

## COMMUNITY IN PROPERTY: LESSONS FROM TINY HOMES VILLAGES

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The evolving role of community in property law remains undertheorized. While legal scholars have analyzed the commons, common interest communities, and aspects of the sharing economy, the recent rise of intentional co-housing communities remains relatively understudied. This Article provides a case study of tiny homes villages for the homeless and unhoused, as examples of communities that highlight the growing importance of flexibility and community in contemporary property law. These communities develop new housing tenures and property relationships that challenge the predominance of individualized, exclusionary, long-term, fee simple-ownership in contemporary property law. The villages, therefore, demonstrate property theories that challenge the hegemony of ownership in property law, such as progressive property theory, property as personhood theory, access versus ownership theories, stewardship, and urban commons theories in action. The property forms and relationships these villages create not only ameliorate homelessness, but also illustrate how communal relationships can provide more stability than ownership during times of uncertainty. Due to increasing natural disasters and other unpredictable phenomena, municipalities may find these property forms adaptable and, therefore, useful in mitigating increasing housing insecurity and instability. This case study also provides examples of successful stakeholder collaboration between groups that often conflict in urban redevelopment. These insights reveal a new role for community in property law, and are instructive for American governance and property law and theory.

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## INTRODUCTION

“*The ache for home lies in all of us.*”— Maya Angelou<sup>1</sup>

Housing insecurity and unaffordability are growing American problems.<sup>2</sup> “Soaring housing costs are largely to blame, with the national median rent rising 20 percent faster than overall inflation in 1990–2016 and the median home price 41 percent faster.”<sup>3</sup> Increasingly, natural disasters, also displace individuals and communities and escalate housing costs.<sup>4</sup> As greater numbers of Americans struggle to maintain or secure housing, larger segments of the population face eviction and homelessness.<sup>5</sup> “After declining by 14 percent between 2010 and 2016, the number of people experiencing homelessness increased by 3,800 last year.”<sup>6</sup> Reductions in national homelessness, between 2010 and 2016, were largely due to federal initiatives that targeted veterans and the chronically homeless. Yet, “[t]he vast majority (83 percent) of people experiencing homelessness are not chronically homeless, and many who enter shelters—especially families—come directly from more stable housing situations.”<sup>7</sup>

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<sup>1</sup> Maya Angelou, *All God’s Children Need Traveling Shoes* \_\_ (\_\_\_\_).

<sup>2</sup> See e.g., Robynn Cox, Seva Rodnyansky, Benjamin Henwood, Suzanne Wenzel, *Measuring Population Estimates of Housing Insecurity in the United States: A Comprehensive Approach*, USC Center for Economic and Social Research 2017-12 1 (defining housing insecurity as “a continuum of housing-related issues among seven dimensions -- housing stability, housing affordability, housing quality, housing safety, neighborhood safety, neighborhood quality, and homelessness – with homelessness being the most severe form of housing insecurity.”).

<sup>3</sup> “More than 38 million US households have housing cost burdens, leaving little income left to pay for food, healthcare, and other basic necessities. As it is, federal housing assistance reaches only a fraction of the large and growing number of low-income households in need. Between the shortage of subsidized housing and the ongoing losses of low-cost rentals through market forces, low-income households have increasingly few housing options. Meanwhile, the rising incidence and intensity of natural disasters pose new threats to the housing stocks of entire communities. See JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIVERSITY, *STATE OF THE NATION’S HOUSING 2018*, at 30, (2018),

[https://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2018.pdf](https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf) [hereinafter *State of the Nation’s Housing 2018*].

<sup>4</sup> See e.g., 3-in-5 Californians Cite Housing Displacement Issues After Severe Weather Events: Poll, *INSURANCE JOURNAL*, (Jan. 17, 2019), (last visited \_\_)

<https://www.insurancejournal.com/news/west/2019/01/17/515085.htm>; Richard Florida, ‘*Climate Change Gentrification*’ Will Deepen Urban Inequality, *CITYLAB*, (July 5, 2018), <https://www.citylab.com/equity/2018/07/the-reality-of-climate-gentrification/564152/>.

<sup>5</sup> “After declining by 14 percent between 2010 and 2016, the number of people experiencing homelessness increased by 3,800 last year... See *State of the Nation’s Housing 2018*, *supra* note \_\_ at 34; National Law Center on Homelessness and Poverty, *Protect Tenants, Prevent Homelessness 2018* <https://www.nlchp.org/ProtectTenants2018>

<sup>6</sup> See *STATE OF THE NATION’S HOUSING 2018*, *supra* note \_\_ at 34.

<sup>7</sup> See *STATE OF THE NATION’S HOUSING 2018*, *supra* note \_\_ at 34.

Large high-cost cities most acutely experience the local effects of these national trends.<sup>8</sup> “More than half (56 percent) of the nation’s homeless population lives in the nation’s highest-cost metros.”<sup>9</sup> “Since 2015, at least 10 cities or municipal regions in California, Oregon and Washington - and Honolulu, as well - have declared states of emergency due to the rise of homelessness, a designation usually reserved for natural disasters.”<sup>10</sup> While many West Coast cities initially experienced the confluence of rising home prices, natural disasters, and homelessness, many other cities increasingly face this trifecta of housing challenges.<sup>11</sup> Cities that confront rising numbers of homeless people also often criminalize homelessness in an effort to remove homeless street sleepers and panhandlers from the city landscape.<sup>12</sup>

At less than 400 square feet per unit, tiny homes are a huge solution to these problems.<sup>13</sup> Tiny homes can provide rapid and inexpensive shelter for the homeless, victims of natural disasters, and the hard-to-house. Tiny homes are an increasingly popular solution to ameliorate homelessness.<sup>14</sup> In cities throughout the country, particularly in cities that have declared homelessness emergencies, municipalities and counties, non-profits, volunteers, and the homeless now collaborate to build tiny homes villages for the unhoused.<sup>15</sup> This case study provides a typology of different kinds of tiny homes villages in at least thirty-nine of the fifty United States.<sup>16</sup> The villages provide both short-term and long-term

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<sup>8</sup> A new study funded by the real estate information firm Zillow and conducted by the University of Washington found a strong link between rising housing prices and rising homelessness numbers. A 5 percent rent increase in Los Angeles, for example, would mean about 2,000 more homeless people there, the authors said. See e.g., Gillian Flaccus & Geoff Mulvihill, *Amid Booming Economy, Homelessness Soars On US West Coast*, US News, Nov 8, 2017 <https://www.usnews.com/news/best-states/washington/Articles/2017-11-06/homeless-explosion-on-west-coast-pushing-cities-to-the-brink>.

<sup>9</sup> “...the metros with the largest homeless populations—New York, Los Angeles, San Francisco, and Seattle—are the same high-cost markets where homelessness is increasing. (Figure 38).” See STATE OF THE NATION’S HOUSING 2018, *supra* note \_\_ at \_\_.

<sup>10</sup> See e.g., Gillian Flaccus & Geoff Mulvihill, *Amid Booming Economy, Homelessness Soars On US West Coast*, US News, Nov 8, 2017 <https://www.usnews.com/news/best-states/washington/Articles/2017-11-06/homeless-explosion-on-west-coast-pushing-cities-to-the-brink>.

<sup>11</sup> See e.g., <https://www.nrdc.org/stories/climate-change-worsening-houstons-housing-crisis>; <https://www.arcgis.com/apps/Cascade/index.html?appid=92ff80a75d934904ad50cd7cfafef32b1>

<sup>12</sup> See Maria Foscarinis et. al., *Out of Sight-Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. ON POVERTY L. & POL’Y 145 (1999).

<sup>13</sup> Tiny homes are 400 square feet or less. 2018 International Residential Building Code [https://codes.iccsafe.org/content/IRC2018/appendix-q-tiny-houses?site\\_type=public](https://codes.iccsafe.org/content/IRC2018/appendix-q-tiny-houses?site_type=public) <https://www.dailyherald.com/business/20181104/tiny-houses-catch-on-in-war-on-homelessness>

<sup>15</sup> See e.g., Husna Haq, *Tiny-House Villages, An Innovative Solution to Homelessness*, The Christian Science Monitor, (January 21, 2016), <https://www.csmonitor.com/USA/USA-Update/2016/0121/Tiny-house-villages-An-innovative-solution-to-homelessness>.

<sup>16</sup> See e.g., Cite to spreadsheet (on file with the Author)

housing in communal village structures. Some villages use traditional housing tenures, such as rentals and homeownership, but others create a new housing tenure this Article terms *stewardship*, which provides some of the behavioral, psychological, and social benefits of ownership without the status of ownership.<sup>17</sup> The homeless often design, construct, and manage these villages; thus, these communities grant formerly homeless people the self-determination, control, and growth that they may have lost on the streets. The villages may be preferable to standard shelters, in some instances, because of the control they grant to formerly homeless people.

The rules and regulations of these communities often include a right to exclude, which affords formerly homeless people privacy. Yet, the rules often combine the right to exclude with a contractual obligation, or a strongly encouraged social norm, to include others, and participate in a productive community that enhances the human flourishing of all involved.<sup>18</sup> These villages, therefore, exemplify property theories that challenge the predominance of the right to exclude and fee simple ownership and in American property law, such as progressive property theory,<sup>19</sup> property as personhood theory,<sup>20</sup> the shift from ownership to access,<sup>21</sup> stewardship principles,<sup>22</sup> and urban commons theories.<sup>23</sup>

These communities also illustrate a new role for community in property relations<sup>24</sup> by making community participation and enhancement, a requirement,

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<sup>17</sup> See generally Stephanie M. Stern, *Behavioral Leasing: Renter Equity as an Intermediate Housing Form* in EVID. AND INNOVATION IN HOUS. L. AND POL'Y, in (Lee Anne Fennell & Benjamin Keys, eds. 2017), Cambridge University Press. doi:10.1017/CBO9781316691335, <https://www.cambridge.org/core/books/evidence-and-innovation-in-housing-law-and-policy/behavioral-leasing-renter-equity-as-an-intermediate-housing-form/A535BEC4F675D3BC9CC5808815B39605/core-reader> (explaining renter equity as a new type of housing form that also provides some of the behavioral benefits of ownership without the status of fee simple ownership).

<sup>18</sup> “[W]e can say that a flourishing human life is one that consists of rational and social activities expressing human excellences or virtues and that such a life is supported by those external goods necessary for participation in such activities.” GREGORY S. ALEXANDER & EDUARDO M. PEÑALVER, AN INTRODUCTION TO PROPERTY THEORY 88 (2012); see also GREGORY S. ALEXANDER, PROPERTY AND HUMAN FLOURISHING (2018).

<sup>19</sup> See generally Gregory S. Alexander, Eduardo M. Peñalver, Joseph William Singer & Laura Underkuffler, *A Statement of Progressive Property*, 94 CORNELL L. REV. 743 (2009) (defining progressive property theories’ main tenets).

<sup>20</sup> See Margaret Jane Radin, *Property and Personhood*, STAN. L. REV. 957 (1982).

<sup>21</sup> See Shelly Kreiczer Levy, *Share, Own, Access*, 36 YALE L. & POL’Y REV. 155 (2017).

<sup>22</sup> See Kirsten A. Carpenter, Sonia K. Katyal, and Angela R. Riley, *In Defense of Property*, 118 YALE L. REV. 1022 (2009).

<sup>23</sup> See Sheila R. Foster & Christian Iaione, *The City As A Commons*, 34 YALE L. & POL’Y REV. 281 (2016).

<sup>24</sup> The following articles discuss the relationship between property and community. See generally COMMUNITY, HOME AND IDENTITY (Michael Diamond & Terry Turnipseed eds., 2012); EVAN MCKENZIE, PRIVATOPIA (1994) (discussing the rise of private common interest communities); (PROPERTY AND COMMUNITY (Gregory S. Alexander & Eduardo M. Peñalver eds.,

or strongly encouraged social norm, of possession, use, or ownership.<sup>25</sup> In the face of growing natural, economic, social, and political instability, Americans may need more flexible and adjustable property forms that foster greater support networks and positive communal relations. As property becomes more inaccessible, precarious and unstable, community may become an increasingly important component of ownership, possession, and use. The stability that even temporary communal networks and activities can bring during radical upheaval may become as important as the stability traditionally associated with long-term, exclusive, ownership. Since communal engagement, stewardship of resources, and sharing are requirements in these communities, they are similar to the recent rise of intentional co-housing and co-working communities amongst market-rate Millennials and senior citizens;<sup>26</sup> yet these communities generate unique arrangements that municipalities can replicate in other contexts, such as rebuilding after natural disasters, workforce development, and sustainable and affordable housing creation.

The villages also increase the human and social capital of residents.<sup>27</sup> Formerly homeless people, who may have been isolated from mainstream social networks, connect to one another and market-rate housed neighbors in unique ways. Village residents also receive job training and skills development, connect to work opportunities and health resources, and learn sustainable practices.<sup>28</sup> While some tiny homes villages for the homeless face Not In My Backyard (“NIMBY”) resistance at the planning stage,<sup>29</sup> neighborhood opposition often wanes, when neighbors witness how formerly homeless residents become part of productive communities, and put vacant or underutilized land into productive use.<sup>30</sup> This case study, therefore, makes a unique contribution to the emerging Yes In My Backyard (“YIMBY”) movement by demonstrating how municipalities, non-profits and interested developers can create new housing supply for vulnerable and marginalized populations in ways that may garner broad community support.

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2010); Elinor Ostrom, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990); Carol Rose, *The Comedy of the Commons: Custom, Commerce and Inherently Public Property*, 53 U. Chi. L. Rev. 711 (1986); Foster & Iaione, *supra* note \_\_.

<sup>25</sup> See discussion *infra* Parts II and III.

<sup>26</sup> See discussion *infra* Part III.

<sup>27</sup> See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 18-19 (2000) (explaining that social capital refers to networks of human relations that have value and human capital refers to individual knowledge skills or assets).

<sup>28</sup> See discussion *infra* Parts II and II.

<sup>29</sup> THE FLY, *NIMBY Backlash Over Tiny Homes’ Prompts City to Reduce Number of Potential Sites*, (Aug 23, 2017), <http://www.sanjoseinside.com/2017/08/23/nimby-backlash-over-tiny-homes-prompts-city-to-reduce-number-of-potential-sites/>.

<sup>30</sup> Doug Erickson, *One Year in, Madison’s Village of Tiny Houses Wins Over Neighborhood Critics*, WISC. ST J., (Sept. 27, 2015), [https://madison.com/wsj/news/local/one-year-in-madison-s-village-of-tiny-houses-wins/Article\\_6d1a54cc-343a-5775-b3de-5fa341677580.html](https://madison.com/wsj/news/local/one-year-in-madison-s-village-of-tiny-houses-wins/Article_6d1a54cc-343a-5775-b3de-5fa341677580.html)

This case study also shows that flexible, adaptable, affordable, and communal property relationships can provide stability in the face of uncertainty; these property arrangements also grant residents some of the same behavioral, psychological, social, and economic benefits of traditional, long-term, fee simple ownership.<sup>31</sup> Property law and theory traditionally associates stability with long-term, exclusive ownership.<sup>32</sup> This Article argues that other more informal property relationships can provide stability during uncertain times. Many scholars and practitioners also understand our contemporary housing challenges as a supply and demand problem.<sup>33</sup> While many of our most insurmountable housing challenges result from inadequate supply at the moderate- to low-income levels, there is also the problem of the quality of the supply, its location, and the quality of life that each form of shelter provides. This Article provides a solution to the problem of the quality of supply by showing how property arrangements that privilege community can foster positive bonding social capital between low-income individuals, and positive bridging social capital with housed individuals,<sup>34</sup> that can connect vulnerable and marginalized groups to opportunities, even during uncertainty and radical change.<sup>35</sup>

Part I of this Article describes the growing phenomenon of tiny homes villages for the homeless in municipalities throughout the fifty United States. Part II.A introduces *stewardship*, as a new housing-tenure created by these villages that deviates from essentialist property theorists' quintessential core of exclusive, long-term, individual ownership. Stewardship includes a right to exclude, but the right to exclude is not an individualistic right, rather the right to exclude is contingent upon participation in a community.<sup>36</sup> Consequently, these projects also exemplify property theories that challenge the centrality of the right to exclude in American property law, such as progressive property theory, property as personhood theory, ownership to access theories, stewardship, and urban commons theories<sup>37</sup> Part II.B, Part II.C, and Part II.D show how these villages use stewardship in both permanent and temporary housing arrangements, and how the

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<sup>31</sup> See generally Stern, *supra* note \_\_, at \_\_.

<sup>32</sup> See Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 Cornell L. Rev. 531(2005).

<sup>33</sup> Scott Beyer, *Does America's Housing Crisis Need Supply-Side or Demand-Side Solutions?*, (Oct. 11, 2018), THE MKT. URBANISM REPORT, <https://marketurbanismreport.com/will-americas-housing-crisis-fixed-supply-side-demand-side-solutions/>.

<sup>34</sup> See PUTNAM, *supra* note \_\_ at 22-23.

<sup>35</sup> In his seminal article written after Hurricane Katrina, John A. Lovett, defines four primary characteristics that frequently conspire to produce a radically changed circumstance: suddenness, unexpectedness, intensely disruptive, and geographically pervasive. No one of these features is necessary, but these factors frequently converge to produce a radically changed circumstance. The term also applies to radical social, political, and economic change. See John A. Lovett, *Property and Radically Changed Circumstances*, 74 TENN. L. REV. 463 (2007).

<sup>36</sup> See discussion *infra* Parts II and III.

<sup>37</sup> Levy, *Share, Own, Access*, *supra* note \_\_ at 158.



stewardship housing tenure provides stewards with many of the behavioral benefits of ownership without the status of ownership. Part III. describes how other villages affirmatively use rental or rent-to-own housing tenures, but place those housing tenures in constructive common interest and co-housing<sup>38</sup> settings that advance the self-actualization and human flourishing of formerly homeless residents.<sup>39</sup>

Part IV.A explains how tiny homes villages for the unhoused illustrate the growing importance of community in contemporary property law. It shows the importance of community in the property relations of the most vulnerable Americans, but also analyzes how municipalities can use these novel property arrangements in other contexts, such as disaster relief and affordable housing creation. Part IV. B. posits ways that states and municipalities can legalize stewardship by making codifying stewardship via statutes or ordinances, and zoning tiny homes co-villages at the local level. Part IV. C. explains how the villages exemplify successful management of the urban commons through stakeholder collaboration. The Article concludes by analyzing the implications of these developments for housing law and policy, governance, and property law and theory.

#### I. TINY HOMES VILLAGES IN THE UNITED STATES

*Some wandered in the wilderness, lost and homeless. Hungry and thirsty, they nearly died. "Lord, help!" they cried in their trouble, and he rescued them from their distress. He led them straight to safety, to a city where they could live.— PSALMS 107:4-7<sup>40</sup>*

Municipalities, non-profits, educational institutions, volunteers, and the business community now collaborate to build tiny homes villages for the homeless and the unhoused.<sup>41</sup> The villages provide permanent housing or temporary shelter. Some homeless people, as well as volunteers, use sweat-

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<sup>38</sup> “Cohousing adapts the legal forms of the CIC to a more intensive, deliberative democracy and explicitly strives for a sense of community by neighborhood. With privately owned, individual residences constructed around an extensive “common house” that includes shared cooking, dining, and childcare facilities, cohousing employs participatory management through collective, consensus decision-making.” See e.g., Mark Fenster, *Community by Covenant, Process, and Design: Cohousing and the Contemporary Common Interest Community*, 15 J. LAND USE & ENVTL. L. 3, 5 (1999).

<sup>39</sup> See Stephanie M. Stern, *supra* note \_\_ at \_\_.

<sup>40</sup> PSALMS 107:4-7 (King James).

