

by Tyler Grooms

## Author

Tyler Grooms, a 2010 Cornell PRE candidate, graduated from Chapman University with both a bachelor's in Economics and a bachelor's in Business Administration. After graduation, he completed a Master's in Finance from San Diego State University. During summers, Tyler worked at Qualcomm in the Technology Licensing division auditing royalty statements and helping implement IT tools. After graduating, Tyler went to work for Torrey Pines Technologies (TPT) as a project manager for projects ranging from photovoltaic development to the development of anti-theft, RF shopping cart casters, the latter of which Tyler is listed on the patent pending. In his off time Tyler enjoys videogames, surfing (perhaps not in Ithaca) and cooking. With a passion for well-engineered products that reduce waste and increase utility, Tyler hopes to make an impact in the sustainable development sector.



Conservation easements can act as a catalyst for new development by increasing land values, improving public access to recreational spaces, and provide land owners with tax savings, among other benefits. Furthermore, the public benefit and growing appeal of sustainable development approaches, such as conservation easements, can help fast track and improve the odds of approval of a project. Conservation easements are not without their costs, however. These costs include giving up developable land and creating a stewardship program, as well as other costs. Commonweal Conservancy acts as an example of the implementation of a large scale conservation easement as the centerpiece of a development. While the conservation easement plays a key role in sustainability efforts, it is the entire process that matters, from education of the community to choosing the right product for the market, to promoting stewardship into the future. Commonweal Conservancy's case exemplifies this process.

## Commonweal Conservancy

Commonweal Conservancy is a not for profit land developer<sup>1</sup> whose goal is conservation-based community development achieved through creating connections between land, the built environment and the people who live there.<sup>2</sup>

Ted Harrison founded Commonweal in 2003 after working with the Trust for Public Land (TPL) for 17 years. While with TPL, Harrison acted as senior vice president, southwest regional director, and director of TPL's national conservation program. At TPL, Harrison had the opportunity to become the conservation developer for a large swath of land near Santa Fe, New Mexico. Harrison had been the founder of the Conservation Ventures program within TPL, which looked to assess the "integrative practice of conservation-based community development." In Harrison's opinion, the site in New Mexico was a prime opportunity to protect and develop. When TPL balked at the idea, Harrison felt it his duty to protect the land and thus created the Commonweal Conservancy.

Soon after, while attending the annual ULI conference, Harrison met John Hesse. Hesse was in his last year at Cornell's Program in Real Estate. After discovering a mutual interest in conservation development Harrison offered Hesse a job in the new company as Senior Project Manager and Director of Sustainability for the project in New Mexico.

## The 3/E Approach and Commonweal

The 3/E concept is considered to be a cornerstone for sustainable thinking. The 3/E approach focuses on economic, environmental and equity based sustainability. A truly sustainable project encompasses all three, focusing equally on each area. Commonweal's

<sup>1</sup> Commonweal could also be a paragon in the development world for non-profit / for-profit corporate structure. It separates transactions between a non-profit parent and for-profit subsidiary in a manner that meets its IRS 501(c)3 charter while also avoiding what is "unrelated business income tax". Profit ensures not only the survival of Commonweal and its projects, but also the creation of an endowment for use in future projects. The non-profit wrap of the parent company ensures that decisions and activities hold true to it to its core mission.

<sup>2</sup> Based on information from Commonweal Conservancy's website.

guiding principles were similar to the 3/E approach to sustainability of environmental, economic, and social<sup>3</sup> sustainability.

Commonweal's environmental goals of sustainability included acquisition, conservation and restoration of lands that were in danger of being exploited as well as following through into the development of this land with environmentally sustainable methods. Examples of sustainable practices include preserving critical wildlife habitats and open space, developing community scale water and energy conservation schemes, and building using industry recognized sustainable practices.

Economic sustainability comes from the creation of jobs through new development, as well as the funding of Commonweal's foundation and other stewardship funds for properties and causes associated with those properties. Furthermore, market rate homes in Commonweal Conservancy's communities were sold by a for profit sister company, Commonweal Communities.

