

## LAND BANKING AND NEWARK: TEACHING AN OLD CITY A NEW TRICK

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### I. INTRODUCTION

On October 17, 2019, the historic Kastner mansion, located in Newark, New Jersey, was gutted by a three-alarm fire.<sup>1</sup> The thirty-two-room Victorian mansion was built of brick and featured hand-carved brownstone ornamentation, an expensive and rare style for New Jersey.<sup>2</sup> Constructed in 1892, the building was one of the few “beer baron” mansions still standing in Newark.<sup>3</sup> In 1957, the then-private residence was converted into a casket factory<sup>4</sup> and subsequently sold to Newark Lodge 93 of the Benevolent and Protective Order of the Elks, serving as a hub for community events.<sup>5</sup>

After falling into disrepair in 2007, the property was conveyed to Denise Colon for a nominal price.<sup>6</sup> Ms. Colon had grand plans of turning the building into a vibrant community center, hosting art galleries, and moving her small business into the space.<sup>7</sup> She planned to convert the

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<sup>1</sup> Chris Sheldon, *3-Alarm Blaze Guts Historic Mansion in Newark*, NJ ADV. MEDIA (Oct. 18, 2019), <https://www.nj.com/news/2019/10/3-alarm-blaze-guts-historic-mansion-in-newark.html>.

<sup>2</sup> RLS Staff, *Breaking Newark: Fire Tears Through Newark Historic Kastner ‘Elk’s Club’ Mansion*, RLS MEDIA (Oct. 17, 2019) [hereinafter *Kastner Mansion*], <https://www.rlsmedia.com/article/breaking-newark-fire-tears-through-newark-elks-club-mansion>.

<sup>3</sup> Rebecca Panico, *Abandoned Newark ‘Beer Baron’ Mansion Apparently Set Ablaze by Squatter*, NJ ADV. MEDIA (Oct. 18, 2019), <https://www.nj.com/essex/2019/10/abandoned-newark-beer-baron-mansion-apparently-set-ablaze-by-squatter.html>. See Evelyn Nieves, *Our Towns; A Mansion Out of Place, and Maybe Out of Time*, NY TIMES (June 15, 1993), <https://www.nytimes.com/1993/06/15/nyregion/our-towns-a-mansion-out-of-place-and-maybe-out-of-time.html>.

<sup>4</sup> *Kastner Mansion*, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Rebecca Panico, *Before Fire Gutted It, Historic Mansion’s Owner Dreamed of Making it a Community Center*, NJ ADV. MEDIA (Oct. 26, 2019) [hereinafter *Before Fire Gutted It*],

space into a safe haven for pregnant women and rent out space to community nonprofits.<sup>8</sup> After spending hundreds of hours planning with private and public entities, investing more than \$250,000 into roof and foundational issues, and surviving a battle with cancer, Ms. Colon fell behind on the tax payments.<sup>9</sup> The City of Newark took title of the property in 2012.<sup>10</sup>

For seven years the Kastner mansion sat vacant, with the city offering no plans for redevelopment.<sup>11</sup> Windows were boarded up, the roof fell into disrepair, and the exterior paint chipped off.<sup>12</sup> Residents made frequent complaints of drug dealers using the building as a refuge for illicit activity.<sup>13</sup> Looking for a safe place to dodge the elements, squatters eventually found a way inside the mansion.<sup>14</sup>

During the night of October 17, 2019, eighty firefighters from three municipalities responded to a three-alarm fire at the mansion.<sup>15</sup> A part of the structure collapsed, briefly trapping several firefighters, and injuring two.<sup>16</sup> Although the cause of the fire remains under investigation at the time of this Comment, initial reports suggested the fire was intentionally set by an arsonist.<sup>17</sup>

Although the plight of the Kastner mansion garnered significant media attention,<sup>18</sup> unfortunately, experiences like this are all too common in the city of Newark. Stories highlighting unkept and abandoned properties are accentuated by homeowners' enduring concerns focusing on the decline of their neighborhood's peace, safety,

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<https://www.nj.com/essex/2019/10/before-fire-gutted-it-historic-mansions-owner-dreamed-of-making-it-a-community-center.html>.