<sup>41</sup> See e.g., ANDREW HEBEN, TENT CITY URBANISM: FROM SELF-ORGANIZED CAMPS TO TINY HOUSE VILLAGES 51 (2014); VILLAGE COLLABORATIVE MAP, [https://resurrectionvillage.wordpress.com/links-and-resources/](https://www.google.com/maps/d/viewer?mid=1ka5rY5f6uMI4l1xobWYUBE15G0E&ll=30.21217439459483%2C-106.75689873643648&z=4; Villages Across the Country, <a href=)



equity<sup>42</sup> to construct these villages, which reduces the costs of construction.<sup>43</sup> The tiny homes villages analyzed in this Article constitute unique types of co-housing<sup>44</sup> and common interest communities.<sup>45</sup> Co-housing is a particular form of common interest community, intentionally designed to facilitate a high degree of social cohesion, sharing, and teamwork amongst residents.<sup>46</sup> As with other co-housing communities, tiny homes villages for the homeless either require, or strongly encourage residents, to commit to being part of a community “for everyone’s mutual benefit.”<sup>47</sup> Some villages require residents to participate in community decision-making and community enhancement as a contractual precondition of possession and use; and other villages strongly encourage community participation through social norms.<sup>48</sup> Residents in these co-housing communities share not only limited physical spaces, but also the realization of certain shared values, such as sustainability, and the restoration of dignity and community to formerly homeless people. The villages afford residents both privacy and community.

This Article asserts that the villages are interesting not only as solutions to mitigate the intractable problem of homelessness, but also as examples of new property arrangements that make community participation and enhancement a central aspect of property possession and ownership. The village model illustrates the increasing importance of community and sharing in contemporary property relations. Some villages’ use and possession agreements de-center the

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<sup>42</sup> Habitat for Humanity, What is Sweat Equity?, <https://www.habitat.org/stories/what-is-sweat-equity> (defining sweat equity as an ownership interest created by the sweat of a person’s labor).

<sup>43</sup> See HEBEN, *supra* note \_\_, at 136.

<sup>44</sup> “Co-housing is an intentional community of private homes clustered around shared space...Households have independent incomes and private lives, but neighbors collaboratively plan and manage community activities and shared spaces...The legal structure is typically an HOA, Condo Association, or Housing Cooperative...Community activities feature regularly-scheduled shared meals, meetings and workdays....Neighbors gather for parties, games, movies, or other events. Cohousing makes it easy to form, clubs, organize child and elder care, and carpool. See e.g., The Cohousing Association of the United States, *What is Co-Housing*, [https://www.cohousing.org/what\\_is\\_cohousing](https://www.cohousing.org/what_is_cohousing).

<sup>45</sup> “Common-interest communities are those in which the property is burdened by servitudes requiring property owners to contribute to maintenance of commonly held property or to pay dues or assessments to an owners association that provides services or facilities to the community. A variety of legal ownership forms may be used to create common-interest communities. Subdivisions with covenants requiring membership in a property-owners association and condominiums are the most common, but cooperatives and a variety of planned developments also create common-interest communities.” See Restatement (Third) of Property (Servitudes) 6 Intro. Note (2000).

<sup>46</sup> *What is Co-Housing*, Definitions, [https://www.cohousing.org/what\\_is\\_cohousing](https://www.cohousing.org/what_is_cohousing);

<sup>47</sup> *What is Co-Housing*, Definitions, [https://www.cohousing.org/what\\_is\\_cohousing](https://www.cohousing.org/what_is_cohousing);

<sup>48</sup> See ULI Austin Case Study, Community First! Village, at 5, <https://ulidigitalmarketing.blob.core.windows.net/ulidcnc/2019/02/CFV-CaseStudy-HD.pdf>

individualistic right to exclude, in favor of more cooperative arrangements that force formerly homeless residents, even temporarily, into community with each other. The villages use different housing tenures including rental, rent-to-own, cooperatives and stewardship housing tenures. The tiny house contracts and community agreements create obligations between non-owners that advance human flourishing, self-determination, sharing, stability, and commons stewardship—all virtues normally associated with ownership.<sup>49</sup>

The villages usually contain at least three to more than three hundred and fifty tiny homes, which range in size from ninety-nine square feet per unit to a maximum of four hundred square feet per unit.<sup>50</sup> Most tiny homes house one or two people, while a few villages have slightly larger units that can accommodate families.<sup>51</sup> Many villages have tiny homes with electricity in each unit and some do not. Residents often share basic amenities such as bathrooms, water and cooking facilities, as well as green spaces and other basic facilities.<sup>52</sup> Unlike traditional rentals or prior sweat-equity and self-help communities,<sup>53</sup> these villages often require residents, as a condition of possession, to engage in community construction and preservation activities. Certain villages require residents to attend community meetings or use sweat-equity to contribute to the development and maintenance of the villages. Traditional rooming houses and Single Room Occupancy (“SRO”) units often do not require residents to use sweat-equity to construct and maintain the units and common areas.<sup>54</sup> Many prior

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<sup>49</sup> See Gregory S. Alexander, *Property's Ends: The Publicness of Private Law Values*, 99 IOWA L. REV. 1257, 1264 (2014) (identifying at least five private law values that are among property's main ends).

<sup>50</sup> See discussion *infra* Parts I, II, and III.

<sup>51</sup> See discussion *infra* Part III.

<sup>52</sup> See discussion *infra* Parts I, II, and III.

<sup>53</sup> During the 1970s and 1980s, when large urban areas, such as New York City, faced fiscal and budget crises, cities provided residents one percent interest rates on 30-year mortgages, and other affordable housing incentives, in exchange for resident labor to rehabilitate and revitalize city-owned abandoned buildings. Resident-led revitalization efforts that used sweat equity in other cities were also the predecessors of contemporary urban community development organizations. Self-help and informal housing models also exist amongst migrant farmworkers in areas such as the *colonias* in Texas and in rural agricultural areas. See Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 Geo. L. J. 179 (1995) (describing the Mexican government's response to *colonias* as a form of self-help housing); Richard R. Brann, Comment, *Housing of Migrant Agricultural Workers*, 46 Tex. L. Rev. 933 (1968) (defining self-help housing as a plan by which the poor themselves supply the necessary labor in the construction and improvement of their homes).

<sup>54</sup> “SRO's are low-cost residential hotels, rooming houses, or converted apartment buildings in which people rent single, furnished rooms.<sup>7</sup> SRO's contain shared bathroom and kitchen facilities, and often include management services, such as twenty-four-hour desk service, telephone switchboards, linens, and housekeeping.” See Suzanne K. Sleep, Comment, *Stonewalled by Seawall: New York Decision Impedes Legislative Solutions to Affordable Housing Shortage*, 45 U. MIAMI L. REV. 467, 468–69 (1991).

sweat-equity projects were typical homeownership or rental projects that did not require residents to serve one another. Contemporary tiny homes villages for the homeless often require or encourage more community participation and community service than earlier sweat-equity models.

While tiny homes villages are also similar to mobile home parks, most mobile home owners are in a more traditional market-rate, landlord-tenant relationship, than the ownership and use arrangements found in many tiny homes villages for homeless people. Mobile home residents often own their mobile homes, but rent the lots.<sup>55</sup> Some landlords of mobile home parks privilege profits over community, and exploit, rather than empower, mobile home tenants.<sup>56</sup> Contemporary accessory dwelling units<sup>57</sup> and market-rate micro-units<sup>58</sup> also differ from the tiny homes villages analyzed in this Article. Accessory dwelling units are either units on wheels or units that are an accessory part of a larger existing property.<sup>59</sup> This Article only analyzes tiny homes that are part of a common interest community and require residents to become members of that community. Many cities zone tiny homes villages for the homeless differently than accessory dwelling units or traditional micro-homes for market-rate populations. Tiny homes villages also often have community-participation and enhancement requirements that are not present in the tiny homes communities of market-rate residents.

## II. TINY HOMES VILLAGES AND STEWARDSHIP

*“The Lord God took the man and settled him in the Garden of Eden  
to cultivate it and take care of it.” – GENESIS 2:15<sup>60</sup>*

The earliest tiny homes villages for the homeless developed a novel housing tenure, which this Article terms *stewardship*.<sup>61</sup> Stewardship is a property-use

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<sup>55</sup> Peter Whoriskey, A Billion-Dollar Empire Made of Mobile Homes, [https://www.washingtonpost.com/business/economy/a-billion-dollar-empire-made-of-mobile-homes/2019/02/14/ac687342-2b0b-11e9-b2fc-721718903bfc\\_story.html?utm\\_term=.3d763ebf490b](https://www.washingtonpost.com/business/economy/a-billion-dollar-empire-made-of-mobile-homes/2019/02/14/ac687342-2b0b-11e9-b2fc-721718903bfc_story.html?utm_term=.3d763ebf490b)

<sup>56</sup> Peter Whoriskey, *supra* note \_\_, at \_\_. (explaining that large financial firms are buying up mobile homes and some are exploiting residents for profits.)

<sup>57</sup> “Accessory dwelling units (ADUs), which are often referred to as in-law units or secondary units, are self-contained units located on the property of a single-family home. See John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 Stan. L. & Pol’y Rev. 53, 54 (2014).

<sup>58</sup> See John Infranca, *supra* note \_\_ at \_\_.

<sup>59</sup> See John Infranca, *supra* note \_\_ at \_\_.

<sup>60</sup> GENESIS 2:15

<sup>61</sup> See Occupy Madison: A Tiny Contract for A Tiny Home, OM Build, <https://occupymadisoninc.files.wordpress.com/2013/07/a-tiny-contract-for-a-tiny-house.pdf> (last visited Mar. 6, 2019) [hereinafter OM Build Tiny House Contract] (stating that occupants are

arrangement and a contractual agreement that gives stewards some of the social and economic benefits of homeownership without the status of ownership. It is different from a traditional rental or leasehold in that individuals do not pay rent in the form of money; instead, a certain amount of sweat equity work credits, or hours of participation in an intentional housing community, is the price of the tiny home.<sup>62</sup> Stewardship gives an occupant a right of possession of the unit for the specified time-period and a right to exclude others from the tiny house unit, as long as the steward has provided sufficient sweat equity hours and complies with the terms of the common interest community agreements.<sup>63</sup> In most villages, a person can only become a steward, if they are homeless or unhoused, have provided a certain amount of sweat equity work credits, and they comply with community rules.<sup>64</sup> Most villages also require residents to participate in weekly village meetings and village upkeep.<sup>65</sup> Stewards may not transfer possession of the unit, without the permission of the village, except back to the community.<sup>66</sup> Stewards also cannot lease or rent the unit for money.<sup>67</sup> Most villages forbid drugs or other substances on the village site or in the vicinity of the village.<sup>68</sup> Some villages provide onsite rehabilitation services and case management services to help stewards stabilize their lives and prepare for more permanent, long-term, renting or ownership.

The stewardship housing tenure was initially created in 2001, by Dignity Village in Portland, Oregon<sup>69</sup>; perfected in 2013 by Opportunity Village in

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called stewards).

<sup>62</sup> See discussion *infra* Part II.B.

<sup>63</sup> See OM Build Tiny House Contract, *supra* note \_\_, at \_\_ (defining stewardship).

<sup>64</sup> See e.g., *Who will live here?*, OM Build, <https://occupymadisoninc.com/wp-content/uploads/2014/01/who-will-live-there-faqs-for-printing-2.pdf> (last visited, Mar 6, 2019); *Paying Off The Tiny House*, OM Build Tiny House Contract, *supra* note \_\_, at \_\_.

<sup>65</sup> Opportunity Village, Eugene, Village Manual, 2 (Revised May 4, 2017), [https://docs.wixstatic.com/ugd/bd125b\\_32be9eddb4d34ea7ae64cf4beed1ddb.pdf](https://docs.wixstatic.com/ugd/bd125b_32be9eddb4d34ea7ae64cf4beed1ddb.pdf); see also HEBEN, *supra* note \_\_, at 198.

<sup>66</sup> See Transfer, OM Build Tiny House Contract, *supra* note \_\_.

<sup>67</sup> See Transfer, OM Build Tiny House Contract, *supra* note \_\_.

<sup>68</sup> See e.g., Camp Second Chance Code of Conduct, <https://www.seattle.gov/Documents/Departments/Homelessness/CAC/C2C-CoC.pdf>; Nickelsville Rules, <https://www.seattle.gov/Documents/Departments/Homelessness/CAC/Ballard-CoC.pdf>; Interbay/Tent City 5 Code of Conduct, <https://www.seattle.gov/Documents/Departments/Homelessness/CAC/TC5-CoC.pdf>; Dignity Village; Dignity Village Entrance Agreement, <https://dignityvillage.org/services/entrance-agreement/>

<sup>69</sup>; Dome Village founded in 1993 in Los Angeles was the first homeless encampment to transform from a tent city to a village community consisting of homeless people renting fiberglass domes. Residents paid small rents to the owner of the parking lot and had chores of buying communal food and cooking in a communal dome kitchen. The community dissolved in 2006 as rents began to escalate in the Los Angeles area. Dome Village did not consist of tiny homes therefore Dignity Village in Portland, Oregon is considered the first tiny homes village since

Eugene, Oregon;<sup>70</sup> used for permanent housing in 2014 by OM Village, Inc., in Madison, Wisconsin; and used most recently by Seattle, Washington, which has created at least seven transitional villages for the homeless.<sup>71</sup> The stewardship housing tenure emphasizes self-help and community self-governance throughout the construction, maintenance, and operation of the facilities in ways that SROs, mobile homes, and shelters, often do not. Unlike a traditional rental, SRO, or mobile home, a steward can only exclude someone from his or her unit once he or she has contractually committed to join the community, abide by its rules, and contribute to the advancement of the community through sweat equity credits.<sup>72</sup> Stewardship, therefore, provides a necessary alternative to the dichotomy of renting or owning for the hard-to-house. It enables formally homeless people, or low-income people on the verge of eviction, to obtain shelter and community without cost-prohibitive rents. The stewardship model can also be a housing first approach to mitigating homelessness by giving homeless people who are struggling with addiction, a residence first, before they have conquered addiction or other challenges.<sup>73</sup>

Many of the villages that use a stewardship model emerged from informal homeless tents and encampments formed in the wake of the 2008 U.S. housing crisis and Great Recession.<sup>74</sup> As cities outlawed informal tent encampments, homeless people and advocates, non-profits, and municipalities began to search for alternative types of shelter. that could empower formerly homeless people and win the approval of local decision-makers.<sup>75</sup> In many cases, tent cities transformed into tiny homes co-housing communities.<sup>76</sup> Tiny home communities are cheaper to produce and maintain than other forms of shelter and affordable housing. Consequently, market-rate neighbors and local decision-makers may be more willing to accept tiny homes communities because the model advances efficiency, but also enhances human dignity, privacy, equity, access, and community.

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Dome Village. <http://Articles.latimes.com/2006/oct/29/local/me-dome29>

<sup>70</sup> See Opportunity Village, *supra* note \_\_ at \_\_.

<sup>71</sup> See City-Permitted Villages, <https://www.seattle.gov/homelessness/city-permitted-villages>.

<sup>72</sup> See Single Room Occupancy, [https://en.wikipedia.org/wiki/Single\\_room\\_occupancy](https://en.wikipedia.org/wiki/Single_room_occupancy) see also How to get a tiny house?, <https://occupymadisoninc.com/wp-content/uploads/2013/07/how-to-get-a-tiny-house.pdf>

<sup>73</sup> See *e.g.*, Nestor M. Davidson, *Rights As A Functional Guide for Service Provision in Homeless Advocacy*, 26 St. Louis U. Pub. L. Rev. 45, 56–57 (2007) (explaining housing first); Housing First, National Alliance to End Homelessness, [http://www.endhomelessness.org/pages/housing\\_first](http://www.endhomelessness.org/pages/housing_first).

<sup>74</sup> See HEBEN, *supra* note \_\_, AT 44-56.

<sup>75</sup> See HEBEN, *supra* note \_\_, AT 44-56.

<sup>76</sup> See HEBEN, *supra* note \_\_, AT 44-56.

### A. Stewardship and The Right to Exclude

Some villages use the *stewardship* housing tenure in both permanent housing and in temporary or transitional housing. Stewardship includes a right to exclude others from your unit, but the right to exclude in this context promotes privacy and shelter, rather than exchange value, wealth maximization, or social exclusivity. Stewards retain extensive possession, control, and use rights over their respective tiny homes, even though they have no formal title, and they are not traditional renters.<sup>77</sup> Stewards cannot borrow against the tiny home, yet while a steward is in possession of a tiny home he or she can obtain many of the benefits associated with ownership; such as privacy and shelter, and access to improved shared amenities such as electricity, bathrooms, cooking facilities, work opportunities, and participation in community meetings and decision-making. Although stewardship arrangements do not monetize the value of upkeep of the unit or the property, the stewardship housing tenure does incentivize initial quality construction of the home by giving stewards sweat equity credits for their work, which, in turn, grants stewards longer-term possession of the quality shelter.

Some may characterize stewardship as a type of landlord and tenant relationship in which the rental price is services, rather than monetary value. However, in many villages, the stewardship relationship requires more than just sweat equity and services to create your unit or to maintain limited common areas. Stewardship often requires stewards to participate in village decision-making as a condition of possessing and using their homes for the specified time period.<sup>78</sup> Stewardship also often requires residents to directly participate in democratic-decision-making, rather than through representatives. Stewards have control over their units, who may remain at the village, and the communities' long-term goals and objectives. Through the co-village model, stewards can connect to one another, and to life-enhancing activities not normally associated with renting. Due to the decision-making control they have over their units and their communities, even temporary stewards—with no formal title, exchange of money, or long-term possession—can obtain some of the social and economic benefits normally associated with title and long-term possession.<sup>79</sup>

Essentialist property theorists assert that property has an essential core, and the concepts of title, long-term ownership, possession, and exclusion are at the center of that core.<sup>80</sup> Essentialists further argue that popular recognition of the essential features of property enables large numbers of people to allocate property

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<sup>77</sup> See discussion *infra* Parts II.B & C.

<sup>78</sup> See *supra* note 78.

<sup>79</sup> See discussion *infra* Part II.B.

<sup>80</sup> See *e.g.*, Thomas W. Merrill and Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L. J. 1, 8 (2000); Thomas W. Merrill and Henry E. Smith, *The Morality of Property*, 48 WM. & MARY L. REV. 1849, 1853 (2007).

resources efficiently.<sup>81</sup> The “*numerus clausus*” of property—well-recognized, standard property forms—such as fee simple estates in land, concurrent interests, non-possessory interests, and personal property, help property owners minimize transaction and information costs when utilizing and exchanging property.<sup>82</sup> While essentialists concur with law and economics scholars that efficiency should be the primary goal of property laws and institutions, they do not embrace a purely functional conception of property; the right to exclude is also a moral right.<sup>83</sup> Except in rare circumstances, all people must refrain from limiting or infringing ownership, long-term possession, and exclusion rights for moral, as well as efficiency, reasons.<sup>84</sup> In this conception, the right to exclude is a necessary feature of anything we recognize as property, but that right can include a more modest right of non-interference.<sup>85</sup> Essentialists characterize the rare instances in which exclusion is not paramount, as non-core property.<sup>86</sup> Under these circumstances, “prudential considerations supplement, or sometimes even override, the core exclusionary aspects of property that rest on ordinary morality.”<sup>87</sup> Essentialists maintain that property law’s few exceptions do not undermine the core.<sup>88</sup>

Even some scholars within the law and economics traditions now question the predominance of the right to exclude and fee simple absolute in American property law.<sup>89</sup> Professor Lee Anne Fennell argues that “[t]he endless duration and physical rootedness of the fee simple” often impedes efficient land reassembly under contemporary urban conditions. Urbanization has made neighboring landowners more dependent upon one another to create land value. *Patterns* of complementary land holdings, rather than single parcels, often maximize values in urban centers. “It is no longer enough for the law to protect an owner's domain and forestall overt land use conflicts, when the opportunity cost of failing to put together complementary uses in valuable patterns looms ever larger.”<sup>90</sup> Fennell argues for alternative property tenures that “move away from the endless duration and physical rootedness of the fee simple.”<sup>91</sup>

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<sup>81</sup> Merrill and Smith, *Numerus Clausus Principle*, *supra* note \_\_ 8.