Finally, social sustainability came with below-market rate housing as well as educational and cultural facilities and programs within the development. Examples of social programs include new schools, libraries, parks and other recreational and educational facilities, preservation of historically and culturally significant sites, as well as mixed income residential development.

### ***Galisteo Basin Preserve***

The Galisteo Basin Preserve formerly Thornton Ranch was a 13,522-acre ranch located 13 miles southwest of Santa Fe in the central Galisteo Basin. The ranch ceased productivity in 1997 and more formally in 2005 after almost 100 years of sheep and cattle ranching. Since then, the land and its delicate ecosystem had been subject to trespass and minor vandalism in the form of off-road vehicle use.

As Santa Fe grew and housing prices increased during the early late 1990's and early 2000's, the Ranch owners were ready to sell and formally retire. Numerous developers tried to implement traditional ranchette style developments on the site. Real estate agents noted that the preferred product for the market consisted of semi-rural estates ranging in size from 2.5-25 acres with some suggestions that 150 acre lots would also sell well. To this extent, the Preserve lands had the capacity for nearly 4,400 dwellings, though likely after infrastructure and larger lot size demand (i.e. more 10+ acre lots), the number was likely to be around 900-1,200 dwellings. For a variety of economic and political reasons, three previous developers failed to develop the area.

Commonweal formed in 2003 to act as the arbiter in facilitating both the development and conservation of the land. The plan that was developed focused on the conservation of the Galisteo basin while allocating a small 300-acre building envelope to the northeastern corner of the land. The original intention was to serve as the master planner and shift development to a "seasoned developer" that shared similar goals and ambitions. Traditional developers dismissed the idea. Developers pointed to the market wondering why anybody would want to live in an urban style development 13 miles outside of Santa Fe in a rural setting.<sup>4</sup>

Faced with no developer for the project, Commonweal had to decide whether to abandon the project or proceed as the land developer. In choosing to proceed as the developer on the project, Commonweal refined their plan for the site in preparation for public criticism in the entitlement process.

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<sup>3</sup>"Equity" in the 3/E approach

<sup>4</sup> Interview with John Hesse

## **The Plan**

The plan for the Galisteo Basin Preserve integrated the founding principles of environmental, economic, and social sustainability as per the company's founding principles. The basic plan of GBP was to set aside 95% of the land as a conservation easement and to concentrate the developable portion to a smaller 300-acre site while making use of a denser development scheme than the semi-rural ranchette scheme. Multi-storey developments along with less intensive infrastructure would allow Commonweal to develop 675 market rate homes, 290 affordable and workforce homes, 100,000 square feet of educational facilities, 30,000 square feet of commercial land, as well as 20,000 square feet of civic land and a "green" cemetery.

### *Conservation Easement and Environmental, Economic and Social Sustainability Aspects*

A conservation easement to preserve over 12,000 acres of land for recreational and conservational purposes was at the heart of the plan. Not a new concept, conservation easements are used regularly. Originally used by Frederick Law Olmsted to protect parks in Boston in the 1880's, conservation easements became popular 1980's with the rise of environmentalism.<sup>5</sup> The conservation easement has again seen a rise in popularity recently with the increased value of sustainability as a social good. This rise in popularity is evident in the growth of conservation easement protected lands from 290,000 acres in 1988 to over 5 million acres in 2003.<sup>6</sup> This pace continues with the most notable recent activity at the historic Tejon Ranch in California where 90% of the 240,000 acre development will be protected by conservation easement.<sup>7</sup>

Conservation easements are similar to appurtenant easements where a portion of lands rights is given to a receiving party. Traditionally easements have protected access rights to adjacent property holders and utility providers as well as protect views along with other interests. Conservation easements in turn can both protect land by restricting its use and allow access to that land. Defined, the conservation easement is an agreement between a landholder and an eligible organization that restricts future activities on the land to protect its conservation values.<sup>8</sup> In definition the conservation easement only affords the negative right of prohibiting development or other damaging future actions such as mining or agriculture. However, depending on the specificity of the conservation easement, it can also afford positive rights or determine uses. For example, many conservation easements allow for public access while some easements specify that the land be kept as a working farm.<sup>9</sup>

GBP's goals for using an easement were both to protect and to allow access. By preserving the land in GBP, Commonweal was accomplishing their three-part goal (environmental, social, and economic) of sustainability by protecting the critical open space.

