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W. Dennis Keating

Cleveland State University Levin College of Urban Affairs, w.keating@csuohio.edu

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URBAN LAND BANKS AND THE HOUSING FORECLOSURE AND ABANDONMENT CRISIS

W. DENNIS KEATING*

INTRODUCTION

After a housing bubble that led to rapidly rising housing prices in many U.S. housing markets, 2007 saw the beginning of a collapse in these same areas. In the ensuing years, foreclosures nationally and locally grew rapidly, resulting in millions of homeowners losing their homes, millions more “underwater,” and many blighted, vacant, abandoned, foreclosed homes littering neighborhoods and causing adjacent properties to lose value.¹ As the number of these blighted properties has grown, local governments have been unable to cope with the magnitude of the problems caused by these nuisance properties. This problem has been exacerbated in those cities that have long been losing population, leading to the abandonment of many properties for lack of a normal sales market and eventually foreclosure for unpaid property taxes.²

Housing code enforcement has proven ineffective at dealing with the blighting of abandoned property for a number of reasons.³ Housing code

* Levin College Distinguished Professor & Director of the Master of Urban Planning, Design, and Development Program, Cleveland State University.

1. The foreclosure crisis continues, with considerable criticism of the federal responses. It has hit some states and cities harder than others. The state of Ohio and its older cities like Cleveland are a leading example of the hardest hit. See David Rothstein, *Home Insecurity 2013: Foreclosure and Housing in Ohio*, POL’Y MATTERS OHIO (May 2013), <http://www.policymattersohio.org/foreclosures-may2013>. For essays about what can be done to rebuild neighborhoods suffering from vacant and abandoned housing and blight, see REBUILDING AMERICA’S LEGACY CITIES: NEW DIRECTIONS FOR THE INDUSTRIAL HEARTLAND (Alan Mallach ed., 2012); THE CITY AFTER ABANDONMENT (Margaret Dewar & June Manning eds., 2013). “Underwater” indicates that the market value of their homes was exceeded by their mortgage debt.

2. Robert Beauregard, *Growth and Depopulation in the United States*, in REBUILDING AMERICA’S LEGACY CITIES, *supra* note 1, at 1, 11 (Noting that over the six decades beginning in 1950 through 2009, four major cities lost more than half of their population: St. Louis (-58.4%), Buffalo (-53.4%), Cleveland (-52.8%), and Detroit (-50.7%)).

3. See LAWRENCE M. FRIEDMAN, GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION 173–74 (1968) (the classic study of origins and failures of code enforcement in American cities).

enforcement staffs are all too often inadequate at dealing with the caseloads.⁴ Ownership is often difficult to determine, especially where no foreclosure has occurred, but the owner either died or walked away; even when known, it may be difficult to locate the legal owner.⁵ Remedies, whether criminal or civil, for violations of housing and health codes have not been very effective, especially when levied against absentee owners and poor owners.⁶ Elderly homeowners with limited incomes, living in older homes in need of repairs, are not likely to be subjected to severe penalties and may be unable to afford any substantial repairs.⁷ Publicly funded programs for home repairs are limited.⁸ Many cities do not conduct periodic property inspections and most do not mandate pre-sale inspections to ensure compliance with codes before a transfer of title.⁹ These myriad shortcomings in housing code enforcement mean that vacant and abandoned properties can quickly deteriorate.¹⁰ Vandalism and the stripping of valuable items from unsecured structures accelerated this process in many neighborhoods.¹¹

4. Donald S. Elliot, Jr. & Michael A. Quinn, *Concentrated Code Enforcement in St. Louis*, 11 AREUEA J. 344, 347 (1983); W. Dennis Keating & Kermit J. Lind, *Responding to the Mortgage Crisis: Three Cleveland Examples*, 44 URB. LAW. 1, 15–16 (2012).

5. See FRANK C. BRACCO, CLAYTON ARCHWAY P'SHIP, AN INCREMENTAL APPROACH TO IMPROVING CODE ENFORCEMENT AND COMPLIANCE IN CLAYTON COUNTY, GA 24 (2010) (explaining how it is difficult to locate the legal owner).

6. Kermit J. Lind, *Collateral Matters: Housing Code Compliance in the Mortgage Crisis*, 32 N. ILL. U. L. REV. 445, 458 (2011) ("The legal system as currently constituted simply has no way to deal with abandoned, worthless housing.").

7. See Melissa Flynn, *Rebuilding Together A Partnership*, 9 MONTGOMERY CNTY. CODE ENFORCEMENT NEWS FROM THE OFFICE OF THE CNTY ATT'Y, no. 4, 2006, at 1 (explaining that elderly individuals are less likely to make repairs on their homes).

8. 12 U.S.C. § 1703 (2012) (authorizing the Federal Housing Administration's major programs for homeowner and rental repairs). Examples of home repair programs in Cleveland, Ohio are: Cleveland Action to Support Housing (CASH); Repair-A-Home (RAH); and Senior Homeowner Assistance Program (SHAP). *Division of Neighborhood Services*, CLEVELAND DEP'T OF CMTY. DEV., <http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/CommunityDevelopment/DivisionofNeighborhoodServices> (last visited Apr. 22, 2014).

9. See Keating & Lind, *supra* note 4, at 5 (illustrating a lack of inspections, Cleveland's building department in 2010 estimated that approximately 7,067 abandoned residential buildings constituted blighted nuisances).

10. See Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV'T L. REV. 101, 126 (2009).

11. GEORGE GALSTER, *DRIVING DETROIT: THE QUEST FOR RESPECT IN THE MOTOR CITY* 232–33 (2012). See also, e.g., ALYSSA KATZ, *OUR LOT: HOW REAL ESTATE CAME TO OWN US* 79 (2009).