<sup>82</sup> Merrill and Smith, *The Morality of Property*, *supra* note \_\_, at 1853.

<sup>83</sup> The right of the owner to act as the exclusive gatekeeper of the owned thing—must be regarded as a moral right.” Merrill and Smith, *The Morality of Property*, *supra* note \_\_, at 1850.

<sup>84</sup> Merrill and Smith, *The Morality of Property*, *supra* note \_\_, at 1850.

<sup>85</sup> Thomas W. Merrill, *Property and the Right to Exclude II*, BRIGHAM-KANNER PROP. RTS. J. 1, 2-3 (2014).

<sup>86</sup> Thomas W. Merrill, *Property and the Right to Exclude*, NEB. L. REV. 77(1998).

<sup>87</sup> Merrill and Smith, *The Morality of Property*, *supra* note \_\_, at 1894.

<sup>88</sup> “Yet, it does not appear that the more complex picture that emerges when we consider this fine-tuning, calls into question the analysis of the importance of the core, or the centrality of morality in maintaining the core.” Merrill and Smith, *The Morality of Property*, *supra* note \_\_, at 1894.

<sup>89</sup> See e.g., Lee Anne Fennell, *Fee Simple Obsolete*, 91 N.Y.U. L. REV. 1457, 1516 (2016).

<sup>90</sup> See Fennell, *supra* note \_\_, at 1516.

<sup>91</sup> See Fennell, *supra* note \_\_, at 1482.



Her insight—that the fee simple absolute has limitations under contemporary urban conditions—indicates the need for additional property configurations. Her observations are particularly relevant to increasingly vulnerable and historically marginalized populations in urban space. Is the traditional workhorse tenure form—the fee simple absolute—the best form to which increasingly vulnerable and historically marginalized groups should always aspire? Are traditional shelters, with beds and cots, or group homes the only efficient alternatives to homeownership or renting? Is there any middle ground? Municipalities also need additional property configurations, besides the fee simple absolute, that can adapt to “radically changed circumstances,” and economic, social, and natural transformations.

This case study identifies tiny homes communities and stewardship as alternative property form and relations that deviate from the essentialist prototypes of the fee simple absolute, traditional ownership, and renting, yet maximizes efficiency and advances equity for the most vulnerable and marginalized groups facing uncertainty and precarity. In *Property, Concepts, and Functions*, new essentialist theorist, Eric R. Claeys, contends that a more capacious definition of property<sup>92</sup> includes a category of lesser rights than fee-simple ownership that facilitate a “purposeful, beneficial, and sociable use.”<sup>93</sup> Although residents in most of the tiny home villages studied here do not have classic ownership rights, one might characterize their uses of tiny homes as “purposeful, social, and beneficial uses.”

While essentialists might characterize tiny homes villages for the homeless as non-core property, the increasing prevalence of ownership forms and housing tenures that challenge the core tenets of essentialist theory raises questions about the efficacy of the core under contemporary conditions.<sup>94</sup> While stewardship does not grant formal title or ownership, it does include a right to exclude others from the unit for a range of time. Thus, stewardship fits within a new essentialist expansive definition of ownership because the right to exclude is a limited element of stewardship that affords formerly homeless people privacy and control. Yet, the concept of stewardship offered here is also broader than the essentialist concepts.

Stewardship has its origins in indigenous American conceptions of property.<sup>95</sup>

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<sup>92</sup> “I think property scholars can develop satisfying accounts of property in the capacious sense on which this Article focuses.” Eric R. Claeys, *Property, Concepts, and Functions*, 60 B.C. L. REV. 1, 19 (2019).

<sup>93</sup> See Claeys, *supra* note \_\_ at 46.

<sup>94</sup> Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1737 (1976) (“What distinguishes the modern situation is the breakdown of the conceptual boundary between the core and the periphery.... [n]ow, each of the conflicting visions claims universal relevance, but is unable to establish hegemony anywhere.”)

<sup>95</sup> See Kristen A. Carpenter, Sonia K. Katyal, Angela R. Riley, *In Defense of Property*, 118 Yale L.J. 1022 (2009). [I can’t get rid of this space?]

*In Defense of Property*, Kirsten A. Carpenter, Sonia K. Katyal, and Angela R. Riley, developed a model of stewardship to “explain and justify indigenous peoples’ cultural property claims in terms of non-owners’ fiduciary obligations towards cultural resources.”<sup>96</sup> They assert that stewards have fiduciary duties of care and loyalty over cultural resources. The authors’ framing of stewardship, as a property concept, is broad enough to include the circumstances under which indigenous people steward resources, but act without traditional title or ownership. “Indigenous peoples, rather than holding property rights delineated by notions of title and ownership, often hold rights, interests, and obligations to preserve cultural property irrespective of title.”<sup>97</sup>

Stewardship, as used by the villages, evokes aspects of Native American concepts of stewardship because it offers a conception of property relations that de-centers the right to exclude in favor of a right to be included in, and to serve, a community in ways not traditionally associated with classic fee simple ownership or even renting. Sharing space, decision-making, and time with other stewards is a condition of possession. While stewards can exclude others from their respective tiny homes, the right to exclude is not the penultimate right in the bundle of sticks, rather the villages privilege the right to be included in a new community over the right to exclude. The reduced costs of construction of tiny homes villages also makes them efficient in the economic sense, because they are a low-cost, low-barrier way for individuals living on the street to obtain shelter, privacy, self-determination, and self-actualization in ways that the standard shelter system cannot.

### *B. Permanent Stewardship: Wisconsin*

A tiny homes village in Madison, Wisconsin was the first village to use the stewardship property tenure for permanent housing for homeless people.<sup>98</sup> Occupy Madison, Inc. (“OMI”) is a non-profit organization established by formerly homeless and housed people who were part of the Occupy Madison movement.<sup>99</sup> Initially, the unincorporated association of homeless and housed volunteers started a tent city for homeless people within Madison, Wisconsin.<sup>100</sup> When the City of Madison shut down the initial encampment, the group shifted focus to identify a “legal” place for Madison’s homeless to reside.<sup>101</sup> Drawing from the experiences of two other transitional tiny homes villages in Portland and Eugene, Oregon, respectively, OMI sought to build tiny homes on wheels and

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<sup>96</sup> See Carpenter et al., *supra* note \_\_, at 1022.

<sup>97</sup> See Carpenter, *supra* note \_\_, at 1067.

<sup>98</sup> See HEBEN, *supra* note \_\_, at 49.

<sup>99</sup> See HEBEN, *supra* note \_\_, at 49.

<sup>100</sup> See HEBEN, *supra* note \_\_, at 49.

<sup>101</sup> See HEBEN, *supra* note \_\_, at 28.

identify a legal place for the homes to remain.<sup>102</sup> OMI identified land on which a former gas station and auto-body shop were run as a possible site.<sup>103</sup> OMI raised money through private donations to purchase the site, and the City of Madison's Planning Commission zoned the site as a planned unit development ("PDU").<sup>104</sup> They used the existing structure as a workshop to build the tiny homes. The central woodworking shop, that used to be an old auto-repair shop, contains running water, toilets, and showers.<sup>105</sup>

The site is called OM Village, Inc. and it provides permanent housing to formerly homeless people.<sup>106</sup> There are currently at least nine people in the village, but the non-profit community hopes to expand to accommodate up to eleven people on the site.<sup>107</sup> OMI owns the land and the PDU upon which OM Village sits.<sup>108</sup> OMI also owns each tiny house created by or located in OM Village. Each tiny home is approximately ninety-eight square feet and contains a master bedroom with storage space. The homes have electricity and insulation, but no running water.<sup>109</sup> Each tiny home costs approximately \$5,000 dollars to construct.<sup>110</sup> OM Village operates exclusively on private donations through crowdfunding, auctions, and volunteer and in-kind donations, including the money the non-profit (OMI) obtained to purchase the site.<sup>111</sup> The group is reluctant to accept government or foundation money, but wants to raise approximately \$90,000 from private donors to expand the village's communal space by adding a community room and a kitchen, both of which are required in order for the City of Madison to grant OM Village additional zoning and building permissions to add four more houses to the property.<sup>112</sup>

The "Tiny House Contract" and the "OM Community Agreement," create the

<sup>102</sup> See HEBEN, *supra* note \_\_, at 49.

<sup>103</sup> <https://occupymadisoninc.com/about/history/>

<sup>104</sup> OM Village Zoning Text,

<https://drive.google.com/drive/folders/0B2jI5OLgYdyYaHFhZ3VWa21HZVU>

<sup>105</sup> <https://occupymadisoninc.com/about/history/>

<sup>106</sup> See HEBEN, *supra* note \_\_, at 49.

<sup>107</sup> Lisa Speckhard Pasque, Occupy Madison Tiny Homes Village Looks to Expand (Aug 21, 2017), [https://madison.com/ct/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/Article\\_76697ab3-e175-59bb-8e59-dda685c7b684.html](https://madison.com/ct/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/Article_76697ab3-e175-59bb-8e59-dda685c7b684.html)

<sup>108</sup> See How to Become a Resident of OM Village, [https://occupymadisoninc.com/wp-content/uploads/2013/07/04\\_how-to-become-a-resident-of-om-village.pdf](https://occupymadisoninc.com/wp-content/uploads/2013/07/04_how-to-become-a-resident-of-om-village.pdf)

<sup>109</sup> Shelly K. Mesch, Occupy Madison's tiny house village seeks funds to expand its community with fundraising auction, [https://madison.com/wsj/news/local/occupy-madison-s-tiny-house-village-seeks-funds-to-expand/Article\\_a45e29d6-900a-57dc-946e-a70ff634f7cf.html](https://madison.com/wsj/news/local/occupy-madison-s-tiny-house-village-seeks-funds-to-expand/Article_a45e29d6-900a-57dc-946e-a70ff634f7cf.html).

<sup>110</sup> See Square One Villages, Case Study Matrix, [https://docs.wixstatic.com/ugd/bd125b\\_37cb3576ec184848ae45c7ec3ccec279.pdf](https://docs.wixstatic.com/ugd/bd125b_37cb3576ec184848ae45c7ec3ccec279.pdf)

<sup>111</sup> See Lisa T. Alexander, 94 Neb. L. Rev. 245, 292 (2015).

<sup>112</sup> Shelly K. Mesch, Occupy Madison's tiny house village seeks funds to expand its community with fundraising auction, [https://madison.com/wsj/news/local/occupy-madison-s-tiny-house-village-seeks-funds-to-expand/Article\\_a45e29d6-900a-57dc-946e-a70ff634f7cf.html](https://madison.com/wsj/news/local/occupy-madison-s-tiny-house-village-seeks-funds-to-expand/Article_a45e29d6-900a-57dc-946e-a70ff634f7cf.html)

status and rights of *stewardship*.<sup>113</sup> Stewardship is defined as, “possession subject to conditions set out in this contract, including but not limited to the Occupant’s compliance with conduct and sanitation obligations, timely fulfillment of repayment obligations [in the form of sweat equity], and keeping the Tiny House in a place agreed to by [Occupy Madison, Inc]. Failure to meet these conditions may result in possession of the Tiny House reverting to OMI.”<sup>114</sup> The Tiny House Contract, therefore, creates “a title deed” to a new housing status called stewardship.<sup>115</sup> Only homeless people or people facing housing insecurity can become stewards of a tiny home in the village.<sup>116</sup> Anyone who owns, or has rights to, another residence cannot become a steward.<sup>117</sup> A homeless person can only become a steward if he or she has amassed 500 sweat-equity work credits, but once a person attains 160 sweat equity hours they are placed on the list of applicants for a tiny home. The steward’s payoff obligation is a personal obligation, a steward cannot substitute money or sweat-equity credits from others to fulfil this obligation, without the consent of OMI.<sup>118</sup>

Stewardship tenure in OMI is permanent once you pass a six-month probationary period unless you violate the rules and regulations of the community, or three-quarters of the general membership present at a village meeting vote you out of the community.<sup>119</sup> The Tiny Home Contract permits joint occupancy of approved stewards. Joint occupants also have rights of survivorship.<sup>120</sup> The OM Community Agreement contains restrictions on who can be a guest and how long a guest can stay.<sup>121</sup> A steward can acquire sweat equity credits by providing labor to build his or her tiny home, or to build the tiny homes of other prospective residents, or from labor that benefits the general common interest community.<sup>122</sup> Stewards are required to use sweat-equity to obtain their

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<sup>113</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>114</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>115</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>116</sup> Occupy Madison, Inc., How to Become a Resident of OM Village, [https://occupymadisoninc.com/wp-content/uploads/2013/07/04\\_how-to-become-a-resident-of-om-village.pdf](https://occupymadisoninc.com/wp-content/uploads/2013/07/04_how-to-become-a-resident-of-om-village.pdf)

<sup>117</sup> See How to Become a Resident, supra note \_\_. d

<sup>118</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>119</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>120</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>121</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>122</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

home, but they are also required to use their sweat equity hours to help build the homes of others, and/or to improve other parts of the village. The communal service and work requirements in OMI's stewardship agreements are not present in a typical rental agreement, SRO, or sweat-equity project.

OMI does conduct a criminal background check on applicants to the village, yet only the status of sex offender can make a person ineligible for membership in the community.<sup>123</sup> This requirement ensures the safety of residents and makes the community more acceptable to outsiders. Other criminal arrests or convictions do not preclude a person from becoming a member of the community. Unlike many rental or rent-to-own programs for low-income people, prior rental or eviction histories, past due debts, or even past (or current) drug use, do not preclude a person from becoming a steward. While a steward cannot use substances on site, a potential steward may struggle with addiction. OMI, and other tiny homes villages using the status of stewardship, measure a potential steward's suitability based upon the steward's present positive behavior and contributions to the tiny home village community, rather than on his or her past housing, payment, or criminal history.

Stewards must also become general members of Occupy Madison, Inc. OMI requires general members to attend a minimum of two general body meetings and to provide services to the organization or the tiny house village.<sup>124</sup> OM Village has an extensive organizational and site plan that provides many opportunities for stewards to serve the village. Stewards can run to become part of the board of directors or they can participate in one of three workgroups: (1) OM Build, the woodworking shop where the homeless and housed volunteers construct the tiny homes. (2) OM Village Store, where wood products and jewelry made on site are sold, and (3) OM Grow, the agricultural and gardening effort that includes bee keeping and other beautification projects. These community service requirements connect formerly homeless people to a new community and a new beginning. The Tiny House Contact and the Code of Conduct also outline the causes for eviction. For example, "[s]tealing is not tolerated." "Violence in your Tiny house, in the trailer, or anywhere in the vicinity of the shop, church property, or the surrounding neighborhood will not be tolerated."<sup>125</sup> The documents available on OM Village's website do not outline a process by which grievances between a steward and OMI, or between stewards, can be resolved. Media reports allege that some former residents struggled with alcohol or drug abuse and OMI asked at

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<sup>123</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>124</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

<sup>125</sup> A Tiny Contract for a Tiny House, <https://occupymadisoninc.com/wp-content/uploads/2013/07/a-tiny-contract-for-a-tiny-house.pdf>

least two former residents to leave the village.<sup>126</sup>

### 1. Permanent Stewardship and Property Theory

The OM Village's stewardship housing tenure grants formerly homeless people a viable alternative to fee simple home ownership or renting, that provides formerly them many of the benefits of ownership and renting, without formal title or a traditional rental lease. In *Behavioral Leasing: Renter Equity as an Intermediate Housing Form*, Professor Stephanie Stern, explores alternatives to traditional home ownership and renting for low-income groups.<sup>127</sup> She analyzes renter equity, an alternative housing form that "monetizes and allocates to tenants a share of the financial value created by their upkeep and participation in the property – and frames that allocation as an incentive in order to support a range of homeownership-like behaviors and benefits."<sup>128</sup> Renter equity leases specifically enable "renters to earn monthly renter equity credits (i.e., savings credits) in exchange for three behaviors: paying their rent on time, participating in a resident community association and attending its monthly meetings, and completing their assigned property upkeep tasks in common areas (for ease of monitoring, the typical work assignments require tenants to maintain specified physical spaces in the building or its grounds). The upkeep task takes each tenant approximately one to two hours per week."<sup>129</sup>

Stern frames renter equity as an alternative for low-income individuals who can't afford ownership, but who desire the economic and social benefits of ownership. She contrasts renter equity against traditional renting, which fails to create the same positive behavioral incentives as homeownership. She notes, the psychological benefits of homeownership "include greater control and governance rights,"<sup>130</sup> "incentives to maintain and improve property"<sup>131</sup> and stronger rights to remain.<sup>132</sup> While most stewards do not reap the economic benefits of improvements they make to the tiny home, the more labor they put into the upkeep of the entire village, the more likely it is that the steward will be accepted into the community and directed to life enhancing opportunities. Stewardship, therefore, incentivizes ownership-like behaviors through social norms. Although stewards do not have title to the tiny homes, the use and membership rights inherent in stewardship provide unhoused people with control and governance rights. As members of the common interest community, stewards can vote to

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<sup>126</sup> Lisa Speckhard Pasque, *Occupy Madison Tiny House Village Looks to Expand*, *The Cap Times* (Aug 21, 2017), [https://madison.com/ct/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/Article\\_76697ab3-e175-59bb-8e59-dda685c7b684.html](https://madison.com/ct/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/Article_76697ab3-e175-59bb-8e59-dda685c7b684.html).

<sup>127</sup> Stern, *supra* note 18, at \_\_ 177.

<sup>128</sup> Stern, *supra* note 18, at \_\_ 178.

<sup>129</sup> Stern, *supra* note 18, at \_\_ 178.

<sup>130</sup> Stern, *supra* note 18, at 177.

<sup>131</sup> Stern, *supra* note 18, at 177.

<sup>132</sup> Stern, *supra* note 18, at 177.

determine who can remain in the village and how the community will develop.

Property theory traditionally conceives that title, long-term possession, equity, and transferability to be the key features of ownership that incentivize residents to steward, maintain, and improve their properties,<sup>133</sup> yet tiny home villages incentivize those behaviors even without ownership. Social norms also incentivize the positive behaviors often associated with ownership. While the right to exclude others from the tiny house unit is an important right that affords formerly homeless people privacy, that right to exclude is consonant with a right to be included in, and participate in, the decision-making and advancement of the common interest community. The villages privilege community building and positive social behavior, rather than wealth-maximization, with a status that is less stable and less profitable than ownership or renting.

The common interest community rules and decision-making structures of OM Village also help advance the goal of human flourishing, heralded by progressive property scholars,<sup>134</sup> and human self-realization, touted by property as personhood theorists.<sup>135</sup> Progressive property theorists assert that property laws and institutions should further human flourishing and democratic values, rather than just efficiency. Human flourishing connotes a “well-lived life,” in which a person has external goods beyond those needed for basic physical survival.<sup>136</sup> The democratic values that property institutions should serve include: “liberty, equality, and democracy.”<sup>137</sup> These normative goals can be a constraint on fee simple ownership and the right to exclude when an owner’s property rights undermine the human flourishing of others or threaten democratic values. Progressive property theorists also embrace informal property forms as a way of advancing human flourishing and other democratic ends.<sup>138</sup> According to progressive property theorists, property should serve as a bedrock for human relations and communal associations. Progressive property scholars, however, have said less about how the most vulnerable constituents can obtain property, or the property-like benefits, that advance human flourishing. Some argue that Section 8 vouchers or rent control are examples of progressive property theory, but most critics chide the theories’ lack of concrete examples.<sup>139</sup> This Article adds

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<sup>133</sup> Stern, *supra* note 18, at 179.

<sup>134</sup> See ALEXANDER AND PEÑALVER *supra* note \_\_, at \_\_ (defining human flourishing).

<sup>135</sup> Radin, *supra* note \_\_, at 957.

<sup>136</sup> ALEXANDER AND PEÑALVER, *supra* note \_\_, at 87.

<sup>137</sup> Joseph William Singer, *Property As the Law of Democracy*, 63 DUKE L.J. 1287 (2014).