Environmentally, wildlife corridors were to be analyzed and protected to allow for natural migration patterns to exist. Furthermore, irrigation of agriculture on the site in its ranch days had led to the dangerous collapse of the water table causing severe erosion to occur around the natural drainage points in the basin. By protecting the land, a plan for rehabilitation could be designed under the assumption that the sites would not be disturbed during the rehabilitation process or in the future.

***“The conservation easement has again seen a rise in popularity recently with the increased value of sustainability as a social good.”***

<sup>5</sup> Beyers, Elizabeth and Karin Marchetti Ponte. Conservation Easement Handbook. Washington DC: Land Trust Alliance, 2005.

<sup>6</sup> Beyers, Elizabeth and Karin Marchetti Ponte. Conservation Easement Handbook. Washington DC: Land Trust Alliance, 2005.

<sup>7</sup> Barringer, Felicity. "Major Deal Preserves Ranch Land in California" New York Times, 9 May 2008.

<sup>8</sup> Beyers, Elizabeth and Karin Marchetti Ponte. Conservation Easement Handbook. Washington DC: Land Trust Alliance, 2005.

<sup>9</sup> Beyers, Elizabeth and Karin Marchetti Ponte. Conservation Easement Handbook. Washington DC: Land Trust Alliance, 2005.

Socially, Commonweal would protect an important cultural site. The site was a crossroads of the Native American Pueblo tribe who had more than a dozen settlements with thousands of inhabitants who survived off of farming the now dry river drainages of Galisteo Creek and traded with nearby Pueblo settlements. Commonweal's plan for an extensive trail system would allow residents and visitors to explore and learn about the area, adding to the social sustainability goal.

Economic benefits include tax incentives, density transfer and possible density bonuses, reduced infrastructure requirements, and higher land values.

## Economic Benefits of Conservation Easements

Tax incentives occur on both the federal and state levels. On the federal level, under IRS § 170, conservation easements can constitute the charitable contribution of land, when in fact title is still held by the original owner. When the basis for the land is marked down by an amount corresponding to the value of the use given up in the easement, the donor benefits from reduced property taxes. If the prohibited use is perpetual development rights, the effected land can become nearly useless and the owner can recognize a proportional amount of "loss" as a charitable donation for that tax year.<sup>10</sup> It is important to keep in mind that the easement rights must be given to an organization that is qualified to receive tax deductible charitable contributions.<sup>11</sup>

In addition to federal level benefits, states provide a tax credit rather than a tax deduction. Currently, twelve states participate in some sort of tax credit arrangement for conservation contributions. These credits are saleable and highly sought after by high tax bracket individuals and corporations.<sup>12</sup> For example, in Virginia owners of land given in conservation easement are awarded a tax credit valued at 40% of the donated land's fair market value, and these credits can be sold or held for up to 10 years.<sup>13</sup> In New Mexico, the rate is higher, at 50% of the assessed fair market value, though a cap of \$250,000 tax credit for donations after January 1, 2008 and \$100,000 before January 1, 2008 restricts some of the value. This cap is on a per owner basis.<sup>14</sup>

Conservation easements only have financial value when the easement is executed by a charitable IRS-qualified organization (i.e. a 501(c)3 non-profit like Commonweal), or when the easement is donated by an individual or corporation to an IRS-qualified organization.<sup>15 16</sup>

As a consolation for impairing land for the sake of conservation, many municipalities allow a landowner to transfer building rights from preserved land to unreserved land. This can happen by directly transferring development rights (TDR) or by banking these rights for future use. The former takes place when a "sending" protected area relinquishes the development rights to an approved "receiving" site. Density bonuses can occur from preservation of lower density sites (such as zoned agriculture or forested or wild areas),

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<sup>10</sup> Beyers, Elizabeth and Karin Marchetti Ponte. Conservation Easement Handbook. Washington DC: Land Trust Alliance, 2005.

