization was facing declines in charitable giving, a key component of discretionary income in each organization. In addition, the financial stability of the resident renters and homeowners very quickly began to deteriorate. Both organizations experienced increased vacancies, delinquencies in their rental housing stocks, and increased bankruptcies and foreclosures by their homeowners.   It became more expensive to employ people, to heat the offices, reimburse for mileage expenses, and to provide benefits to employees.

The mission to provide decent affordable housing to low income households was being threatened. During the same period there was an increase in the demand for housing services such as housing counseling and foreclosure assistance, for home rehabilitation assistance (often times for energy efficiency upgrades) and lending help. This demand increased at a faster rate than either organization's fund raising capacity. The ensuing years would reveal strengths and weaknesses within each organization and within communities they serve, and would, perhaps unfairly, resurrect organizational management decisions that were made by each organization years before. This paper will explore the one year merger feasibility study between the two community land trust organizations, which took place between May of 2010 and May of 2011. It will also study the financial and organizational structure of each group, the market service area of each, as well as the key stakeholders associated with each organization.

The findings of this research will hopefully serve to help other nonprofit organizations considering a MAC by outlining a well thought out feasibility process which yielded a set of risk and opportunities, which in turn was used to weight the overall benefits of a merger. While the author has learned throughout his research that no two MACs are the same, determining the right feasibility steps is a process that can be replicated from organization to organization and across various nonprofit sectors. Finally it is the author's hope that this paper will help encourage leaders and staff who are part of a community land trust network in Vermont to envision the future of the land trust affordable housing delivery system, and continue to be nationwide leaders in community based affordable housing, even in light of significant growth and stewardship challenges that lie ahead. This paper will highlight some of those challenges.

Literature Review

The literature reviewed for this case study follows four distinct themes. The first is a body of action-oriented work related to the strategy, mechanics, and legal considerations of nonprofit mergers. Largely case studies and guidebooks, this group of work focuses on providing technical advice for leaders of mission driven organizations daring to consider the possibility of a merger, acquisition, or consolidation. The second segment reviews a group of articles and case studies which explore predominant reasons for mergers of nonprofit organizations and focuses mainly financial feasibility, efficiency of service delivery, and concepts surrounding appropriate "economic size". Following this group of work, lifecycles of nonprofit organizations involved with broader memberships or networks, such as the Vermont Land Trust Network, are explored. Finally the review moves to a group of major works defining the community land trust movement in the United States. In effect a historical review of critical writings and community and economic factors that traced the sentiments, writings, and activities of scattered group of like minded people in the mid 1960's to what is today a growing movement of nearly 300 community land trust organizations through the United States alone. This group of literature is important because, while growing in influence, the community land trust model of affordable housing development continues to produce a very small percentage of affordable housing throughout the United States, but produces a majority in Vermont. The network of non-profit organizations providing and stewarding this housing is relatively young and experiences many of the same growth challenges expected in any mission driven organization.

Regarded as one of the most recent and comprehensive guides to nonprofit mergers, *The Nonprofit Mergers Workbook Part I: The Leaders Guide to Considering, Negotiating, and Executing a Merger*, by David La Piana (2000), became an early resource for both boards and staff. This guide helped to structure the way in which the investigations would take place during the feasibility study stage, and ultimately helped the two organizations to avoid common pitfalls encountered in nonprofit mergers. Perhaps the most important contribution of La Piana's guide to the WHT-RACLT merger study was to instill a sense of confidence with the staff and directors that these two organizations were suitable for merger discussions.

In a compilation that perhaps best summarizes the technical merger literature, La Piana (2000) has created a guide designed primarily for directors, active board members, and consultants. This comprehensive guide includes sample forms, worksheets, and assessment tools, as well as worksheets and a list of resources. The guide includes case studies, of primarily social service nonprofits, but is less of an academic resource that a useful reference tool when considering a merger. LaPiana also discusses the role of funders in a merger feasibility and negotiation process.

But La Piana's work has drawn on nearly 25 years of emerging research around advancing organizational development in nonprofit organizations. A majority of the nonprofits in the US today were developed after 1980 as a result of tax code definition. According to the Foundation Center there were approximately 13,000 tax exempt organizations in 1940. By 2001 there were 1.26 million nonprofit organizations, and between 2001 and 2011 that number grew by 25% to 1.57 million. Because many of these organizations are developing and maturing in roughly the same time period they will experience external pressures in similar ways. For instance two healthcare organizations founded in the mid 1980's with similar mission objectives, would likely experience a change (cut) in federal funding cycles similarly. As a result of relative newness of the sector the body of research around organizational matters has often been drawn from the corporate sector which has a much longer history of academic research in the US. But as the non-profit sector collectively ages, organizational cycles begin to become evident.

Looking at the NGO sector in the developing world is one means of understanding organizational cycles. Avina (2002) discusses the evolution of NGO development organizations worldwide. While Avina's work focuses mainly on developing nation NGO's, the life cycles he proposes have a strong correlation with those in the US. According to Avina, NGO's evolve through four stages, start up, expansion, consolidation, and close out. Avina acknowledges that these stages do not necessarily follow in direct order, nor does he propose timelines for any one stage, however he does postulate that every NGO is faced with each of these stages at some point in its life cycle.

Key to each stage in Avina's model is the influence of the mission objective, needs of the surrounding community, and the involvement external financial, conceptual or technical support entities. These forces shape and create the strategic direction of the organization. However Avina does imply that donors and "external agents" have greater influence in the organization lifecycles than either mission or community needs.

> "Some NGOs expand under pressure from donors or other external agents, Donors, for example, just like NGOs, are under pressure to perform. To maintain institutional credibility to their funders, they must demonstrate a record of orderly disbursements and quantifiable outputs which are (preferably) directly associated with their financial contribution. Donors strongly prefer to finance new project activities (rather than administrative overhead) precisely because they are easily sourced and quantifiable. Thus, donors seek out organizations with a proven development track record who are willing to initiate new project activities directly linked to their contribution" (p. 134).

While this example specifically refers to donor influence throughout the expansion stage of the lifecycle, a similar situation exists in the United States non-profit sector, and holds relevance for the WHT merger study. Avina's definition of consolidation refers to a reduction or downsizing of project activities within an organization, while throughout this paper, and the remainder of the domestic works cited, consolidation refers to the combining organizations which is the result of one particular model of what is commonly referred to as "merger."

In the early 1990's the nonprofit sector began to recognize that there was an abundance of newly spawned nonprofits, many of which were in the midst of a similar lifecycle stage, startup and expansion. Thinking began to emerge which suggested the predominant reason for mergers was to increase efficiency in the context of resource competition, taking an evolutionary natural selection viewpoint. Two articles in the journal *Nonprofit World* in 1989 and 1992 outline case studies of social service organizational mergers. In both cases these mergers were a result of recognizing the potential for greater operational efficiency, and in both cases the recognition that resources, or the stiff competition for resources, demanded that organizations combine. In both cases the external influence of massive federal cuts in social service programs throughout the 1980's drove these organizations to consider ways to remain competitive. Consolidation: A Nonprofit Success Story (Consolidation, 1989) outlines the process two Anchorage, Alaska, social service organizations experienced. Family Connections and the Anchorage Child Abuse Board held similar enough mission objectives that they were viewed by funders as having duplicative services. Whether that was true or not, it was difficult for each of these organizations to overcome the funders' sentiment that combining the services would yield greater efficiency and lower cost structure overhead. Ultimately the two consolidated, which means each organization was dissolved and a new organization, The Anchorage Center, was born out of the assets of the prior two.

Keys to Successful Nonprofit Merger (1992) uses the case of the merger of Family Service of Greater St. Paul and East Communities Family Center to outline a six-key merger process. While somewhat simplistic, the six key processes were able to ferret out the true incentive to merge and outline a process to follow which would allow the final organization to emerge stronger. The external influence of the funding cycles again was the main driver in the merge:

> Numerous small, specialized nonprofit organizations are emerging to meet increasingly complex social and cultural needs. Competition for scarce funds is escalating, with financing and fundraising taking a disproportionate share of nonprofits time and energies. Funders demand greater levels of accountability, which requires expertise and sophisticated system capabilities beyond the resources of smaller nonprofits… (p. 14)

In this case the merging of the organizations had less direct donor involvement, however the benefits were that a particular subsidy was able to now be shared throughout the entire merged organization, and a new service area was opened up for one particularly successful service. Along with the theme of the financial benefit, this case study also cites several emerging themes as being keys to success. These include focusing on mission, openly involve people from the beginning (staff, board, clients/customers), deal with the most difficult issues early, and take as much time as needed to do it right (in this case 18 months).

McLaughlin (1996) argues that nonprofits could learn a lesson from Wall Street. Rather than pursue a merger study as a result of the need to find cost savings, nonprofits need to understand the concept of achieving economic size, and integration of services. The underlying failure to achieve economic size is often times the reason for a nonprofit to seek restructuring, however it is not always recognized as such. Economic size is defined by an organization meeting the critical balance point between cost of service delivery and community impact. Each nonprofit organization and service sector are their own best judge of what is an appropriate and sustainable economic size, but with a mosaic of donor driven pilot programs since the 1960's, and small start up non-profits being a common model, most sectors are haphazardly constructed, making it very difficult to visualize and distinguish how a community might be served by a particular nonprofit sector in the most efficient and impactful way possible. McLaughlin goes on to prescribe a seven step feasibility analysis process, which as it turns out, is very similar in concept to the feasibility steps outlined below by Lewis and Chandler (1993), "Keys"

(1992), and LaPiana above. This a general guide designed primarily for boards. The final recommended step is implementation and evaluation.

In perhaps the most quantitative research related to efficiency and competition, Singer and Yankey (1995) present a study of eighteen nonprofit MACs (merger, acquisitions, or consolidation transactions). The findings conclude that the major motivation for a MAC is inability for smaller organizations to compete, and underscore other case studies which suggest financial concerns are the primary initial reasons to embark on a MAC. The study collected data from structured interviews of 39 individuals involved with 38 different Cleveland area social service nonprofits in the process of a MAC. Of these interviews, 94% of respondents cited financial reasons as major force that led to their MAC. Following this thread most respondents cited large financial difficulties for the weaker of the two organizations. Two thirds of the respondents cited encouragement or suggestion from external funding sources as a major influence on the decision to explore a MAC. In addition to a broad range of additional data respondents also echoed other work by stating the importance of early communication with staff, board, and clients. Notable in this study is the authors' recognition that none of these 18 groups actually completed a formal evaluation of their MAC, and recommends that such evaluations are essential to increase the collective understanding of nonprofit MACs.

WHT and RACLT like most nonprofits are mission driven and are less beholden to shareholders than to the communities they serve. We move next from exploring organizational efficiency as reason to merge to reviewing works which look critically at community impact as a better reason for merging. Lewis and Chandler outline the case of the merger of two Michigan based insurance agent membership organizations. *The Urge to Merge* (1993) outlines nine considerations that must be made before two membership organizations merge.   Among the considerations tackling the most difficult issues first, allow as much time as needed for the transition, early and constant communications with members, staff, and board. As with other examples the merger was driven by the financial constraints and intense competition each organization was experiencing as a result of having membership overlap of nearly 50%. This article discusses executive leadership transition, a factor that might be more relevant in this case even though both of these organizations were nonprofit; their membership was entirely from the insurance sector each organization had a close alignment to corporate sector business practices. In addition there was intense competition between organizations prior to the merge, and was likely a greater degree of market competition than between social service non-profits.