<sup>138</sup> “Property rights are based as much on informal practices as on formal arrangements.” Joseph William Singer, *The Rule of Reason in Property Law*, 46 U.C. DAVIS L. REV. 1369, 1433–34 (2013).

<sup>139</sup> “What remains to be done is a close examination of the new progressive property on some of its own terms by carefully considering the plural and incommensurable underlying values, purposes, and social relationships that recent progressive-property accounts seek to serve.” Zachary Bray, *The New Progressive Property and the Low-Income Housing Conflict*, 2012 B.Y.U.



an additional example of progressive property theory in action because it shows how tiny homes villages can advance human flourishing and democratic participation.

Property as personhood theorists also argue that property should further human self-realization. Professor Margaret Jane Radin derived the property as personhood theory from Hegel. “The premise underlying the personhood perspective is that to achieve proper self-development—to be a *person*—an individual needs some control over resources in the external environment.”<sup>140</sup> Professor Radin outlines a dichotomy between two kinds of property, personal and fungible.<sup>141</sup> Personal property is property so constitutive of a person’s self-conception that the loss of that property cannot be remedied by substitutes.<sup>142</sup> Fungible property can easily be replaced by substitutes.<sup>143</sup> Some tiny homes, even temporary or transitional tiny homes, constitute a form of personal property that can help to restore hope, dignity, self-pride, and self-worth to formerly homeless people. When formerly homeless people are able to design, build, and steward their shelter, as well as participate in community decision-making and self-determination, they develop a personal relationship with the tiny home, and the broader village community, that can serve as a form of personal property, even though they do not formally rent or own the units. Thus, for formerly homeless or unsheltered people, tiny homes can constitute a form of personhood property even without ownership.<sup>144</sup>

Many homeless people have also lost connections to positive communities. OM Village requires its stewards to contribute to community self-governance and enhancement. These work requirements and service opportunities force stewards into community with other stewards by working on communal projects, such as constructing one another’s homes or making projects for sale to support community upkeep costs.<sup>145</sup> The projects can also help residents develop skills they can transfer to the workforce or use to sustain themselves. In Phase three of the OM Village project, for example, OMI contemplates creating a day laborer program that can employ stewards.<sup>146</sup> The community gardens in which stewards

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L. Rev. 1109, 1114 (2012) (“

<sup>140</sup> Radin, *supra* note \_\_, at \_\_. 957.

<sup>141</sup> See Radin, *supra* note \_\_, at 960.

<sup>142</sup> See Radin, *supra* note \_\_, at 960.

<sup>143</sup> See Radin, *supra* note \_\_, at 960.

<sup>144</sup> See Radin, *supra* note \_\_, at 992 (1982) (describing residential tenancies as personhood property).

<sup>145</sup> “I agree to participate in the work of self-governance, including governance meetings, the dispute resolution process, and agreed-upon approaches to de-escalation of any conflicts. I know there are costs to keep the residential area running. Stewards will support the goal of self-sufficiency by contributing in a sustainable way appropriate to individual circumstances.” OM Village Community Agreement, [https://occupymadisoninc.com/wp-content/uploads/2013/07/05\\_community-agreement.pdf](https://occupymadisoninc.com/wp-content/uploads/2013/07/05_community-agreement.pdf).

<sup>146</sup> See OM Village, Phase 1, <https://occupymadisoninc.com/om-village-phases/phase-1/>.

can participate also help provide healthy and organic food for use by stewards and area neighbors.<sup>147</sup> These features of the village help advance the human flourishing of stewards beyond shelter. While stewards are not owners in the traditional sense, stewardship gives formerly homeless individuals access to a well-lived life. Stewardship also grants formerly homeless people access to a form of personal property (the tiny home) that helps residents regain the hope, dignity, self-worth, and human flourishing that they may have lost on the streets.

OM Village, clearly, has limitations; it is not a panacea to solve homelessness. The project can only serve a small number of homeless people given the land and financial limitations. The project, intentionally, does not benefit from government funding or land donations, so the village can only assist a small number of people. The homeless population in Madison is clearly larger than the number of people who will benefit.<sup>148</sup> The units are not large enough to accommodate small families. The residents, some of whom may have histories of substance abuse, do not receive any counseling or services as part of their stewardship in OM Village, and the residents of OM Village are not diverse,<sup>149</sup> so the project, currently, does not substantially advance integration. Yet, despite these limitations, OM Village makes a meaningful contribution to the range of options for homeless people in Madison, Wisconsin.

### C. Temporary Stewardship: Colorado, Oregon and Washington

Some tiny homes villages also use stewardship in temporary or transitional villages. Beloved Community Village in Denver, Colorado,<sup>150</sup> Dignity Village in Portland, Oregon<sup>151</sup>; Opportunity Village in Eugene, Oregon<sup>152</sup>; Quixote Village in Olympia, Washington<sup>153</sup>; and several villages established by the City of Seattle, Washington<sup>154</sup> use *stewardship* as a temporary housing tenure for homeless people. As the Entrance Agreement of Dignity Village in Portland, Oregon,

<sup>147</sup> See OM Grow Workgroup, <https://occupymadisoninc.com/om-grow-workgroup/>

<sup>148</sup> According to the July 2018 Point-In Time-Count which takes a snapshot of the number of homeless people in the Madison/ Dane County Metropolitan Area, 640 people were homeless on July 25, 2018. See Madison Dane County Continuum of Care, July 2018 Point-In-Time Count. [https://docs.wixstatic.com/ugd/73dee7\\_fa1b98477ce346e9a0cb5cd6fc25cb98.pdf](https://docs.wixstatic.com/ugd/73dee7_fa1b98477ce346e9a0cb5cd6fc25cb98.pdf).

<sup>149</sup> See Interview with Luca Clemente, Vice-President, OM Build, April 18, 2014) (recording on file with the author) (discussing the demographics of the residents).

<sup>150</sup> See Beloved Community Village, <https://belovedcommunityvillage.wordpress.com>

<sup>151</sup> See Dignity Village Entrance Agreement, <https://dignityvillage.org/services/entrance-agreement/>

<sup>152</sup> See HEBEN, *supra* note \_\_, at 156-164 (describing Opportunity Village).

<sup>153</sup> See HEBEN, *supra* note \_\_, at 156-164 (describing Quixote Village).

<sup>154</sup> See Dignity Village Entrance Agreement, <https://dignityvillage.org/services/entrance-agreement/>

<sup>154</sup> See Update: City Permitted Villages, <https://homelessness.seattle.gov/update-city-permitted-villages/>

explains:

We are **not permanent housing**. Show us you are looking for a job, or housing—anything to help achieve these goals. You have a maximum of 2 years from the date you become a resident to find alternative housing. This is mandated by our contract and is not up for debate.<sup>155</sup>

Most transitional tiny homes villages that use stewardship allow stewards to spend up to two years in a tiny home unit.<sup>156</sup> Membership in the co-housing community is a condition of possession.<sup>157</sup> Consequently, a formerly homeless person cannot become a temporary steward unless he or she becomes a member of the village counsel and attends village meetings.

Dignity Village, established in 2001, was the first tiny homes village that utilized stewardship in a transitional housing village.<sup>158</sup> It has approximately forty-three dwelling structures on 1.15 acres of land that provide temporary shelter for up to fifty to sixty homeless people per day.<sup>159</sup> The City of Portland, Oregon provides the land for the village, so the encampment is on city-owned land.<sup>160</sup> The tiny homes are approximately 120 square feet per unit. The shared common buildings have plumbing and electricity, but each tiny home does not have plumbing or electricity. All residents must be eighteen years of age or older and homeless.<sup>161</sup> Unlike at OM Village in Madison, residents at Dignity Village pay nominal fees of \$35 dollars per month for insurance, plus a ten dollars per month utility charging fees.<sup>162</sup> All residents are required to provide a minimum of ten hours per week of sweat equity for the time period that they possess a tiny home.

The basic rules to which temporary residents must abide at Dignity Village are: (1) no violence to yourself or others; (2) no theft; (3) no alcohol, illegal drugs, or drug paraphernalia on-site or within a one block radius; (4) no constant disruptive behavior; and (5) everyone must contribute to the operation and maintenance of the Village through sweat equity hours.<sup>163</sup> “The village allows

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<sup>155</sup> See Dignity Village Entrance Agreement, <https://dignityvillage.org/services/entrance-agreement/>

<sup>156</sup> See Dignity Village Entrance Agreement, <https://dignityvillage.org/services/entrance-agreement/>

<sup>157</sup> See *supra* note \_\_\_\_.

<sup>158</sup> See HEBEN, *supra* note \_\_, at 129-143 (describing Dignity Village)..

<sup>159</sup> See HEBEN, *supra* note \_\_, at 129-143 (describing Dignity Village)

<sup>160</sup> See HEBEN, *supra* note \_\_, at 129-143 (describing Dignity Village)

<sup>161</sup> See Dignity Village Entrance Agreement, <https://dignityvillage.org/services/entrance-agreement/>

<sup>162</sup> In this way stewardship at Dignity Village is more like renting, with homeless stewards paying a nominal rent to cover fees, rather than a rent that gives the landlord a profit. Yet, those without income have tried to establish micro-businesses to raise the necessary funds to cover

<sup>163</sup> Dignity Village, Entrance Agreement, <https://dignityvillage.org/services/entrance-agreement/>

couples to live together and also includes pets—arrangements not permitted by the traditional shelter system.”<sup>164</sup> Under Oregon state law, Dignity Village is considered a legally permitted “transitional campground.”<sup>165</sup> A 2007 Dignity Village survey showed that from the village’s establishment in 2001 to March of 2007, approximately 700 people cycled through the village; 25 percent stayed for only a few days or a few weeks; 55 percent stayed for several months; and approximately 20 percent stayed more permanently, although the survey did not collect data regarding where former residents transitioned.<sup>166</sup> The 2007 survey also revealed that 70 percent of the residents were male, and 75 percent were white and between the ages of 31 and 50.<sup>167</sup>

Beloved Community Village, in the RiNo District of Denver Colorado, is another transitional stewardship tiny home village.<sup>168</sup> The community has approximately eleven 8-by-12-foot tiny homes, a bathhouse, two portable toilets, and a circular common building from which food and running water is distributed.<sup>169</sup> The tiny homes are insulated and have electricity, but no running water. Each tiny home costs approximately \$22,000 to construct.<sup>170</sup> The Baron Institute for Philanthropy and Social Enterprise which is a part of Denver University, invested \$91,725 to build and study the Beloved Community Village, as well as a proposed second village in Denver.<sup>171</sup> The Beloved Community Village is self-governed through a Village Council that consists of formerly homeless village residents. An Advisory Council consisting of volunteers and technical professionals assists the village council and provides expertise when needed to assist the village council with decision-making. A local church called, The Beloved Community acts as the fiscal agent for the project and provides support as a member of the Advisory Council. The landlord, who owns the land on which the project sits, is the Urban Land Conservancy.<sup>172</sup>

Bayaud Enterprises provides weekly visits by the laundry truck and is developing a day laborer program for the villagers. The Denver Food Rescue Program provides food and groceries, and the Denver Homeless Outreach Collaborative provides additional social resources. Residents must also agree to

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[agreement/](#).

<sup>164</sup> HEBEN, TENT CITY URBANISM, supra note \_\_ at 135.

<sup>165</sup> Transitional Housing Accommodations 2017 ORS 446.265.

<sup>166</sup> HEBEN, TENT CITY URBANISM, supra note \_\_ at 135.

<sup>167</sup> Heben, Tent City Urbanism, supra note \_\_ at 135.

<sup>168</sup> <https://belovedcommunityvillage.wordpress.com>

<sup>169</sup> <https://belovedcommunityvillage.wordpress.com>

<sup>170</sup> <https://belovedcommunityvillage.wordpress.com>

<sup>171</sup> <https://belovedcommunityvillage.wordpress.com>

<sup>172</sup> “Using a fiscal sponsorship arrangement offers a way for a cause to attract donors even when it is not yet recognized as tax-exempt under Internal Revenue Code Section 501(c)(3).” Fiscal Sponsorship <https://www.councilofnonprofits.org/tools-resources/fiscal-sponsorship-nonprofits> .

and abide by community rules as well as provide sweat equity work hours in order to become and remain a steward.<sup>173</sup> Beloved Community Village has experienced a few difficulties: two stewards were asked by the Village Council to leave due to violations of community rules, and the village incurred \$25,000 in additional costs, because it had to relocate from its original site to a location across the street because the city changed its regulations regarding transitional encampments.<sup>174</sup> Yet, despite these initial obstacles, the project helps provide a low-barrier form of housing for people otherwise on the streets or even in temporary shelters. A study of the village, one-year after its opening, conducted by the Denver University Burns Center on Poverty and Homelessness, found that:

Of the 12 original village residents who participated in the study — one person declined — 10 remained housed through April. It goes beyond the scope of the study, but those 10 people are still in stable housing today, Chandler said. Three residents moved out of the village into housing of their own. Two of them, a couple, saved up for their own apartment, Chandler said. A third person was approved for Section 8 rental assistance. And all villagers — nine of whom were already working when they moved in — were either employed, in school or collecting disability, as of April. That fact also holds true today.<sup>175</sup>

Seattle, Washington also derives its transitional housing model from Dignity Village. Unlike Colorado and Oregon, Seattle has established a system of seven transitional tiny home encampment villages.<sup>176</sup> In 2014, the Mayor of Seattle convened an Emergency Task force on Homelessness.<sup>177</sup> The taskforce recommended that the City of Seattle legally permit homeless encampments on city-owned land or privately-owned, non-religious property. The city adopted a strategic plan called Pathways Home. As part of that plan, Seattle offered public land and some city funding to support the creation of permitted tiny home encampments. Some Seattle villages, such as Nickelsville, are on land privately owned by a church.<sup>178</sup> Others are on city-owned land. The villages serve formerly

<sup>173</sup> <https://belovedcommunityvillage.wordpress.com>

<sup>174</sup> <https://belovedcommunityvillage.wordpress.com>

<sup>175</sup> *Tiny home village for the homeless thriving in Denver's RiNo District*  
<https://www.denverpost.com/2018/07/27/tiny-home-homeless-thriving-denver-rino-neighborhood/>

<sup>176</sup> Update: City Permitted Villages, <https://homelessness.seattle.gov/update-city-permitted-villages/>

<sup>177</sup> See Permitted Encampment Evaluation at 2  
<http://www.seattle.gov/Documents/Departments/HumanServices/AboutUs/Final%202017%20Permitted%20Encampment%20Evaluation.pdf>

<sup>178</sup> Square One Villages, Village Case Study Matrix,  
[https://docs.wixstatic.com/ugd/bd125b\\_37cb3576ec184848ae45c7ec3ccec279.pdf](https://docs.wixstatic.com/ugd/bd125b_37cb3576ec184848ae45c7ec3ccec279.pdf)

homeless people, who need a form of shelter to transition from the streets to more permanent indoor living.

In 2015, the Seattle City Council unanimously adopted an ordinance “related to land use and zoning to permit transitional encampments as an interim use on city-owned or private property.”<sup>179</sup> The ordinance restricts the number of people that each site can accommodate “and limits the permitted use for one year with the possibility of permit renewal for an additional year.”<sup>180</sup> Previously, Seattle law only allowed transitional encampments for a 90-day period; now formerly homeless people can remain in the encampments for up to two years. A City of Seattle study of the encampments maintains that “[t]his longer-term siting means residents can make greater progress towards their stability goals and build stronger relationships with the surrounding community.”<sup>181</sup> There is also a related Joint Director’s Rule that establishes compatible service requirements and operational standards for the encampments.<sup>182</sup> The Joint Director’s Rule also requires “the creation of Community Advisory Councils (CACs) to provide neighborhood and business input on proposed encampment operations.”<sup>183</sup> The CAC’s also identify methods for complaints and dispute resolution at each site.<sup>184</sup>

The permitted transitional encampments follow a unique model of combining village self-government by homeless people with city-supported case management services. Like Dignity Village, residents do pay a nominal rent of approximately \$90 per month that covers some operational expenses. The Low-Income Housing Institute (LIHI), an established non-profit (501)(c)(3) organization dedicated to developing, owning, and operating housing for low-income people, owns and operates most of the tiny homes permitted encampments. LIHI is in a contractual relationship with the City of Seattle to provide case-management services to residents at almost all of the seven encampments.<sup>185</sup> Each village has a slightly different governance structure, but each site shares the following fundamental characteristics: (1) democratic decision-making which requires homeless stewards to become members of the village association and attend community meetings with each member having one equal vote, (2) all residents must provide sweat-equity hours to towards the day-to-day operation of the village; (3) each site has a grievance procedure; (4) the stewardship tenure can be temporarily, or permanently, revoked if stewards violate established community rules.<sup>186</sup> The possibility of re-entry is determined

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<sup>179</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 2.

<sup>180</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 2.

<sup>181</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 2.

<sup>182</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 2.

<sup>183</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 2.

<sup>184</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 3.

<sup>185</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 3.

<sup>186</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 3.

based upon the severity of the offense.<sup>187</sup>

“From September 2015 through May 2017, 759 people were served by the villages, and 121 of those people transitioned into safe permanent housing.”<sup>188</sup> During 2016, 403 adults over the age of 18 and 64 children as part of a family were served in the transitional villages.” Of the total population, 60% were male and 39% female. The other 1% includes two individuals who identify as transgender and one who does not identify as male, female or transgender, and two who declined to share their gender identity.”<sup>189</sup> 57% of the people served are white, 19% are Black or African-American, 10 % identified as mixed race. However, the City of Seattle study noted that:

One of the primary findings of this evaluation and, recommendations for future study is the high percentage of White individuals (57%) served at the encampment as compared to City funded Single Adult Enhanced Emergency Shelters (43%). The legal representation of Black/African-American, American Indian, or Alaska Native and Native Hawaiian people as compared to other programs should be researched to identify any racial disparities and make programmatic changes that lead to racial equity.<sup>190</sup>

Some criticize Seattle’s use of transitional tiny homes villages as an alternative to permanent supportive housing.<sup>191</sup> Some worry that transitional tiny homes villages isolate the homeless from the broader community and needed long-term services.<sup>192</sup> The villages also do not substantially promote racial integration. As Seattle develops more transitional villages in close proximity to existing market-rate neighborhoods, neighborhoods respond in classic not-in-my-backyard (NIMBY) fashion. For example, some Seattle residents sued the city for failing to conduct adequate environmental review of the villages, inadequate community outreach, and violating a city ordinance specifying the number of transitional homeless camps permitted in the city.<sup>193</sup> One of Seattle’s permitted tiny homes encampments, Licton Springs, was the only project that explicitly permitted drugs and alcohol on site, using a Housing First and recovery from

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<sup>187</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 3.

<sup>188</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 1.

<sup>189</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 5.

<sup>190</sup> Permitted Encampment Evaluation, *supra* note \_\_, at 5.

<sup>191</sup> <https://www.seattletimes.com/seattle-news/homeless/seattles-tiny-house-villages-could-reduce-federal-funding-for-homelessness/>

<sup>192</sup> <https://www.seattletimes.com/seattle-news/homeless/seattles-tiny-house-villages-could-reduce-federal-funding-for-homelessness/>

<sup>193</sup> <https://www.seattletimes.com/seattle-news/homeless/lawsuit-filed-as-tensions-flare-over-new-seattle-tiny-house-homeless-village/>



substance abuse second, model.<sup>194</sup> Crime complaints in the areas surrounding Licton Springs did increase after the site was created and community residents complained about the site. As a result, Licton Springs is slated to close in March of 2019. However, Licton Springs was the Seattle project that received the most criticism and NIMBY resistance.

### 1. Temporary Stewardship and Property Theory

Stewardship, even as a temporary housing tenure, provides residents some of the behavioral, social, and economic benefits of ownership, without the status of ownership. The village agreements require stewards to sometimes create, and in some instances, improve the units they steward.<sup>195</sup> Failure to fulfill that obligation can mean ex-communication from the community. According to John Locke's labor theory of appropriation,<sup>196</sup> by constructing their tiny homes, and mixing their labor with their tiny homes, stewards develop a sense of control over the unit,<sup>197</sup> even temporarily. Even though the transitional stewardship tenure is no longer than two years, the other village community rules and regulations incentivize the steward to maintain the unit, because the risk of not maintaining the unit is expulsion from the community and its attendant benefits.