<sup>11</sup> IRS §170(c)

<sup>12</sup> Young, Christen Linke. "Conservation Easement Tax Credits in Environmental Federalism." Yale Law Journal 117:218 (2008): 218-224.

<sup>13</sup> Fagan, Joey; Orndorff, and Zokaites. "Incorporating Cave and Karst Protection into Conservation Easements: A Tool for Cave and Karst Protection in Virginia." University of Texas: 2007.

<sup>14</sup> NMAC 3.13.20

<sup>15</sup> IRS §170(c)

<sup>16</sup> While Commonweal could easily hold the easements it creates, or accept them from other individuals or corporations, it instead planned to donate them to a local land trust that is in the easement management business. Easement management requires an ongoing stewardship function to make sure that covenants and restrictions aren't violated either by the residual land owner, or outside interests such as hunters, ATV riders, or other trespassers not specifically permitted in the easements covenants.

provided the “receiving” site can support the increased density.<sup>17</sup> Furthermore, because these decisions usually occur on a county level, density bonuses are awarded in addition to the transfer rights based on the quality of the master plan or other attributes of the development or its environment, and are given at the discretion of the zoning board.<sup>18</sup>

As the envelope for building gets smaller and structures begin to go vertical to achieve density, infrastructure requirements decrease.<sup>19</sup> It is easy to imagine a reduction of sewer, water, pavement, and other utility costs when density goes from around 0.1 dwellings per acre in the ranchette style development to 3.1 dwellings per acre in the proposed plan. While less material inputs in effect costs less to the developer, municipalities benefit from less infrastructure because it can mean less upkeep. Residents enjoy the reduced tax or assessment burden. In addition, fewer pervious surfaces reduce the altering affects on watershed and decrease material shipment and usage, mitigating environmental affects.

More open space allows residents, the developer, and the taxing authority to enjoy higher land values from the developed land. More lots with undisturbed views toward the preserve increase the view premium on lots. Furthermore, promising that the view will remain undisturbed indefinitely adds even more value to the lot.<sup>20</sup> The open space that provides that view is also an amenity, accessible via trails that connect to the development, and in turn adds value much the same way a park might add value (which GBP was also going to have). This open space preserve becomes a unique asset to the community; instead of just sitting as open undeveloped land, it serves a purpose of being a wildlife refuge and cultural exhibit.

From Hesse’s point of view however, all of the aforementioned benefits of the conservation easement were unquestionable, but were second to the affect it had during the entitlement process. Whereas the previous developers of GBP all failed with their traditional PUD style developments, Hesse saw the conservation easement as adding value to the land for every party involved and believed GBP would pass planning review over similar projects without a conservation easement. In effect, the conservation easement was the difference between a go and a no go decision by the planning board. Hesse believed that the easement would speed up the entitlement process because there was minimal impact of this type of entitlement on 95% of the land. This type of entitlement actually granted better public access to the property than before development or if the property were to be traditionally developed. Furthermoer, because conservation and environmentalism were becoming popular ideals, a conservation easement could enhance the sustainable image of the development.

### **Costs**

Conservation easements are not without their costs. . The most obvious cost is the loss of developable land. While there is value in the easement donation, there is usually a greater loss of value in surrendering the developable land. Developers must weigh the perceived benefits of donating a portion of their land versus expanding the building envelope.

*“While there is value in the easement donation, there is usually a greater loss of value in surrendering the developable land.”*

<sup>17</sup> “Growth Tool Kit: Maintain Farmland and other Working Lands.” National Governor’s Association Center for Best Practices: 2001.

<<http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=6a685aa265b32010VgnVCM1000001a01010aRCRD>>

<sup>18</sup> “Planning Implementation Tools: Density Bonus.” Center for Land Use Education: 2005.