<sup>8</sup> Leslie Kwoh, *Owner Hopes to Restore Former Elks Lodge Mansion in Newark*, N.J. ADV. MEDIA (Apr. 2, 2019), [https://www.nj.com/news/2009/02/owner\\_keeps\\_alive\\_dream\\_to\\_res.html](https://www.nj.com/news/2009/02/owner_keeps_alive_dream_to_res.html).

<sup>9</sup> *Kastner Mansion*, *supra* note 2; *Before Fire Gutted It*, *supra* note 7.

<sup>10</sup> *Id.*; *Before Fire Gutted It*, *supra* note 7.

<sup>11</sup> *See Before Fire Gutted It*, *supra* note 7; *see also* Darren Tobia, *Kastner Descendant Dreams of New Life for Historic Newark Mansion*, N.J. ADV. MEDIA (Sep. 3, 2020), <https://www.nj.com/essex/2019/10/abandoned-newark-beer-baron-mansion-apparently-set-ablaze-by-squatter.html>.

<sup>12</sup> *See id.* (photos showing exterior and interior of the historic mansion).

<sup>13</sup> *Kastner Mansion*, *supra* note 2.

<sup>14</sup> *Id.*; *Before Fire Gutted It*, *supra* note 7.

<sup>15</sup> Sheldon, *supra* note 1; *see also* Paul Milo, *Historic Newark Mansion Destroyed in 3-Alarm Blaze, 2 Firefighters Hurt*, DAILY VOICE (Oct. 17, 2019), <https://dailyvoice.com/new-jersey/essex/police-fire/update-historic-newark-mansion-destroyed-in-3-alarm-blaze-2-firefighters-hurt/777744>.

<sup>16</sup> Milo, *supra* note 15.

<sup>17</sup> *Id.*; *see also* Tobia, *supra* note 11.

<sup>18</sup> *See, e.g.*, Paul Milo, *A Historic Home, Now in Peril*, PATCH (May 16, 2012, 9:02 PM), <https://patch.com/new-jersey/newarknj/a-historic-home-now-in-peril>.

and continuity.<sup>19</sup> Citizen complaints of blighted properties and concerns for children's safety are commonplace, with official complaints to the city of Newark occurring daily.<sup>20</sup> Although Newark is witnessing a historic period of investment and development,<sup>21</sup> as of 2019, over six thousand vacant properties exist within the city limits.<sup>22</sup>

Although excessive vacancies have long been a problem, the vacant property crisis was greatly exacerbated by the Great Recession of 2008, particularly in communities of color such as Newark.<sup>23</sup> The Great Recession has had a disproportionately severe effect on people of color,<sup>24</sup> as, generally, people of color held much more of their wealth in their homes.<sup>25</sup> As home values plummeted, driven largely by predatory and

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<sup>19</sup> See Karen Yi, *This N.J. Block is Dying, One Abandoned Property at a Time*, NJ ADV. MEDIA (Jan. 16, 2019), [https://www.nj.com/essex/2017/09/newark\\_abandoned\\_properties\\_pushing\\_longtime\\_homeo.html](https://www.nj.com/essex/2017/09/newark_abandoned_properties_pushing_longtime_homeo.html) (featuring quotes from homeowners, including "We can't take this anymore."; "This isn't a place to have a family."; "If I could live peacefully, I would stay."; "It's unbearable, that's what's forcing us to leave.").

<sup>20</sup> See *Violations and Enforcement High Priority in Newark*, NEWARK ADVOCATE (Oct. 29, 2016), <https://www.newarkadvocate.com/story/news/local/2016/10/29/violations-and-enforcement-high-priority-newark/91964390/>.