The transitional villages are also the types of informal housing communities that progressive property theorists consider property, even without ownership.<sup>198</sup> According to Professor Joseph William Singer, property rights can accrue from social relationships of reliance and dependence, rather than from clear title or ownership.<sup>199</sup> Although some residents may only stay a few days, weeks, or months, stewards form a dependence on one another, and on the

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<sup>194</sup> All of the other Seattle permitted tiny homes villages prohibit drugs and alcohol on the premises. Violations of the city permitted transitional villages respective codes of conduct can result in excommunication from the villages. Kate Walters, *Inside the new South Lake Union, tiny house village*, KUOW (Oct 2, 2018, at 3:33pm), <https://www.kuow.org/stories/inside-the-south>.

<sup>195</sup> See *supra* Part II. C.

<sup>196</sup> "Thus, *Labour*, in the Beginning, gave a right of property, where-ever anyone was pleased to imploy it, upon what was common." See *John Locke, Second Treatise on Civil Government in PROPERTIES OF PROPERTY* 1, 8 (Gregory S. Alexander and Hanoch Dagan eds. 2012).

<sup>197</sup> See ALEXANDER AND PENALVER, *supra* note \_\_, at 39.

<sup>198</sup> In contrast, the social relations approach directs our attention in the following ways: (1) It encourages us to see people as situated in various relationships with others that continue over time; (2) It describes social relations as comprising a spectrum from short-lived relations among strangers to continuing relations in the market to intimate relations in the family; (3) It comprehends rights as emerging out of understandings that develop over the course of relationships rather than as being fully articulated at clear decision points; (4) It encourages us to ask various questions about the relationship between the parties. Joseph William Singer, *The Reliance Interest in Property*, 40 Stan. L. Rev. 611, 655 (1988).

<sup>199</sup> Joseph William Singer, *The Reliance Interest in Property*, 40 Stan. L. Rev. 611, 655 (1988).

housing provider, to continue to provide adequate housing that advances human flourishing. The housing provider also has obligations to the stewards that arise out of their special relationship. As such, the transitional tiny homes villages reflect progressive property scholars' social relations view of property rights.<sup>200</sup> The transitional villages also further the human flourishing of even temporary residents.<sup>201</sup> The villages provide more than shelter, they provide social activities that encourage residents to pursue excellence in trades and skills that advance the community. The villages bring stewards into positive communal relations with other stewards. Yet, the village model also respects autonomy because villagers have privacy and self-determination when needed. The best transitional villages also advance the well-being of the broader communities in which they are located through sustainable practices, artisan workshops, and service opportunities.

The self-help, self-management, and sweat-equity aspects of the villages also illustrate the property as personhood theory. Margaret Jane Radin emphasized that other forms besides fee simple ownership could constitute personal property.<sup>202</sup> Even though stewards do not have title or long-term tenure over their tiny homes, they develop a sense of community with other stewards, and have a decision-making stake in their communities, because they often construct their tiny homes and participate in community meetings. Formerly homeless people can experience a kind of self-actualization that is not present in other transitional homeless shelters. The village gives the steward an opportunity to restore his or her sense of dignity through the privacy the tiny home provides, and to forge a new sense of identity and accomplishment through participation in the co-housing community. Even temporary stewards can fuse their self-conceptions with their tiny home units and communities, such that that the property helps the steward to develop as a person.<sup>203</sup> The threat of loss of the unit, or participation in the community, also incentivizes stewards to engage in many of the positive behaviors frequently associated with long-term ownership.

Temporary stewardship also exemplifies the shift in property law from ownership to access. Professor Shelly Kreiczer-Levy defines *access* as “the

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<sup>200</sup> See Singer *supra* note \_\_, at 655.

<sup>201</sup> ALEXANDER & PEÑALVER, *supra* note \_\_, at 88.

<sup>202</sup> “Viewing the leasehold as personal property recognizes a claim in all apartment dwellers, not just poor ones. The common law revolution in tenants' rights, to the extent it relies only on landlords being rich and tenants being poor, could reflect merely a conviction about wealth redistribution.<sup>124</sup> But it is my thesis that the intuition that the \*994 leasehold is personal is also at work in the recent common law development. New tenants' rights are granted to all tenants, even where the result is to redistribute wealth to tenants who are wealthier than their landlords. Viewing the leasehold as personal would tend to influence courts and legislatures to grant to all tenants entitlements intended to make an apartment a comfortable home--a perpetual and non-waivable guarantee of habitability.” See e.g., Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 993–94 (1982)

<sup>203</sup> Personhood theory here

casual, short-term use of property.”<sup>204</sup> She argues that Americans, particularly Millennials, now prefer short-term access to property and are losing interest in fee simple ownership.<sup>205</sup> *Share* is “a communal form of access,” in which the property asset itself is less important than the communal exchange and cooperation it facilitates.<sup>206</sup> “Technological advances, the economic downturn, consumer ideology, and no less importantly, generational attitudes,” facilitate these trends.<sup>207</sup> Kreiczer-Levy argues that the shift to access and share property relationships constitutes younger Americans’ rejection of traditional property ownership.<sup>208</sup> She further asserts that, as new property forms, the access and share relationships will require state support and incentives to flourish.<sup>209</sup>

Temporary stewardship is both the “access” form of property, defined as “the casual, short-term use of property,” and the “share” form of property, where “the property asset itself is less important than the communal exchange and cooperation it facilitates.” Most of the villages provide lower-barrier access to shelter than traditional rentals, but place more barriers than some shelters. Some of the homeless people in the transitional villages remain for only a few days or a few months; yet unlike traditional shelters, homeless stewards can access some of the benefits of communal living while they are in the village. These villages also illustrate the share form of property. Social norms, rather than money, incentivizes the temporary stewards to maintain their units and to share with other homeless residents in the present and in the future. Stewards often share water, sinks, showers, and port-a-potties.<sup>210</sup> The access and share forms of property give the homeless shelter and connections to communities that they may have lacked while on the streets or living in emergency shelters. While tiny homes villages for the homeless can be a viable and positive alternative to life on the streets, they are not a replacement for longer-term supportive housing. The small size of the units may not be suitable for larger families or unhoused people with aversion to small spaces. Some homeless and unhoused individuals may not want to participate in community activities; respect for their autonomy requires cities to produce alternative housing arrangements. Transitional stewardship, therefore, should be only one solution in a continuum of approaches to ameliorating homelessness.

### III. TINY HOMES VILLAGES AS CO-HOUSING COMMUNITIES

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<sup>204</sup> *See id.*

<sup>205</sup> *See* Kreiczer-Levy, *supra* note \_\_\_ at 157.

<sup>206</sup> *See* Kreiczer-Levy, *supra* note \_\_\_ at 158.

<sup>207</sup> *See* Kreiczer-Levy, *supra* note \_\_\_ at 157.

<sup>208</sup> *See* Kreiczer-Levy, *supra* note \_\_\_ at 161

<sup>209</sup> *See* Kreiczer-Levy, *supra* note \_\_\_ at 161.

<sup>210</sup> <https://dignityvillage.org/about-2/>

“It takes a community to raise a village.”<sup>211</sup>

“Cohousing communities are intentional, collaborative neighborhoods that combine extensive common facilities with private homes to create strong and successful housing developments.”<sup>212</sup> Co-housing’s distinctive characteristics include: fostering relationships among residents; balancing privacy and community; participatory design, building, and decision-making processes; helping other residents attain shared goals and share values; as well as promoting sustainable practices.<sup>213</sup> Co-housing initially developed in Denmark. Kathryn McCamant and Charles Durrett brought co-housing to the United States and popularized it in their seminal book, *Creating Cohousing: Building Sustainable Communities*.<sup>214</sup> While co-housing has its roots in the 19<sup>th</sup> century communes, co-housing communities are not always centered around a shared ideology or religion.<sup>215</sup> While the United States has long had other forms of communal housing, co-housing has recently flourished in the United States.<sup>216</sup>

Co-housing’s increasing popularity in America is part of the growth of the new “sharing economy.”<sup>217</sup> As housing prices escalate in high-cost cities, many Millennials gravitate towards co-housing communities in cities, such as New York, Washington DC and Chicago.<sup>218</sup> Real estate companies such as Common, Pure House, WeLive, and WeWork, now comprise part of the communal living industry. Landlords seeking profits now create intentional co-housing communities.<sup>219</sup> In these communities, six or more residents live together, each renting separate individual rooms, but sharing common spaces, amenities, and

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<sup>211</sup> Square One Villages, <https://www.squareonevillages.org/emerald>.

<sup>212</sup> The Cohousing Association of the United States, *Cohousing in the United States: An Innovative Model of Sustainable Neighborhoods* (2017), <https://www.cohousing.org/sites/default/files/attachments/StateofCohousingintheU.S.%203-6-17.pdf>; see also Kathryn McCamant and Charles Durrett, *CREATING COHOUSING: BUILDING SUSTAINABLE COMMUNITIES* 25 (2011).

<sup>213</sup> See *supra* note \_\_\_\_.

<sup>214</sup> See generally McCamant & Durrett, *supra* note \_\_\_\_.

<sup>215</sup> See McCamant & Durrett, *supra* note \_\_\_\_, at 9.

<sup>216</sup> See generally Cohousing Association of the United States, *supra* note \_\_\_\_; Zoe Bernard, *Take a look inside the stylish, modern-day communes that are taking over US cities*, BUSINESS INSIDER (Feb. 28, 2018, 4:38 PM), <https://www.businessinsider.com/common-co-living-spaces-is-spreading-into-more-us-cities-2018-2>; Chris Bentley, *Can Boomers Make Cohousing Mainstream?*, CITYLAB FROM THE ATLANTIC (Jan. 20, 2015), <https://www.citylab.com/equity/2015/01/can-boomers-make-cohousing-mainstream/384624/>.

<sup>217</sup> See e.g., THE CAMBRIDGE HANDBOOK ON THE LAW OF THE SHARING ECONOMY (Nestor M. Davidson, (Michèle Fink, and John Infranca eds. 2018); Kellen Zale, *Sharing Property*, 87 U. Colo. L. Rev. 501 (2016) (analyzing the property sharing activities that comprise the sharing economy and providing a taxonomy of different types).

<sup>218</sup> See James Hamblin, *Communal Living Is Alleviating Millennial Ennui*, THE ATLANTIC (Jul. 28, 2016) <https://www.theatlantic.com/health/archive/2016/07/communes-in-the-city/492599/>

<sup>219</sup> See Hamblin, *supra* note \_\_\_\_.

experiences.<sup>220</sup> Landlords rent to several residents at a time, in small spaces, through month-to-month contracts with rents upwards of \$1,000 per month.<sup>221</sup> Communal living companies also buy in bulk to reduce costs and provide residents with amenities such as furniture, toilet paper, paper towels and other items. Communal living particularly appeals to Millennials, confronting extremely high rental prices in technology hub cities, and seeking communal associations similar to the ones they may have had in college or graduate school.<sup>222</sup> Some co-housing rental communities offer communal yoga, group massages, and community dinners.<sup>223</sup> These arrangements minimize Millennial isolation and ennui, but also make huge profits for landlords and real estate companies. “Along with WeWork, the co-working space part of the company, WeLive is part of a \$16 billion valuation.”<sup>224</sup> Co-housing has also become popular amongst seniors looking to downsize and find community as they age.<sup>225</sup>

The tiny homes rental co-housing villages analyzed in this Article differ from these Millennial and senior communal living arrangements in several respects. First, they expand the village model to serve larger numbers of unhoused people at each site. They also remove the profit motive from the project, so the rents cover upkeep and maintenance rather than enrich the landlords. The villages combine housing with a number of other amenities and activities essential to human flourishing, such as physical and decision-making control over the environment, physical and mental health outreach, healthy food opportunities, sustainable living practices, work opportunities, transportation access, childcare, spiritual renewal and interactions with market-rate housed individuals. While market-rate Millennials and seniors may already have access to jobs and transportation, these examples show how landlords can structure villages to bring low-income and market-rate individuals into community with each other to advance common life needs in a cost-effective way. Independent low- and moderate-income seniors could live in tiny homes villages with Millennials seeking affordable housing, community, and mentorship. The villages could require Millennials and seniors to participate in community decision-making meetings. Millennials could periodically volunteer to provide needed services to aging seniors, such as mowing community lawn spaces, reading and assisting

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<sup>220</sup> See Hamblin, *supra* note \_\_\_\_.

<sup>220</sup> See Hamblin, *supra* note \_\_\_\_.

<sup>221</sup> See Hamblin, *supra* note \_\_\_\_.

<sup>222</sup> See Alana Semuels, *Dorms for Grownups: A Solution for Lonely Millennials?*, THE ATLANTIC (Nov. 6, 2015), <https://www.theatlantic.com/business/archive/2015/11/coliving/414531/>.

<sup>223</sup> See Hamblin, *supra* note \_\_\_\_.

<sup>224</sup> Hamblin, *supra* note \_\_\_\_.

<sup>225</sup> Chris Bentley, *Can Boomers Make Cohousing Mainstream?*, CITYLAB FROM THE ATLANTIC (Jan. 20, 2015), <https://www.citylab.com/equity/2015/01/can-boomers-make-cohousing-mainstream/384624/>.

aging seniors. Conversely, qualifying aging seniors could volunteer to help run onsite childcare for working Millennials with children.<sup>226</sup> These villages further illustrate the increasingly important role that facilitating community can play in housing opportunities for vulnerable people.

#### A. Rental Tiny Homes Co-Villages: Florida, Hawaii, Texas

This section describes and analyzes three rental tiny homes villages that scale-up the village model to serve hundreds of unhoused people in permanent rental housing. The rental villages described below emerged out of successful public and private partnerships often spurred by wealthy developers or non-profit organizations seeking new solutions to homelessness and housing unaffordability. Stakeholders that often conflict in contemporary urban redevelopment collaborate in these villages to reduce homelessness and housing unaffordability. Although these villages use a rental model, they also place the units in a co-housing setting that strongly encourages resident sharing, communal associations, and community participation and enhancement through social norms and group activities. Other villages encourage socialization, and community cohesion and enhancement through physical design. Some villages build the tiny homes with small front porches facing one another in a circular or parallel design to encourage neighbors to socialize. Most villages also host community events, communal artisan projects, community gardening, or community micro-enterprise and workforce development opportunities.

Community First! Village in Austin, Texas is the largest tiny homes village for the homeless in the United States.<sup>227</sup> It is “a 27-acre master planned community that provides affordable, permanent housing, and a supportive community for the disabled and chronically homeless in Central Texas.”<sup>228</sup> Mobile Loaves and Fishes (MLF) is a non-profit 501(c)(3) organization in Austin that develops a range of programs for homeless people.<sup>229</sup> It owns the village and the land on which the village sits.<sup>230</sup> The site has a variety of housing units

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<sup>226</sup> Ina Jaffe, *A Community Built Around Older Adults Caring for Adoptive Families*, NPR (Aug. 4, 2015, 05:49 AM), <https://www.npr.org/2015/08/04/429219678/at-hope-meadows-in-illinois-older-adults-help-families-care-for-foster-children>.

<sup>227</sup> Austin’s Fix for Homelessness, Tiny houses and Lots of Neighbors. <https://www.citylab.com/design/2018/11/community-first-village-homeless-tiny-homes-austin-texas/575611/>; see also Square One Villages, Case Study Matrix, [HTTPS://DOCS.WIXSTATIC.COM/UGD/BD125B\\_37CB3576EC184848AE45C7EC3CCEC279.PDF](HTTPS://DOCS.WIXSTATIC.COM/UGD/BD125B_37CB3576EC184848AE45C7EC3CCEC279.PDF)

<sup>228</sup> See Community First Village, <https://mlf.org/community-first/>

<sup>229</sup> See Mobile Loaves and Fishes, <https://mlf.org>

<sup>230</sup> See Community First! Village Case Study at 1, <https://drive.google.com/file/d/0B2jL5OLgYdyYbVh0WjNySEtvSGc/view>

<sup>230</sup> See Community First! Village Case Study, supra note \_\_, at \_\_1.

including tiny homes, recreational vehicles (RVs), and canvass tee-pee huts.<sup>231</sup> It costs \$10,335 per unit to build the studio tiny homes unit, and \$22,500 per unit to construct the one-bedroom tiny homes.<sup>232</sup> The RVs per unit cost of production is \$10,000 and the cost of production of the insulated canvass side tee-pee huts' is approximately \$5,313 per unit.<sup>233</sup> After MLF completes phase two of the village, it will have a total of 50 acres and 500 housing units for homeless people.<sup>234</sup> The village currently has approximately 250 housing units.<sup>235</sup> The tiny homes units range from 121 to 300 square feet per unit.<sup>236</sup> Prospective residents must be chronically homeless, defined as "living in a place not meant to be lived in for at least one year, and having at least one qualifying disability."<sup>237</sup> Prospective residents must also have been in Travis County for at least one year.<sup>238</sup> Residents at Community First! Village must pay a low-cost rent which ranges from \$250 dollars per month to \$380 dollars per month; residents can use Supplemental Security Income (SSI), Social Security Disability Income (SSDI), working off-site, or working on-site, through the village's community works program, in order to meet the rental obligation.<sup>239</sup>

The project began when Alan Graham, the executive director of MLF, decided that RVs were a great way to lift the homeless off the streets.<sup>240</sup> MLF purchased four RVs to house formerly homeless people, and placed them in RV parks throughout Austin.<sup>241</sup> As a former commercial real estate developer, Graham had the vision to create a special RV park for formerly homeless residents of Austin. He found a national consultant for creating RV parks, and they created a proforma for the development, which is the basis of Community First! Village today. MLF approached then Mayor of Austin, Will Wynn, whose grandfather had died as a homeless alcoholic, about creating an RV park for the homeless on city-owned land.<sup>242</sup> "However, in late 2007, new City of Austin rulings for "Quality of Life" called for no camping, no siting, no lying on Austin's streets."<sup>243</sup> Local

<sup>231</sup> The village has 125 micro or tiny homes, 100 RVs and 25 Canvans Tee-Pee Cottages. See Community First! Village Case Study, supra note \_\_, at 4

<sup>232</sup> See Community First! Village Case Study, supra note \_\_, at 9.

<sup>233</sup> <https://drive.google.com/file/d/0B2jI5OLgYdyYbVh0WjNySEtvSGc/view>

<sup>234</sup> See Phase II, <https://mlf.org/community-first/>

<sup>235</sup> See "Tiny house bed-and-breakfast sits on 27 acre community for the homeless" <https://www.mystatesman.com/news/local/tiny-house-bed-and-breakfast-sits-acre-community-for-homeless/1thFRCyH65ACTY2MDmpLlO/>

<sup>236</sup> SquareOne Villages, Village Study Matrix, [https://docs.wixstatic.com/ugd/bd125b\\_37cb3576ec184848ae45c7ec3ccec279.pdf](https://docs.wixstatic.com/ugd/bd125b_37cb3576ec184848ae45c7ec3ccec279.pdf)

<sup>237</sup> <https://mlf.org/apply-for-a-home/>.

<sup>238</sup> <https://mlf.org/apply-for-a-home/>.

<sup>239</sup> <https://mlf.org/apply-for-a-home/>

<sup>240</sup> <https://drive.google.com/file/d/0B2jI5OLgYdyYbVh0WjNySEtvSGc/view>

<sup>241</sup> See Community First! Village case study supra note \_\_ at 3.

<sup>242</sup> See Community First! Village case study supra note \_\_ at 3.