The result of these factors has been a glut of unsalvageable, abandoned housing that has been condemned as a public nuisance.¹² Due to lack of funding, however, cities have not had sufficient financial resources to demolish these buildings within a reasonable time.¹³ The federally funded urban renewal program that had demolished hundreds of thousands of deteriorated buildings in blighted neighborhoods from 1949 to 1974 encountered increasing resistance and was terminated.¹⁴ While funded localities can use its successor, the federal Community Development Block Grant (CDBG), for a variety of purposes, primarily to benefit low- and moderate-income residents, its use for code enforcement and the demolition of blighted buildings has been limited.¹⁵

I. LAND BANKS

In order to deal with the growing number of abandoned properties not being maintained by responsible owners, including lenders unable to sell their foreclosed properties for a sufficient price, some cities have created land banks.¹⁶ Land banks are not a new phenomenon; cities that earlier were suffering from serious population loss created land banks.¹⁷ St. Louis and Cleveland both created land banks in the 1970s.¹⁸ Louisville (1989) and Atlanta (1991) later followed suit.¹⁹ Professor Frank Alexander, Emory University School of Law, is a leading authority on land banks in the United States.²⁰ Of these four earliest municipal land banks, Alexander noted, “Each

12. See Kermit J. Lind, *Can Public Nuisance Law Protect Your Neighborhood from Big Banks?*, 44 SUFFOLK U. L. REV. 89, 91, 101 (2011).

13. ALAN MALLACH, BRINGING BUILDINGS BACK FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS 180 (National Housing Institute 2d ed. 2010); Lind, *supra* note 6, at 458 (“There is far too little public money available to demolish the vast majority of houses with no future.”).

14. See William J. Collins & Katharine L. Shester, *Slum Clearance and Urban Renewal in the United States*, 5 AM. ECON. J.: APPLIED ECON. 239, 241–42 (2013).

15. See, e.g., DEPARTMENT OF COMMUNITY DEVELOPMENT, CITY OF CLEVELAND, THIRD PROGRAM YEAR ACTION PLAN 2013–2014 NARRATIVE RESPONSES 2, 6 (Apr. 19, 2013). Out of its 2013–2014 CDBG budget of \$19,039,000, Cleveland allocated only \$419,000 (2.2%) to code enforcement and \$780,000 (4.1%) to demolition and board-up of condemned vacant properties. *Id.*

16. See FRANK S. ALEXANDER, METROPOLITAN POLICY PROGRAM AT BROOKINGS, LAND BANKING AS METROPOLITAN POLICY 22 (2008).

17. See Beauregard, *supra* note 2, at 11; FRANK S. ALEXANDER, LAND BANKS AND LAND BANKING 18 (2011).

18. ALEXANDER, LAND BANKS AND LAND BANKING, *supra* note 17, at 19.

19. *Id.*

20. *People: Frank S. Alexander*, EMORY UNIV. CTR. FOR THE STUDY OF LAW AND RELIGION, <http://cslr.law.emory.edu/people/person/name/alexander/> (last visited Apr. 22, 2014); JOHN GALLAGHER, REVOLUTION DETROIT: STRATEGIES FOR URBAN REINVENTION 55 (2013).

of the four major first generation land banks was successful, but only when measured against the very limited range of powers and authority they were given and the very difficult nature of the real property they were confronting.”²¹

Alexander identified four missing core features in these first generation land banks: (1) a lack of dedicated or internally generated sources of funding, (2) properties entangled in a maze of archaic property tax foreclosure laws, (3) a lack of marketable and insurable property titles, and (4) a lack of intergovernmental collaboration.²² Using five land banks as examples, Alexander has authored a handbook detailing how to create and operate a land bank.²³

In addition to the four first generation land banks, the fifth example is the Genesee County, Michigan land bank created in 2002.²⁴ It is the first of what Alexander has called “second generation” land banks.²⁵ First created under an intergovernmental cooperation statute, it was transformed by the enactment in of the 2004 Land Bank Fast Track Authority Act.²⁶

Alexander stated, “The 2004 Michigan legislation ushered in the second generation of land banks. Land banks that are created under this model possess a dramatically different range of powers and possibilities than are found in the first generation of land banks, with the new statutes expressly addressing each of the four system limitations found in the first generation of land banks.”²⁷

The renamed Genesee County Land Bank Authority was created to deal with the abandonment created by the city of Flint, Michigan’s loss of auto manufacturing jobs, triggering a major population loss that left the city with growing numbers of abandoned properties.²⁸ It became a model followed by

21. ALEXANDER, LAND BANKS AND LAND BANKING, *supra* note 17.

22. *Id.* at 19–20.

23. FRANK S. ALEXANDER, LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS (2005). *See also* Julie A. Tappendorf & Brent O. Denzin, *Turning Vacant Properties into Community Assets Through Land Banking*, 43 URB. LAW. 801 (2011); ALAN MALLACH, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS – A GUIDEBOOK FOR POLICYMAKERS AND PRACTITIONERS 128–42 (2d ed. 2010); Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. ST. L. REV. 189, 213–31 (2008).

24. ALEXANDER, LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS, *supra* note 23, at 7.

25. ALEXANDER, LAND BANKS AND LAND BANKING, *supra* note 17, at 20.

26. MICH. COMP. LAWS § 124.751 (2003). *See also* MICHIGAN LAND BANK FAST TRACK AUTHORITY, <http://www.michigan.gov/landbank> (last visited Apr. 22, 2014).