<sup>21</sup> E.g., Vince Baglivo, *Newark on the Rise*, N.J. BUS. (Sept. 6, 2018), <https://njbmagazine.com/special-sections/newark-growth-revitalization/newark-on-the-rise>; Rick Rojas, *A Revival Comes to Newark, But Some Worry It's 'Not for Us'*, N.Y. TIMES (Aug. 8, 2017), <https://www.nytimes.com/2017/08/08/nyregion/newark-development-projects.html>.

<sup>22</sup> Disha Raychaudhuri, *The Number of Vacant Properties in Every N.J. Town, and Why They're Costing You Big Money*, NJ ADV. MEDIA (Jan. 30, 2019), [https://www.nj.com/data/2018/08/nj\\_real\\_estate\\_the\\_number\\_of\\_vacant\\_properties\\_in\\_every\\_nj\\_town\\_and\\_why\\_theyre\\_costing\\_you\\_big\\_money.html](https://www.nj.com/data/2018/08/nj_real_estate_the_number_of_vacant_properties_in_every_nj_town_and_why_theyre_costing_you_big_money.html).

<sup>23</sup> See Gillian B. White, *The Recession's Racial Slant*, ATLANTIC (June 24, 2015), <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725>; see also *Newark City, New Jersey*, U.S. CENSUS BUREAU: QUICKFACTS, <https://www.census.gov/quickfacts/newarkcitynewjersey> (last visited Nov. 2, 2019) (describing 74.7% of Newark's population as non-white); Angela Helm, *For Us, By Us: Newark's Blackness Doing it for the Culture, the Politics, the People*, THE ROOT (Feb. 27, 2019), <https://www.theroot.com/for-us-by-us-newark-s-blackness-doing-it-for-the-cult-1832915091> (stating the case to be named "America's Blackest City").

<sup>24</sup> White, *supra* note 23.

<sup>25</sup> *Id.* Before the 2008 recession and excluding home values, the median household wealth for white and black households in the United States was \$92,950 and \$14,200, respectively. *Id.* "When factoring in home equity, the wealth of black households grew more than four-and-a-half times, to \$63,060. For white households factoring in home equity helped wealth figures grow by only about two-and-a-half times to 244,000." *Id.* This relationship shows that black families, on average, held a far greater proportion of their wealth in home equity, and thus lost a greater proportion of their wealth when home equity rates plummeted in the 2008 recession. See *id.*

sub-prime lending,<sup>26</sup> unprecedented numbers of families faced foreclosure, with many of these properties remaining vacant today.<sup>27</sup>

But, beyond the unattractive nature and legitimate nuisance concerns, when considered in the aggregate, these unproductive properties have a large-scale detrimental effect on the operating costs and procedures of a city.<sup>28</sup> Abandoned properties do not generate tax revenue, are costly for a city to maintain, and suppress the value of neighboring properties.<sup>29</sup> Enter, land banking.

Land banks offer creative and flexible solutions to mitigate a municipality's inventory of unproductive or undesirable properties. For over four decades, land banking entities have existed to assist municipalities convert abandoned, vacant, and blighted properties into healthy and productive community assets.<sup>30</sup> The Department of Housing and Urban Development defines a land bank as a "governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property."<sup>31</sup> Simply put, "[l]and banks are [generally] governmental entities that specialize in the conversion of vacant, abandoned, and foreclosed properties into productive use."<sup>32</sup> A land bank operates in a specific geographical area<sup>33</sup> by assuming title

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<sup>26</sup> See DEAN BAKER, CENTER FOR ECON. & POLICY RES. THE HOUSING BUBBLE AND THE GREAT RECESSION: TEN YEARS LATER 23 (2018), <http://cepr.net/images/stories/reports/housing-bubble-2018-09.pdf>; see also Amanda Logan & Christian E. Weller, *The State of Minorities: The Recession Issue*, CENTER FOR AMERICAN PROGRESS (Jan. 16, 2009), <https://www.americanprogress.org/issues/race/news/2009/01/16/5482/the-state-of-minorities-the-recession-issue> ("Of home-purchase loans made to African Americans in 2007, more than 34 percent were high cost, as opposed to only 11 percent for whites.").