Funders play a major role in monitoring and evaluating community impact. In *Beyond Collaboration: Strategic Restructuring of Nonprofit Organizations* (1998), The James Irvine Foundation, in partnership with The National Center for Nonprofit Boards, and David La Piana, set out to answer five questions related to how funders can best encourage and support nonprofit strategic restructuring, with an emphasis on encouraging greater impact from the non-profit sector. The findings of this study suggest that organizations considering strategic restructuring are doing so because of economic pressures of competition, a shrinking supply of leaders willing to remain in the sector for poor wages, and increasingly complicated and diverse community needs and organizational advancements. In addition, several of the findings suggest nonprofit leaders need assistance to oversee organizational change and funders are poised to provide that assistance. Funders should consider direct financial assistance for studying mergers, and should provide broader funding for education and training about strategic restructuring, but should never include strategic restructuring requirements as prerequisites for funding. This study also recognized that the concepts behind strategic restructuring have not been well studied and that additional research is necessary to develop best practice guidelines and compile and disseminate information.

The role of funder in the WHT - RACLT merger negotiations was perhaps the most important aspect driving the feasibility study. But with both WHT and RACLT what might be described as "funders" to an objective reviewer are actually in a much closer relationship to the organizations than what is evident in the financial reports, and are deeply rooted in the community land trust movement. To best understand this relationship it is best to understand what a community land trust is. While the roots of the community land trust movement date back to the early 1800's, with threads of the concept weaving across the globe to England, Israel, India, and Africa, the community land trust model and movement that we recognize today were formed during the tumultuous years of the 1960's. Like many aspects of that period the land trust ideas were interwoven with broader social discontent, and connected to civil rights, civil disobedience, and opposition to the war in Vietnam. The land trust movement connected to recognizable leaders such as Dr. Martin Luther King Jr., and organizations such as Habitat for Humanity.

> *"The [CLT], both the model and the movement , was a long time coming. The organization generally credited with being the first attempt to create a CLT, New Communities Inc., was founded in 1969. Ten years later, only a handful of CLT's were operational in the United States, all of them in remote rural areas. Another 20 years passed before the number, variety , and dispersion of CLT's reached the point where it was fair to speak of a CLT "movement"., although the model's proponents had been brazenly using that term since the early 1980's...as long as it took for the model to become a movement, to took even longer for the CLT itself to become the model we know today (Davis, 2010)*

In Davis's , *Origins and Evolution of the Community Land Trust in the United States*, he artfully details the history of the movement through individual people, experimental communities, and broader social ideas, and lays the background for what became a much more operationally focused group of proponents of the CLT methodology responding to the dramatic public disinvestment in affordable housing experienced during the Regan presidency in the 1980's. Davis describes two seminal works which best describe the movement. Davis credits the authors and contributors behind the books *The Community Land Trust: A Guide to a New Model for Land tenure in America* (International

Independence Institute, & Swann 1972) as putting the" C" in CLT, and the 1982 book, *The Community Land Trust Handbook* by the Institute for Community Economics as putting the "T" in CLT.

The CLT movement in Vermont through the Vermont Housing and Conservation Board's (VHCB) role in creating and statewide network on non-profit community base organization is the final segment of literature reviewed, with contributions by Briechle (2006 and 2007), Libby (1990 and 2010), Libby & Bradley (2000), and Axel-Lute (1999). These authors detail the creation and tremendous social impact of the VHCB. As a funder, technical advisor, advocate and steward of over a dozen local community land trusts in Vermont, preserving land for conservation as well as housing, VHCB's purpose and history was (and continues to be) inextricably linked to both WHT and RACLT.

Because of the uniqueness of the these organizations, and the more general concept that no two mergers are alike, these works have help to frame not only the technical non-profit merger themes but also characterize the local context.

Methodology

In addition to the literature reviewed above the author also conducted a series of interviews with stakeholders involved with the merge, and relied on organizational documents, and participant observation.

Method	Target
Interviews	Senior staff at WHT, Former senior staff at RACLT, and Senior staff at the Vermont Housing and Conservation Board (VHCB)
Academic Research	Books, journals, case studies, online resources, and articles written on MAC's, and the community land trust movement.
Merger Feasibility Case Study	Internal merger feasibility reports, internal financial documents and tax exempt filings

Table 1. Methodology for conducting research

Since the author is currently a senior staff member at WWHT, and has been employed at WWHT since prior to pursuing graduate studies at SIT Graduate Institute, he has been able to draw upon first-hand insights into the inner workings of both RACLT and WHT. Although he hoped to remove all biases for this paper it must be stated that he did formulate some of his own opinions while working within the organization and the Vermont land trust network. Rather that clouding his judgment, he strongly believes that the inside viewpoint provided added valuable perspective to this research. It must be also stated that as a staff member at WHT during the merger feasibility study period, the author was explicitly asked to remain on the sidelines of the merger feasibility study, and instead focus on continued management of his own department, housing development. The housing development department generates a majority of the organization's discretionary revenue, and as such it was decided by WHT's Executive Director that this department must not be distracted by the consuming merger process, and must continue to strive to maintain revenue stability. Nevertheless, much of the information and viewpoints expressed in this paper are possible because of the author's field notes, informal conversations and on-site observations to augment the information gathered through the rest of the research process. In addition the author has been granted permission to review and cite important private internal documents related to the merger feasibility study, which requires balancing the value of this case study with protecting the information and privacy of the organization(s) and individuals within the organization(s) studied.

To collect the most pertinent qualitative data for this paper, the author conducted three in-depth interviews. All of the interviews were face-to-face. A custom script of both open ended and close-ended questions was developed by the author for each interview, but was not handed to the interviewees. These questions consisted of contextual and merger related questions. The interviews were generally open ended discussions, and the author was able to move through the questions in a way that was more organic to the discussion, instead of listing questions in interview format, which allowed for a greater comfort level on the part of the participants and yielded answers to questions that might not have been explicitly asked. The author collected both written notes and digital audio recordings of each interview.

The first interview was conducted with three senior staff members from VHCB including the founding Executive Director, Gus Seelig; Housing Programs Director, Polly Nichol; and Administrative Officer, Larry Mires. These three staff members have been with the VHCB since the early in the organizations history in the late 1980's. The second interview was with the former Finance Director of RACLT, and current Housing Counselor at WWHT, Darlene Kelley. Ms. Kelley was one of a handful of staff employed by WWHT after the consolidation. The final interview was with WWHT's Executive

Director, Connie Snow. Ms. Snow is the founding director of what is now WWHT and was an instrumental figure throughout the merger feasibility study.

Because one of goals of this research was to determine whether lessons could be learned from the merger study, and develop a document that could aid similar organizations who might be considering a MAC, participants were encouraged to reflect beyond the technical aspects of the merger and discuss the impact or organizational consolidations on the network of community land trust housing organizations around the state.

All participants agreed to allow the author to use their actual names. As a practical matter disguising individual names and organizational names would have little value in eliciting more honest and true responses since most of these participants are part of a very small network in a very small state, and the subject of organizational mergers in within the network is neither new, or considered particularly private. Again, as a result of not disguising names the author has had to make some effort to ensure that participants' professional integrity is not negatively impacted by this paper. The names of some people were disguised throughout the report. While none of the aliases were interviewed or quoted directly, it was the case that the interviewees listed above identified specific people who should not be called by name for various reasons.

Case Study

The case study provides a history and status of both WHT and RACLT, as well as describes the stakeholders involved with the merger. This information is then tied together with a synopsis of the merger feasibility study process and outcomes, and places this merger in the larger context of community land trust organizations around the state.

The merger process fell into two distinct phases. First was the feasibility or "due diligence" phase. The second was a negotiation phase. Productive merger discussions between WHT and RACLT began as early as January 2010, but it wasn't until after March of 2010 that a scope of work was drafted, and feasibility work truly started. The feasibility scope (Windham Housing Trust, 2010) included the following elements:

- A review of the RACLT portfolio of housing and other assets by an asset management consultant. A very deep analysis by WHT of RACLT's portfolio, the list of tasks included items like reviewing three years of organizational, and partnership audits, financial reports, capital needs assessments, and property reviews. This phase of due diligence also included physically inspecting each of RACLT's 25 properties, determining performance indicators for each property, and creating recommendations about overall risk in the physical portfolio of holdings.
- Commission a regional market study of need and demand in Windsor County.
- Complete and organizational review of RACLT. Less focused on the physical assets, this review would include reviewing organizational audits, management letters, annual reports, and monitoring summaries. As part of this task WHT would also look carefully at the viability of existing programs, staffing, budgets, and compensation. Also organizational systems, filing, technology would be reviewed, in addition to RACLT's current strategic plan. The deliverable in this phase would be a preliminary staffing plan, and a preliminary combined organizational budget.

- The final task was to review legal and accounting options to recommend the mechanics of the merger and determine whether potential joining of the organizations be considered a merger, an acquisition, a consolidation, or a hybrid structure.

This task list was to be completed concurrently and would result in a recommendation to both WHT and RACLT boards of directors. After this due diligence phase was completed, and assuming both boards would vote to move forward, a negotiation and fundraising phase would commence. The product of this phase would be to monumentalize the merged organizations structure and programs, mission and bylaws, board composition, staffing, and office locations (Windham Housing Trust, 2010).

Mergers cost money, and leveraging public and private funding from long-term supporters and partners of each organization would be key. The feasibility study was designed such that analysis of the harder facts and intricate details of each organizations and their respective partnerships was on the table, prior to entering the negotiation phase.

RACLT and WHT were similar organizations, with similar missions and values, and similar lines of business. While each organization evolved different core competencies, which are described further below, key to understanding both the information gathering phase and the negotiation phase is understanding how the affordable housing was developed by each organization (and throughout much of the US), as well as understanding the community land trust structure by which this housing was owned, managed, and stewarded. Over 90% of all affordable rental housing development in the United States since 2000 has been done using the Low Income Housing Tax Credit (LIHTC) program of the IRS. The LIHTC provides funding for the development costs of low-income housing by allowing an investor (usually the partners of a partnership that owns the housing) to take a federal tax credit equal to a percentage of the qualified cost incurred for development of the low-income units in a rental housing project. Development capital is raised by "syndicating" the credit to an investor or, more commonly, a group of investors. Under a strict set of compliance rules these investors, which in Vermont are often times local Banks, are able to offset corporate income tax liabilities on a one-to-one ratio with the equity or "capital contribution" invested into a qualifying LIHTC project. The investor equity in low income housing projects typically comprises 60-80% of the total development costs, and allows projects to be completed with little or no debt, which in turn allows for projects to need less operating income since there is no debt service. The need for less operating income means rents can be set lower to meet the demands of residents who make less than 60% of area median income (AMI) of the community the project is located in.

To take advantage of the LIHTC, a non-profit developer (such as RACLT or WHT) will typically propose a project to a state agency, seek and win a competitive allocation of tax credits, complete the project, certify its cost, and rent-up the project to low income tenants. Simultaneously, an investor will be found that will make a capital contribution to the partnership or limited liability company that owns the project in exchange for being "allocated" the entity's LIHTCs over a 10-year period.

The program's structure as part of the tax code ensures that private investors bear the financial burden if properties are not successful. This pay-for-performance accountability has driven private sector discipline to the LIHTC program, resulting in a foreclosure rate of less than 0.1%, a percentage far less than that of comparable market-rate properties. As a permanent part of the tax code, the LIHTC program necessitates public-private partnerships, and has leveraged more than $75 billion in private equity investment for the creation of affordable rental housing throughout the United States (U.S. Department of Housing and Urban Development, n.d.)