<sup>243</sup> See Community First! Village case study supra note \_\_ at 3.



developers called for increased criminalization of homelessness to remove the homelessness from the city's revitalizing downtown areas.<sup>244</sup> Neither Alan Graham, the Mayor, nor real estate developers from the Urban Land Institute (ULI), could get the city council to provide land for the effort.<sup>245</sup>

MLF then worked with an architecture class at the University of Texas (professor Steve Ross) to search for private land appropriate for an RV park. The chosen site is reasonably close to wastewater/water, outside of the city limits, near public transportation, accessible to electricity, and has rich soil for farming.<sup>246</sup> Since the site is outside of Austin's city limits, the zoning laws of Austin do not apply. The site was zoned as a planned unit development to accommodate a range of uses on the site.<sup>247</sup> After MLF selected and purchased its present 27-acre site, Alan Graham realized that small tiny homes could also provide adequate shelter in the village. Graham approached a chapter of the American Institute of Architects to create a tiny homes design competition for the tiny homes that would be on the site. The four design models that Community First! Village currently uses emerged from this competition. Unlike, the villages described earlier, Community First! Village uses a traditional landlord and tenant housing tenure.<sup>248</sup> Formerly homeless people sign a lease agreement and pay slightly more than at-cost rents. The rent covers the costs of the electricity for the tiny homes and the canvas sided cottages, and some of the costs of maintaining the village common areas, such as toilets, showers, laundry, and the outdoor kitchens. MLF does not make a substantial profit from the rents, rather the rents cover operations costs.<sup>249</sup>

Before a prospective resident's ability to pay is assessed, prospective residents must complete a Coordinated Community Assessment that evaluates the prospective tenant's homeless status for at least one year, and their health and disability status.<sup>250</sup> The Coordinated Community Assessment enables MLF to ensure they are serving chronically homeless individuals and families. It also enables MLF to work with caseworkers to assess residents' service needs. Community First! Village also has a medical facility on site that provides residents with physical and mental health screenings and as well as respite and

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<sup>244</sup> See Community First! Village case study supra note \_\_\_ at 4.

<sup>245</sup> See Community First! Village case study supra note \_\_\_ at 4.

<sup>246</sup> See Community First! Village case study supra note \_\_\_ at 4.

<sup>247</sup> See Community First! Village case study supra note \_\_\_ at 4.

<sup>248</sup> The central feature contemporary landlord/tenant law is the lease which specifies the agreed upon possession and use terms, as well as the landlord and tenant obligations including the amount of the rent and the terms of the tenancy. John G. Sprankling, Property Law 234 (3<sup>rd</sup> ed. 2012) (defining modern landlord tenant law as "an evolving compromise between two competing bodies of law: traditional property law concepts and emerging contract law doctrines.").

<sup>249</sup> Community First! Village Statement of Resident Qualifying Criteria, <https://mlf.org/wp-content/uploads/2018/09/Resident-Qualifying-Criteria-for-website-2018.09.05.pdf>

<sup>250</sup> See Resident Qualifying Criteria, supra note \_\_\_, at \_\_\_.

hospice care.<sup>251</sup> Prospective residents must also complete an FBI fingerprint check and a criminal background check.<sup>252</sup> A past or present history as a sex offender precludes prospective residents from becoming tenants in the village. Other criminal history that may preclude a prospective tenant from become a resident includes: “capital murder, murder/manslaughter, kidnapping, child molestation, rape, and crimes of a sexual nature, or arson.”<sup>253</sup> Applicants with a misdemeanor assault record within seven years of applying for a unit in limited-circumstances may be accepted as a resident, if they successfully complete anger management courses provided by MLF.<sup>254</sup> These requirements protect the safety of residents at the village and minimize NIMBY concerns. Many of the lower-level misdemeanors that often preclude formerly homeless people from becoming renters in typical units do not preclude them from becoming residents at the village. While there are barriers to accessing the village, the barriers are lower than in more typical rental units in Austin. Community First! Village is also a drug-free campus.<sup>255</sup> Once a formerly homeless person becomes a renter at the village they can remain a resident in the village indefinitely.<sup>256</sup> There is no time limit on how long someone can be a resident. Some formerly homeless people use the village as a stepping stone to more traditional housing and others remain at the village long-term.<sup>257</sup>

The renters at Community First! Village, however, also live in a co-operative or a co-housing village model. All members of the village can benefit economically and socially from participating in maintaining shared amenities and undertaking communal micro-enterprise and artisan endeavors.<sup>258</sup> Homeless people often lose connections to positive communities that can advance their human flourishing. Community First! Village restores these connections through a range of shared amenities and community activities that give residents an opportunity to earn nominal wages and gain skills.<sup>259</sup> Community First! Village also has a woodworking shop in which residents can gain transferable skills as artisans that they can use when, and if, they exit the community. There are outdoor places for worship, a memorial garden, and a prayer labyrinth. One unique feature of Community First!Village is that it provides opportunities for formerly homeless people to experience community with housed or non-homeless people. The site has an Outdoor Community Movie Theater provided by famous

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<sup>251</sup> Phase I, Mobile Loaves and Fishes, <https://mlf.org/community-first/>

<sup>252</sup> See Resident Qualifying Criteria, *supra* note \_\_, at \_\_.

<sup>253</sup> See Resident Qualifying Criteria, *supra* note \_\_, at \_\_.

<sup>254</sup> See Resident Qualifying Criteria, *supra* note \_\_, at \_\_.

<sup>255</sup> See Resident Qualifying Criteria, *supra* note \_\_, at \_\_.

<sup>255</sup> See Resident Qualifying Criteria, *supra* note \_\_, at \_\_.

<sup>256</sup> See Austin’s Fix for Homelessness, *supra* note \_\_, at \_\_;

<sup>257</sup> See Austin’s Fix for Homelessness, *supra* note \_\_, at \_\_;

<sup>258</sup> See Community First! Village, Community Works, <https://mlf.org/community-works/>.

<sup>259</sup> See Community First! Village, Community Works, *supra* note \_\_.

movie theater purveyor, Alamo Draft House.<sup>260</sup> Residents of Community First! Village work at the concessions stands and operate the theater. Work at the theater can serve as sweat equity compensation for renting a unit in certain cases, or as compensation that can be used to pay the monthly rent or other expenses.<sup>261</sup> The site also has a bed and breakfast called the Community Inn that enables housed residents to rent more luxurious RV's or Tiny Homes on the site via Airbnb.<sup>262</sup> Airbnb renters can stay overnight at the village and interact with village residents through community service projects, the community theater, community woodworking projects, beekeeping, or other artisan activities.<sup>263</sup> Although Community First Village does not utilize an alternative housing tenure, it provides a meaningful example of a large-scale permanent tiny homes village that advances the human flourishing of a significant number of formerly homeless people.

Similar to Community First! Village, the Dwellings is the first partially-completed, large-scale, rental tiny homes community for the homeless and unhoused in Florida. Located in Tallahassee, Florida, it is a sustainable tiny homes village community that serves “the financially, socially, or institutionally disadvantaged.”<sup>264</sup> The village offers three models of rental homes: small homes are 220 square feet per unit and rent for \$550 dollars per month; medium homes are 290 square feet per unit and rent for \$700 per month; and large homes are 410 square feet per unit and rent for \$850 per month. The rent is a flat fee that covers utilities and there are no upfront fees, making it low-barrier housing.<sup>265</sup> The village’s design facilitates communal relations between residents and the sharing of facilities and space. Upon completion, the Dwellings will have up to 130 tiny homes in a village setting that includes: communal laundry services, walking trails, a community center, community gardens, a hydroponic greenhouse, a community kitchen and dining hall, outside gathering spaces, training and educational facilities, and shuttle services to connect residents to resources and work opportunities in the broader Tallahassee community.<sup>266</sup> Each unit has a low-carbon footprint and high-tech amenities, such as smart meters to measure utility consumption, solar powered options, smart televisions, lighting, door knobs, fans, locks and air conditioning units, as well as Alexa for health care and

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<sup>260</sup> See Community First! Village, Community Works, *supra* note \_\_.

<sup>261</sup> See Community First! Village, Community Works, *supra* note \_\_; see also Telephone Interview with Community First! Village, Property Manager, (September 2018)(notes on file with author).

<sup>262</sup> See <https://communityinn.mlf.org>

<sup>263</sup> See <https://communityinn.mlf.org>

<sup>264</sup> See About Our Program, The Dwellings, <http://www.thedwellings.org/about-our-program/>

<sup>265</sup> Tackling Homelessness More Affordable Housing in Tallahassee, [http://www.wtxl.com/news/tackling-homelessness-more-affordable-housing-in-tallahassee/Article\\_1ca17b84-03d6-11e9-aa60-738a0e3776c9.html](http://www.wtxl.com/news/tackling-homelessness-more-affordable-housing-in-tallahassee/Article_1ca17b84-03d6-11e9-aa60-738a0e3776c9.html)

<sup>266</sup> See Our Community, The Dwellings, <http://www.thedwellings.org/about-our-community/>

transportation assistance.<sup>267</sup> Like Community First! Village, the Dwellings is a drug-free campus.

CESC, Inc. is the non-profit owner of the project and property manager of the facility.<sup>268</sup> Since the Dwellings is a supportive rental housing community all residents are required to participate in on-site case management to resolve barriers to attaining long-term housing and self-sufficiency, and attend resident meetings whenever they are held.<sup>269</sup> Any resident who cannot attend one of the resident town hall meetings must get an exemption from CESC, and the property manager.<sup>270</sup> The Dwellings only requires limited community participation from residents, yet, like Community First! Village, the Dwellings encourages community participation through the village's design and social norms. Notably, wealthy area business man and developer, Rick Kearney, who had funded a nearby Tallahassee homeless shelter, had the vision to create the Dwellings, a \$7.8 million project.<sup>271</sup> Kearney envisioned that the dwellings could mitigate homelessness, spur community development, and provide affordable housing alternatives. The Dwellings project did face initial NIMBY resistance and was the subject of litigation, however, the County adopted the recommendations of an administrative law judge and the project moved forward.<sup>272</sup>

Kahauiki Village, in Oahu, Hawaii, is a 11.3 acre developing affordable housing community that will consist of 144 one- and two-bedroom plantation-style tiny homes for homeless and unhoused families with children.<sup>273</sup> The village is very close to Oahu's largest homeless camp.<sup>274</sup> Families must first go through transition services at local social service agencies before they are eligible to live in Kahauiki Village.<sup>275</sup> The village will provide long-term, permanent, affordable rental housing for approximately 153 families, or up to 600 people.<sup>276</sup> Each unit will have electricity and its own kitchen and bathroom. The housing is designed for families who work, and have children, but who are homeless or unhoused.<sup>277</sup> The one-bedroom homes rent for \$725 dollars per month and the two-bedroom homes rent for \$900 dollars per month, utilities included—all below-market rents

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<sup>267</sup> See About Our Program, The Dwellings *supra* note \_\_. /

<sup>268</sup> See CESC, Inc. <http://cesctlh.org>

<sup>269</sup> See The Dwellings Program Agreement, <http://www.thedwellings.org/wp-content/uploads/2018/08/Dwellings-Program-Agreement.pdf>

<sup>270</sup> See Dwellings Program Agreement, *supra* note \_\_, at \_\_.

<sup>271</sup> <https://www.tallahassee.com/story/money/2016/04/01/tiny-house-community-proposed-northwest-tallahassee/82389800/>

<sup>272</sup> <https://www.tallahassee.com/story/money/2016/04/01/tiny-house-community-proposed-northwest-tallahassee/82389800/>

<sup>273</sup> <http://www.kahauiki.org>

<sup>274</sup> <http://www.kahauiki.org>

<sup>275</sup> <http://www.kahauiki.org>

<sup>276</sup> <http://www.kahauiki.org>

<sup>277</sup> <http://www.kahauiki.org>

in Hawaii.<sup>278</sup> The village also provides work and training opportunities on-site to help residents afford the rent and become more self-sufficient.<sup>279</sup>

Kahauiki Village is the brain child of Hawaiian wealthy business man and aio Foundation founder, Duane Kurisu. He is the son of a Hawaiian sugar plantation worker and was raised on the big island's famous Hakalau plantation camp.<sup>280</sup> The camp consisted of small villages with 60 or more small hut-style homes centered around shared resources and schools for plantation workers.<sup>281</sup> In 2011, Kurisu purchased approximately 200 modular homes from Japan where the homes were used to house "more than 5,000 people in Japan displaced by the Tohoku earthquake and tsunami."<sup>282</sup> As Hawaii's housing prices rapidly escalate and homelessness grows, Kurisu thought to use the emergency homes to create an affordable housing tiny homes village for homeless families with children.

Kahauiki Village is also the product of a public-private partnership between the state of Hawaii, the City and County of Honolulu, and the aio Foundation, a 501(c)3 nonprofit that supports programs that empower Hawaii.<sup>283</sup> The project is on state-owned land which the state leases to the city and the aio Foundation for \$1.00 per year for 20 years.<sup>284</sup> The city agreed to dedicate approximately \$4 million dollars to the project for separate water and sewer facilities for the site.<sup>285</sup> The village also has its own separate efficient microgrid and energy storage facility, enabling the project to operate entirely off Oahu's power grids.<sup>286</sup> Phase one of the project completed 30 homes in December 2017.<sup>287</sup> "The core of each residence is remodeled from the emergency homes built for the Tohoku, Japan tsunami victims by System House, formerly known as Komatsu."<sup>288</sup> The wood siding and corrugated roofs added to the homes are reminiscent of the old Hawaiian plantation style communities that working-class individuals lived in during the mid-1900s in Hawaii. During the mid-1900s, sugar plantation owners built majestic Hawaiian Kama'aina homes. "Field laborers lived in small "camp houses," while plantation managers enjoyed much larger and more elaborate residences." More modest moderate homes were originally built for skilled workers and overseers.

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<sup>278</sup> <https://hawaiihomemag.com/Article/welcome-home-0>

<sup>279</sup> <https://hawaiihomemag.com/Article/welcome-home-0>

<sup>280</sup> <https://www.hakalauhome.com/timeline.html>

<sup>281</sup> <https://www.hakalauhome.com/timeline.html>

<sup>282</sup> <http://www.hawaiiensnow.com/story/32451059/hawaii-businessman-brings-tiny-homes-to-hawaii-to-ease-homeless-crisis/>

<sup>283</sup> <https://www.aiohawaii.com/aio-foundation/>

<sup>284</sup> <http://www.hawaiiensnow.com/story/32451059/hawaii-businessman-brings-tiny-homes-to-hawaii-to-ease-homeless-crisis/>

<sup>285</sup> <http://www.kahauiki.org>

<sup>286</sup> <https://hawaiihomemag.com/Article/microgrid-major-savings>

<sup>287</sup> <http://www.kitv.com/story/37080157/30-homeless-families-on-oahu-will-have-a-place-to-call-home-next-month>

<sup>288</sup> <https://hawaiihomemag.com/Article/welcome-home-0>

Like the old Hawaiian plantation communities, Kahauiki Village, facilitates community interactions and associations through its physical design and layout. The modular homes are placed in a circular arrangement so units are facing one another. In between homes there are designated areas for community vegetable gardens, fruit trees, and fish farms; these areas will not only provide residents with work opportunities to pay their rents and develop skills, but will also facilitate interactions between residents.<sup>289</sup> There is a coin operated central laundry facility and drying lines on the sides of homes to minimize the environmental impact of laundry facility use.<sup>290</sup> There is also a preschool and a daycare for children who are not school age.<sup>291</sup> These facilities enable families and single parents to obtain work opportunities. Residents can also use these common facilities for evening events when the preschool and daycare is not in use. Lastly, the village is located near United Laundry, a company that has agreed to hire formerly homeless Kahauiki Village residents in need of work. Hata & Co., is also providing job training in the food and beverage industry for Kahauiki residents in need of work. In each of these three case studies, homeless people, homeless advocates, and municipalities adapted the co-housing model to mitigate homelessness. The villages also demonstrate various design choices and activities that facilitate communal relations, encourage residents to share scarce resources, enhance their collective well-being, and develop positive social and economic networks.

Housing scholarship often criticizes rental communities with significant concentrations poor people living together. Sociologists encourage de-concentration of poor communities and herald mixed-income communities.<sup>292</sup> The mixed-income philosophy is based upon the premise that poor residents living together in large numbers may be prone to dysfunction; they may need working, and middle- and upper-class mentors and examples to forge more positive social networks.<sup>293</sup> While municipalities should still pursue de-concentration of poverty strategies in certain instances, these examples show how the most vulnerable, low-income, people can live together in smaller, very productive communities that restore self-worth and self-determination. Municipalities and developers can replicate the co-housing and communal aspects of these rental arrangements in other contexts while maintaining efficiencies of scale.

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<sup>289</sup> <http://www.kahauiki.org>

<sup>290</sup> <http://www.kahauiki.org>

<sup>291</sup> <http://www.kahauiki.org>

<sup>292</sup> See generally WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER-CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987); Robert C. Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 *UCLA L. Rev.* 983 (2010)

<sup>293</sup> See Lisa T. Alexander, *Hip-Hop and Housing Revisiting Culture Urban Space Power and Law*, 63 *HASTINGS L. J.* 803, 814 (2012) (explaining the de-concentration hypothesis).

### *B. Smaller-Scale Co-Villages for Veterans and Special Populations*

Other smaller-scale rental tiny homes villages cater to special populations. Tiny homes villages for veterans have become an increasingly popular in many cities. The Veterans Community Project (VCP) in Kansas City, Missouri is a 501(c)(3) non-profit, started in 2015 by veteran Chris Stout and other formerly homeless veterans. VCP's mission is to eliminate veteran homelessness through transitional housing in the form of tiny homes villages, and to connect veterans to needed services.<sup>294</sup> VCP built its first tiny homes village in Kansas City with approximately 49 completed homes. Each home is 240 square feet on a foundation and connects to city electricity, water, and sewer services.<sup>295</sup> Each home comes equipped with "furniture, kitchen supplies, linens, toiletries, food and even gift baskets of coffee and cookies."<sup>296</sup>

The village also facilitates camaraderie amongst veterans, and provides need services to veterans including: "outreach services, identification issues, financial counseling, discharge upgrades, disability, various mental and physical health services, substance abuse treatment, independent living skills, gardening classes, cooking classes, case management, veterinary services, transition services, homeless prevention services, and mentoring services."<sup>297</sup> One veteran resident analogized the village to the military "barracks lifestyle," in which service members take care of each other and foster community.<sup>298</sup> VCP seeks to replicate its model in St. Louis, Missouri; Denver, Colorado; and Nashville, Tennessee.<sup>299</sup> The James A Peterson Veteran Village and SC Johnson Community Center in Racine, Wisconsin, created by Veterans Outreach of Wisconsin, is another example of a veterans co-housing village that provides shelter, services and community to formerly homeless veterans.<sup>300</sup> Approximately 13 other tiny homes for homeless veterans' projects are in development throughout the United States.<sup>301</sup>

Some villages are single-sex villages. Second Wind Cottages, for example, is a tiny homes village for homeless men in Newfield, New York, outside of downtown, Ithaca, New York. "From September 2013-January 2014, Second Wind built six single-occupancy 16'x20' year-round cottages for formerly homeless men."<sup>302</sup> Three additional cottages were built each year bringing the

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<sup>294</sup> <https://www.veteranscommunityproject.org/faq-s>

<sup>295</sup> <https://www.veteranscommunityproject.org/faq-s>

<sup>296</sup> <https://www.veteranscommunityproject.org/faq-s>

<sup>297</sup> <https://www.veteranscommunityproject.org/faq-s>

<sup>298</sup> <https://www.cnn.com/2018/10/18/us/cnnheroes-chris-stout-veterans-community-project/index.html>.

<sup>299</sup> <https://www.veteranscommunityproject.org/faq-s>

<sup>300</sup> <https://vetsoutreachwi.us/vets-village/>

<sup>301</sup> Cite to spreadsheet on tiny homes villages projects (on filed with the author).

