Conservation Subdivisions

A Win-Win Form of Rural Residential Development

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Abstract

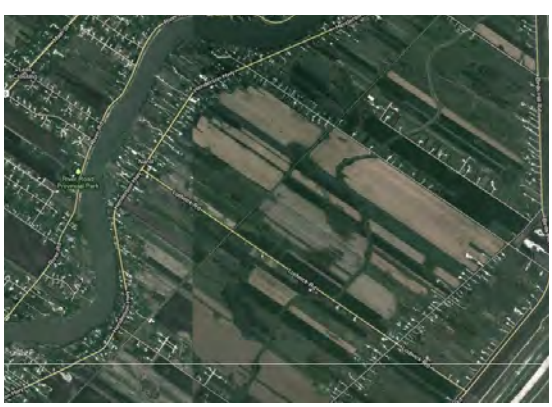
As a first in Manitoba planning history, this year the Selkirk and District Planning Area and Dillon Consulting will be incorporating conservation subdivisions into a secondary plan. A conservation subdivision typically conserves up to sixty to seventy percent of land in a parcel that is slated for development (Arendt, 1994). The conserved land might consist of forests, fields, marshes, or pre-existing agricultural land. This land is then commonly owned and managed by all of the land owners within the development. This is possible under the Real Property Act through a declaration of a development scheme registered against the land's title (McCandless, personal communication, March 29th 2013). This common land in conservation subdivisions may incorporate amenities like trail networks and playgrounds or may be used for shared, onsite wastewater management systems. Even though conservation subdivisions use less land for development purposes, lots are smaller and developers can produce the same number of lots as in a conventional subdivision. The difference, however, is that conservation subdivisions require less land to be graded, fewer pipes, and fewer roads, as more compact built forms are possible. Studies from the United States show that developing land as conservation subdivisions costs less than conventional subdivisions and that lots sell faster and for more money (Mohamed, 2006). When neighbouring residents are concerned about a loss of rural charm and open space, they may be more inclined to accept conservation subdivisions. They are a win for planners, developers, residents, and homebuyers.

Landchoices: Subdivision comparison (2013)

Win-Win Development

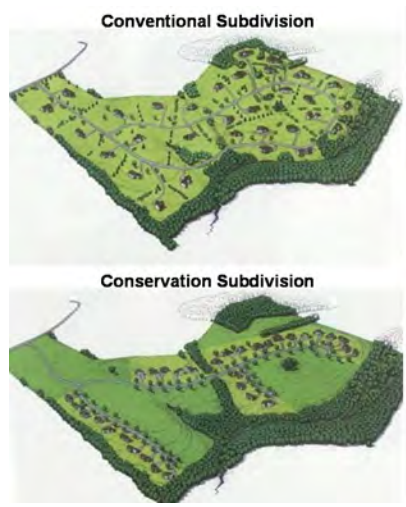
The Selkirk and District Planning Area and Dillon Consulting will be promoting conservation subdivisions through their secondary plan in the southern portion of the Rural Municipality of St. Clements. It is anticipated that a development plan text amendment and a revision to the St. Clements zoning by-law will help to "support conservation design principles" (Dillon Consulting, 2013). These changes are not yet finalized but what they will do is provide explicit support for conservation subdivision proposals as well as point to a new avenue of development potential for landowners.

The conservation subdivision policy in the secondary plan will apply to the central portion of South St. Clements, in between the Red River and the Floodway. This is an area characterized by extremely long and narrow river lots, which are in some cases 70 feet wide and 2 miles long. The river lot system is a part of this area's early French Canadian agricultural settlement heritage, but it is not a very useful system today with the advent of modern transportation and agriculture. The area is also increasingly becoming more residential in character. As it is well within the Winnipeg commuter shed, employment statistics show a decline in agriculture-related employment and a rise in employment types more characteristic of an urban area (SDPA, 2011).



Google Maps: South St. Clements (2013)

The pressure to convert these highly inefficient agricultural river lot lands into rural residential development has posed some interesting challenges to the planners working in the District. There is the potential for the Government of Manitoba to pass a 'replotting' legislation bill in order to give powers to a local body to rearrange river lot parcels into more useful configurations, providing greater servicing efficiency to each of the landowners (Lloyd Talbot, personal communication, March 2013). This legislation is an important part of preventing a jumble of excessively long access roads and unserviceable development patterns. This could easily result from a haphazard subdivision of every river lot into a series of 4 acre parcels (there is a 4 acre site minimum requirement under the district's development plan). However, as local residents have publically expressed complaints about losing the 'rural charm,' agriculture, and low-density character of this area, the proper planning response is not just to figure out a way to accommodate more rural residential development (Redekop, 2013). Planners working in this area have aptly understood that the long-term, win-win solution for South St. Clements lies in conservation subdivision design.