Both RACLT and WHT developed affordable housing using the LIHTC program, and as a result each of these non-profit organizations became the "general managing partners" of various Limited Partnerships (LP's). These LP's are separate taxable entities from the non-profit corporation, but are often times managed by the nonprofit. Often the asset is a housing complex, or a scattered group of apartments, in Vermont ranging from 15 to 50 apartments. Each of these LP's is not carried on the balance sheets of the nonprofit corporation, but are noted as subsidiary partnerships. This is important to understand as key part of the merger feasibility study, because in addition to investigating organizational finances, the health and sustainability of each partnership needed to be ascertained.

In July of 2010 RACLT had 334 apartments held in 14 LP's, and 17 apartments in 5 buildings which were wholly owned by the nonprofit itself. RACLT also owned the land under 76 single family homes or mobile homes, as well as 14 commercial properties. By contrast WHT was the general managing partner in 12 LP's containing 225 apartments, 72 wholly owned apartments in 12 buildings, and owned the land under 53 single family homes or mobile homes, as well as 3 commercial properties. (Windham Housing Trust Merger Committee, 2010).

The Windham Housing Trust

The Brattleboro Area Community Land Trust was incorporated in 1987 in response to increasing threats to the region's supply of affordable housing. Its purpose was to acquire and hold land and housing in trust in order to provide permanent access to decent and affordable housing for low- and moderate-income residents of Windham County. In 2007 BACLT changed its name to the Windham Housing Trust (WHT) to better reflect its regional role. Coordinating with the name change and rebranding, WHT moved its headquarters to the newly renovated Daly Shoe Building, an adaptive reuse of a 95 year old factory located in Brattleboro, Vermont. Much of the affordable housing developed by WHT (and RACLT) and would not be recognized as affordable housing as many of the buildings are integrated within the historic buildings, neighborhoods, and small villages. This is an important distinction between the affordable housing development system in Vermont versus most other areas around the United States. The priority in Vermont has been balancing the affordable housing needs with preserving important cultural landscapes and historical development patterns.

The mission of the Windham Housing Trust was to enhance the quality of life of low- and moderate-income citizens; to preserve and revitalize neighborhoods; to foster diversity; and to improve the social, economic, and cultural health in communities of Windham County, Vermont.

WHT employed nineteen people in five departments. The Finance Department employed two full time staff members and oversaw all of the organizations finance and human resources needs. The Housing Development Department employed two full time equivalent positions(FTE's) and was responsible for developing, financing, and constructing rental housing. The Fundraising and Development Department employed two FTE's and was responsible for all organizational fundraising including annual campaign, events, solicitations, and grant writing. The Homeownership Department employed six FTE's, and provided housing counseling, foreclosure counseling, and rehabilitation technical and financial assistance. The Asset Management Department employed ten people and managed all WHT physical assets, oversaw the rental housing program, performed maintenance and upgrade, and oversaw contracts, vendors, and outside management agents. The organization was lead by the founding Executive Director, Connie Snow, and had a four person management team. The WHT Board of Directors was made up of fifteen directors drawn from three stakeholder cohorts, WHT residents and homeowners, general community members, and public interest directors, such as municipal staff members.

WHT's three primary lines of business were management of affordable housing, both wholly owned and in LP's, development and rehabilitation of affordable housing (construction), and homeownership support through counseling, lending and finance, and ongoing maintenance of "land leases" which will be described in more detail below. These three lines of business represented a relatively balanced set of core competencies within WHT, with development and rehabilitation historically being WHT's most recognizable competency within the community.

WHT was a membership organization. The annual general membership meeting took place in June of each year. In 2010 WHT had estimated total assets of $10.5 million with liabilities of $2.4 million equaling a net asset value of just over $8 million, much of it in wholly owned physical structures. WHT derived its income mainly from operating grants, rents, development fees, management fees, and fundraising and development. Total revenue in 2010 was $2.3 million. Again, the net assets and revenues of the LP's were not carried on WHT books.

The Rockingham Area Community Land Trust

RACLT was incorporated in 1989 and evolved from a grassroots effort of a handful of Bellows Falls, Vermont residents who were concerned about the problems facing low income residents in those neighborhoods. RACLT was dedicated to promoting, creating, and ensuring the maintenance of quality affordable housing for low and moderate-income people, in cooperation with the community organizations that served them in southern Windsor and northern Windham counties. RACLT's mission was to maximize affordable housing opportunities for the people of southeastern Vermont.

RACLT was governed by a ten-person volunteer Board of Directors, and had seven staff members in four departments, three FTEs in the homeownership center, one in property management, one in property development, and two FTEs in finance and administration. RACLT's lines of business included the homeownership center and property development. RACLT had a very small property management presence since years prior the organization had made the strategic decision to hire a property management company to oversee the day-to-day management of all of its limited partnerships. In addition, all of RACLT's property development was done in partnership with another Vermont nonprofit organization, Housing Vermont. RACLT's core competency was clearly the homeownership center, and RACLT has been partnering with WHT for several years, and leading fundraising and organizational efforts around the homeownership center.

For nearly ten years RACLT had struggled to remain a solvent organization. RACLT leadership had employed several strategies over the years to try to increase revenues. One of those strategies was noted above, the parceling off of the property management component. It is very difficult for non-profits housing organizations in Vermont to run revenue neutral, or better, property management operations. This is true even though the LP's actually pay the organization to manage the partnerships. As such the strategic decision was to remove a department that drained the organization of cash. At the same time RACLT was unable to profitably manage its LP's, either before spinning off the management function, or with either of the hired managers that subsequently managed the partnerships. While WHT by contrast was able to subsidize it's less-than-break-even management operation through other revenues, and generally was more successful in running the LP's.

When RACLT's LP's could not cash flow, year after year, the operating reserve balances were drawn down. When the operating reserves were nearly exhausted and unsupported loans were made to a number of the partnerships from the non-profit itself, RACLT sought help from some of the funders and the co-managing general partner, Housing Vermont, to seek ways to "work out" the financing on several properties. While some of these "work outs" or refinances may have helped some properties cash flow better, there appeared to be a systemic problem with the rental housing portfolio.

Compared to WHT, RACLT served a larger, more rural, lower income area. In many of these areas RACLT was in a position where they simply couldn't get rent prices low enough to serve the need. Project based housing subsidies in some projects helped the situation by enabling RACLT to set lower rent levels for residents, but collected a higher subsidized rent from the state entity overseeing project based vouchers. In addition, compared to WHT, there was a greater local culture of homeownership, and with real estate prices not quite reaching the dramatic appreciation rates experienced in other areas, homeownership was still in reach for many residents.

RACLT did operate a viable Homeownership Center, and they were a network charter member of NeighborWorks America. This membership came with a distinction and reputation for quality in the affordable single family homeownership arena. With this membership also came training, certification, and technical assistance, operating funding, and development funding (for rental projects), as well as nationwide recognition. While housing counseling, lending, home rehab, and community land trust stewardship activities appeared to thrive, the multifamily portfolio continued to struggle.

RACLT had trouble retaining leadership, burning through eight executive directors (and interims) in twelve years.   "Inconsistency of leadership is one thing, disastrous leadership, in some cases, is quite another," VHCB's Administrative Officer, Larry Mires goes on to describe VHCB's inability to influence RACLT leadership. "There's so much that goes into a situation like this, because you know, these are independent boards and [VHCB] can't just go tell them what to do." A number of these executive directors were recruited by the RACLT board from out of the region, or out of the state entirely. One director in the late 1990's, Jason Stutgartt (name disguised), who was from within Vermont and understood the land trust system, enjoyed a great deal of support from the funders in his efforts to stabilize RACLT's finances. Stuttgartt's strategy was to develop more rental properties and garner more development fee revenue from these projects. Several successful and award winning projects were brought through the construction cycle between 2004 and 2008 earning well over a million dollars in developers fees. But subsequent to this director's departure, neither the organization nor the market service area was able to sustain the development pipeline at that level, and the RACLT once again began to feel the revenue pinch. The next director lasted less than one year.

In 2010 RACLT had estimated total assets of $5.3 million with liabilities of $1.6 million, equaling a net asset value of $3.6 million. Much of this asset was physical structures, though as noted before the assets or income of the LP's is not carried on the RACLT balance sheet. RACLT also derived its income mainly from operating grants, rents, development fees, and fundraising and development. Total revenue in 2010 was $1.3 million, down from 3.1 million on 2009.

The Vermont Housing and Conservation Board

For over 25 years none of the RACLT or WHT relationships was deeper than with the Vermont Housing and Conservation Board (VHCB). WHT and sixty other organizations are part of the Vermont Housing and Conservation Coalition, and are supported by the VHCB. VHCB is an independent, state-supported funding agency providing grants, loans and technical assistance to nonprofit organizations, municipalities and state agencies for the development of perpetually affordable housing and for the conservation of important agricultural land, recreational land, natural areas and historic properties in Vermont. Born out of a period of rapid growth in Vermont, a coalition of affordable housing, conservation, and historic preservation advocates concerned with this rapid change in the character of or the Vermont landscape approached the state legislature with a plan to form a unique agency to review and fund projects addressing a range of community needs. The Legislature responded by passing the Vermont Housing and Conservation Trust Fund Act, enacted in June 1987 (Libby and Bradley, 2000). The statute dictated the makeup of the nine-member Board: five citizen members appointed by the Governor, to include an advocate for low income Vermonters and a farmer, the Commissioners of the state agencies of Agriculture, Housing and Community Development, and Natural Resources, and the Executive Director of the Vermont Housing Finance Agency. In July 1987, the Board held its first meeting (Libby, 1999).

VHCB's mission is taken directly from the authorizing legislation:

In the best interests of all of its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside, Vermont should encourage and assist in creating affordable housing and in preserving the states' agricultural land, historic properties, important natural areas and recreational lands (10 V.S.A. Chapter 15).

Such mission and objectives at a statewide level were extraordinary, and have proved ahead of their time in wisdom. During this same period other landmark land use laws were set in place throughout Vermont, creating an environment of some of the toughest land use and development review processes in the United States. Briechle (2006 and 2007) outlines essential elements of conservation-based affordable housing:

- *Partnerships.* Land conservation and housing organizations be involved, as should local governments, funders and investors, and in some cases private developers and nonprofit organizations.
- *Good outcomes.* The partners must ensure that the project will provide high-quality conservation land and high-quality, low-cost housing.
- *Ongoing stewardship, management, and monitoring.* Communities need to ensure that both the conservation and housing will be permanently protected.
- *Political and public support.* Community engagement can help citizens and public officials realize the multiple benefits of these developments.
- *Secure financing*. The pairing of housing and conservation land can attract new sources of funding, but combining these efforts can be complex. Care must be taken to achieve balanced support.

While Briechle describes the importance of combining these goals in specific projects, VHCB's overarching goal is to support both housing and conservation organization, whether or not they are combined in a specific project. VHCB has completed a number of combined goal projects, however they have supported exclusively housing projects with RACLT and WHT, though they have also supported other conservation projects in the same communities which RACLT and WHT served. On a statewide level, VHCB has virtually eliminated resource competition between conservation groups and housing groups by equitably distributing resources between the "dual goal" organizations. While perhaps slightly more myopic in scope that the community land trust ideals, VHCB recognized early on that the community land trust model of land protection was a natural fit when it comes to stewardship, management, monitoring, and has thus adopted many of the key tools of the CLT movement.

Additional Important Stakeholders

During the feasibility study there were dozens of stakeholders, both financially interested organizations, individuals, municipalities, and area social service provider groups. Housing Vermont, NeighborWorks America, and the Vermont Housing Finance Agency were perhaps the most important groups participating in the feasibility study. Many other groups were involved with the actual implementation phase.