<[ftp://ftp.wi.gov/DOA/public/comprehensiveplans/ImplementationToolkit/Documents/Density\\_Bonus.pdf](ftp://ftp.wi.gov/DOA/public/comprehensiveplans/ImplementationToolkit/Documents/Density_Bonus.pdf)>

<sup>19</sup> “Alternatives for Costal Development: One Site, Three Scenarios.” NOAA. Accessed: 2 Dec. 2008.

<<http://www.csc.noaa.gov/alternatives/infrastructure.html>>

<sup>20</sup> Geoghegan, Jacqueline. “The Value of Open Spaces in Residential Land Use”. Clark University. 2001.

*“The reality is that most developers wouldn’t donate 95% of their lands for conservation. While conservation is in our mission statement, the opportunity cost for other developers would be too high. However, lesser percentages would be fully attainable from a conventional developer’s point of view. Ninety-Five percent is a bit extreme.”<sup>21</sup>*

Developers also have to be wary of the timing of conservation easements. As soon as the easement is recorded, the value of land owned is immediately impaired. Even though a developer may not be using the portion of the land slated for donation, they can use the land in the interim for collateral and potential loans. However, undevelopable land (steep slopes, wetlands, etc) is worthless from both an appraisal standpoint and a public standpoint, therefore these lands often do not count for much in the valuations.

Because such a vast space of land will remain undisturbed but also accessible to the public, a stewardship program must be developed that allows for education and patrolling of the land. A poor stewardship plan can have dire consequences to the proposed benefits of the conservation easement especially if the land is not policed and monitored for biological and conservational reasons. A good stewardship plan will include trail maintenance schedules, storm water management plans, ranger duties for recreational supervision, wildlife monitoring, and an educational aspect, as well as a proposed source of funding. In GBP’s case, a 1% transfer fee would apply to every property within the development. These fees would go to the entity that accepted the conservation easement, which specializes in the stewardship of protected lands.

Beyond the concept of the easement is the idea that people like personal space and some people may not be willing to trade vast amounts of public land for even the smallest amounts of private land.

Furthermore, conceptions about the scope, value, or intent of the conservation easement may put some people off. When conservation easements are an afterthought to a development or protect land that is not valuable ecologically or for other preservation reasons these conservation easements may appear to be empty promises from the developers. This perpetuates the image that developers are only after money instead of long-term community building.

## **The Other Half**

Hesse is quick to point out that despite the possible benefits of an easement, a conservation easement alone will not win everyone over or make the project a success:

*“A conservation easement is not a slam dunk. In fact it’s only 50% of the deal. Many people don’t understand conservation easements and they have to be educated on what they are and what they do. Furthermore, some people just want 2.5-10 acre ranchettes. They want this feeling of rural life that they think comes from this type of sprawl development. But when these types of developments happen, people realize their rural dream has been paved over by roads and power lines and they can see their neighbors from every window in their home. Educating people on the benefits of an easement they can walk through with their families and will never be developed, to preserve that rural lifestyle, is just as important as the easement itself.”*

To this end, Commonweal set out to educate the public on its goals. Education started on the grassroots level by demonstrating to small community groups the benefits to their community of the development plan as well as the benefits to the greater Santa Fe community. Next were the regional groups. In Commonweal’s case, this was the 285

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<sup>21</sup> All block quotes throughout the paper are from interviews with John Hesse performed by the author.

Corridor Group who controlled what was built off the local highway where the development was planned. Hesse then educated the county commissioner and development committee, followed by the county planning staff and key administrators.

Through this process of education, Commonweal made itself available. Harrison and Hesse appeared at public gatherings and hearings, accepted phone calls and even by setup information booths in front of nearby grocery stores to answer questions about the development.