SWIM Photo: Subdivision comparison (2013)

Conservation subdivisions will allow landowners and developers to efficiently maximize their land holdings in an inexpensive, value maximizing, environmentally sensitive, community responsive, and municipal-servicing-friendly way. In parts of South St. Clements, where the site area minimums are 4 acres, a developer could locate houses on individual lots ranging in sizes of 2 acres to as little as 6,000 sq. ft, reflecting even the size of newer urban lots in Winnipeg subdivisions. The conservation subdivision will

cluster smaller lots on a part of a parcel without exceeding the overall density maximums of a particular zone. They reduce the need for excessively long access roads, drainage works, expansive lot grading, and they allow landowners and developers to more efficiently utilize their property in either a river lot, 'replotted,' or nearly any other conceivable parcel scenario. As a result of these factors, research by Rayman Mohamed in Urban Affairs Review has indicated that conservation subdivisions in the United States substantially reduce land production costs for developers, in the range of 30%-35% (Mohamed, 2006). These same studies showed that not only did conservation subdivisions reduce the cost of development, but they also demonstrated an increase in the value per acre of developed lots by 12% to 16%, as well as reduce the time for absorption by 8- 16 months, when compared with traditional rural subdivisions. The relative rarity of conservation subdivisions in the face of such attractive figures has led some scholars to probe deeper into the question of why most municipal governments, planners, rural residents, and developers, have not yet properly recognized their benefits (Allen, Moorman, Peterson, Hess, & Moore, 2012).

In terms of their benefits to the community, conservation subdivisions increase the feasibility of future municipal wastewater servicing because the development pattern can attain a much more compact built form. As the individual lot sizes are significantly reduced within the larger parcel, it will also allow for the preservation of natural features and farmland. It also provides space for developers to incorporate additional public or commonly-owned amenities like walking trails, village greens, equestrian paddocks, and playgrounds. This form of development can protect rural charm and agriculture—something which is considered very important to South St. Clement's residents as well as many other rural communities in Manitoba.

A 'conservation subdivision' is generally defined by well-accepted minimum thresholds regarding the preservation of open space and natural features (Arendt, 1994; NC State University, n.d; Ross & Coleman, 2009). Typically, in rural areas a conservation subdivision should preserve somewhere around 50% to 70% of a parcel for open space, farmland, or natural features. In more urban/suburban locations, a conservation subdivision should at least preserve up to 30% of a parcel for open space and parks. Some communities with conservation subdivision by-laws or ordinances have included open/conservation space minimums for new conservation subdivisions. According to Randall Arendt in his seminal book Rural by Design, there are several ways that these local by-laws can be implemented, including: leaving the conservation design requirement up to councils and planning board's discretion on a case by case basis; requiring a percentage of open space whenever the subdivision size reaches a threshold above just a few lots; or requiring it whenever subdivision is proposed near clearly defined sensitive watercourses, endangered farmland, aquifer discharge areas, or significant wildlife corridors (Arendt, 1994).

Some ordinances and zoning by-laws are also designed to incentivize conservation subdivision design by allowing density bonuses. They are one way for local governments to persuade developers to pursue

Land Choice's Photo: Open space (2013)

this option. However, a density bonus could operate independently of a conservation subdivision requirement or concurrently with it. Whatever the case, incentives ought to be implemented carefully though because conservation subdivisions may give the impression that certain developers are being treated differently by local governments, apparently allowing them to bypass the lot density rules. Explaining how conservation subdivisions respect the same density rules -- just in a different way -- might prevent some residents from getting riled up unnecessarily. If there is a density

bonus attached to conservation subdivisions, it might confirm the resident's misunderstandings that these developments circumvent the rules. Where density bonuses seem appropriate, subdivisions with higher development density should be required to preserve a higher percentage of the original parcel, on a sliding scale approach, requiring individual lot size to be even smaller (Arendt, 1994). The more important thing for communities seeking to preserve rural charm, agriculture, and natural environments, as well as accommodate development, is to allow conservation subdivisions by right, instead of permitting them through an uncertain conditional use application process (NC State University, n.d).