<sup>27</sup> See BAKER, *supra* note 26, at 22, Fig.14.

<sup>28</sup> See generally ALAN MALLACH, THE EMPTY HOUSE NEXT DOOR (2018), <https://www.lincolnst.edu/publications/policy-focus-reports/empty-house-next-door>.

<sup>29</sup> NAT'L VACANT PROPS. CAMPAIGN, VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITIES 1 (2d ed. 2005), [hereinafter NAT'L VACANT PROPS.], <https://files.hudexchange.info/resources/documents/VacantPropertiesTrueCosttoCommunities.pdf> (describing vacant properties as a "curse").

<sup>30</sup> FRANK S. ALEXANDER, CTR. FOR COMM. PROG., LAND BANKS AND LAND BANKING 8 (2015).

<sup>31</sup> U.S. DEPT. HOUS. & URBAN DEV., NEIGHBORHOOD STABILIZATION PROGRAM 1 (2009) [hereinafter NSP FACT SHEET]; see also HOUS. & CMTY. DEV. NETWORK OF N.J., TALKING POINTS: LAND BANKING BILL (A.1648/S.583), [hereinafter TALKING POINTS], <https://www.hcdnj.org/assets/documents/land%20banking%20bill%20talking%20points.pdf>.

<sup>32</sup> ALEXANDER, *supra* note 30, at 10.

<sup>33</sup> *Id.*; see also, e.g., *History*, GENESEE CTY. LAND BANK, <http://www.thelandbank.org/history.asp> (last visited Sept. 19, 2019).

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to these problem properties.<sup>34</sup> Thereafter, the land bank will “maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties.”<sup>35</sup> This is done by eliminating liabilities attached to the property and transferring title to new owners, preferably “in a manner most supportive of local needs and priorities.”<sup>36</sup>

In 2019, New Jersey enacted the Land Banking Act,<sup>37</sup> a comprehensive enabling statute “allow[ing] [New Jersey] municipalities to designate redevelopment entities (redevelopment authorities, housing authorities or county improvement authorities) and non-profit entities to act as a land bank on behalf of the municipality.”<sup>38</sup> This legislation authorizes municipalities to form land banks with the “sole mission of gaining control of properties in order to put them back to use in ways that benefit the community and get back on the tax rolls.”<sup>39</sup>

This Comment argues Newark should utilize the Land Banking Act to form a land banking entity charged with turning costly vacant, abandoned, or blighted properties into productive, community-centric assets. Part II explains what abandoned properties are and why communities should care. Part III proposes land banking as a tool to deal with abandoned properties, providing a brief history and an overview of the process as it exists today. Part IV analyzes the brand-new New Jersey Land Banking Act and the development power it conveys, briefly touching on how these powers could greatly benefit the city of Newark.

## II. ABANDONED PROPERTIES

After introducing what abandoned properties are and why they exist, this Part moves into a discussion about why communities should care about these troublesome properties, including exploring direct and indirect costs. Maintenance costs of abandoned properties drain municipal coffers. Abandoned properties invite increased criminal activity. Further, abandoned properties lower the value of neighboring properties, causing decreased tax revenue and a loss of community feeling.

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<sup>34</sup> ALEXANDER, *supra* note 30, at 10.

<sup>35</sup> NSP FACT SHEET, *supra* note 31; TALKING POINTS, *supra* note 31.

<sup>36</sup> ALEXANDER, *supra* note 30, at 10.

<sup>37</sup> New Jersey Land Bank Law, 2019 N.J. LAWS 159 (2019).

<sup>38</sup> TALKING POINTS, *supra* note 31.

<sup>39</sup> *Id.*

A. *What Are Abandoned Properties?*

For a moment, if you are not already, imagine yourself as a homeowner. What does your neighborhood look like? Does it have a park down the block for the local children to play in after school? Do you enjoy walking your dog before heading to work? Who are your neighbors? Do they keep good care of their lawn and provide friendly conversation? What did you bring to the end-of-summer block party? It might be an older neighborhood, and most houses could use a facelift, but it is home.