*“Making yourself available to the public has two-fold benefits. First, it shows the community that you as a developer really do exist. And second it allows you to straighten out any rumors or misconceptions about your project. I remember one day Ted (Harrison) was sitting outside of the local grocery store when a well know anti-development citizen came up to the booth and exploded about Commonweal just being another greedy developer who would make promises here and there, but at the end of the day was just trying to, in essence, take a buck from the local. Ted was great and took the time to walk the man through the development process, explain that Commonweal Conservancy was a not for profit land developer and what the goal of the conservation easement was. Who knows if the man was sold on the project, but we do know he didn’t show up to the master plan review to object.”*

Education should be done in two ways:

*“By making ourselves available to the public, we also made ourselves available to feedback from the public. We found this feedback very helpful in many cases in helping us to shape our plan to best fit the community. After all, this was the community that was ultimately going to elect the people who appoint the entitlement people and also the same people who are going to buy into our project.”*

*“With the feedback, the plan was tailored to fit both the goals of Commonweal and the public. It was then reintroduced to the respective groups for more feedback until eventually those groups felt a sense of ownership in the project. “*

By empowering the responsible groups with the education and feeling of ownership with the project, GBP and Commonweal were viewed to have authority over the project site as well as support from these groups when the project ran into hold ups:

*“Three great examples of the benefits of educating the community and making your project known are:*

- 1) *When the Galisteo Basin was proposed as an area for [oil] drilling, the state (Governor Richardson) came to us to understand the boundaries of what we thought the Galisteo Basin was – as he had heard of our project in the area and he wanted to make sure he understood the area. This was the basis for an oil drilling moratorium on the area.*
- 2) *When a new regional planning ordinance was to be created with planners from Kansas who had dealt with oil and gas ordinances before, they used our planning concepts as a basis for the plan. This was confirmed in a recently in a public hearing.*
- 3) *When administrative staff at the planning office were stalling and not giving us the responses we needed in a timely manner, we went to the County*

*attorney who we found to be a big supporter of our concept. As a result, he said he would take the reins and make sure things got through the administrative staff (i.e. gaining key “power” positions within the county to keep the wheels greases).*

*If we had been an ordinary developer, these events probably would not have happened.”<sup>22</sup>*

After months of education and dialogue with the community, Commonweal approached the planning committee for a hearing on their master plan. After Hesse and Harrison gave their presentation to the committee and the locals who attended the meeting, the county commission chairwoman asked if anyone wanted to express opposition to the proposed plan. The room was silent for a few seconds before about 15 people began to file forward to the microphone. One after the other each person voiced support for the plan and the planning committee passed the master plan. Harrison recalls, “Rather than the usual bloodbath, the public hearing proved a powerful affirmation of the project vision and our faith and commitment to community engagement.”

### ***Beyond the Easement***

Conservation represents only a portion of Commonweal’s goals. Commonweal’s guiding principles are similar to the 3/E approach to environmental, economic, and social sustainability, but also encompass more. Hesse likes to quote sustainability guru Paul Hawkins, “Sustainability is halfway between destruction and restoration”. However, Hesse acknowledges that sustainability is increasingly becoming a more complex concept as developers and homeowners alike become more cognizant and educated of development’s impact. “The minute we turn a piece of earth with any machine, we’re churning out carbon monoxide.”

Commonweal has therefore set one of its primary goals to be “carbon negative”. While many developers target to be “carbon neutral”, Hesse wants to be carbon negative to attempt to offset the daily commuter trips that might occur from the site, as well as contribute to the greater goals of carbon reduction.

Commonweal’s goals for sustainability are, as Hesse describes them, “extensive, daunting, and perhaps idealistic.” This is intentional. Commonweal’s philosophy has been to include all lofty goals knowing that some might be unachievable, versus targeting a few goals and trying to readapt plans later to expand the scope. The GBP’s storm water drainage system is a good example. Commonweal is focusing on natural drainage systems that are intended to enhance the health of arroyos (ephemeral streams) and adjacent vegetation.

*“We have worked extensively with local stream morphologists to better determine ways to enhance arroyo health, resilience, and opportunity for restoration. It took some time to educate our engineers (from Seattle) on their methodology, but once the engineers understood the concepts, they were heartily embraced and incorporated into the overall solution. I believe we will match the costs of the traditional systems that were originally proposed. So far it has really been a really great success story on the design front.”*

Examples of Commonweal’s other sustainable practices include: developing community scale water, waste water, rainwater catchment; including thirty percent affordable housing; energy conservation schemes; using locally based employers during both construction process as well as during ongoing maintenance.