27. ALEXANDER, LAND BANKS AND LAND BANKING, *supra* note 17, at 21.

28. *See* STEPHEN P. DANDANEAU, A TOWN ABANDONED: FLINT, MICHIGAN, CONFRONTS DEINDUSTRIALIZATION 202 (1996); GENESEE COUNTY LAND BANK, <http://www.thelandbank.org> (last visited Apr. 22, 2014); Gallagher, *supra* note 20, at 53–59.

other Michigan localities with similar problems.²⁹ Its founder was Genesee County Treasurer Dan Kildee who also served as chair of the Michigan Land Bank Fast Track Authority and was co-founder and president of the Center for Community Progress,³⁰ which has been a national advocate for addressing the issue of vacant, abandoned blighted properties.³¹ He was elected to the U.S. Congress in 2012.³² Kildee in his foreword to Alexander's 2011 guide published by the Center for Community Progress acknowledged that Alexander "was an essential adviser in developing the Genesee County Land Bank."³³ Kildee stated, "Perhaps most critical to the early success of the Michigan model is that the law provides a funding mechanism to acquire, manage, clear, demolish, rehabilitate, and develop tax-foreclosed land, which for decades was written off as used, useless and valueless. New revenue that once went into the pockets of smart or fortunate tax lien buyers now accrues to a restricted county fund that can be used only to acquire and care for tax-foreclosed property."³⁴

Since its inception through 2012, the Genesee County Land Bank has demolished 2,040 structures, sold another 3,691 acquired properties, and sold 650 lots to adjoining homeowners through its side lot program.³⁵ Its 2012 inventory of vacant residential structures was 5,300, of which almost 4,000 needed to be demolished.³⁶ This land bank became the model for the Cuyahoga County land bank,³⁷ which is the focus of this article.

Alexander predicted that more communities affected by the foreclosure and abandonment crisis would create land banks.³⁸ In July 2011, the state of

29. See *Michigan Association of Land Banks*, FACEBOOK, <https://www.facebook.com/MichiganLandBanks> (last visited Apr. 22, 2014).

30. *The Center for Community Progress: Helping transform problem spaces into vibrant places*, CTR. FOR CMTY. PROGRESS, <http://www.communityprogress.net/our-history-pages-223.php> (last visited Apr. 22, 2014); DAN KILDEE, *Foreword* to FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING*, *supra* note 17, at X, 9.

31. *Mission*, CTR. FOR CMTY. PROGRESS, <http://www.communityprogress.net/mission-pages-24.php> (last visited Apr. 22, 2014).

32. Catherine Hollander, *Michigan, 5th House District: Daniel Kildee (D)*, NAT'L J. (Nov. 7, 2012), <http://www.nationaljournal.com/congress-legacy/michigan-5th-house-district-20121101>.

33. DAN KILDEE, *Foreword* to FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING*, *supra* note 17, at 9.

34. *Id.*

35. DEBORAH CHERRY, *GENESEE CTY. LAND BANK AUTH., GENESEE COUNTY LAND BANK 2012 ANNUAL REVIEW* 2, 3 (2013).

36. *Id.*

37. W. Dennis Keating, *The Impact of the Foreclosure and Abandonment Crisis and Responses to It in Cleveland, Ohio*, THE JOINT AESOP-ACSP CONG. XX, 928, 936 (2013).

38. ALEXANDER, *LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS*, *supra* note 23, at 2.

New York authorized localities to create land banks as not-for-profit corporations, while limiting the number to ten.³⁹ Previous land bank legislation passed in 2008 had been vetoed by then governor Paterson because no funding was made available for their operation.⁴⁰ In June 2013, New York Attorney General Schneiderman announced the allocation of \$20 million in state funding to the eight land banks that now exist.⁴¹ Two more recent examples are the Kansas City, Missouri land bank created in August 2012⁴² and the Cook County, Illinois land bank created in February 2013.⁴³ The Cook County land bank will deal primarily with the large number of vacant, abandoned buildings in the city of Chicago.⁴⁴ Pennsylvania passed legislation in October 2012 authorizing land banks, and there is interest in creating land banks in Philadelphia and Pittsburgh.⁴⁵

The creation of these new land banks in cities experiencing large scale abandonment of foreclosed homes reinforces their important roles in addressing the problems caused by this crisis.⁴⁶ However, not all of these cities have created land banks. For example, Baltimore has had a large number of abandoned properties but instead of creating a land bank, in November 2010 Baltimore Mayor Stephanie Rawlings-Blake announced the Vacants to Value program.⁴⁷ In contrast to previous efforts by the city to increase the demolition of abandoned properties, this is a market-based approach to encourage

39. Eric F. Buckley et al., *Land Banking in New York Begins—Now Our Towns and Cities Are Using the New York Land Bank Act to Fight Blight and Encourage Renewal*, 40 N.Y. REAL PROP. L. J. 52, 52–53 (2012).

40. *Id.* at 52.

41. Attorney General Schneiderman Announces \$20 million for New York Land Banks, CTR. FOR CMTY. PROGRESS (June 27, 2013), <http://www.communityprogress.net/public-policy-pages-8.php?id=385>.

42. Missouri authorized creation of the Kansas City land bank in 2012. H.B. 1659, 96th Gen. Assemb., 2d Reg. Sess. (Mo. 2012). See Lynn Horsley, *Kansas City Launches Land Bank for Derelict Property*, KANSAS CITY STAR, June 26, 2013, at A1. See also LAND BANK: KANSAS CITY, MISSOURI, <http://www.kcmolandbank.com> (last visited Apr. 22, 2014).

43. The Cook County Commission created the land bank in January, 2013. *Resources*, COOK CNTY. LAND BANK AUTH., <http://www.cookcountylanbank.org/resources/> (last visited Apr. 22, 2014). Ben Austen profiled the housing, foreclosure, and abandonment crisis in Chicago. Ben Austen, *The Death and Life of Chicago*, N.Y. TIMES MAG., May 29, 2013, at A1.