<sup>302</sup> <https://www.secondwindcottages.org/our-story>



total number of cottages to eighteen by 2018.<sup>303</sup> Each cottage costs approximately \$12,000 to \$15,000 to build and residents are encouraged, but not required, to provide sweat equity to assist with construction costs.<sup>304</sup> There is a small administrative building on site which has a kitchenette and washing machines and dryers for residents.<sup>305</sup> “Second Wind does not turn away the most difficult to place felons, including arsonists and sex offenders.”<sup>306</sup> The male residents pay rents, as they are able to help defray operating expenses.<sup>307</sup> Residents have access to certain services and communal activities such as “a drug and alcohol counselor, GED assistance, Christian fellowship and support, life skills training, meals and social events such as movie nights with other residents and the larger community, laundry facilities, exercise equipment, and a food pantry.”<sup>308</sup> The site is also on bus route which gives residents access to jobs and other municipal resources.<sup>309</sup> There are no limits on how long residents can stay, but at least six residents progressed from the village to more traditional permanent housing.<sup>310</sup> Second Wind Cottages also has land and future plans and goals to build another tiny homes village nearby for women and children.<sup>311</sup>

Kenton Women’s Shelter, in Portland, Oregon, is another creative, but year-long, transitional tiny homes village for homeless and low-income women between the ages of twenty and late-sixties.<sup>312</sup> The village has 14 sleeping pods, that are 8 by 12 feet each.<sup>313</sup> The common spaces include a fully operational kitchen and shower facilities, contained in customized shipping containers, as well as a community garden for positive social interactions between residents.<sup>314</sup>

<sup>303</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>304</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>305</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>306</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>307</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>308</sup> <https://www.secondwindcottages.org>

<sup>309</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>310</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>311</sup> [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/Article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html)

<sup>312</sup> Kenton Women’s Village, <https://www.catholiccharitiesoregon.org/provide-shelter/kenton-womens-village/>

<sup>313</sup> Kenton Women’s Village, <https://www.catholiccharitiesoregon.org/provide-shelter/kenton-womens-village/>

<sup>314</sup> Kenton Women’s Village, <https://www.catholiccharitiesoregon.org/provide-shelter/kenton-womens-village/>

Catholic Charities provides services to the residents including case management, employment assistance, access to legal and financial services, mental and physical health care, as well as support in creating a personalized transition plan to permanent housing. Although Kenton Village only provides temporary transitional housing, the privacy, safety, and opportunities for self-governance, self-determination, and leadership, that the Village affords women is a welcome alternative to the bureaucracy, noise, and lack of privacy and safety in many emergency shelters.<sup>315</sup> Some other tiny homes villages cater to homeless youth. Youth Spirit Artworks in Berkeley, California<sup>316</sup> La Casa Norte and Pride Action Think Tank in Chicago, Illinois, are developing tiny homes villages for homeless college students near the University of Illinois, Chicago campus.<sup>317</sup> These examples illustrate how non-profits and municipalities collaborate to use the co-housing village model to serve select populations. These projects, however, only serve limited numbers of residents, and it is difficult to find sufficient space and resources from private donors and municipalities to create villages large enough meet the overwhelming need for these projects. However, these villages do help reduce homelessness and promote human flourishing in unique ways.

Lastly, some smaller villages adopt a purely housing first permanent supportive housing model. The Cottages at Hickory Crossing is a tiny homes village serving fifty of the most chronically homeless individuals in Dallas, Texas. The project is the product of a public and private consortium between the non-profit, CitySquare, and the Joint Dallas County Mental Health and Mental Retardation Center, and UT Southwestern Medical Center.<sup>318</sup> The project's goal is to reduce homelessness and city expenses on homelessness, by providing the fifty most expensive chronically homeless people with adequate shelter, extensive services, and communal life in a tiny home village.<sup>319</sup> The units are 430 square feet with a kitchen, small bedroom, and a bath and shower. The units are grouped together in micro neighborhoods of six to eight units and a common green space. Villagers pay as much rent as they are able given their respective sources of income, with a minimum mandatory rent of fifty dollars per month.<sup>320</sup> Each unit is also allotted a parking space. There is a 3,000 square foot common building with administrative and caseworker offices and common spaces. The village is located across the street from other services CitySquare provides including a food bank,

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<sup>315</sup> Kenton Women's Village, <https://www.catholiccharitiesoregon.org/provide-shelter/kenton-womens-village/>

<sup>316</sup> <http://youthspiritartworks.org/programs/tiny-house-village/>

<sup>317</sup> <http://youthspiritartworks.org/programs/tiny-house-village/>

<sup>318</sup> <https://www.dallasnews.com/arts/arts/2018/04/18/tiny-houses-shipping-containers-just-might-solve-dallas-homeless-crisis>

<sup>319</sup> <https://www.dallasnews.com/arts/arts/2018/04/18/tiny-houses-shipping-containers-just-might-solve-dallas-homeless-crisis>

<sup>320</sup> <https://www.dallasnews.com/arts/arts/2018/04/18/tiny-houses-shipping-containers-just-might-solve-dallas-homeless-crisis>

an employment center, a clinic and thrift store and other services for residents. The retention rate for residents is an impressive eighty percent. Critics of smaller tiny homes village projects often argue maintaining smaller, sustainable, tiny homes villages for the homeless can be expensive compared to the small number of homeless people served. The Cottages at Hickory Crossing cost \$10 million dollars, for example, but compared to high emergency room and criminal justice costs that municipalities often spend on the chronically-homeless, tiny homes co-villages as supportive housing may have some efficiencies.

### *C. Rent-To-Own and Cooperative Co-Villages: Michigan and Oregon*

Finally, a few other tiny homes villages use more traditional ownership property tenures such as rent-to-own or cooperatives. Tiny Homes Detroit is a project of Cass Community Social Services (CCSS), a 501(c)(3) that develops programs to provide food, health, housing, and jobs in areas of concentrated poverty within Detroit, Michigan. Tiny Homes Detroit is a project of CCSS that will comprise twenty-five tiny homes in a village structure with each home ranging from 250 to 400 square feet per unit. Each home will sit on its own foundation and lot with a front porch or rear deck to maximize living space.<sup>321</sup> CCSS purchased twenty-five vacant lots in a part of Detroit that had not seen new construction or development since 1972. Volunteer labor constructs each home, as residents are not required to construct their units.

Tiny homes Detroit will serve a range of unhoused and hard-to-house people including: formerly homeless people, senior citizens, low-income college students, children aging out of foster care, and a few CCSS staff members. All village residents must qualify as low-income. Initially, residents will rent their tiny homes in a traditional rental arrangement at the cost of a dollar per square foot which means rents will range from \$250 to no more than \$400 dollars per month. However, anyone who remains in the community for seven years will have the opportunity to own the tiny home and the lot upon which it sits. The project has completed six new tiny homes at the writing of this Article. The project also enables individuals with incomes less than \$8,000 per year to rent and own quality homes. The requirements for admission into the Tiny Homes Detroit community are more rigorous than many of the other villages analyzed in this Article, but less stringent than more traditional rental or homeownership models. “Anyone convicted of a violence offense within the last decade, drug dealing in the last five years or sexual offense was not considered.”<sup>322</sup> The program also requires residents to meet with a financial coach and eventually join a homeownership association. Residents are also required to attend financial literacy classes and volunteer eight hours per month at the village. The first

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<sup>321</sup> <https://casscommunity.org/tinyhomes/>

<sup>322</sup> <http://www.bu.edu/today/2018/tiny-homes-detroit/>

villagers are slated to have traditional title to the homes by 2023. Unlike some of the villages analyzed in this Article, Tiny Homes Detroit serves many people of color. Tiny homes Detroit provides an example of how municipalities might use the homeownership model in a tiny homes village, creating a continuum of housing options throughout a city or county area.

Emerald Village in Eugene, Oregon is an affordable tiny homes cooperative for low-income people.<sup>323</sup> Formerly homeless residents will become owners under this model, except they will own shares in a cooperative housing corporation, rather own single-family homes.<sup>324</sup> Emerald Village is slated to have 22 tiny homes that qualify as “permanent dwellings,” under the local building code. Each unit will have “sleeping and living areas, a kitchenette, and a bathroom—all in 160-300 square feet.”<sup>325</sup> The site will have common buildings that contain a community kitchen, a gathering area, laundry, restroom, and tool storage to encourage sharing. Cooperative members will pay \$250-\$300 dollars per month to help meet operating costs.<sup>326</sup> “As part of this payment each household will also accumulate a \$1,500 share, paid in increments over the course of 30 months.”<sup>327</sup> The cooperative model enables residents to accumulate an asset that they can cash out, if they choose to leave the village, promoting wealth-building, and exit from the community as well as access to affordable housing. Emerald Village is a project of the 501(c)(3) Square One Villages, which will build a similar tiny homes village cooperative in Cottage Grove, Oregon.<sup>328</sup> Square one villages also operates the transitional Opportunity Village in Eugene, Oregon, as well as other transitional tiny homes villages throughout Oregon. Square One Villages demonstrates how non-profits working with local officials, and the homeless can create a range continuum of housing choices throughout a city.

#### IV. TINY HOMES CO-VILLAGES: THE CASE FOR COMMUNITY IN PROPERTY

"We're saying we'd rather be part of a community," he says, "that's pulling together to solve a problem."<sup>329</sup>

<sup>323</sup> <https://www.squareonevillages.org/emerald>

<sup>324</sup> <https://www.squareonevillages.org/emerald>

<sup>324</sup> <https://www.squareonevillages.org/emerald>

<sup>324</sup> <https://www.squareonevillages.org/emerald>

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<sup>325</sup> <https://www.squareonevillages.org/emerald>

<sup>326</sup> <https://www.squareonevillages.org/emerald>

<sup>327</sup> <https://www.squareonevillages.org/emerald>

<sup>328</sup> <https://www.squareonevillages.org/emerald>

<sup>329</sup> Charles Withuhn, CHAT organizer <https://www.npr.org/2019/02/18/694863105/tiny-homes-for-homeless-get-the-go-ahead-in-the-wake-of-californias-worst-wildfire>

### A. Natural Disasters and Precarious Property

Natural disasters are now a common feature of everyday life in America. Many metropolitan areas experience routine hurricanes, flooding, wildfires, earthquakes, and other natural disasters.<sup>330</sup> The historic Camp Fire that devastated Northern California in November of 2018, California's deadliest natural disaster on record, was the world's costliest natural disaster in 2018.<sup>331</sup> Hurricane Michael, which fiercely blew through the Florida panhandle in October of 2018, caused \$16 billion dollars of damages, and was the world's second most costly natural disaster in 2018. Hurricane Florence, which dumped historically heavy rains across the Carolinas, was the world's third costliest disaster in 2018 at a total cost of \$14 billion dollars. Dane County, Wisconsin was underwater in 2018 from historic rainfalls that overflowed its lakes and caused significant human and physical damage.<sup>332</sup> The recent eruption of the Kilauea Volcano on Hawaii's Big Island in 2018 is now one of the biggest volcanic eruptions in recent history.<sup>333</sup> Hurricane Harvey, which devastated Houston and other parts of southern Texas in 2017, tied with 2005's Hurricane Katrina as the costliest tropical cyclone on record, causing \$125 billion dollars in damages.<sup>334</sup>

Many of the same cities that experience natural disasters also experience homelessness emergencies, gentrification, and severe affordable housing shortages.<sup>335</sup> Natural disasters not only cause loss of life and costly infrastructure damages, they also cause housing loss, displacement, and instability.<sup>336</sup> This confluence of factors leads to a state of precariousness regarding property possession, use, and ownership. In his seminal Article, *Property and Radically Changed Circumstances*, Professor John Lovett asserted that property forms must

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<sup>330</sup> Doyle Rice, USA had world's 3 costliest natural disasters in 2018, and Camp Fire was the worst, USA Today, January 8, 2019 4:01am, <https://www.usatoday.com/story/news/2019/01/08/natural-disasters-camp-fire-worlds-costliest-catastrophe-2018/2504865002/>

<sup>331</sup> Doyle Rice, USA had world's 3 costliest natural disasters in 2018, and Camp Fire was the worst, USA Today, January 8, 2019 4:01am, <https://www.usatoday.com/story/news/2019/01/08/natural-disasters-camp-fire-worlds-costliest-catastrophe-2018/2504865002/>

<sup>332</sup> Wisconsin's Floods are Catastrophic and Only Getting Worse, <https://www.wired.com/story/wisconsins-floods-are-catastrophic-and-only-getting-worse/>

<sup>333</sup> Hawaii volcano is now one of the biggest in recent history, <https://www.usatoday.com/story/news/nation/2018/06/20/hawaii-volcano-eruption-now-one-biggest-recent-history/718415002/>

<sup>334</sup> Hurricane Harvey, [https://en.wikipedia.org/wiki/Hurricane\\_Harvey](https://en.wikipedia.org/wiki/Hurricane_Harvey)

<sup>335</sup> <https://www.theguardian.com/environment/2018/sep/25/climate-gentrification-phoenix-flagstaff-miami-rich-poor>

<sup>336</sup> *See id.*

be resilient in the face of “radically changed circumstances.”<sup>337</sup> Discussing property relationships in the wake of Hurricane Katrina, Professor Lovett emphasized that radically changed circumstances are often sudden,<sup>338</sup> unexpected,<sup>339</sup> intensely disruptive, and geographically pervasive.<sup>340</sup> Professor Lovett proffered five criteria to judge the responsiveness of various property forms to radical change. First, he argued that responsive and resilient property forms facilitate the preservation of existing property, but also foster democratically responsive processes to “substantially improve,” and “adaptively alter” that property.<sup>341</sup> Second, resilient property regimes also “spread risk,” and “enlist endogenous institutional and financial resources” to respond to radical change.<sup>342</sup> Third, responsive property forms also take advantage of economies of scale in the face of radical change.<sup>343</sup> Fourth, resilient forms facilitate exit from property relationships in a manner that maintains trust between parties.<sup>344</sup> Finally, responsive and resilient property forms also enable entry into communities of opportunity and facilitate the sharing of resources.<sup>345</sup>

As natural disasters proliferate and housing instability increases, radically changed circumstances and uncertainty will become common conditions. Americans will increasingly need property forms that can adapt to these new realities. Scholars normally understand long-term, fee simple, ownership as the property form that provides the most stability and predictability. Under increasingly precarious circumstances, however, communities may need more flexible and adjustable property forms that foster trust, cooperation, positive self-determination, and community empowerment, even if only temporarily. The permanent and temporary tiny homes villages analyzed in this Article meet the criteria for resilient property under radically changed circumstances. Most villages require residents to attend monthly resident meetings as a condition of possession. Many villages also encourage formerly homeless individuals to use sweat equity or participate in community decision-making, which gives residents the self-determination they may have lost on the streets. Public and private partnerships create most of these villages, in which municipalities and non-profits, and the homeless collaborate to enlist endogenous resources. Many villages scale-up the model to serve from 350 to 1,000 unhoused people. All villages encourage trust through shared resources and experiences. Finally, the villages connect formerly unhoused people to each other, and to important social and human

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<sup>337</sup> See Lovett, *supra* note \_\_, at 471.

<sup>338</sup> See Lovett, *supra* note \_\_, at 471.

<sup>339</sup> See Lovett *supra* note \_\_, at 471.

<sup>340</sup> See Lovett, *supra* note \_\_, at 471.

<sup>341</sup> See Lovett, *supra* note \_\_, at 484.

<sup>342</sup> See Lovett, *supra* note \_\_, at 487.

<sup>343</sup> See Lovett, *supra* note \_\_, at 489.

<sup>344</sup> See Lovett, *supra* note \_\_, at 490.

<sup>345</sup> See Lovett, *supra* note \_\_, at 492.

networks that increase their life chances.

Transitional or permanent stewardship in co-housing settings might provide better housing alternatives for some victims of natural disasters, than FEMA trailers or make shift shelters. Localities can establish these villages, temporarily or permanently, in habitable locations. Cities can use some of the zoning designations and categories created by tiny homes villages for the homeless, such as transitional encampments on public lands or non-profit properties, to create temporary disaster recovery housing for six months or up to two years. Non-profits or churches can act as fiscal sponsors for villages on their land or on city- or county-owned land. Using stewardship, individuals living in emergency tiny home communities can live rent free in co-housing communities that they create with other victims and displaced people, as they work to reconstitute their former lives. Displaced people can steward the new tiny homes units, rent-free, for a certain period of time, or permanently in some cases. Tiny homes villages can only charge nominal rents to cover utilities.

Village sponsors can employ similar common interest community rules and regulations that require stewards to engage in sweat-equity efforts and community decision-making in their new villages. Emergency tiny homes villages can have low-barriers to entry, yet they can adopt some barriers that protect villagers from harm, such as those used by Community First! Village. The tiny homes villages may not always be able to withstand hurricanes, earthquakes, floods or other natural disasters, but municipalities can more easily reconstitute the villages in more habitable places, if natural disasters destroy them. Villages that require residents to serve one another may be a solution to property's increasing precariousness.<sup>346</sup> In times of radical upheaval, community, not exclusive ownership can play a central role in restoring stability.

The co-housing tiny homes villages that rent to formerly homeless residents at affordable rents also provide promising models for new affordable housing efforts outside of the context of homelessness or natural disasters. Perhaps in the future, affordable housing projects can use tiny homes village and co-housing models, employing design principles that facilitate positive community relations, provide needed childcare services on site, and facilitate access to transportation and work opportunities, like Community First! Village and Kahauiki Village. Municipalities can integrate different housing tenures, income levels, and property forms into one large site enabling low-income people to live among market-rate and housed renters. Cities can also build a range of villages on non-continuous parcels throughout a city, and all of the villages could become part of a municipal community land trust.

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<sup>346</sup> The author is not talking about precarious possession which has a specific meaning under Roman and French civil law, and Louisiana state law, rather this Article refers to the increasing uncertainty and instability of property possession. See John A. Lovett, *Precarious Possession*, 77 La. L. Rev. 617, 618 (2017).



A community land trust (CLT) “is an organization created to hold land for the benefit of a community and of individuals within the community. It is a democratically structured nonprofit corporation, with an open membership and a board of trustees elected by its membership. . . .The CLT acquires land through purchase or donation with an intention to retain title in perpetuity, thus removing the land from the speculative market”<sup>347</sup> Municipalities such as Irvine, California; Chicago, Illinois; and Burlington, Vermont have developed municipal CLTs.<sup>348</sup> Each city creates a 501(c)(3) corporation, run by the city, that holds title to non-contiguous parcels of land throughout the municipality, but keeps all housing units and improvements on that land affordable in perpetuity.<sup>349</sup> Cities seeking to create a variety of temporary and permanent affordable tiny homes villages can place all of the land on which the respective villages sit into ownership by the municipal CLT. Municipalities using this approach will need for-profit social entrepreneurs and non-profit partners, willing to sacrifice profits in certain circumstances, to foster the social benefits of these communities. Municipalities can spur these efforts through tax incentives and abatements or density bonuses.

In dense, high cost cities, with scant available land at affordable prices, the village co-housing model may not provide a workable solution. Boston, Massachusetts, Los Angeles, California, and a growing number of metropolitan areas now encourage existing home- and land-owners to house one or two homeless families in tiny homes on their backyards, as granny flats or accessory dwelling units.<sup>350</sup> The homeless people will receive housing vouchers that enable them to pay rents that are 30% of their respective incomes.<sup>351</sup> The owners who participate in these programs will receive the rents. While this approach may expand the number of homeless people a city can serve through tiny homes units, it does not foster the communal relations between unhoused people, that have made tiny homes communities for the homeless so successful. Yet, municipalities can add a communal element to the accessory dwelling unit and granny flat approach, through placing all non-contiguous villages into a municipal community land trust.

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<sup>347</sup> Community Land Trusts, Leg. Guide to Affordable Housing Dev. s 4.III.D

<sup>348</sup> Steven Miller’s Article.