Imagine now, the family next door, the Smiths, were foreclosed upon because Ms. Smith lost her job and Mr. Smith had unexpected medical bills. It was sad to see them go, but what happens to their house? What if, two weeks after the Smiths moved out, a vandal shatters their front window? No one is there to clean up the glass, so either you must clean it up or keep your child away from the broken glass. Now, last weekend, a group of teenagers noticed the empty house and decided it would be a great place to host a party; they still have not picked up their beer cans. Worried about what neighborhood kids could find, you clean up the beer cans and empty bottles yourself.

Next, the Joneses, on the other side of the street, could not pay their property taxes. Unfortunately, the back-taxes, cost of needed repairs, and mortgage far exceed the value of their property. To escape a hopeless situation, they simply walked away, leaving their home behind. The city puts plywood over the windows, but someone forces their way in the back door. Later that week, loud music comes from the house late into the night, and you are worried about possible drug use. The next morning, you walk your daughter to school. On the way, only eight blocks, you pass ten or so similar houses: one's foundation is sagging, another had a chain-link fence surrounding it, the porch on a third house has fallen through. All have refuse scattered in the yard.<sup>40</sup>

Vacant properties are simply defined as properties that are unoccupied<sup>41</sup> and can exist for several reasons, including the titleholder merely sitting on a long-term investment.<sup>42</sup> The concept of abandonment is more troubling for municipalities. Abandonment occurs when the property holder ceases investments into the property, including routine maintenance and fulfilling financial obligations such as property tax or mortgage payments.<sup>43</sup> The state of New Jersey defines

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<sup>40</sup> With a bit of thematic liberty, this description is based upon real stories shared by the Newark community. See Yi, *supra* note 19.

<sup>41</sup> ALEXANDER, *supra* note 30, at 14.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

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a property as abandoned when the property has no legal occupancy for at least six months and a public official has determined that either (1) the property requires rehabilitation, (2) construction was initiated but not completed in a manner to make the property habitable, (3) at least one installment of property tax is past due, or (4) the property has been determined to be a public nuisance.<sup>44</sup> Abandoned properties carry several negative economic consequences including significant municipal upkeep costs, adverse effects on surrounding property values, and harmful effects on community cohesiveness, leading to community-wide disinvestment.<sup>45</sup>

### B. *Why Should We Care?*

When properties are neglected and abandoned by their owners, municipalities are left to care for them.<sup>46</sup> Generally, municipalities must bear the costs of abandoned properties in two direct ways: (1) acquisition and maintenance of the property and (2) cost of responding to increased criminal activity.<sup>47</sup> Abandoned properties, indirectly costing municipalities, pay no taxes and suppress the value of surrounding properties, further decreasing a municipalities' tax base.<sup>48</sup> Moreover, abandoned properties eat away at a community's cohesiveness, leading to a cycle of disinvestment.<sup>49</sup>

#### 1. Maintenance Costs

Blighted structures pose costs far beyond simple aesthetics.<sup>50</sup> Because of the complex problem abandoned properties present, they often require a unique mix of city departments to maintain them including emergency services, public works, legal, and other administrative positions.<sup>51</sup> Abandoned properties often become tax delinquent, requiring municipalities to enforce tax liens or commence tax foreclosures,<sup>52</sup> usually requiring the municipality to coordinate with county tax assessors and collectors.<sup>53</sup> After the property is acquired, the municipality must then decide what to do with it. Each option—

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<sup>44</sup> N.J. STAT. ANN. § 55:19–81 (West 2018).

<sup>45</sup> See generally NAT'L VACANT PROPS., *supra* note 29.

<sup>46</sup> NAT'L VACANT PROPS., *supra* note 29, at 3.

<sup>47</sup> See NAT'L VACANT PROPS., *supra* note 29, at 2–6.