44. See COOK COUNTY LAND BANK ADVISORY COMMITTEE REPORT, COOK CNTY. LAND BANK AUTHORITY, available at <http://www.cookcountylanbank.org/wp-content/uploads/2013/05/Land-Bank-Advisory-Board-Reccomendations-Nov-21-2012.pdf> (last visited Apr. 22, 2014).

45. 68 PA. CONS. STAT. § 2101 (2012) (authorizing the creation of land banks in Pennsylvania); *The Road to Passing the Pennsylvania Land Bank Act*, CTR. FOR CMTY. PROGRESS (May 21, 2012), <http://progress.communityprogress.net/features/05212013plba.aspx>.

46. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 3.

47. Mayor Rawlings-Blake Hosts 1st Vacants to Value Open House, BALTIMORE HOUS. (May 15, 2012), http://www.baltimorehousing.org/wgo_detail.aspx?id=486.

investment in blighted neighborhoods through strengthening housing code enforcement, promoting rehabilitation, streamlining the sale of city-owned properties, and providing targeted subsidies for homebuyers and developers to invest in vacant residential properties.⁴⁸ Nevertheless, to deal with the crisis, many cities have turned to the type of land bank pioneered in Genesee County, Michigan. This is the case in Cuyahoga County, Ohio.⁴⁹

II. THE FORECLOSURE AND ABANDONMENT CRISIS IN CLEVELAND AND CUYAHOGA COUNTY

Cuyahoga County is the urban county surrounding the central city of Cleveland.⁵⁰ Cleveland was once the fifth largest city in the United States but has steadily lost population since it peaked at 914,000 in 1950.⁵¹ In the 1970s, the city lost almost one-quarter of its population.⁵² The factors fueling this decline included the aftermath of race riots in 1966 and 1968, deindustrialization, suburbanization, backlash against court-ordered desegregation of the public schools (including a citywide busing order), and the city's 1978 default resulting from then Mayor Dennis Kucinich's conflict with the power structure over tax abatements and a demand that he privatize the city's public power company.⁵³ In the years 2000-2010, Cleveland lost another 17 percent of its population, reducing it to 396,000, not much more than it had in 1900.⁵⁴ In addition to Cleveland's population decline, suburban Cuyahoga County has also lost population for the past few decades, especially in its older suburbs.⁵⁵ This led to the formation of the First Suburbs Consortium comprised of these suburbs, which advocated for more state support in the face of urban sprawl that had caused their population decline.⁵⁶

48. Ellen Janes & Sandra Davis, Fed. Reserve Bank of Balt., *Vacants to Value: Baltimore's Market-Based Approach to Vacant Property Redevelopment*, in PUTTING DATA TO WORK: DATA-DRIVEN APPROACHES TO STRENGTHENING NEIGHBORHOODS 79, 80 (2011).

49. See *infra* Part II.

50. See U.S. DEP'T OF COMMERCE, UNITED STATE CENSUS 2010, OHIO: 2010, SUMMARY POPULATION AND HOUSING CHARACTERISTICS 16 (2012).

51. U.S. DEP'T OF COMMERCE, CENSUS OF POPULATION: 1950, OHIO 8 (1952).

52. U.S. DEP'T OF COMMERCE, 1970 CENSUS OF POPULATION, CHARACTERISTICS OF THE POPULATION, OHIO 8 (1973); U.S. DEP'T OF COMMERCE, 1980 CENSUS OF POPULATION, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS, OHIO 13 (1983).

53. CAROL P. MILLER & ROBERT A. WHEELER, CLEVELAND: A METROPOLITAN READER 44-45 (W. Dennis Keating et al. eds., 1995).

54. U.S. DEP'T OF COMMERCE, UNITED STATES CENSUS 2000, OHIO: 2000, SUMMARY POPULATION AND HOUSING CHARACTERISTICS 16 (2002); U.S. DEP'T OF COMMERCE, *supra* note 50.

55. W. Dennis Keating & Thomas Bier, *Greater Cleveland's First Suburbs Consortium: Fighting Sprawl and Suburban Decline*, 19 HOUS. POL'Y DEBATE 457, 459-61 (2008).

56. *Id.* at 458.

Beginning in the mid- to late-1990s, the rate of foreclosures began to rise in the city of Cleveland. Without a housing bubble, but fueled by predatory lending practices especially targeting the city's minority neighborhoods, the foreclosure rate quadrupled between 1995-2007.⁵⁷ It was only around 2007 that the rapid increase in foreclosures led to a national crisis.⁵⁸ The Cleveland mayor's Flipping Task Force found a pattern of speculators turning older properties into much more profitable sales without making substantial improvements or complying with the city's housing codes.⁵⁹ This finding came after efforts to combat these practices in Cleveland's Slavic Village neighborhood, whose organization, Slavic Village Development, was one of the city's most successful community development corporations.⁶⁰

In June 2005, the National Vacant Properties Campaign released a report commissioned by Neighborhood Progress, Inc. entitled, "Cleveland at the Crossroads: Turning Abandonment into Opportunity," which led to the creation of a Vacant Abandoned Property Action Council (VAPAC) to coordinate public and private efforts to counteract the growing impact of foreclosures and vacant abandoned houses on Cleveland's neighborhoods and their residents.⁶¹ In addition to increasing the number of demolitions of condemned nuisance properties, the city of Cleveland sued the holders of foreclosed properties claiming that the damages caused to displaced homeowners, their neighbors, and the city through the loss of property values and property taxes, and the costs of boarding up and maintaining vacant, abandoned properties and then eventually demolishing thousands of them, were foreseeable in making subprime loans to financially marginal homebuyers.⁶² However, this lawsuit was dismissed in the federal courts.⁶³

57. POL'Y MATTERS OHIO, DAVID ROTHSTEIN & SAPNA MEHTA, FORECLOSURE GROWTH IN OHIO 2009, at 1 (Mar. 2009), available at <http://www.policymattersohio.org/wp-content/uploads/2011/09/ForeclosureGrowth2009.pdf>.