***“The room was silent for a few seconds before about 15 people began to file forward to the microphone.”***

<sup>22</sup> New Mexico’s Commonweal Conservancy Offers ‘New’ Regional Preservation Model” The Planning Report: 2006. <[http://www.planningreport.com/tpr/?module=displaystory&story\\_id=1277&edition\\_id=94&format=html](http://www.planningreport.com/tpr/?module=displaystory&story_id=1277&edition_id=94&format=html)>



## Next Steps

With the plan approved and zoning soon to follow, Hesse began working on housing concepts for the site. By this time, however, the market was declining after years of nearly double-digit gains in home prices. Nationally, home prices have dropped approximately 20% in some areas of the country.<sup>23</sup> Santa Fe has matched national figures and prices are expected to fall further.<sup>24</sup> To compound the issue, commodity prices, while also softening, are still historically high. Moreover, Santa Fe was a weak link in the national distribution of construction goods and prices in the area were much higher than prices in even Albuquerque.

All of these issues combined to cause a great headache for Hesse who went ahead and contacted local builders to feel out demand for the idea. Hesse was sure to pre-qualify builders based on their reputation as quality builders as well as confirming the builder's commitment to sustainable practices. Commonweal chose a local builder sent a proposal for the purchase and development of the master plan. The builder would purchase all of the land and would have the rights to build the allotted units per the master plan as well as provide the community and educational buildings called out in the plan.

Hesse was relatively sure that the local builder was as committed to the project's sustainable aspects as Commonweal, but he was not certain, especially in trying financial times. He also was not sure about was the builder's ability to complete the project. Funding had recently dried up in the credit market along with housing demand in general. Despite low interest rates, nobody was able to borrow money, especially for real estate development. Furthermore, even if the builder did get funding, the possibility of not completing the project because of poor demand could cripple or even end the project. If the bank repurchased or repossessed the land before the easement was set in place, the land could be open to traditional development in the future. Worse, if the conservation easement was in place, effectively impairing the value of the land, and the land was repossessed before the stewardship foundation was funded, the land would go uncared for.

The possible consequences of failure led Hesse to develop alternative plans, one of which incorporated modular housing. Modular homes are built by section in a factory and shipped to the site in pieces where workers assemble and permanently install the edifices in a matter of days, compared to the months it can take to assemble traditional stick built homes. While structurally as resilient and robust, if not more so than stick built homes, modular housing has a stigma with homebuyers who may confuse them with manufactured homes or for some other reason may prefer stick built homes.

Manufactured housing does have more advantages than simply being as robust as stick built homes. For one they are cheaper to build than stick built homes mainly because they benefit from the accuracy and controlled environment of a factory. In addition, for the sustainable side, modular housing produces much less waste than stick built homes for the same reasons. Additional cost savings come from reduced labor costs on site. Outsourcing is another benefit. Because the modular home manufacturer usually promises a date, a developer or builder can arrange for only the necessary people to be on site for the installation process and does not have to worry as much about the critical path of a project if one aspect of the building is put on hold. Many scheduling dilemmas become the manufacturer's problem.<sup>25</sup>

<sup>23</sup> Home Prices Slide Further in Summer Months; Few States Show Price Gains" Federal Housing Finance Administration: 2008. <<http://www.ofheo.gov/newsroom.aspx?ID=487&q1=1&q2=None>>

<sup>24</sup> "Home Prices Slide Further in Summer Months; Few States Show Price Gains" Federal Housing Finance Administration: 2008. <<http://www.ofheo.gov/newsroom.aspx?ID=487&q1=1&q2=None>>

<sup>25</sup> Manufactured homes are homes built in a factory and mostly or totally assembled in a factory. They are shipped to the site on a non-removable steel chassis and the structure is not always permanently attached to a foundation, making mobile and hard to finance because they do not qualify as real assets.