<sup>48</sup> See *id.*

<sup>49</sup> See David P. Weber, *Taxing Zombies: Killing Zombie Mortgages with Differential Property Taxes*, 2017 U. ILL. L. REV. 1135, 1153 (2017).

<sup>50</sup> Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1125 (2014).

<sup>51</sup> See NAT'L VACANT PROPS., *supra* note 29, at 5.

<sup>52</sup> Anderson, *supra* note 50, at 1170.

<sup>53</sup> NAT'L VACANT PROPS., *supra* note 29, at 3.

rehabilitating or demolishing structures, redeveloping vacant lots, holding or selling—comes with administrative costs that could exceed the value of the property itself.<sup>54</sup>

No matter the decision, immediate expenditures will be required.<sup>55</sup> When abandoning properties, people and businesses have little incentive to clear any troubles left, leaving dilapidated structures and hazardous messes.<sup>56</sup> The city must expend resources to prevent properties from becoming public nuisances and to ensure future marketability.<sup>57</sup> Municipalities must spend funds to address common problems such as illegal dumping, rodent infestations, and, especially at abandoned industrial properties, toxic waste,<sup>58</sup> requiring municipalities to work with county offices such as health departments.<sup>59</sup>

As a result of maintaining abandoned properties, “government resources are diverted away from other needs, such as providing adequate municipal services to residents, investing in development to attract new tax sources, or fulfilling fiscal obligations, such as long-term debt service and pensions.”<sup>60</sup> The longer these properties are left abandoned, the greater the associated financial costs become.<sup>61</sup> Because of this immediate drain and the resulting suffering of the community, demolishing dilapidated structures becomes a popular short-term solution.<sup>62</sup> Some commentators go as far as to say “demolitions may be the major public works of the twenty-first century.”<sup>63</sup>

While the demolition of a blighted property may seem like an attractive and immediate solution, a study of St. Paul, Minnesota, suggested that rehabilitated properties return a substantially greater net pecuniary benefit to the public than demolished properties.<sup>64</sup> Demolition has significant costs of its own.<sup>65</sup> Therefore, the attractive

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<sup>54</sup> Anderson, *supra* note 50, at 1170.

<sup>55</sup> *Id.*

<sup>56</sup> *See id.* at 1125.

<sup>57</sup> Kellen Zale, *The Government's Right to Destroy*, 47 ARIZ. ST. L.J. 269, 305–06 (2015).

<sup>58</sup> *See* NAT'L VACANT PROPS., *supra* note 29, at 5.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> Zale, *supra* note 57, at 305–06.

<sup>61</sup> NAT'L VACANT PROPS., *supra* note 29, at 2.

<sup>62</sup> Zale, *supra* note 57, at 306.

<sup>63</sup> Anderson, *supra* note 50, at 1125.

<sup>64</sup> *See* Edward G. Goetz et al., *Pay Now or Pay More Later: St. Paul's Experience in Rehabilitating Vacant Housing*, 28 CURA REPORTER 12, 15 (1998), [https://conservancy.umn.edu/bitstream/handle/11299/1385/April\\_1998.pdf](https://conservancy.umn.edu/bitstream/handle/11299/1385/April_1998.pdf).

<sup>65</sup> *See, e.g.*, ECONSULT CORP., VACANT LAND MANAGEMENT IN PHILADELPHIA A-11 (2010), [https://econsultsolutions.com/wp-content/uploads/2010/09/Vacant-Land-Reform-Analysis-FINAL-REPORT\\_2010-09-23.pdf](https://econsultsolutions.com/wp-content/uploads/2010/09/Vacant-Land-Reform-Analysis-FINAL-REPORT_2010-09-23.pdf) (explaining that, in fiscal year 2009,



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and immediate fix of demolition may cost municipalities even more in the long run.<sup>66</sup> Further, even after demolition, administrative and maintenance costs still exist for the simple reason that managing vacant properties ties up the time of municipal employees and taxpayer resources.<sup>67</sup>