Legal Frameworks

Planners working in South St. Clements are working towards an explicitly supportive regulatory environment for conservation subdivisions, but conservation subdivisions have actually been a development option in Manitoba for decades. A developer could have theoretically pursued a conservation subdivision either through a planned unit development (PUD) or a bare land condominium unit.

A PUD refers to a project planned with a unitary plan that permits flexibility in the siting of buildings, the mixture of housing types and land uses, usable open spaces, and the preservation of significant natural features (David Neufeld, personal communication, February 15th 2013). They are often found as conditional uses in zoning by-laws in the Province (For example: RM of Tache, 2013; RM of St. Clements, 2002; City of Brandon, 2001). A PUD is often described in this way in Manitoban zoning by-laws:

> Specific zone regulations shall not directly apply to planned unit developments. However, the project shall produce an environment of stable and desirable character and shall incorporate at least equivalent standards of building separation, parking, height and other requirements and provisions of this By-law (RM of East St. Paul, 2009 p. 126).

The PUD allows the developer of a single parcel to create lots in a development pattern that does not exactly follow the zoning bulk regulations or the prescribed uses. That is, an individual lot size in a planned unit development might be half of what the zoning by-law would prescribe and it may contain various land uses. Like conservation subdivisions, this does not mean that there would be more lots than what is allowed under that particular parcel's zone. However, some municipalities do offer incentives for PUDs such as the RM of Tache, which offers a density bonus of 10% for PUDs in its zoning by-law (2013).

A PUD can be considered nearly synonymous with the concept of a conservation subdivision in the sense that they reduce individual lot size to achieve objectives like the preservation of natural features and the creation of well-designed open space. Their primary connotation, however, are large-scale, master-planned residential communities, new town centres, and landscaped business parks (Buckwalter Commercial, 2009). The amount of preserved natural space or open space in a PUD may be high or it may be little; they may or may not have specific thresholds in this regard, unlike conservation subdivisions. Regardless, they could be theoretically utilized to develop a conservation subdivision.

Using a PUD, a conservation subdivision would require either a site plan agreement or declaration of a development scheme that is signed by both the developer and the municipality and upheld by *The Real Property Act*. These are legal documents which outline the acceptable land uses within the subdivision as well as prohibit the development of the preserved portions. In the case of the declaration of a development scheme, it has a legal effect which lasts 50 years after the date of registration (Michael McCandless, personal communication, March 27th 2013). Both types of legal documents are registered on the title as a caveat and they can only be removed if the original signatories, the District Registrar, or the courts, rescind the agreement or declaration. In other words, the preserved land in conservation subdivisions is not liable to development with any future changes to zoning by-laws or even through the lobbying of the homeowners.

The preserved portions and common areas in a conservation subdivision can be managed in one of two ways. In the United States, the developer generally will establish a homeowner's association that lot owners must join (Ross & Coleman, 2009). The homeowners association can in turn collect maintenance fees, maintain common property/ utilities/infrastructure/amenities, lease land to farmers, and enforce rules regarding the use of common property.

In South St. Clements, bare land condo units are the preferred avenue with which to develop conservation subdivisions (Lloyd Talbot, personal communication, March 2013). Bare land condominium units are individual owned units of land, much like ordinary lots, that are within the delineated common condo corporation property. The preserved land, which would be a common element in these bare land condominium unit conservation subdivisions, would be managed through a condo corporation that the developer establishes. These corporations would have the same sphere of responsibilities over the common elements that the homeowners associations in the United States have over common property.

Similar to the way PUDs are regulated through a site plan agreement or a declaration of a development scheme, a condominium site plan, as detailed under *The Condominium Act*, is registered against the title to legally define the location of bare land condo units, as well as common spaces, within the development. However, the difference between these legal documents is that an amendment to the condominium site plan can be accomplished: "... with the written consent of the persons holding 80%, or such greater percentage as may be specified in the declaration, of the voting rights in the corporation" (The Condominium Act S. 6[3], 1997) as well as a subdivision approved according to *The Planning Act*. In theory, then, there could be more leeway for a condominium corporation to seek to develop its preserved open space because once they agree that they want to amend their condominium site plan they could apply, like any other applicant, to subdivide their property.