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A big drawback, however, is unfamiliarity with modular homes not only from the consumer's standpoint, but also from the real estate agents' perspective, and agents he worked with often reminded Hesse of this. A new modular housing development was a relatively untested idea in Santa Fe, though it would allow Commonweal complete control of even the smallest details of execution for the land plan.

The third option, while not a favorite of anyone at Commonweal, might be the safest option financially. While Commonweal was in fine financial shape, the economic outlook was not good. Selling out to a national builder would be a moral loss for much of the staff and community, but would at least be financially neutral for Commonweal. With this option, Hesse foresaw complete loss of control over the project, with product quality and attention to sustainability slipping to meet the bottom line demands of the publicly traded national builder. Plans for xeriscape<sup>26</sup>, smaller streets and a focus on public places might be replaced by traditionally market accepted, but not sustainable features such as large lawns (in the middle of the New Mexico desert), wider streets and more fenced in backyards. If the easement was not put into place by the time of sellout, more than likely the national builder would revert back to the original ranchette style development that all the real estate agents were clamoring for. That said, with the rise in popularity of sustainable development it is conceivable that the national builder would execute the conservation style development. Furthermore, with the proceeds, Commonweal could wait out the market downturn for another conservation development opportunity in the future.

The loss for Commonweal in selling out to a national builder, however, would probably end up being more than just a moral loss, if the builder chose a traditional development scheme. It would probably turn into a loss of confidence by the community in Commonweal. Hesse notes:

*"The community doesn't distinguish between a land developer and a builder. They are all the same. So if the land developer does everything right and then the builder builds a substandard product, we're all the same to the community, and we as the land developer have failed the community."*

While engaging the local builder or taking development duties on themselves would give the best chance for a successful conservation development, selling out to a national builder was a low risk opportunity that at least made Commonweal financially whole again to pursue other projects.

In reviewing the options, Hesse sums the situation up:

*"On the macro level the issue is how do we ensure that what we've planned doesn't get dumbed down and dismissed by our key audiences: builders, realtors, buyers, and the community? If they dismiss our development, the result could be a break even project (our goal of building an endowment fails – or for the typical builder, their profits aren't realized); or we fall below a break even return and level such that we are forced to sell out to [a national builder] and the representative example of how a conservation scheme can aid a developer is no longer valid. In a sense, we have to succeed! On the micro -level, if we fail in the execution, i.e. community form, product quality, landscaping – the same result could happen, or we just become another development out there with an initial cool concept that didn't quite make it, like Cevanno in Arizona, and that can serve as a model/inspiration for change..."*

<sup>26</sup> Xeriscape landscaping usually consisting of indigenous foliage that does not require additional irrigation. Adapted from Colorado Waterwise Council: <[http://coloradowaterwise.org/index.php?option=com\\_content&task=blogcategory&id=72&Itemid=245](http://coloradowaterwise.org/index.php?option=com_content&task=blogcategory&id=72&Itemid=245)>

Commonweal's process demonstrates that the successful implementation of a conservation easement goes beyond the easement itself. By garnering community support through education and reaction to feedback, the development was able to proceed through the master planning approval steps without delay. Furthermore, by following through with a sustainable approach to development in terms of products chosen and site design, Commonweal built on the perception that their proposed development was a benefit to the community.

***“By garnering community support through education and reaction to feedback, the development was able to proceed through the master planning approval steps without delay.”***

Commonweal's project can act as a guide for developments that are prone to intense community pushback on development. Furthermore, conservation easements need not only apply to raw land. Rehabilitated brownfield sites can also benefit from a conservation easement and could be an especially promising strategy in dense cities where land is at a premium and density bonuses may be hard to come by. Agricultural land that is socially significant to a community and in danger of redevelopment can be permanently preserved and serve as different type of amenity for residence to be proud of while offering the developer some political capital.

With the growing popularity of sustainability, conservation easements will become more common place as a means to protect valuable land. Sustainability aside, conservation easements will proliferate as increasing amounts of culturally significant land requires preservation for the benefit of society. If implemented correctly, conservation easements can be the difference between a failed development attempt and a successful community.