Housing Vermont

Housing Vermont is a nonprofit syndication and development company founded in 1988. Housing Vermont creates permanently affordable rental housing for Vermonters through partnerships with local organizations (such as WHT and RACLT), public agencies and the private sector. This highly successful partnership has produced more than 4,400 affordable apartments in 145 different developments. Housing Vermont has raised and deployed more than $247 million in private equity which has leveraged an additional $351 million in private financing and public investment. The partnerships advance State and local development goals, particularly downtown revitalization, and create safe and attractive apartments. Housing Vermont raises equity by syndicating low income housing and historic tax credits. In addition to a reliable return on their investments, community banks and other Vermont and national companies which invest with Housing Vermont have an opportunity to help communities build or renovate tangible, long-lasting housing resources. Housing Vermont has a staff of 21. Oversight is provided by an 11-member board of directors.

Housing Vermont brings other critical services to its partners. Housing Vermont's development staff is skilled in shepherding nascent projects through the complex permitting process. The staff also helps to secure loans and grants to compliment the equity and provide construction management services to complete the project on time and within budget. RACLT had made a strategic decision in its early years to develop projects exclusively in partnership with Housing Vermont. Housing Vermont's extensive project development and syndication experience, as well as it ongoing role as co-owner and asset manager in the LP's, made it an excellent partnership choice for an organization like RACLT. Housing Vermont effectively ameliorated the development risk for smaller nonprofit organizations, but the partnership is long term as Housing Vermont and RACLT became "co-general managing partners" in over a dozen LP's. This made Housing Vermont a critical stakeholder in the merger feasibility study.

By contrast WHT had only completed two projects as co-developer with Housing Vermont, and retained a full in house development, asset management, and property management competency. WHT had prioritized the higher risk, greater cost exposure projects with which to partner with Housing Vermont.

NeighborWorks America

NeighborWorks is a national network of 240 community development based organizations. RACLT was a NeighborWorks Charter Member 1998. Known as NWO's, the local NeighborWorks organizations are local mission driven homeownership, development, and neighborhood revitalization nonprofits that carry out much of NeighborWorks America's mission. WHT was not an NWO, but partnered with RACLT through its NeighborWorks supported Homeownership Center of Southeastern Vermont.

The roots of the NeighborWorks system go back to a resident-led, 1968 campaign for better housing in Pittsburgh, Pennsylvania's, Central North Side neighborhood. Dorothy Mae Richardson, a homemaker and community activist, enlisted city bankers and government officials to join with her block club to improve her neighborhood. Together, they persuaded sixteen financial institutions to make conventional loans in the community; a local foundation capitalized a revolving loan fund. They rented a trailer, hired staff, and named the effort Neighborhood Housing Services (NeighborWorks America, n.d.)

In 1978, Congress institutionalized the NHS network by establishing the Neighborhood Reinvestment Corporation to carry on the work of the Urban Reinvestment Task Force. The Congressional act (Public Law 95-557) charged Neighborhood Reinvestment with promoting reinvestment in older neighborhoods by local financial institutions in cooperation with the community, residents and local governments. Bill Whiteside was named executive director. The act defined Neighborhood Reinvestment's mission as "revitalizing older urban neighborhoods by mobilizing public, private and community resources at the neighborhood level."

In April 2005, Neighborhood Reinvestment began doing business as NeighborWorks America. The mission of NeighborWorks America is to create opportunities for people to live in affordable homes, improve their lives and strengthen their communities. Charter Membership as an NWO came with a suite of operational funding, project funding, technical assistance, and high quality trainings and certifications.

The Vermont Housing Finance Agency

Vermont Housing Finance Agency (VHFA) was established in 1974 to finance and promote affordable housing opportunities for low- and moderate- income Vermonters. Since its inception, VHFA has assisted approximately 27,000 Vermonters and their families purchase primary residences; and provided financing, development and management support, subsidy administration and tax credits to approximately 8,400 units of multifamily rental housing. VHFA's mission is to finance and promote affordable, safe and decent housing opportunities for low- and moderate-income Vermonters.

VHFA has provided on-going projects support for both WHT and RACLT (as well as Housing Vermont). A bulk of this support has come from state LIHTC allocations. Competitive as they are, VHFA has allocated most of Vermont's annual LIHTC's to non-profit housing developers. In addition to LIHTC allocation and regulation, VHFA has provided pre-development financing, construction financing, permanent loans, single family home loans, technical assistance, and housing data and analysis to the network of community land trusts in Vermont.

The "Merger" Feasibility Study

By June of 2010 WHT had completed the initial due diligence on the RACLT organization and was prepared to seek resolutions from both boards confirming the type of "merger" that would take place, and collectively agree to enter the negotiation phase.

The initial due diligence indicated that full merger would come with more risk than acceptable by WHT. LaPiana (2000) describes a full merger as an interlocking board structure, whereby two organizations desire to merge but for technical reasons need to keep the two corporations alive. There are still two separate organizations but the boards have the same membership. Often used as a quick, and relatively inexpensive step, interlocking boards was quickly dismissed by WHT.

LaPiana goes on to describe three other general forms of merge structures. Merger by "dissolution into" is a case where a dissolving corporation wholly merges its assets and liabilities into a surviving corporation. The second option is to simply dissolve one corporation as if it were going out of business. In this situation the assets of dissolving corporation could be absorbed by the surviving, and it liabilities may not need to be dealt with by the surviving. Federal law, and most state laws, including Vermont, stipulate procedures for non-profit dissolution. The third, and more rare scenario, is when both corporations dissolve and a new one is created to accept the assets and liabilities of both. WHT proposed a hybrid scenario between the second and third:

> *…that RACLT simply dissolve, and [its] assets get distributed to various entities (nonprofits, with WHT taking the majority); some assets disposed of; and, possibly, some liabilities would be defaulted on. RACLT would need to retain a staff person or consultant to complete the dissolution and disposition process. This is likely the route that would work best from WHT's perspective, in terms of managing risk. (Windham Housing Trust Merger Committee, 2010,page 2)*

According to Vermont law this is not a merger at all but rather a "dissolution and disposition," where the assets of a non-profit are then distributed for the common good, typically other area non-profits. WHT had determined that it could not accept all of RACLT's risk, particularly in light of its own operational challenges since the 2008 downturn. The proposal was a follows:

- All of RACLT's assets and liabilities would be disposed of, some accepted by WHT others not.
- WHT would pursue, and indeed seek assurances that the NeighborWorks charter would be retained and expanded to the new organization.
- WHT would retain RACLT's main office in Springfield, VT and reopen it at as satellite office, primarily as a homeownership center.

- WHT would take on and steward the single family land portfolio, by assuming the land leases under 76 homes.
- WHT would accept 11 of the 14 LP's, all but the three worst performing LP's.
- WHT would accept only 2 of the 8 RACLT wholly owned properties, and none of the four mobile home parks.
- WHT proposed keeping 3 of the 7 RACLT staff, and hiring several new staff in the Brattleboro office. Those new positions would be made available to RACLT staff interested, qualified and willing to travel. In addition their individual employment longevity at RACLT would be calculated with respect to the benefits package offered by WHT. WHT would expand its board to accommodate membership representation from the new region, but not merge board structures.
- The proposal above would need adequate funding to implement, and WHT conditioned its proposal on this funding paying the full costs of the merger.

Singer and Yankee (1995) discuss the differences between mergers and consolidations:

> Mergers are permanent relationships between two or more organizations that involve the combining of boards staff, and physical facilities. A merger is the complete absorption of one organization (which loses it corporate existence) by another whose corporate existence is preserved. (page 5)

So much emphasis was placed on the dissolution of RACLT it was easy to lose sight of the fact that WHT needed to change its charter, service area, its organizational budget, and board structure to accommodate the new organization. Even though nothing was dissolved, the rapid addition of scope to the organization required, by Vermont law, that a new organization must be created. By contrast a consolidation is defined as each organization dissolving entirely, and a new single corporate entity is formed ("Consolidation", 1989; "Keys", 1992). By virtue of the Vermont state technicality, the RACLT-WHT merger was looking more like a consolidation. This general framework was accepted by both boards as a practical decision, however in the coming months the negotiation phase of what now became known as the "consolidation" revealed that not all stakeholders accepted this model.

The acting RACLT Executive Director, Marvin Hannity (name disguised), had either been hired by the RACLT board as a closeout director, or had quickly realized upon arriving at the organization in 2009 that it was insolvent, but had likely envisioned a more concise merger process. "Marvin wanted this to be a merger, and he pushed really hard for us to agree to wrap up RACLT's business," recalled Connie Snow, WWHT Executive Director. McLaughlin (1996) says problems arise from lack of common language, and from the mistaken assumption that structure is nothing more than a legal question. In truth, structure is first and foremost a management responsibility. Four sticky issues quickly came to light during the negotiation phase:

- **Disposition Timing.** Soon into the negotiation phase it became clear to the board of RACLT and to Mr. Hannity that the disposition of the assets which WHT was refusing to accept would be a long and costly process. The three LP's which WHT was refusing to accept all operated at a significant loss, were in poor condition, and were difficult to redevelop. Exacerbating matters it would be very difficult to liquidate or sell these properties on the open market by virtue of the housing subsidy covenants and deed restrictions, which had placed these under "perpetual" affordability. RACLT would be facing a long a difficult process to dispose of these assets, without the technical assistance of WHT. For this reason, Mr. Hannity continued to favor a merger rather than consolidation, or at least a commitment from WHT that they would provide assistance in the disposition. When it became clear that neither of these request would be honored communication became difficult. Connie Snow recalls, "It was no longer like we're both on the same side, it became a situation where we agreed to talk through the lawyers."

In addition, RACLT's co-partner in these properties, Housing Vermont, was increasingly anxious about not having a viable local partner, and as a result being left on the hook for the operational guarantees provided to the other LP's (equity investors). In addition to the three LP's, there were two wholly owned buildings, and four mobile home parks which WHT was refusing. These would also have to be disposed, and Mr. Hannity began to realize that that process would likely take much longer than the organizational consolidation.

- **Mobile Home Parks**. Operating mobile home parks was not one of WHT's core competencies. While at the time of the feasibility study WHT did own one park, and had made various shallow forays into the mobile home park business over the years, operationally WHT had struggled to figure out how to run parks at break-even. Beyond the fact that mobile homes are important segment of affordable housing throughout the United States, there was not many other aspects of mobile home parks which fit into WHT mission or core competencies. In Vermont, most mobile home parks are operated by non-profits, the land under the homes is owned by the non-profit as well. While this system fit neatly into the CLT model, the homes did not meet some of Briechle's (2006) definition of high quality. The homes themselves are owned by the residents, and the residents pay a lot lease fee to the non-profit. These lower quality homes, fill a niche of providing homeownership opportunities for people at relatively low cost. But a complicated brew of home depreciation, difficulty in securing home loans in the wake of the 2008 financial crisis, and the standardized sizing of new mobile homes increasing beyond parks lot sizes, meant that the non-profit owner of these parks often used unbudgeted staff resources on the softer people side of managing the parks. The relative low quality of the housing, the ongoing capital investment needed by the non-profit, and the relatively high degree of state regulation (resident protection laws), made this acquisition very unattractive to WHT. This was an issue for RACLT, for there was no clear path to disposing of this asset, while protecting the resident homeowners in the park. They would be difficult to sell on the open market, and there were no local nonprofit organizations willing to take them on.