58. DAN IMMERGLUCK, FORECLOSED: HIGH-RISK LENDING, DEREGULATION, AND THE UNDERMINING OF AMERICA'S MORTGAGE MARKET 135 (2009).

59. KIMBERLY BURNETT ET AL., ANALYSIS OF PROPERTY TURNOVER PATTERNS IN ATLANTA, BALTIMORE, CLEVELAND, AND PHILADELPHIA C-2, C-3 (2004).

60. Alex Kotlowitz, *All Boarded Up*, N.Y. TIMES MAG., Mar. 8, 2009, at A1. Kermit Lind, *The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland's Neighborhoods*, 17 J. AFFORDABLE HOUS. & CMTY. DEV. 237, 241 (2008).

61. CLAUDIA COULTON & KATHY HEXTER, FED. RESERVE BANK OF CLEVELAND, FACING THE FORECLOSURE CRISIS IN GREATER CLEVELAND: WHAT HAPPENED AND HOW COMMUNITIES ARE RESPONDING 6 (2010).

62. CMTY. RESEARCH PARTNERS, \$60 MILLION AND COUNTING: THE COST OF VACANT AND ABANDONED PROPERTIES TO EIGHT OHIO CITIES 5-22, 5-23 (Feb. 2008), available at http://www.greaterohio.org/files/policy-research/FullReport_Nonembargoed.pdf.

63. *Cleveland v. Ameriquist Mort. Sec., Inc.*, 621 F. Supp. 2d 513 (N.D. Ohio 2009), *aff'd*, 615 F. 3d 496 (6th Cir. 2010). See also Matthew Saunig, *Rebranding Public Nuisance: City of*

Cleveland Housing Court Judge Ray Pianka, despite his limited jurisdiction, made innovative efforts to force absentee owners to obey the housing codes through fines and to prevent the flipping of blighted properties.⁶⁴ Judge Pianka's fining of absentee owners who refused to appear in his court was blunted by an adverse procedural ruling by the Ohio Supreme Court.⁶⁵

The city found itself in a losing battle with its limited resources in keeping up with the spread of blight. In the 2000 U.S. Census, there were 25,518 vacant units (11.7 percent of the total); by 2010, the number had grown to 40,006 (19.3 percent of the total).⁶⁶ Without doubt this reflected the growth in foreclosures, both for mortgage delinquency and for failure to pay property taxes. As of February 2012, it was estimated that there were approximately 16,000 vacant residential structures in Cleveland. In 2011, the city of Cleveland estimated that around 7,000 abandoned blighted properties constituted a nuisance, which would require their demolition.⁶⁷

Beginning in 2009, foreclosures in the suburbs of Cuyahoga County exceeded those in Cleveland for the first time.⁶⁸ With the rise of foreclosures and vacant housing in the suburbs, Cuyahoga County had previously initiated reforms to speed up the foreclosure process in its courts and also had funded a foreclosure prevention counseling program.⁶⁹ The damage to property values was illustrated in a study of the impact of tax delinquent, vacant, and foreclosed residential properties.⁷⁰ The authors found that it reduced home sale

Cleveland v. Ameriquest Mortgage Securities, Inc. as a Failed Response to Economic Crisis, 59 CATH. U. L. REV. 911, 930 (2010); Creola Johnson, *Flight Blight: Cities Sue to Hold Lenders Responsible for the Rise in Foreclosures and Abandoned Properties*, 2008 UTAH L. REV. 1169, 1219 (2008) (reviewing local government lawsuits against lenders for foreclosure-related damages).

64. Keating & Lind, *supra* note 4, at 11–12.

65. *Cleveland v. Washington Mut. Bank*, 929 N.E. 2d 1039, 1043 (Ohio 2010) (limiting its holding to the trial of corporations in absentia in a criminal proceeding initiated in a municipal court).

66. Keating & Lind, *supra* note 4, at 4–5.

67. *Id.* at 5 n.21. In some cities, particularly Detroit and Cleveland, the increase in vacancies has only accelerated since 2000. This reflects the extent to which the mortgage crisis and the resulting foreclosure tsunami have increased the flow of properties into abandonment over and above that which would have resulted from long-term declines in demand. ALAN MALLACH, BROOKINGS INST., LAYING THE GROUNDWORK FOR CHANGE: DEMOLITION, URBAN STRATEGY, AND POLICY REFORM 8, available at <http://www.brookings.edu/~media/research/files/papers/2012/9/24%20land%20use%20demolition%20mallach/24%20land%20use%20demolition%20mallach.pdf>.

68. *Id.* at 21.

69. COULTON & HEXTER, *supra* note 61, at 11.

70. Stephen Whitaker & Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent, and Foreclosed Property on Sales Prices of Neighboring Homes* 11–23 (Fed. Reserve Bank of Cleveland, Working Paper No. 11-23R, 2011).

prices within 500 feet by 4.6 percent.⁷¹ These factors led Cuyahoga County to seek to establish a land bank modeled after the Genesee County, Michigan land bank.⁷² This contrasted with the first generation Cleveland land bank, created in the 1970s period of massive depopulation.⁷³ This land bank received clear lots after Cuyahoga County acquired them due to tax delinquency and the demolition of abandoned structures.⁷⁴ The land bank then attempted to transfer these lots to buyers for a nominal sum.⁷⁵ Buildable lots were sold to community development corporations for the development of affordable housing.⁷⁶ Unbuildable lots were offered to neighbors who might use them for expansion of their existing homes, gardens, and parking.⁷⁷ In 2013, the Cleveland land bank had approximately 12,000 empty lots in its inventory.⁷⁸