To ensure that designated natural spaces and agricultural lands within bare land condos are not developed in the future, it would be wise for the approving authority to require that the condominium developer enter into a conservation agreement, with a plan outlining the affected areas. This is an easement that is placed on the title and it can be entered into with an eligible conservation agency under the *Conservation Agreements Act* such as a municipality, a conservation district or a not-for-profit corporation. The Manitoba Heritage Habitat Corporation (MHHC), which is under *The Manitoba Hertiage Act*, is also eligible to enter into conservation agreements. The conservation agency should be capable of monitoring these lands to ensure that they remain protected under the easement for perpetuity.

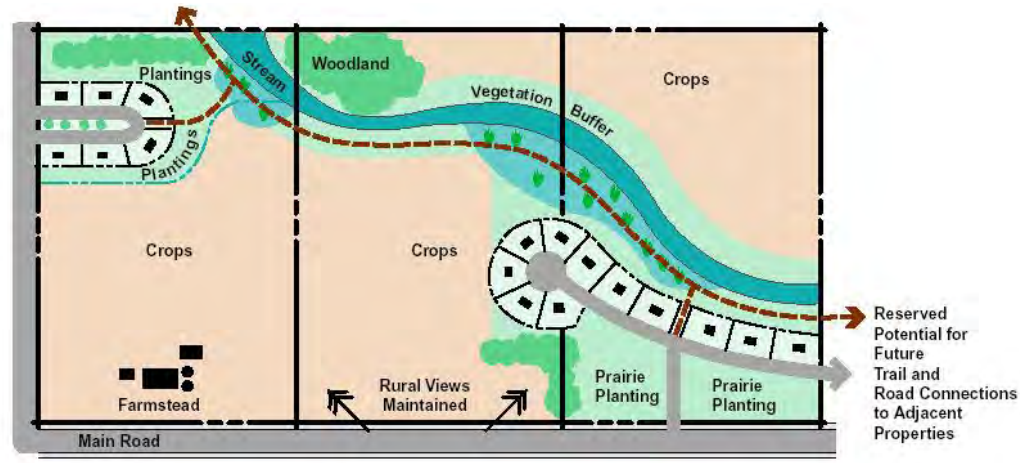
Manitoba developers that intend to use conservation agreements to preserve agriculture need to be aware that current legislation will not explicitly support their endeavours. In the *Conservation Agreements Act*, the stated objective of conservation agreements are for the protection of: "(a) natural ecosystems; (b) wildlife or fisheries habitat; or (c) plant or animal species" (S. 2[2], 1997). It is worded much the same as *The Manitoba Hertiage Act* too. Their central concerns are not agricultural preservation. This is unlike Ontario's *Conservation Land Act* which is explicitly for: "(d) ...the conservation, preservation or protection of the land for agricultural purposes" (S. 2[d], 2009). There are non-profit organizations in Ontario and elsewhere which exist as agricultural land trusts to preserve farm land from ex-urban residential development pressures (Ontario Farmland Trust, 2013; Marin Agricultural Land Trust, 2013; Bruce Dungannon, 2004). Nevertheless, the MHHC in Manitoba will allow land owners to customize their conservation agreement so as to be able to continue certain agriculture uses on lands under conservation easements (2013).

Wastewater Issues

In rural areas where there is no water servicing, the biggest roadblock to reducing the size of lots are the land use policies of Manitoba Conservation which aim to protect well and surface water from contamination. Their current minimum lot size for unserviced lots with septic fields, the most common onsite waste water management system, is 2 acres (Manitoba Conservation, 2009). When designing or establishing by-laws for conservation subdivisions, developers and planners must be cognizant of the fact these kinds of subdivisions will likely require community-level onsite wastewater management systems or individual holding tanks. According to S. 6(2) in the *Onsite Wastewater Management Systems Regulation*, individual wastewater management systems must be contained solely within the property of the owners that use the system. This means that there is no possibility for homes in conservation subdivisions to use commonly-owned land to meet the 2 acre requirement for individual septic fields. If a developer of a conservation subdivision wishes to utilize the common land for septic field disposal then the systems must be designed to serve multiple homes and they can only get approval through *The Environment Act* licensing. This is also true for community holding tanks or any other onsite wastewater management system that is located on commonly-owned land and used by multiple homes. Unfortunately, this kind of licensing involves a lengthier and costlier process than the permitting process under the *Onsite Wastewater Management Systems Regulation*. In South St. Clements, the planning district will recommend that all new conservation subdivisions hook up to community holding tanks because these will be much easier to adapt to municipal wastewater servicing that is eventually planned for the area (Lloyd Talbot, personal communication, March 2013).