<sup>349</sup> “Chicago, Illinois and Irvine, California are illustrative of the rise of major cities that are sponsoring city-wide CLTs, and are arguably two of the most ambitious of the new wave of city CLTs” <http://landuselaw.wustl.edu/Articles/A%20Land%20Trust%20Article.pdf>

<sup>350</sup> See e.g., A Novel Solution for the Homeless; House Them in Backyards <https://www.nytimes.com/2018/10/29/us/homeless-housing-los-angeles.html>; L.A. County wants to help build guest houses in backyards — for homeless people; <https://www.latimes.com/local/lanow/la-me-ln-homeless-tiny-house-20180411-story.html>; <https://www.citylab.com/design/2018/05/boston-wants-residents-to-build-tiny-houses-in-their-backyards/560267/>

<sup>351</sup> L.A. County wants to help build guest houses in backyards — for homeless people; <https://www.latimes.com/local/lanow/la-me-ln-homeless-tiny-house-20180411-story.html>

### B. Legalizing Stewardship and Tiny Homes for the Unhoused

Tiny homes co-villages are not legal throughout the United States.<sup>352</sup> Tiny homes that are less than 400 square feet per unit can violate local building codes, and emergency makeshift transitional homeless encampments are not permitted under many local zoning laws. While tiny house regulations vary substantially from state to state, and cities, towns, and counties within each state have different zoning and building codes, some areas have begun to make tiny homes legal. The 2018 International Dwelling Code for One- and Two- Family Dwellings defines a tiny home as, “A dwelling that is 400 square feet (37<sup>2</sup>) or less in floor area excluding lofts.”<sup>353</sup> Tiny homes on foundations, therefore, should be legal in any city that has adopted the 2018 International Residential Dwelling Code.

In the wake of the 2008 Great Recession and Housing Crisis, many cities amended their local building codes to permit micro-units for market-rate residents.<sup>354</sup> In some cities such as, New York City, housing maintenance code regulations on “rooming houses,” limit the ownership and types of single-room occupancy units, and density regulations limit the number of micro-units on a lot.<sup>355</sup> These regulations restrict the creation of micro-units by private entities, but there are exceptions for developments run by non-profits and churches.<sup>356</sup> Some local laws also characterize tiny homes as accessory dwelling units (“ADUs”).<sup>357</sup> A few states have encouraged municipalities to change their building codes to accommodate ADUs.<sup>358</sup> However, some ADU laws require that ADU’s can only be built as an accessory to an existing lot or dwelling, and cannot be located on an

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<sup>352</sup> See generally Katherine M. Vail, *Saving the American Dream: The Legalization of the Tiny House Movement*, 54 U. Louisville L. Rev. 357 (2016).

<sup>353</sup> [https://codes.iccsafe.org/content/IRC2018/appendix-q-tiny-houses?site\\_type=public](https://codes.iccsafe.org/content/IRC2018/appendix-q-tiny-houses?site_type=public)

<sup>354</sup>; Vicki Been, Benjamin Gross & John Infranca, NYU Furman Center, *Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units* (Working Paper 2014),

[http://furmancenter.org/files/NYUFurmanCenter\\_RespondingtoChangingHouseholds\\_2014\\_1.pdf](http://furmancenter.org/files/NYUFurmanCenter_RespondingtoChangingHouseholds_2014_1.pdf).

<sup>355</sup> Eric Stern and Jessica Yager, 21 Century SROs: Can Small Housing Units Meet the Need for Affordable Housing in New York City?, (working paper 2018), <http://furmancenter.org/research/publication/21st-century-sros-can-small-housing-units-help-meet-the-need-for-affordable>

<sup>356</sup> Eric Stern and Jessica Yager, 21 Century SROs: Can Small Housing Units Meet the Need for Affordable Housing in New York City?, (working paper 2018), <http://furmancenter.org/research/publication/21st-century-sros-can-small-housing-units-help-meet-the-need-for-affordable>

<sup>357</sup> See John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 Stan. L. & Pol’y Rev. 53, 69 (2014).; <https://www.tinysociety.co/Articles/tiny-house-laws-united-states/>

<sup>358</sup> See John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 Stan. L. & Pol’y Rev. 53, 69 (2014).

independent lot.<sup>359</sup> Thus, not all tiny homes units can be characterized as ADUs.

Separate from the legality of the tiny home unit, there are other land use and zoning considerations when creating a tiny homes village. Many jurisdictions use variance exceptions to local zoning codes to create tiny homes villages for the homeless.<sup>360</sup> Other villages obtain a planned unit development zoning designation for the village.<sup>361</sup> Some cities create special zoning designations for temporary tiny homes villages. For example, the City of Seattle in 2015 unanimously adopted an ordinance which permitted “transitional encampments on city-owned or private property” for a period of up to two years.”<sup>362</sup> Other jurisdictions codify the transitional encampment concept through state legislation. In 2001, Dignity Village encouraged the state to enact a statute that created a special zoning designation called, a “transitional campground.”<sup>363</sup> The legislation empowers municipalities to approve temporary, transitional campgrounds for homeless and unhoused people.<sup>364</sup> The party establishing the transitional campground can provide utilities such as water, toilets, showers, cooking facilities, laundry or telephone services through separate or shared facilities.<sup>365</sup>

States can learn from the examples of Oregon and Washington that developed model statues to permit transitional campgrounds in cases of emergency. California enacted a state law in 2017 that allowed the City of San Jose to bypass restrictive state building codes to create tiny homes villages for the homeless.<sup>366</sup> “The law requires the city to first declare a “shelter crisis” — which it did last December — and to use city-owned or city-leased land for the tiny homes. The homes must be insulated, have weather-proof roofing, lighting and electrical outlets....”<sup>367</sup> Tiny homes for individuals must be a minimum of 70 square feet,

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<sup>359</sup> <https://www.tinysociety.co/Articles/tiny-house-laws-united-states/>

<sup>360</sup> See Emily Keable, *Building on the Tiny House Movement: A Viable Solution to Meet Affordable Housing Needs*, 11 U. ST. THOMAS J.L. & PUB. POL'Y 111, 128 (2017).

<sup>361</sup> See discussion *supra* Part III.

<sup>362</sup> <http://www.seattle.gov/Documents/Departments/SDCI/Vault/TransitionalEncampments/EncampmentsExpansionOrdinance.pdf>

<sup>363</sup> <https://www.oregonlaws.org/ors/446.265>

<sup>364</sup> “A municipality may approve the establishment of a campground inside an urban growth boundary to be used for providing transitional housing accommodations. The accommodations may consist of separate facilities, in the form of yurts, for use as living units by one or more individuals or by families.” <https://www.oregonlaws.org/ors/446.265>

<sup>365</sup> “The person establishing the accommodations may provide access to water, toilet, shower, laundry, cooking, telephone or other services either through separate or shared facilities. The accommodations shall provide parking facilities and walkways.” <https://www.oregonlaws.org/ors/446.265>

<sup>366</sup> San Jose Waives State Building Codes for Tiny Houses for the Homeless, <http://tinyhousecommunity.com/1008-san-jose-waives-state-building-codes-for-tiny-houses-for-the-homeless/>

<sup>367</sup> San Jose Waives State Building Codes for Tiny Houses for the Homeless, <http://tinyhousecommunity.com/1008-san-jose-waives-state-building-codes-for-tiny-houses-for-the-homeless/>

and for couples 120 square feet.<sup>368</sup> The San Jose City Council approved two locations for its first emergency tiny homes villages for the homeless in 2018.<sup>369</sup>

The California state law creates an opportunity for other cities to follow suit and use transitional tiny homes villages as disaster relief housing. Non-profits in the City of Chico, California, in Butte County, in Northern California wanted to create a tiny homes village for the homeless, but the city lacked the political will to create a village. The political will to create the village emerged out of the ashes of the 2018 California Camp Fire. The historic wildfire tore through the area killing approximately 80 people and damaging 14,000 homes. After the fire, the Chico City Council approved a 2.6 acre site for Simplicity Village, a 33 unit tiny homes co-village. Each tiny home will contain a bed, kitchenette, and bathroom. The village will have five community buildings on site for community meetings, community meals, a community kitchen, shared laundry facilities, a workshop, and a guardhouse.<sup>370</sup> Residents can also receive mental health, health care, and job training services on-site. One-third of the units will be specifically set-aside for homeless victims of the Camp Fire, the other units will be for Chico's approximately 2,000 other homeless families.<sup>371</sup> Simplicity Village shows how public and private partnerships can legalize the tiny homes co-village model to respond to gentrification and to a natural disaster.

None of the previously mentioned building code, land use, or zoning categories fully legalize stewardship as a housing tenure. Currently, stewardship is created via written or verbal contracts and agreements.<sup>372</sup> Other rules are enforced through social norms. Unlike a residential lease in which the default rules and the mandatory rights and obligations of tenants and landlords are outlined via default statutes, stewardship rights are defined via voluntary agreements. The tiny house contracts clearly outline the stewards' obligations to each other, and to the village sponsor, but the duties of the village sponsor to the stewards are not well-defined. Most villages are sponsored by non-profit organizations or social enterprises seeking to advance a triple bottom line. As organizations interested in advancing social welfare, these sponsors use the stewardship or at-cost rental models to empower, rather than exploit low-income

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<sup>368</sup> San Jose Waives State Building Codes for Tiny Houses for the Homeless, <http://tinyhousecommunity.com/1008-san-jose-waives-state-building-codes-for-tiny-houses-for-the-homeless/>

<sup>369</sup> <https://sanfrancisco.cbslocal.com/2018/12/19/san-jose-approves-tiny-home-locations-emergency-housing/>

<sup>370</sup> <https://www.npr.org/2019/02/18/694863105/tiny-homes-for-homeless-get-the-go-ahead-in-the-wake-of-californias-worst-wildfire>

<sup>371</sup> <https://www.npr.org/2019/02/18/694863105/tiny-homes-for-homeless-get-the-go-ahead-in-the-wake-of-californias-worst-wildfire>

<sup>372</sup> See e.g., Occupy Madison, Inc., How to Become a Resident of OM Village, [https://occupymadisoninc.com/wp-content/uploads/2013/07/04\\_how-to-become-a-resident-of-om-village.pdf](https://occupymadisoninc.com/wp-content/uploads/2013/07/04_how-to-become-a-resident-of-om-village.pdf); Dignity Village Entrance Agreement, <https://dignityvillage.org>

and vulnerable tenants.<sup>373</sup>

However, if the village sponsors are private, profit-oriented developers, then state statutes or local ordinances should codify the minimum obligations of landlords to stewards, stewards to landlords, and stewards to each other. Codifying the stewardship tenure may mitigate the likelihood that profit-oriented or unscrupulous landlords will co-opt or exploit stewardship's informality<sup>374</sup>, flexibility, and community-orientation for nefarious ends.<sup>375</sup> Statutes or ordinances might create different rights, rules, and obligations for permanent, rather than temporary stewardship. Different jurisdictions might have different goals and policies for stewardship that they can codify via local ordinances or state statutes.<sup>376</sup> Statutes and ordinances might also outline the minimum due process rights of stewards, as well as reinforce villages' commitments to non-discrimination, since the co-housing rules and regulations of many villages empower stewards to vote each other out of the community. Formalizing stewardship may help it become an empowering housing tenure, rather a weak status that segregates and ghettoizes the poor and the vulnerable.<sup>377</sup> Legalizing stewardship may also enable municipalities and developers to apply the housing tenure in other contexts such as disaster relief, no-fault evictions, or extreme gentrification.

Just as medieval farmers were the paradigmatic tenants at the time of the medieval farming lease, and the poor urban tenant was the motivation behind 1960's revolution in landlord-tenant law, perhaps, the unstable and displaced tenant will become the paradigmatic tenant of the future. The medieval farmer was the motivation for the leasehold estate as a conveyance of land under English-feudal law.<sup>378</sup> The landlord was understood as an absentee owner who conveyed his interest to the farmer who provided the labor on the estate.<sup>379</sup> The landlord had few service obligations to the tenant because the tenant was understood to be a manual laborer who could maintain the land, and the owner

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<sup>373</sup> Explain how rent-to-own and informal housing models can often be exploitative.

<sup>374</sup> See e.g., Ray Thomas, *The Plight of Texas Colonias*, 62 TEX. B.J. 1045 (1999) (explaining that colonias are unincorporated subdivisions of plots of valueless agricultural land sold to Mexican immigrants, near the Texas, Arizona, and New Mexico borders, through land installment contracts); Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 137 (2009) (explaining the title problems with Texas colonias).

<sup>375</sup> [https://www.washingtonpost.com/business/economy/a-billion-dollar-empire-made-of-mobile-homes/2019/02/14/ac687342-2b0b-11e9-b2fc-721718903bfc\\_story.html?utm\\_term=.32120c41ae14](https://www.washingtonpost.com/business/economy/a-billion-dollar-empire-made-of-mobile-homes/2019/02/14/ac687342-2b0b-11e9-b2fc-721718903bfc_story.html?utm_term=.32120c41ae14)

<sup>376</sup> Local ordinances can go beyond minimum state requirements, but differences between local ordinances and state statutes could raise pre-emption versus home rule challenges in home rule jurisdictions.

<sup>377</sup> Hud study warning about tiny homes villages.

<sup>378</sup> John G. Sprankling, *Understanding Property Law* 220-221(3<sup>rd</sup> ed. 2012).

<sup>379</sup> John G. Sprankling, *Understanding Property Law* 220-221(3<sup>rd</sup> ed. 2012).

was landed “gentry,” who did not perform manual labor.<sup>380</sup> In the late 1960’s, the poor urban tenant replaced this older conception; and led to a statutory and common law revolution in which the tenant gained more rights and the landlord had more obligations because the urban tenant could not perform the basic services needed to maintain the estate.<sup>381</sup> As circumstances become more uncertain, stewardship may provide low-barrier access to property possession, but in exchange for easy access and cheap possession, the steward must assist other stewards, and improve the village community, either permanently, or on a short-term basis. Since instability may become more prevalent in the future, formalizing the status of stewardship, and encouraging co-housing villages with shared space and responsibilities, may be a wise course of action for localities and states.

### C. *Managing the Urban Commons Through Stakeholder Collaboration*

Finally, tiny homes villages for the homeless and unhoused also exemplify effective stakeholder collaboration and management of the urban commons. In their Article, *The City as Commons*, Professors Sheila Foster and Christian Iaione outline two dichotomous conceptions of the commons: Professor Garrett Hardin’s *Tragedy of the Commons*, in which an unowned and unrestricted open field motivates “uncoordinated actors to overuse or exploit a resource;” and Professor Carol Rose’s theory that “the inherent public value of an open access resource (even if privately held),” can “suggest it is an essential or necessary resource for a community of users.”<sup>382</sup> Foster and Iaione frame the city itself as an “urban commons.” Drawing upon Hardin and Rose’s conceptions, Foster and Iaione argue that the city itself is a commons; “by virtue of its openness and potential for rivalry,” as Hardin argued,<sup>383</sup> but also because the public increasingly seeks access to the resources of the city for communal experiences and interactions that enhance their quality of life, as Rose asserted. Foster and Iaione suggest that the urban commons could be more efficiently and more equitably managed by collaborative groups of public and private stakeholders, rather than by simply private or state ownership.

Foster and Iaione proffer their theory of “urban collaborative governance” as a more effective way to mitigate resource conflicts within the city and equitably distribute the benefits of urban resurgence. Drawing upon Nobel Prize Winner Elinor Ostrom’s work on *Governing the Commons*, Foster and Iaione assert that

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<sup>380</sup> John G. Sprankling, Property Law 221(3<sup>rd</sup> ed. 2012).

<sup>381</sup> John G. Sprankling, Understanding Property Law 220-221(3<sup>rd</sup> ed. 2012).

<sup>381</sup> John G. Sprankling, Property Law 221(3<sup>rd</sup> ed. 2012).

<sup>382</sup> Sheila R. Foster & Christian Iaione, *The City As A Commons*, 34 Yale L. & Pol’y Rev. 281, 294 (2016).

<sup>383</sup> Sheila R. Foster & Christian Iaione, *The City As A Commons*, 34 Yale L. & Pol’y Rev. 281, 334 (2016).

an approach of user-managed, rather than user-owned governance of the commons may be best under contemporary urban conditions. In user-managed scenarios, “individuals exist in an interdependent relationship with each other and with the resource, and are strongly motivated to overcome collective action problems, collaboratively manage the resource, and enhance their productivity over time.”<sup>384</sup> The institutions that facilitate user-management are neither purely market-institutions or state-institutions. Some groups are informal collections of volunteers, and others are more formalized non-profit institutions and membership organizations, which facilitate multiple stakeholder decision-making. Foster and Iainone note that “business improvement districts, park conservancies, community gardens, and neighborhood foot patrols” are examples of such institutions.<sup>385</sup> They argue that the state plays a facilitative, rather than top-down command and control role in urban collaborative governance, and “redistributes decision making power and influence away from the center and towards an engaged public.” The facilitator state creates the conditions under which citizens and stakeholders can develop collaborative relationships.<sup>386</sup>

The villages studied in this Article are also examples successful management of the urban commons. Tiny homes villages, as “limited access commons,” may seem more akin to private property, endowed with the right to exclude, but with some shared commons elements.<sup>387</sup> Yet, the villages help formerly homeless residents carve out a legal space to exist within the city, and contribute to the polis in meaningful ways that improve the city landscape. The homeless, whom city policy frequently criminalizes or chides, become part of effective management of the urban commons. They ameliorate homelessness and create shared communities without state or federal mandates. The stakeholder groups that create these communities effectively collaborate to solve homelessness in the face of local government’s inability to ameliorate the problem. The stakeholder collaborations often include homeless people; public cities, counties and states; as well as third-sector non-profits<sup>388</sup>, and fourth sector social enterprises, seeking to make profits and enhance the public good. Sometimes the city, the county, or a non-profit organization owns the land upon which these villages are established.

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<sup>384</sup> Sheila R. Foster & Christian Iainone, *The City As A Commons*, 34 Yale L. & Pol’y Rev. 281, 325 (2016).

<sup>385</sup> Sheila R. Foster & Christian Iainone, *The City As A Commons*, 34 Yale L. & Pol’y Rev. 281, 325 (2016).

<sup>386</sup> Sheila R. Foster & Christian Iainone, *The City As A Commons*, 34 Yale L. & Pol’y Rev. 281, 335 (2016).

<sup>387</sup> Sheila R. Foster & Christian Iainone, *The City As A Commons*, 34 Yale L. & Pol’y Rev. 281, 292–93 (2016) (citing Carol M. Rose, *The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems*, 83 Minn. L. Rev. 129, 155 (1988)).

<sup>388</sup> John Emmeus Davis, *Homemaking: The Pragmatic Politics of Third-Sector Housing*, in PROPERTY AND VALUES: ALTERNATIVES TO PUBLIC AND PRIVATE OWNERSHIP 233-58 (explaining non-profit third-sector organizations’ role in housing development).



Yet, when localities convene local taskforces on homelessness, dedicate the land on which to place the tiny homes, and make land use and zoning decisions to permit these communities, they play a facilitative role, similar to the role envisioned for the state in urban collaborative governance. The villages also produce new property forms that can mitigate housing instability, and model successful collaboration between public, private, and-third and fourth-sector stakeholders, who normally compete in rivalrous ways for urban space. These examples show a powerful role for traditionally marginalized stakeholders in housing and urban reform.

#### CONCLUSION

Stewardship as used by the tiny home villages analyzed in this Article, is a new property form that can be used in emergency housing situations, or in other situations, to provide affordable housing for people underserved by traditional housing markets. If we understand property as a “category of legal doctrines concerned with allocating rights to material resources,” then stewardship is a property form in that allocates access rights, possession, exclusion, and inclusion to stewards, without formal title or ownership. Stewardship also grants formerly homeless people decision-making control over resources in a manner similar to ownership. Property possession through stewardship also connects stewards to economic resources and social networks that maximize their self-actualization, privacy, human flourishing, and community participation. While tiny homes villages for the homeless and stewardship should not replace more traditional forms of shelter or affordable housing, they can supplement those forms by increasing the meaningful housing choices available to vulnerable people. Tiny homes villages also place a variety of housing tenures—temporary and permanent stewardship, rental, rent-to-own, and cooperatives, into a co-housing setting that encourages sharing, community enhancement, and the human flourishing of all residents. As such, tiny homes village forge a new central role for community in private property law. Community itself, rather than permanence or exclusive ownership, provides needed stability in the face of increasing housing instability and insecurity.