III. THE CUYAHOGA COUNTY LAND REUTILIZATION CORPORATION: CREATION, STRUCTURE AND IMPLEMENTATION

The advocates for a Cuyahoga County land bank sought a much more powerful response to the growing foreclosure and abandonment crisis. Led by Cuyahoga County Treasurer Jim Rokakis, they persuaded the Ohio Legislature to authorize the County to create such a land bank as an experiment (a two-year time limit was soon rescinded).⁷⁹ The Cuyahoga County Land Reutilization Corporation (“Cuyahoga County land bank”) was created in 2009.⁸⁰ The Cuyahoga County land bank is not part of the Cuyahoga County government.⁸¹ Instead, it is a special purpose, non-profit corporation.⁸² The

71. *Id.* at 24.

72. *Id.* at 37.

73. ELISE BRIGHT, REVIVING AMERICA’S FORGOTTEN NEIGHBORHOODS: AN INVESTIGATION OF INNER CITY REVITALIZATION EFFORTS 140 (2000). *See also* Keating & Lind, *supra* note 4, at 21–22 nn. 95–103.

74. *Id.*

75. *Id.*

76. Michael McQuarrie, *Nonprofits and the Reconstruction of Urban Governance: Housing Production and Community Development in Cleveland, 1975-2005*, in *POLITICS AND PARTNERSHIPS: THE ROLE OF VOLUNTARY ASSOCIATIONS IN AMERICA’S POLITICAL PAST AND PRESENT* 237, 249 (Elisabeth S. Clemens & Doug Guthrie eds., 2011).

77. *Land Bank Application for Non-Buildable Lots*, DIV. OF NEIGHBORHOOD SERVS., CLEVELAND DEP’T OF CMTY. DEV., <http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/CommunityDevelopment/LandBank> (last visited Apr. 22, 2014).

78. *Id.*

79. W. DENNIS KEATING, CUYAHOGA COUNTY LAND REUTILIZATION CORPORATION: THE BEGINNING, THE PRESENT, AND BEYOND 2009-2011, at 1 (2012).

80. Keating & Lind, *supra* note 4, at 24 n.114.

81. *Id.* at 24.

82. *Id.* at 25 nn.115–16. *See also* Thomas J. Fitzpatrick IV, *Ohio’s Land Bank Legislation: Modernizing an Aged Model*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 127, 135 (2010).

board of directors, originally seven members, later increased to nine, represents the county, cities, and civic figures.⁸³ Its stated mission is to “strategically acquire properties, return them to productive use, reduce blight, increase property values, support community goals, and improve the quality of life for county residents.”⁸⁴ Its powers include: (1) purchasing, receiving, transferring, holding, managing, and leasing real property; (2) engaging in code enforcement and nuisance abatement (including demolition); (3) acquiring or managing unimproved (vacant) underutilized property and forfeited lands; (4) purchasing delinquent property tax lien certificates; and (5) issuing bonds, applying for grants, making loans, and borrowing money.⁸⁵

In order to carry out its mission, it was crucial that the land bank had access to funding.⁸⁶ A primary source of the land bank’s funding comes from interest and penalties on unpaid or delinquent real property taxes and assessments collected by the Cuyahoga County Auditor.⁸⁷ This has amounted to approximately \$7 million annually.⁸⁸ It also derives income regularly from the sales of properties that can be rehabilitated, primarily by either builders or prospective owner-occupants.⁸⁹

It has also shared in funding from the federal Neighborhood Stabilization Program (NSP).⁹⁰ In December 2010, it successfully obtained \$9 million from its first bond issue.⁹¹ It has received a grant from the U.S. Environmental Protection Agency (EPA) to assist with assessment of environmental contamination in industrial and commercial sites.⁹² Most recently, it was able to receive funding through Ohio Attorney General Mike DeWine’s Moving

83. Keating & Lind, *supra* note 4, at 25 n.116.

84. Keating & Lind, *supra* note 4, at 25.

85. *Id.*

86. *See id.*

87. *Id.* at 25–26.

88. KEATING, *supra* note 79, at 13.

89. *Id.* at 15. *See also Housing*, CUYAHOGA LAND BANK, <http://www.cuyahogalandbank.org/> (last visited Apr. 22, 2014).

90. Keating & Lind, *supra* note 4, at 26 n.33.

91. *Id.* As originally enacted, HERA provided only limited support for land banking activities by authorizing expenditure of NSP funds for “establishment” of a land bank but not for its future operations and acquisition of “homes” but not other residential properties. ARRA [American Recovery and Reinvestment Act] expanded the eligible uses by revising the section on land banking to read “establish and operate land banks for homes and residential properties that have been foreclosed upon.” Roberta L. Rubin, *Stabilizing the Neighborhood Stabilization Program*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 5, 11–12 (2009). The NSP program authorizes use of its funds to support land banks.