Conclusion

Conservation subdivisions are a new concept for Manitoba, but they are an attractive solution to many of the problems regarding residential development in rural areas like South St. Clements. This brief case-in-point cannot properly address larger questions surrounding rural development and the unsustainable loss of farmland or the question of when/where conservation subdivisions are not an appropriate land use. There are many topics about conservation subdivisions in Manitoba that have yet to be addressed. The intention of this case-in-point was merely to research important basic land use issues and questions regarding conservation subdivisions so that a better understanding of them may work towards promoting their development in this province and South St. Clements.



Town of Saragota's Photo: Conservation subdivision site plan (2013)

Resources

Allen , Stephen C., Moorman, Christopher E., Peterson , M. Nils, Hess , George R., Moore, Susan E.. (2012). Overcoming socio-economic barriers to conservation subdivisions: A case-study of four successful communities. Landscape and Urban Planning. V. 106. pp. 244– 252

Arendt, R. (1994) Rural by design. American Planning Association.

Buckwalter Commercial. (2009). Buckwalter PUD. Retrieved from: http://www.buckwaltercommercial.com/buckwalter_pud.aspx?#

City of Brandon. (2001). Zoning by-law 6642. Retrieved from: http://brandon.ca/images/pdf/bylaws/6642.pdf

Conservation Agreements Act. S. 2[2], c. 173 (1997).

Conservation Land Act. S. 2[d], c 12 (2009).

Dillon Consulting (2013, February 5th). Community open house. Retrieved from: http://www.rmofstclements.com/_assets/Open%20House%203%20Display%20Boards.pdf

Dungannon, B. (2004). Agricultural land trust research project. Retrieved from: http://www.manitobaresearchallianceced.ca/Documents/44-AgriculturalLandTrust.pdf

Goodmortgage.com (n.d.) Condos, PUDs, townhomes. Retrieved from: http://www.goodmortgage.com/Learn/Terms/Condo_PUD_Townhome.html

Manitoba Conservation. (2003). Onsite wastewater management systems regulation. Retrieved from: http://web2.gov.mb.ca/laws/regs/pdf/e125-083.03.pdf

Manitoba Habitat Heritage Corporation. (2012). Myths about conservation agreements. Retrieved from: http://www.mhhc.mb.ca/learn_more/myths-about-conservation-agreement

Marin Agricultural Land Trust. (2012). About MALT. Retrieved from: http://www.malt.org/about

McCandless, M. (March, 2013). Personal communication. University of Manitoba.

Mohamed, R. (2006) . The economics of conservation subdivisions: price premiums, improvement costs, and absorption rates. Urban Affairs Review, 41, 376.-399. doi: 10.1177/1078087405282183

NC State University (n.d.) Conservation subdivision handbook. http://www.ces.ncsu.edu/forestry/pdf/ag/ag742.pdf

Neufled, D. (February, 2013). Personal communication. Community and Regional Planning.

Ontario Farmland Trust. (2013). Retrieved from: http://www.ontariofarmlandtrust.ca/

Redekop, B. (2013). Critics fear rural charm will be lost. Winnipeg Free Press. Retrieved from: http://www.winnipegfreepress.com/local/critics-fear-rural-charm-will-be-lost-195212761.html

RM of East St. Paul. (2009) By-law 2009-04. Retrieved from: http://selkirkplanning.com/assets/downloads/2009-04%20zoning%20by-law.pdf

RM of St. Clements. (2002). The RM of St. Clements Zoning by-law 5-2002. Retrieved from: http://selkirkplanning.com/assets/downloads/2%20st.%20clements%20zoning%20by-law%20consolidation.pdf

RM of Tache. (2013) Zoning by-law 12-2009. Retrieved from: http://www.rmtache.ca/docs/12-2009ZoningBy-law.pdf

Ross, B., Coleman, J. (2009). From policy to reality. Retrieved from: http://www.crplanning.com/pdfs/susdo6_09/conservation.pdf

Selkirk and District Planning Area. (2011) Development plan 190-08. Retrieved from: http://selkirkplanning.com/assets/downloads/dp_190_textonly.pdf

Talbot, L. (March, 2013). Personal communication. Selkirk and District Planning Area.

The Condominium Act. S. 6[3], c. 170 (1997).

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