- **RACLT Staffing.** Having worked closely with RACLT over the years through the Homeownership Center of Southeast Vermont, WHT was aware of the deteriorating staff morale at RACLT. "They're prettier than us," reported Darlene Kelly referring to RACLT staff impressions of WHT. Ms. Kelly had served in several roles with RACLT. In recent years the widespread expectation at RACLT was "all hands on deck at all times," and staff members did whatever they needed to do to get the job done. People performed various functions, and often took on business well outside their job descriptions, blurring the lines between positions and between work and personal time. "We had all the NeighborWorks stuff going on at RACLT [which WHT did not have], but we were definitely the Land of the Misfit Toys, I always felt that way." Larry Mires put it another way, "We recognized in [Jason's] time [at RACLT] that given the situation the organization couldn't withstand anything but the very best work in every aspect of the organization if it was to have a chance to succeed."

The negotiation phase of was a period of great uncertainty among the staff at RACLT. They were neither in control of their future, nor did they feel involved with the process of the merger feasibility study. For years a skeleton staff at RACLT had held the organization together, despite what appeared to be daunting circumstances and market conditions. Despite this hard work staff at RACLT felt that they were viewed as amateurs, or as incompetent by WHT staff. Ms. Kelly reported that the sentiment of staff toward the merger was very negative primarily because they felt that under any merger/consolidation scenario they would be losing everything they had worked so hard for. It was clear not all staff would remain employed in the new organization.

The level of staff commitment to, and investment in RACLT was very high, and perhaps for this reason the one aspect of the consolidation which the RACLT staff favored was the promise of more defined roles and responsibilities, even in light of likely overall decreases in take home pay. "We looked forward to not be on-call at any hour of the day, and responding to issues beyond our pay grade". To a lesser degree the WHT staff were also anxious. The initial merger feasibility proposal had in effect proposed a work plan and an expanded service area with less staff.

Lewis and Chandler (1993) outline steps that can be taken to alleviate tensions with staff,"...be sensitive to bruised feelings. In any merger, employees feel a sense of loss even if they retain their jobs. Fight this with social staff functions, joint staff task forces for a problem resolution, and a lot of reassurance and hand holding, particularly during the transition period."

- **Deficit Guarantees for the LP's**. In each housing partnership agreement the general managing partners, or co-partners in this case, provide deficit guarantees to the equity investors in the partnership. This in effect ensures that the partnership will remain healthy, because if there is a cash flow failure, the general managing partners have committed to covering any operational losses.

As part of the consolidation, the new organization WWHT would assume RACLT's partnership role. WHT was reticent to assume that risk, since they had not been involved in the development of the properties. In fact WHT had some philosophical differences in the way a number of the RACLT projects had been developed over the years. On the other hand HV was reticent to end up solely owning property in the area. Solely owning and operating properties was not HV's primary business model. They were not a community land trust and did not operate under the same fundamental principles of perpetual affordability. Further HV was incensed that WHT was refusing to accept a number of other poorly performing partnership under any circumstance, leaving them holding the bag.

While much of the literature on nonprofit mergers advocates dealing with the most risky or difficult negotiations first, Lewis and Chandler (1993) perhaps best describe the reason to handle the "deal breakers" first:

> These questions are usually the high-visibility perceptual issues, such as the selection of a CEO, headquarters location, election of officers, and the official logo. They should be handled with the idea of striking a rough balance, without keeping score. While some would argue that it is better to start with the smaller, less volatile issues and work up to the tougher ones, nothing could be more devastating than to spend months successfully negotiating minor issues, only to discover irreconcilable differences at the last moment. One of the dynamics of the negotiating process is the inevitable exhaustion that strikes team members after several months. This wearing-down process make negotiators more testy and less likely to compromise than at earlier stages, when energy and commitment are at a high level. We suggest putting the deal breakers up front and, if consensus can't be reached, putting those issues on hold to deal with later. Everyone in the process deserves to know at the outset which issues are the potential deal breakers. (page 2)

WHT had put the most contentious issues on the table, so that the stakeholders involved with the consolidation discussions were under no illusions that the process would be easy. The next step was the negotiation phase, and working through the broader issues that each stakeholder brought to the table.

Statewide Context of CLT Housing Development Organizations

Through VHCB's 25 years of statewide leadership a strong network of local housing and trust conservation groups has prospered and innovated. New funding sources were developed, local capacity was greatly increased, and projects became higher quality. Increasingly Vermont was becoming nationally recognized for this unique, community oriented, and comprehensive housing delivery system. Vermont's overarching policy of permanent affordability and focus on sustainability was the foundation in which the system grew. And grow it did. By 2000 nearly all of the affordable housing in the state was being produced with the policy that public investment into affordable housing should neither be lost or used to displace people. The policy applied to single family homes, condominiums, cooperatives, rentals, transitional housing, and emergency shelters, ensuring that investments today will provide long-term social and financial return.

Housing construction became a catalyst for economic development, community reinvestment, revitalization, responsible growth, and energy conservation. By directing new housing away from farm and forest land, VHCB also furthered the state's commitment to conservation, protecting the rural landscape and natural world for agriculture, forestry, recreation, tourism, historic preservation, health, and bio diversity (Libby, 2010). All of this work was carried out by the network of local community land trusts from around the state, and as the movement began to grow so did the inventory perpetually affordable structures and land.

The Vermont community land trust network operated like a hive of bees busily working toward the common good, almost as if as one organism. Adjustments needed to be made along the way. The RACLT/WHT merger proposal was not the first that VHCB had been involved with over the years. A high profile, true merger, had taken place between the Burlington Community Land Trust and Lake Champlain Housing Development Corporation in 2006, creating what is now know as the Champlain Housing Trust, the largest in the state, and also a NeighborWorks Charter organization. Other less high-profile mergers and consolidations had taken place or been discussed over the years. From VHCB's point of view these were all with the purpose of ensuring long term stewardship of the perpetually affordable housing.

Jim Libby describes the problem with perpetuity:

> Woody Allen is reputed to have said, "Perpetuity is a long time, especially near the end." The stewardship of permanently affordable homes is a big responsibility. It present three challenges: affordability, durability, and sustainability. Though separate, these challenges are interconnected; they are based upon a common goal of sustaining people and communities....the greatest value of these homes is the people they shelter and the event that will define their lives while residing within these walls. Affordability, durability, and sustainability are like a three leaf red clover: separate parts, joined as whole, sustaining people, communities, and land.

As a result of making a commitment to at least partially funding the RACLT/WHT consolidation, and advocating for this consolidation among policy makers and other funders, VHCB became the most critically interested stakeholder in the negotiations. As lofty as VHCB goals may have been, as Larry Mires had pointed out earlier, these were all independently run organizations, and VHCB could not control the outcomes and decision made by local people and local communities. While staff and board at both WHT and RACLT recognized this broader goal, it was the trench decisions which needed to be made now.

A consolidation with WHT would clearly alleviate a short term cash flow problem at RACLT, but would a new organization be able to serve the RACLT communities as well? Would the property, and market issues in the RACLT portfolio and communities weaken a new organization, thus further threatening the network? Would the new organization be able to steward this affordable housing for, well, forever?

The groundbreaking text, *The Community Land Trust Handbook* (White, 1982), successfully operationalized what had until that time been a movement of human rights, and a collection of utopian experiments. The *CLT Handbook* not only focused on the relationship between people and communities and the land, but added four elements to the common lexicon of the CLT. These were as follows:

1. A two-party structure of ownership where a non-profit local community land trust organization, dedicated to stewarding the land for affordable housing would own the land, and would lease

the land to a household who owned the building which was located on the land. The ideas put forward were awkward to finance in the early years, and were an underwriter's nightmare, but as local land trusts became more advanced with financing mechanisms and advocacy this model later became accepted in common law.

2. There was a prescribed inclusive structure within the local CLT itself. It was not enough that members of the community were present on the board. Earlier CLT's were hard to distinguish from a commune, and remained insular and parochial, with families living a common tract of land. These communities were structured such that everyone in the community had a voice. The *CLT Handbook,* took this to the next step by prescribing a two-part membership in the organization which would included people residing on leased land, and representation from the general community, or those who did not live on leased land or rent CLT homes but resided in the area. In addition there would be a three-part board structure representing tenants/homeowners, public interest citizens, and general community members.
3. Stewardship. The operational commitment came in the form of priority access for low income households, ensuring that the land an homes remained permanently affordable, enforcement of resale controls embedded in the ground lease or the in deed restrictions, and responsibility to assist homeowners and renters to be successful. This last element includes a suite of services that not only allowed the homeowner to stay in their home, but to assist them with maintenance and upkeep on the asset, and assist them with resale of the home (Davis, 2010). Unlike in the *The Community Land Trust: A Guide to a New Model for Land Tenure in America* (International Independence Institute, & Swann, 1972), the *CLT Handbook* placed a new emphasis on the poor, and making the land protected homes available to the most vulnerable in the community. White (1982) says, "It's not enough to provide low income people with land and financing for homes and then leave them to their own resources".

4. Capture the unearned increment. Community land trusts must enforce the capturing of market appreciation, by keeping a portion of that market increment for future community value. In other words, in today's markets, homeowners would have to agree to accept a pre-arranged, and presumably fixed and smaller portion of the market appreciation. Removing market appreciation from the land was one of the earliest concepts in the CLT movement, traced back to Henry Georges', *Progress and Poverty,* published in 1879.

The community land trust organizations in Vermont were doing all of these things, some more successful than others, but the stewardship element takes consistent local leadership with a talent for keeping an eye on the ball. Some organizations were more successful than others.

Analysis of the Consolidation

Since much of the merger feasibility study had been focused on financial risk, a risk/opportunity analysis is perhaps the best way to understand what was at stake for each of the organizations involved. Singer and Yankee's 1994 study of the perceptions of participants of 18 non-profit mergers confirms that similar prevailing reasons drove many organizations studied by them to MAC's, citing mainly financial reasons, inability to compete in marketplace, benefit to the community, and capacity to carry out mission. Two thirds of respondents in this study cited encouragement or suggestions from funders, to explore the possibility of merging or consolidating.

"The idea of expanding to such a big territory was a stunning proposal, for me anyway. Even expanding from Brattleboro to cover Windham County had seemed like a big deal. We saw ourselves as a grass roots organization coming up from the Clark and Canal neighborhoods." Connie Snow went on to describe advice provided to her from another CLT director in the state who had recently been through a merger, "It was really talking with Bethany Torbin (name disguised) who said small isn't always beautiful, what you owe your residents is to be strong, not to be small. You owe them strength so you'll be here for them. And this is not only for your residents but for the communities we serve."

In order of degree, the following are the major risk factors which WHT considered:

Risk: RACLT Portfolio

The single most important consideration driving WHT to propose a consolidation rather than merger, was the financial condition of RACLT's multifamily portfolio, both wholly owned, and the partnerships. The most dramatic indicator/ratio of health was the amount of replacement reserves per unit of housing. Replacement reserves are cash held by each of the partnerships, and are defined as an amount set aside from net operating income to pay for the eventual wearing out of short-lived assets. Replacement reserves are an organization's first line of defense against the risk of need for capital improvements (Windham Housing Trust Merger Committee, 2010).

WHT's total replacement reserves per unit of housing stood at $3,150. By contrast RACLT was about 14% of that at $435 per unit. Reviewing the stacks of Capital Needs Assessments completed on each property, as well as staff site visits to each, WHT had determined that RACLT's portfolio had a greater degree of capital needs looming, and maintenance was being deferred as a result of not having the cash on hand. An additional indicator was that the both the general partners, RACLT and Housing Vermont, had made significant cash advances to several of the more troubled partnerships to cover operational losses. By contrast, throughout its history WHT had very rarely made loans to their LP's since most of the WHT portfolio carried robust reserves.