92. *Id.*

Ohio Forward program.⁹³ DeWine set aside \$75 million from the state's share of the settlement agreement he negotiated with the five largest mortgage servicers in the United States.⁹⁴ DeWine launched a matching program for the demolition of blighted structures.⁹⁵ Cuyahoga County was able to obtain nearly \$12 million from this program, with the matching funds coming from the city of Cleveland, the Cuyahoga County prosecutor, and the Cuyahoga County land bank itself.⁹⁶ The land bank negotiated the first agreement in the United States with the Federal National Mortgage Association (FNMA) under its First Look program which gives the land bank the first right to acquire its low value foreclosed properties in Cuyahoga County.⁹⁷ This can prevent flipping of these properties by speculators.⁹⁸ The FNMA also agreed to pay approximately half the cost of demolishing these blighted properties, which cannot be feasibly rehabilitated.⁹⁹ Although FNMA has not always honored this agreement, it has been hailed as a success.¹⁰⁰ Likewise, the U.S. Department of Housing and Urban Development (HUD) agreed to sell its low-value foreclosed properties to the land bank for a nominal sum.¹⁰¹ Some major banks have followed suit and also provided payments to cover demolitions.¹⁰²

Since its creation and start-up in 2009, the Cuyahoga County land bank has made considerable progress in fulfilling its mission.¹⁰³ In addition to foreclosed properties that the land bank receives from FNMA, HUD, and lenders, the other major source of properties that it receives is from Cuyahoga County as a result of tax foreclosures.¹⁰⁴ As of Spring 2013, the Cuyahoga County land bank had demolished 1,842 properties and had another 312 that it had acquired that are scheduled for demolition (out of a total of 3,164 property

93. OHIO ATTORNEY GENERAL'S OFFICE MORTGAGE FORECLOSURE UNIT, MOVING OHIO FORWARD GRANT PROGRAM DEMOLITION GUIDELINES 4 (2012), available at <http://www.ohioattorneygeneral.gov/OhioAttorneyGeneral/files/f4/f4882fe3-4cac-40c4-8a29-a2f45a8bf157.pdf>.

94. *Id.*

95. *Id.* at 7.

96. Mark Gillespie, *Prosecutor Bill Mason Doles Out \$1 Million to Suburbs to Demolish Dilapidated Homes*, CLEVELAND PLAIN DEALER (Aug. 1, 2012), http://www.cleveland.com/metro/index.ssf/2012/08/mason_doles_out_1_million_to_s.html.

97. Keating & Lind, *supra* note 4, at 27.

98. *Id.* at 28.

99. *Id.* at 27.

100. *Id.* at 28.

101. *Id.* at 27. This agreement was temporarily ended but then reinstated by HUD. See Sandra Livingston, *HUD Ends Deal Allowing Cleveland to Buy Distressed Foreclosed Homes for \$100*, CLEVELAND PLAIN DEALER, June 26, 2010, http://blog.cleveland.com/metro/2010/06/post_316.html.

102. Keating & Lind, *supra* note 4, at 27–28.

103. See generally KEATING, *supra* note 79.

104. *Id.* at 16.

acquisitions).¹⁰⁵ The land bank has agreements with many of Cuyahoga County's municipalities, including Cleveland, under which the land bank acquires foreclosed properties and does demolitions of nuisance properties in collaboration with these cities and their priorities.¹⁰⁶ In one of its most publicized demolitions, the Cuyahoga County land bank demolished the notorious Cleveland house where Ariel Castro held three kidnapped women for years.¹⁰⁷ The Cuyahoga County land bank has also saved, and seen the rehabilitation of, more than 500 foreclosed houses by both private builders and prospective owner-occupants.¹⁰⁸ The Cuyahoga County land bank has provided a number of innovative policies and programs. Examples include:

- Providing vacant lots for community gardens;¹⁰⁹
- Providing rehabilitated homes for immigrants in partnership with the International Services Center;¹¹⁰
- Providing rehabilitated homes for wounded Iraq war veterans;¹¹¹
- Providing a workforce re-entry training program for formerly incarcerated fathers¹¹² in partnership with the Career Development and Placement Strategies program;¹¹³

105. Interview with Cheryl Stephens, Dir. of Acquisitions, Dispositions, and Dev., Cuyahoga Cnty. Land Bank (May 2013). For a view of the demolition activities of the Cuyahoga County land bank, see *Raze the Roof*, PBS NEWS (July 6, 2011), available at <http://www.youtube.com/watch?v=ItYz5PkWGv4>.

106. KEATING, *supra* note 79, at 13.

107. Timothy Williams, *Cleveland Destroys Home Where 3 Were Held for Years*, N.Y. TIMES, Aug. 8, 2013, at A15.

108. Interview with Dennis Roberts, Dir. of Programs and Prop. Mgmt., Cuyahoga Cnty. Land Bank (Cleveland, Ohio) (May 2013).

109. See, e.g., *Metro Catholic Schools' Sister Ann Michael Garden*, CUYAHOGA LAND BANK BLOG (May 5, 2013), <http://blog.cuyahogalandbank.org/2013/01/metro-catholic-schools-sister-ann-michael-garden/>. See also W. Dennis Keating, *Redevelopment of Vacant Land in the Blighted Neighborhoods of Cleveland, Ohio, Resulting From the Housing Foreclosure Crisis*, 4 J. OF URB. REGENERATION & RENEWAL 37, 52 (2010) (explaining that Cleveland is among those cities foremost in the re-use of vacant land for agricultural uses, including community gardens); Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225, 249 (2010) (explaining that Cleveland has revised its zoning to allow for agricultural uses in residential neighborhoods).

110. Press Release, Cuyahoga Cnty. Land Reutilization Corp., Cuyahoga Land Bank Partners With the International Services Center to Create a Home for Refugees (Dec. 12, 2011), available at <http://blog.cuyahogalandbank.org/2012/01/cuyahoga-land-bank-partners-with-the-international-services-center-to-create-a-home-for-refugees/>.

111. *When Hearts Come Together, Great Things Happen!*, CUYAHOGA LAND BANK (Jan. 2, 2013), <http://blog.cuyahogalandbank.org/2013/02/when-hearts-come-together-great-things-happen/>.

- Providing rehabilitated homes to a Cleveland community development corporation to be sold to artists as part of a neighborhood program to promote the arts;¹¹⁴ and
- Using those sentenced to community service to maintain abandoned properties owned by the land bank.¹¹⁵

In the future, it is hoped that the Cuyahoga County land bank will play a key role in the assembly of vacant lots for redevelopment for new affordable housing and commercial development projects.¹¹⁶ Meanwhile, through its residential housing demolition program to remove blight, it is contributing to neighborhood stabilization and recovery of the housing market.¹¹⁷ A Cleveland Federal Reserve Board study concluded that blighted structures reduced the sales prices of neighboring houses by about 5-7 percent; but after their acquisition and demolition by the Cuyahoga County land bank, sales prices increased by approximately 4-9 percent.¹¹⁸

Despite these impressive accomplishments, it must be acknowledged that the magnitude of the need to remove or rehabilitate blighted foreclosed homes in Cuyahoga County presently and in the foreseeable future far exceeds the financial resources available to the Cuyahoga County land bank.

IV. THE ROLE AND IMPACT OF LAND BANKS

Amidst the housing foreclosure and abandonment crisis, land banks in some of the hardest hit communities have proven to be a critical entity in

112. *Non-Custodial Dads Get A Second Chance Rehabbing Land Bank Homes*, CUYAHOGA LAND BANK BLOG (Aug. 1, 2012), <http://blog.cuyahogalandbank.org/2012/08/non-custodial-dads-get-a-second-chance-rehabbing-land-bank-homes/>.

113. *Partner Feature: Career Development and Placement Strategies, Inc. (CDPS)*, CUYAHOGA LAND BANK BLOG (Oct. 5, 2012), <http://blog.cuyahogalandbank.org/2012/10/partner-feature-career-development-and-placement-strategies-inc-cdps/>.

114. *Community Partnership for Arts and Culture Scrutinizing Economic Impact of Music, Musicians in Studies (Plain Dealer)*, CUYAHOGA LAND BANK (July 31, 2012), <http://blog.cuyahogalandbank.org/2010/07/community-partnership-for-arts-and-culture-scrutinizing-economic-impact-of-music-musicians-in-studies-plain-dealer/>.

115. *Preservation and Inspection*, CUYAHOGA LAND BANK, <http://cuyahogalandbank.org/preservation.php> (last visited Apr. 22, 2014).

116. *Strategic Land Assembly*, CUYAHOGA LAND BANK, <http://cuyahogalandbank.org/assembly.php> (last visited Apr. 22, 2014).

117. ALAN MALLACH, BROOKINGS METRO. POL'Y PROGRAM, LAYING THE GROUNDWORK FOR CHANGE: DEMOLITION, URBAN STRATEGY, AND POLICY REFORM, 3-5 (2012), <http://www.brookings.edu/research/papers/2012/09/24-land-use-demolition-urban-strategy-policy-reform> (making the case for demolition as a key part of an overall community stabilization and revitalization strategy).

118. Thomas J. Fitzpatrick IV & Stephen Whitaker, *Land Bank 2.0: An Empirical Evaluation* 20 (Fed. Reserve Board of Cleveland, Working Paper No. 12-30, 2012).

addressing the blight that has engulfed many communities. With reforms in laws affecting the foreclosure process and the need for an agency with the necessary powers and financial sources to undertake the acquisition and disposition of vacant, abandoned foreclosed properties, these land banks have emerged as critical to the rebuilding of neighborhoods suffering from blight. Second generation land banks like the Cuyahoga County land bank—modeled on the Genesee County land bank and others that have followed in many city and counties in state like Illinois, Michigan, Missouri, New York, Ohio, and Pennsylvania—offer hope that neighborhoods can be revitalized.¹¹⁹

An example of the role and impact of a land bank in neighborhood revitalization is the Opportunity Homes project in Cleveland.¹²⁰ Over several years, a consortium of community development corporations, local intermediaries, the city of Cleveland, private lenders, and the Ohio Housing Finance Agency undertook a demonstration program in six Cleveland neighborhoods to demonstrate that there could be rebuilding, even in the midst of the continuing foreclosure crisis.¹²¹ Targeting model blocks in these neighborhoods, blighted properties were acquired in part by the Cuyahoga County land bank, many to be demolished and others to be rehabilitated and sold by the Cleveland Housing Network.¹²² While the scale of this demonstration program was very small, it did show signs of success as a model for larger scale revitalization efforts in the future.¹²³

There needs to be greater financial support for land banks if they are to have the capacity to succeed in having an even greater impact in the stabilization and revitalization of neighborhoods suffering from the blight caused by the foreclosure crisis. Federal funding of the NSP and CDBG programs has fallen far short of the need to support the efforts of land banks. Despite the example of the use of some of the funds from Ohio's share of the settlement negotiated by the Ohio attorney general with the five largest mortgage servicers in the United States to demolish nuisance properties,¹²⁴ the federal government remains as the only likely source of the funding needed by land banks.¹²⁵

119. See *Michigan Association of Land Banks*, *supra* note 29; Buckley et al., *supra* note 39, at 52; Horsley, *supra* note 42, at A1; *Resources*, *supra* note 43.

120. Keating & Lind, *supra* note 4, at 31.

121. *Id.*

122. *Id.* The Cleveland Housing Network is a local intermediary whose members include many of the city's community development corporations. *Id.* at 28.

123. *Id.* at 31.

124. See *supra* notes 94–95 and accompanying text.

125. For example, in August, 2013, HUD allowed the Ohio Housing Finance Agency (OHFA) to shift up to \$60 million from its allocation from the federally-funded Hardest Hit Funds program for foreclosure prevention to demolition. See Press Release, Ohio Hous. Fin.

Agency, OHFA Expands Foreclosure Prevention Efforts to Demolish Ohio's Vacant and Abandoned Properties (Aug. 22, 2013), *available at* www.ohiohome.org/newsreleases/rlsHHFvacantproperties.aspx.