Gus Seelig sums up Housing Vermont's role in extending RACLT tenure, "While some people around the state might regard Housing Vermont as a 900 pound gorilla, people need to understand that they have performed heroically in many cases...this is particularly true in the Armory Square project, which was a monumental effort to rehabilitate what was arguably one of the worst slums in the state." Besides years of partnering with RACLT on development projects, and cooperating with RACLT on managing the LP's assets, Housing Vermont had agreed to take on one of the largest development projects in State, the two-phase, 58 unit, Armory Square in Windsor. While the political environment and funding resource timing couldn't have been worse for such a project, it was of critical importance for RACLT. The project would generate important developer fee income for RACLT, and bring a large, potentially profitable, multifamily building into their portfolio. Indeed the project would also serve a critical workforce housing need in one of the few towns in RACLT's service area which was experiencing some prosperity from the rapid economic growth experienced in the Upper Valley. While the project was funded and completed, Housing Vermont had expended a great deal of political capital on the project. In subsequent years Housing Vermont took on a 77 unit rehab of an elderly housing complex just down the road in Windsor, also as part of the overall effort to shore up RACLT revenue side. Because of their willingness to infuse cash in foundering partnerships and their longstanding commitment to continue developing projects with RACLT even in the worst of times, Housing Vermont became a very important stakeholder in the consolidation...perhaps more important than either WHT or VHCB estimated.

But it was this relationship which placed the consolidation discussions in jeopardy. While other aspects of the consolidation plugged along, the deficit guarantees became a standoff in the negotiations. All parties recognized this as being a deal breaker, but continued to move in good faith. It was VHCB who was able to break the stalemate by offering a onetime risk pool sufficient enough to mitigate losses which WHT might incurring in the first few years of the consolidation, and at the same time ease HV's concerns about being the sole general partner ownership. VHCB and HV were cognizant that more consolidations in the community land trust network were likely to take place in coming years, and HV was very concerned about setting a precedent that they would accept sole liability to rescue troubled properties.

In addition to reservations about the multifamily portfolio, WHT was not interested in the four mobile home parks which RACLT owned and operated. This had less to do with the financial performance of these parks than it did the fact that operating mobile home parks was not a core competency of WHT. Not accepting these parks was a problem for both RACLT, and VHCB, both of which had invested heavily in these parks over the years. Again, VHCB was instrumental in brokering and contributing to a deal where the parks would be distributed to local non-profit ownership if residents, who are given collectively a first right of refusal under Vermont law, voted not to purchase their own parks (cooperative ownership). In the end, one park voted to form a cooperative, one was accepted by another CLT, the Rutland Area Community Land Trust, and the final two would be accepted by WHT with the promise from VHCB for financial support to acquire and provide physical rehabilitation upgrades to each park.

Risk: Staffing and Satellite Office

One risk of collective learning from other organizations is that a big deal can be made from something that really isn't that much of a problem. Several CLT's around the state had struggled with a business plan in maintaining satellite offices in rural areas, either by virtue of a merger, or just in their regular operations.

In the WHT/RACLT consolidation this became an early concern. Would the new organization keep former headquarters of RACLT open? What programs would be run from this office? These decisions related to the degree of RACLT staff retention, sentiments in the Springfield community about keeping that presence, and the cost versus benefit of running a satellite. Keeping this office open became one of the few demands of the RACLT organization in the negotiation phase, but was viewed as having inherent risk for WWHT. It was awkward to staff, costly to rent and operate, and only had the capacity to run one major program.

Gus Seelig pointed out, "If you don't work really hard at it the people who are not in your main office, or in your main community, are going to inevitably feel like step children." In the end it was VHCB who came to the rescue again by advocating for keeping the office open and funding physical upgrades and IT improvements at the satellite office to create more connectivity with the home office in Brattleboro. The office would remain open on a walk-in basis to the community. The public could be directed to all of the new organizations resources, however the Homeownership Center was only program to run out of the office with a staff of four FTE's.

Keeping the Springfield office open also had another important benefit. It could only help in introducing the new organization to the new northern service area. To the extent that it can be measured, it is widely believed that WHT enjoyed a greater degree of community support than did RACLT, which is partly why WHT remained as strong as it did. WHT staff was cognizant that generating the same degree of community support in the north was going to be a long term process. With limited housing development potential and no property management operations proposed in the new territory, both of which generate a lot of external contact with communities, closing the Springfield office seemed like poor way to begin a new relationship.

Risk: Windsor County Housing Markets

The housing markets in the new region posed a significant risk for WHT, not because there were clear indicators that the market was much worse than WHT current service area, but because there appeared to be contradictory data. WHT had its own problems in Windham county. Dramatic increases in the cost of homeownership, continued job loss and stagnant wages, increases in demand for subsidized rental housing, accelerated division of wealth within the area, and an increase in seasonal second homes and high end home sales were all factors which WHT had recognized over the years, but had accelerated since the mid 2008 market peak (Ryan, 2011). The rental markets were very competitive, with one of the lowest vacancy rates in the state. Seemingly counterintuitive, as the economic distress factors intensified, the demand for what WWHT offered also increased, with fewer funding sources available to meet the demand.

The same situation did not exist in the three largest communities in the new service area, Rockingham, Springfield and the Town of Windsor. The commonalities between these three communities revolve around outmigration. All three communities experienced an increase in the numbers of people leaving the community for work. As a result the prior decade experienced a slowing of population growth of young adults, fewer rental households, and demographic declines in the elderly population. With the exception of the Town of Windsor, the new service area was experiencing a long slow decline in the rural economy similar to many areas throughout the northeast U.S.

What WHT did understand was that because of the recent high profile rental development projects in the RACLT service area, and in light of declining funding for rental housing programs, that there would likely be few if any new housing development opportunities. In addition to the problems with housing development in the new region was the need for what is known as "deep subsidy". Deep subsidy projects are an older model in multifamily development. In this model a developer is guaranteed a market based rent by the federal government, and people who lease the housing units don't pay more than 30% of their annual income towards their housing. The difference between the market rent, and the ability for a renter to pay, is made up by the federal government. More costly to the federal government, with less private sector involvement than with LIHTC projects, these deep subsidy programs have atrophied over the course of the past two decades as a result of the ballooning costs associated with maintaining the nationwide inventory. Rural areas like the RACLT service area, with low household income, and declining employment prospects, benefit tremendously from deep subsidy projects. Increasingly projects developed without deep subsidy are unable to find renters with the necessary income. But deep subsidy from the U.S. Department of Housing and Urban Development or U.S. Department of Agriculture is very limited, with little prospect of expansion, so would be remote prospect for the new organization. The best hope for projects would be to rehabilitate some of the older projects in the RACLT portfolio.

While homeownership opportunities appeared to be a more within reach for people in the new service area as a result of lower priced single family homes, the nationwide foreclosure crisis had reached both service areas. As part of the housing counseling capacity in both organization, not only was foreclosure counseling provided to current CLT homeowners, but also to anyone who walked through the door asking for help. As foreclosures were on the rise, so was the demand for services. It was not very likely that new organization could increase the portfolio of CLT homes, or at lease increase the rate in which properties were added to the permanent affordability portfolio.

The combination of the overall market trends made it seem like a new expanded organization would neither increase rental housing or homeownership opportunities beyond what the two organizations were already producing, only that now there would be fewer staff doing it with more limited budgets.

Opportunity: NeighborWorks Charter

"Another thing of overriding importance for us [VHCB] was for Vermont not to lose the NeighborWorks Charter. This is ultimately what gave me confidence that this thing would work out, in whatever form, was that it would valuable enough for your board to able to work through....any other work out strategy [other than consolidation with WHT] and the charter would be lost to Vermont." (Gus Seelig)

For years there had been five Chartered NeighborWorks organizations in Vermont. It was in fact remarkable that in such a small state that there were five NWO's, and credit for that had been provided to Vermont's long standing U.S. Senator, Patrick Leahy, a stalwart supporter of affordable housing, historic preservation, and land protection.

NeighborWorks America had less interest in adding a new organization than it did losing a struggling organization in a state which already had more NWO's per capita than any other. So the consolidation proposal held out hope that the charter could simply be expanded to the new organization. In effect this was already the case with the homeownership programs since WHT and RACLT has been working together to serve the entire region. WHT would need this confirmation prior to consolidating, and assurances that future annual funding from NeighborWorks would be commensurate with the expanded area. Retention and expansion of the charter became a non-negotiable necessity, and was strongly supported by, and advocated for, all the stakeholders.

Opportunity: Preserve Affordable Housing Delivery System and Stewardship in Windsor County Service Area

Libby (2010) discussed three major challenges of the perpetuity promise, affordability, durability, and sustainability. Though difficult, Vermont has strong record of managing the affordability and durability problem. Affordability covenants are built into each home, and durability is largely about being organized in project capital needs and lifecycle costs over the years. But the sustainability nut may end up being a harder to crack. There are so many risks associated with the ongoing stewardship of the network of land protected homes.

> In order to protect our investment in affordable housing, VHCB has long accepted the fact that we need to support and enhance the organizational capacity of nonprofits to work with residents, to provide high quality property management, to promote sound maintenance and capital investment, and to maintain affordability. Regardless of the contractual mechanism chosen, the lights must be on in the stewardship office and qualified staff must be paid to complete this work. (Libby, 2010, p.555)

The opportunity to solidify the sustainability of the Windsor county portfolio of affordable housing was one for the network and the movement in the Vermont. The opportunity for WHT was to be a party to that preservation and continued stewardship, and if not for the support of the funders, namely VHCB, the consolidation would likely have been too risky for WHT to take on.

Lessons Learned

Despite the feasibility study and all the hard work that went into the consolidation, the lessons drawn from this experience have limited immediate usefulness to the new organization WWHT.   No one is anticipating another consolidation anytime soon. However, WWHT will need to position itself to learn from the first two to three years of operations after the consolidation.   A two-year post consolidation evaluation could help answer many questions. How have the consolidation plans panned out?   How accepted is the new organization in the communities? What are the financial indicators relative to before the consolidation? How is the staffing working out? Perhaps the largest question maybe whether the affordable housing is better stewarded several years after the consolidation?

It is the Vermont-wide network and VHCB which are in the best position to capture lessons learned from the feasibility study and apply them around the state. This consolidation should raise larger questions about the sustainability of the CLT affordable housing stock in the state, particularly around the issue of what an appropriate economic size might be. In the years to come Vermont's expanding CLT affordable housing will be needing more investment than ever, and the question becomes whether the costs associated with this stewardship threatens to overtake revenue availability.

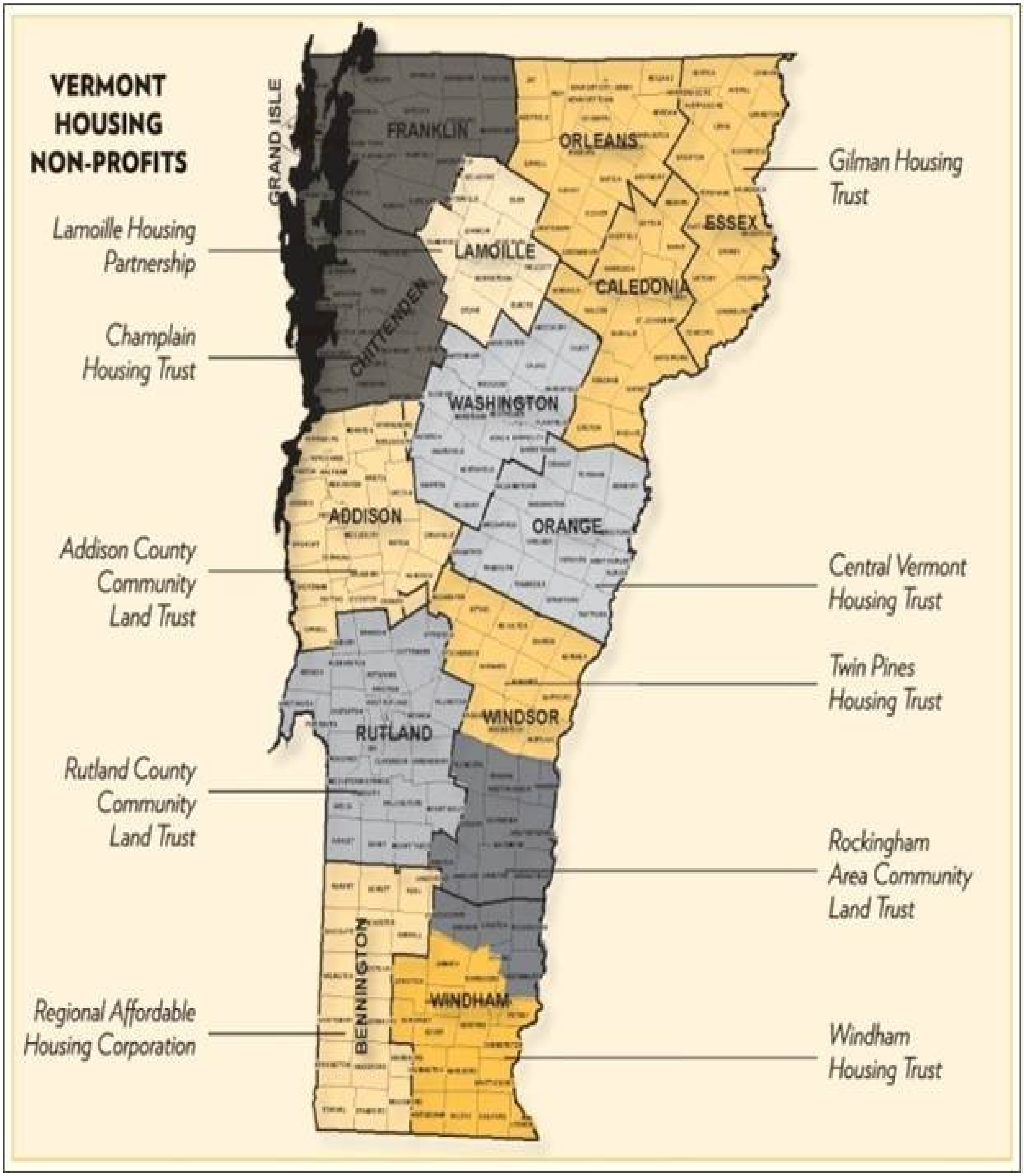
The WHT/RACLT case study is a preview for practitioners around the state to consider how vulnerable (and costly) stewardship can be, and to consider how much CLT housing inventory is too much manage even if absence of satisfying all of the communities shelter needs. What is the tipping point where the capital needs for operation, maintenance, and upgrades, outpace available resources? The issue of determining what an appropriate economic size for CLT housing in the state has proven to be a sticky issue in the past. Due to Vermont's uniqueness in delivering affordable housing, and its relatively high cost per unit developed, this exercise will likely be embarked on again only under extreme financial duress. As practitioners of community development, not just housing development, we like to talk about impact and service to our communities. But understanding the stewardship costs is an important part of the impact we have.

Conclusions

While an obvious conclusion might be to conduct an evaluation of the consolidation, it appears that WWHT would be better served by a two or three year post-consolidation evaluation. A more important need might be for the CLT network, perhaps through VHCB, to conduct a scenario planning exercise where several likely courses of action are played out in great detail. The goal of this exercise would be to ferret out the implications of a massive state funding cuts to VHCB for instance, or cutbacks in the LIHTC program, or the loss of any one of the local CLT partners around the state, or any number of other eventualities. Alternatively, a planning exercise such as this could build out more positive scenarios, such as a continued increase in the popularity of the CLT model, or the expansion of the model to higher income range households, for instance. Either way the network could place itself in a better position to deal with crisis or opportunity through scenario planning. These are all very real possibilities even in light of stellar support the CLT movement in Vermont receives each year from funders and policy makers. Any one of these scenarios could severely limit the CLT networks ability to grow and produce more land protected homes, but more importantly could impact the ability of the network partners to provide on-going stewardship of the existing stock.

The health and integrity of the CLT system seems to be dependent on health of each of the CLT's. In the case of failure of one or more of these organizations, can we really expect further consolidation in the network? Can we really expect fewer and fewer organizations doing more work? Now approaching two years since the WHT/RACLT consolidation took place, it has been widely hailed as a success, but the growing pains remain. Documenting the merger feasibility study, and further evaluation of the post merger period could become a valuable preview of the struggles in stewardship which other CLT's around the state are likely to experience in the coming years.

Appendix A



VERMONT HOUSING NON-PROFITS
Lamoille Housing Partnership
Champlain Housing Trust
Addison County Community Land Trust
Rutland County Community Land Trust
Regional Affordable Housing Corporation
Gilman Housing Trust
Central Vermont Housing Trust
Twin Pines Housing Trust
Rockingham Area Community Land Trust
Windham Housing Trust
GRAND ISLE
FRANKLIN
ORLEANS
ESSEX
LAMOILLE
CALEDONIA
CHITTENDEN
WASHINGTON
ADDISON
ORANGE
WINDSOR
RUTLAND
BENNINGTON
WINDHAM

Appendix B

Title 10: Conservation and Development

Chapter 15: VERMONT HOUSING AND CONSERVATION TRUST FUND

§ 301. Short title

This chapter may be cited as the "Vermont Housing and Conservation Trust Fund Act."Â (Added 1987, No. 88, § 1, eff. June 11, 1987.)

§ 302. Policy, findings, and purpose

(a) The dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural land, forestland, historic properties, important natural areas, and recreational lands are of primary importance to the economic vitality and quality of life of the state.

(b) In the best interests of all of its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside, and to support farm, forest, and related enterprises, Vermont should encourage and assist in creating affordable housing and in preserving the state's agricultural land, forestland, historic properties, important natural areas and recreational lands, and in keeping conserved agricultural land in production and affordable for future generations of farmers.

(c) It is the purpose of this chapter to create the Vermont housing and conservation trust fund to be administered by the Vermont housing and conservation board to further the policies established by subsections (a) and (b) of this section. (Added 1987, No. 88, § 1, eff. June 11, 1987; amended 2011, No. 118 (Adj. Sess.), § 1; No. 142 (Adj. Sess.), § 3, eff. May 15, 2012.)

§ 303. Definitions

As used in this chapter:

(1) "Board" means the Vermont housing and conservation board established by this chapter.

(2) "Fund" means the Vermont housing and conservation trust fund established by this chapter.

(3) "Eligible activity" means any activity which will carry out either or both of the dual purposes of creating affordable housing and conserving and protecting important Vermont lands, including activities which will encourage or assist:

(A) the preservation, rehabilitation or development of residential dwelling units which are affordable to lower income Vermonters;

(B) the retention of agricultural land for agricultural use, and of forestland for forestry use;

(C) the protection of important wildlife habitat and important natural areas;

(D) the preservation of historic properties or resources;

(E) the protection of areas suited for outdoor public recreational activity;

(F) the protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources;

(G) the development of capacity on the part of an eligible applicant to engage in an eligible activity.

(4) "Eligible applicant" means any:

(A) municipality;

(B) state agency as defined in section 6301a of this title;

(C) nonprofit organization qualifying under Section 501(c)(3) of the Internal Revenue Code; or

(D) cooperative housing organization, the purpose of which is the creation or retention of affordable housing for lower income Vermonters and the bylaws of which require that such housing be maintained as affordable housing for lower income Vermonters on a perpetual basis.

(5) "Lower income" means less than or equal to the median income based on statistics from state or federal sources.

(6) "Important natural area" means any area containing one or more endangered species as defined in chapter 123 of this title or any area essential to maintaining the ecological diversity or natural heritage of the state.

(7) "Historic property or resource" means any building, structure, object, district, area, or site that is significant in the history, architecture, archeology, or culture of this state, its communities or the nation. (Added

1987, No. 88, § 1, eff. June 11, 1987; amended 2011, No. 138 (Adj. Sess.), § 29; No. 142 (Adj. Sess.), § 3, eff. May 15, 2012.)

§§ 304-310. Repealed. 1973, No. 197 (Adj. Sess.), § 4.

§ 311. Creation of the Vermont housing and conservation board

(a) There is created and established a body politic and corporate to be known as the "Vermont housing and conservation board" to carry out the provisions of this chapter. The board is constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the board of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the state. The board is exempt from licensure under 8 V.S.A. chapter 73.

(b) The board shall consist of the following 11 members:

(1) The secretary of agriculture, food and markets or his or her designee.

(2) The secretary of human services or his or her designee.

(3) The secretary of natural resources or his or her designee.

(4) The executive director of the Vermont housing finance agency or his or her designee.

(5) Three public members appointed by the governor with the advice and consent of the senate, who shall be residents of the state and who shall be experienced in creating affordable housing or conserving and protecting Vermont's agricultural land and forestland, historic properties, important natural areas, or recreational lands, one of whom shall be a representative of lower income Vermonters and one of whom shall be a farmer as defined in 32 V.S.A. § 3752(7).

(6) One public member appointed by the speaker of the house, who shall not be a member of the general assembly at the time of appointment.

(7) One public member appointed by the senate committee on committees, who shall not be a member of the general assembly at the time of appointment.

(8) Two public members appointed jointly by the speaker of the house and the president pro tempore of the senate as follows:

(A) One member from the nonprofit affordable housing organizations that qualify as eligible applicants under subdivision 303(4) of this title who shall not be an employee or board member of any of those organizations at the time of appointment.

(B) One member from the nonprofit conservation organizations whose activities are eligible under subdivision 303(3) of this title who shall not be an employee or member of the board of any of those organizations at the time of appointment.

(c) The public members shall serve terms of three years beginning February 1 of the year of appointment. However, two of the public members first appointed by the governor shall serve initial terms of one year; and the public members first appointed by the speaker and committee on committees shall serve initial terms of two years. A vacancy occurring among the public members shall be filled by the respective appointing authority for the balance of the unexpired term. A member may be reappointed.

(d) Annually, the board shall elect from among its public members a chair and vicechair. The board may elect officers as it may determine. Meetings shall be held at the call of the chair or at the request of three members. A majority of the sitting members shall constitute a quorum and action taken by the board under the provisions of this chapter may be authorized by a majority of the members present and voting at any regular or special meeting.

(e) Members other than ex officio members shall be entitled to per diem authorized under 32 V.S.A. § 1010 for each day spent in the performance of their duties and each member shall be reimbursed from the fund for his or her reasonable expenses incurred in carrying out his or her duties under this chapter.

(f) The board shall employ an executive director to administer, manage and direct the affairs and business of the board, subject to the policies, control, and direction of the members. The board may employ technical experts and other officers, agents, and employees as are necessary to effect the purposes of this chapter, and may fix their qualifications, duties, and compensation. The board shall use the office of the attorney general for legal services. (Added 1987, No. 88, § 1, eff. June 11, 1987; amended 1987, No. 203 (Adj. Sess.), § 18, eff. May 27, 1988; 1995, No. 190 (Adj. Sess.), § 1(b); 2003, No. 42, § 2, eff. May 27, 2003; 2009, No. 1 (Sp. Sess.), § E.813; 2009, No. 156 (Adj. Sess.), §§ E.810.1, E.810.2; 2011, No. 142 (Adj. Sess.), § 3, eff. May 15, 2012.)

§ 312. Creation of Vermont housing and conservation trust fund

There is created a special fund in the state treasury to be known as the "Vermont housing and conservation trust fund." The fund shall be administered by the board and expenditures therefrom shall only be made to implement and effectuate the policies and purposes of this chapter. The fund shall be comprised of 50 percent of the revenue from the property transfer tax under chapter 231 of Title 32 and any moneys from time to time appropriated to the fund by the general assembly or received from any other source, private or public, approved by the board. Unexpended balances and any earnings shall remain in the fund for use in accord with the purposes of this chapter. (Added 1987, No. 88, § 1, eff. June 11, 1987; amended 1997, No. 156 (Adj. Sess.), § 40; 1999, No. 49, § 79.)

§ 313. Expenditure of bond proceeds

Any proceeds of state bonds issued in support of activities under this chapter shall be used exclusively for the funding of long-term, tangible capital investments and those capital expenses allowed under federal laws governing the use of state bond proceeds as determined with the guidance of the state of Vermont's bond counsel. No bond proceeds shall be used to fund the operational expenses of the board. For purposes of this section, "operational expenses" shall include costs related to persons directly employed or under contract to provide administrative, clerical, financial, lobbying, policy analysis, or research services. (Added 1991, No. 256 (Adj. Sess.), § 21a, eff. June 9, 1992.)

§ 314. Repealed. 1973, No. 197 (Adj. Sess.), § 4.

§ 321. General powers and duties

(a) The board shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including without limitation those general powers provided to a business corporation by Title 11A and including, without limiting the generality of the foregoing, the power to:

(1) upon application from an eligible applicant in a form prescribed by the board, provide funding in the form of grants or loans for eligible activities;

(2) enter into cooperative agreements with private organizations or individuals or with any agency or instrumentality of the United States or of this state to carry out the purposes of this chapter;

(3) issue rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering the provisions of this chapter;

(4) transfer funds to the department of economic, housing and community development affairs to carry out the purposes of this chapter.

(b) The board shall seek out and fund not-for-profit organizations and municipalities that can assist any region of the state which has high housing prices, high unemployment, and low per capita incomes in obtaining grants and loans under this chapter for perpetually affordable housing. The board shall administer the "HOME" affordable housing program which was enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Title II, P.L. 101-625, 42 U.S.C. 12701-12839). The state of Vermont, as a participating jurisdiction designated by Department of Housing and Urban Development, shall enter into a written memorandum of understanding with the board, as subrecipient, authorizing the use of HOME funds for eligible activities in accordance with applicable federal law and regulations. HOME funds shall be used to implement and effectuate the policies and purposes of this chapter related to affordable housing. The memorandum of understanding shall include performance mea sures and outcomes that the board will annually report on to the Vermont department of economic, housing and community development.

(c) On behalf of the state of Vermont, the board shall be the exclusive designated entity to seek and administer federal affordable housing funds available from the Department of Housing and Urban Development under the national Housing Trust Fund which was enacted under HR 3221, Division A, Title 1, Subtitle B, Section 1131 of the Housing and Economic Reform Act of 2008 (P.L. 110-289) to increase perpetually affordable rental housing and home ownership for low and very low income families. The board is also authorized to receive and administer federal funds or enter into cooperative agreements for a shared appreciation and/or community land trust demonstration program that increases perpetually affordable homeownership options for lower income Vermonters and promotes such options both within and outside Vermont.

(d) On behalf of the state of Vermont, the board shall seek and administer federal farmland protection and forestland conservation funds to facilitate the acquisition of interests in land to protect and preserve in perpetuity important farmland for future agricultural use and forestland for future forestry use. Such funds shall be used to implement and effectuate the policies and purposes of this chapter. In seeking federal farmland protection and forestland conservation funds under this subsection, the board shall seek to maximize state participation in the federal wetlands reserve program and such other programs as is appropriate to allow for increased or additional implementation of conservation practices on farmland and forestland protected or preserved under this chapter.

(e) The board shall inform all grant applicants and recipients of funds derived from the annual capital appropriations and state bonding act of the following: "The Vermont Housing and Conservation Trust Fund is funded by the taxpayers of the State of Vermont, at the direction of the General Assembly, through the annual Capital Appropriation and State Bonding Act." An appropriate placard shall, if feasible, be displayed at the location of the proposed grant activity. (Added 1987, No. 88, § 1, eff. June 11, 1987; amended 1991, No. 93, § 16a, eff. June

26, 1991; 1995, No. 46, § 27; No. 62, § 54, eff. April 26, 1995; 2005, No. 71, § 219a; 2009, No. 1 (Sp. Sess.),.§ E.813.1; 2009, No. 110 (Adj. Sess.), § 12, eff. May 18, 2010; No. 156 (Adj. Sess.), § E.810, eff. June 3, 2010; 2011, No. 142 (Adj. Sess.), § 3, eff. May 15, 2012.)

§ 322. Allocation system

(a) In determining the allocation of funds available for the purposes of this chapter, the board shall give priority to projects which combine the dual goals of creating affordable housing and conserving and protecting Vermont's agricultural land, historic properties, important natural areas or recreation lands and also shall consider, but not be limited to, the following factors:

(1) the need to maintain balance between the dual goals in allocating resources;

(2) the need for a timely response to unpredictable circumstances or special opportunities to serve the purposes of this chapter;

(3) the level of funding or other participation by private or public sources in the activity being considered for funding by the board;

(4) what resources will be required in the future to sustain the project;

(5) the need to pursue the goals of this chapter without displacing lower income Vermonters;

(6) the long-term effect of a proposed activity and, with respect to affordable housing, the likelihood that the activity will prevent the loss of subsidized housing units and will be of perpetual duration;

(7) geographic distribution of funds.

(b) The board's allocation system shall include a method, defined by rule, that evaluates the need for, impact and quality of activities proposed by applicants. (Added 1987, No. 88, § 1, eff. June 11, 1987; amended 1997, No. 156 (Adj. Sess.), § 45, eff. April 29, 1998.)

§ 323. Annual report

Prior to January 31 of each year, the board shall submit a report concerning its activities to the governor and legislative committees on agriculture, natural resources and energy, appropriations, ways and means, finance, and institutions. The report shall include, but not be limited to, the following:

(1) a list and description of activities funded by the board during the preceding year;

(2) a list of contributions received by the board, whatever their form or nature, and the source thereof, unless anonymity is a condition of a particular contribution;

(3) a full financial report of the board's activities, including a special accounting of all activities from July 1 through December 31 of the year preceding the legislative session during which the report is submitted;

(4) if more than 70 percent of the funds allocated by the board during the previous year were allocated to either one of the dual goals of this chapter, as established in subsection 302(a) of this title, the board shall set forth its reasons for not allocating funds more equally between the two. (Added 1987, No. 88, § 1, eff. June 11, 1987; amended 1991, No. 93, § 16, eff. June 26, 1991.)

§ 324. Stewardship

If an activity funded by the board involves acquisition by the state of an interest in real property for the purpose of conserving and protecting agricultural land or forestland, important natural areas, or recreation lands, the board, in its discretion, may make a one-time grant to the appropriate state agency or municipality. The grant shall not exceed ten percent of the current appraised value of that property interest and shall be used to support its proper management or maintenance or both. (Added 1987, No. 88, § 1, eff. June 11, 1987; amended 2011, No. 142 (Adj. Sess.), § 3, eff. May 15, 2012.)

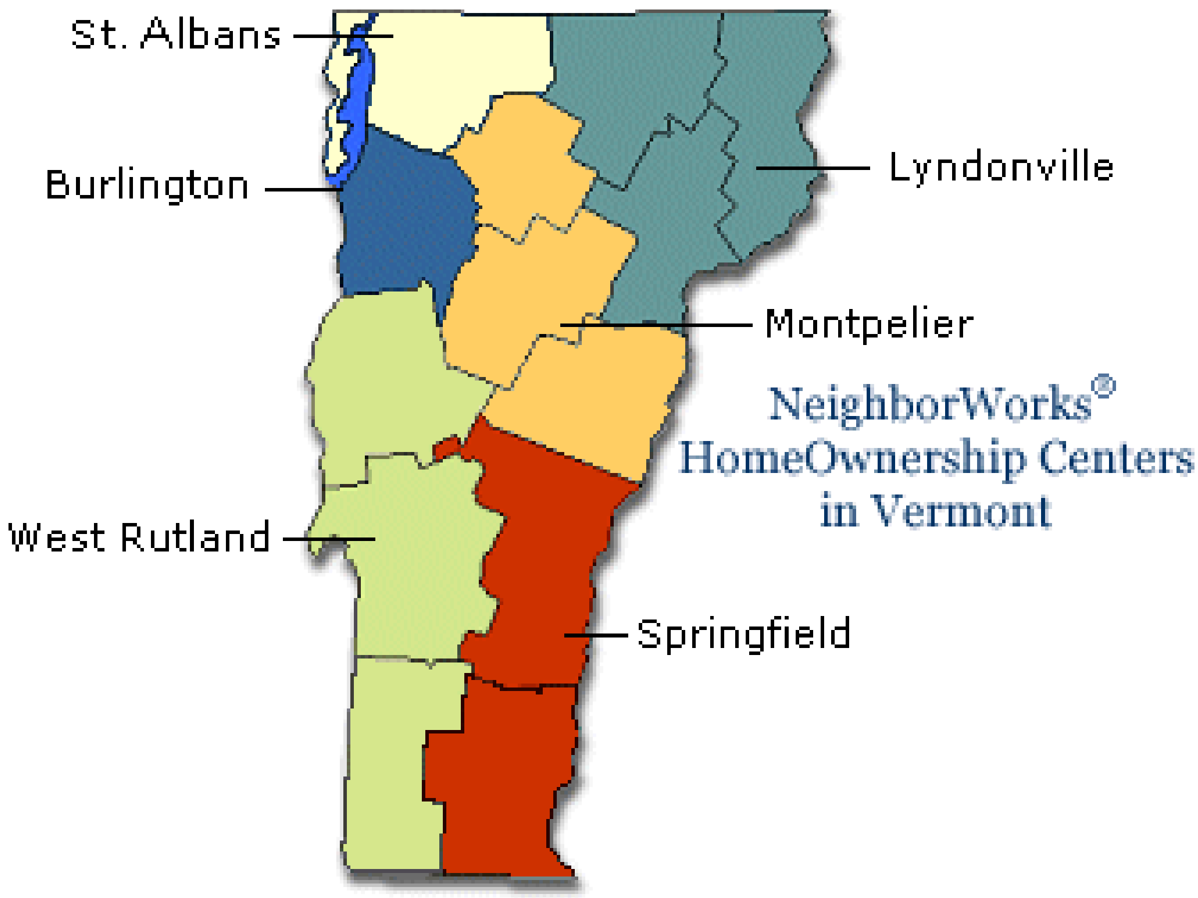
§ 325. Condemnation prohibited

The board shall not have the authority or power to acquire property for the purposes of this chapter through condemnation or through the exercise of the power of eminent domain. (Added 1987, No. 88, § 1, eff. June 11, 1987.)

§ 325a. Conservation easement review appraisals

The Vermont housing and conservation board shall ensure on a periodic basis that review appraisals are conducted of conservation easements proposed to be acquired pursuant to this chapter. (Added 1995, No. 185 (Adj. Sess.), § 14a, eff. May 22, 1996.)

Appendix C


St. Albans
Burlington
Lyndonville
Montpelier
NeighborWorks®
HomeOwnership Centers
in Vermont
West Rutland
Springfield

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