## 2. Invitation of Crime

Further strapping municipal budgets, abandoned properties are associated with increased crime rates.<sup>68</sup> Although the enforcement mechanisms of the Broken Windows Theory<sup>69</sup> are controversial, including infamous stop and frisk policies,<sup>70</sup> the theory itself relates to abandoned properties.<sup>71</sup> The theory suggests that “[i]f the first broken window in a building is not repaired, then people who like breaking windows will assume that no one cares about the building and more windows will be broken. Soon the building will have no windows. . . . The disorder escalates, possibly to serious crime.”<sup>72</sup>

A study from Richmond, Virginia, showed that vacant properties are consistently correlated with an increase of crime.<sup>73</sup> In Austin, Texas, blocks with abandoned properties saw violent crime rates twice the city average.<sup>74</sup> Blocks with unsecured vacant buildings see over three times the drug calls to police than an average block.<sup>75</sup> Further, vacant properties are a favorite target for arsonists and often suffer from other

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Philadelphia spent \$5,339,049 to demolish only buildings that were likely to collapse within 90 days).

<sup>66</sup> See Goetz et al., *supra* note 64, at 14.

<sup>67</sup> NAT’L VACANT PROPS., *supra* note 29, at 6 (describing that managing demolished properties costs the city of Philadelphia about \$1.8 million per year).

<sup>68</sup> Jessica Bacher & Meg Byerly Williams, *A Local Government’s Strategic Approach to Distressed Property Remediation*, 46 URB. LAW. 877, 877 (2014).

<sup>69</sup> See generally James Q. Wilson & George L. Kelling, *Making Neighborhoods Safe*, ATLANTIC (Feb. 1989), <https://www.theatlantic.com/past/docs/politics/crime/safe-hood.htm>; see also *What is Broken Windows Policing*, CENTER FOR EVIDENCE-BASED CRIME POLICY, <https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing> (last visited Oct. 30, 2019) (providing an evidence-based overview of the efficacy of the theory).

<sup>70</sup> See, e.g., Sarah Childress, *The Problem with “Broken Windows” Policing*, FRONTLINE (June 28, 2016), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/> (describing how the Broken Windows Theory has led to “aggressive over-policing of minority communities, which often creates more problems than it solves”).

<sup>71</sup> ALEXANDER, *supra* note 30, at 16.

<sup>72</sup> Wilson & Kelling, *supra* note 69.

<sup>73</sup> See NAT’L VACANT PROPS., *supra* note 29, at 3.

<sup>74</sup> William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 J. CRIM. JUS. 481, 489 (1993).

<sup>75</sup> *Id.*

non-intentional fires.<sup>76</sup> The U.S. Fire Administration estimates roughly twelve thousand fires occur per year on abandoned properties causing \$73 million in property damage and injuring six thousand firefighters.<sup>77</sup> Although roughly seventy percent of these fires are caused by arsonists, vacant buildings are likely to experience poor maintenance, faulty wiring, or squatters using candles for warmth; each of which may cause unintentional fires.<sup>78</sup> Responding to fires on vacant properties is often more costly and dangerous than average as vacant properties are more likely to contain pits, debris, and other hazards that first responders must navigate.<sup>79</sup> “Firemen are kept busy and endangered: When arson becomes entertainment, a city’s decay is as desperate as it is ordinary.”<sup>80</sup>

While it is difficult to calculate the specific costs abandoned properties place on municipal coffers, it is clear they place a strain on municipal resources, including those dedicated to crime prevention and life preservation.<sup>81</sup> What is easy to see is that securing and flipping abandoned properties acts as an economically effective crime deterrence mechanism.<sup>82</sup>

### 3. Negative Tax Effects, Declining Property Values, Loss of Community

Beyond the direct maintenance and first responder costs, abandoned properties often pay no property taxes, lower the value of surrounding properties, and lead to an erosion of community cohesiveness. While not directly diverting funds, these problems further strain municipal budgets by reducing a municipality’s income, often exacerbating budget shortfalls.

The most common denominator of abandoned properties is their tax-delinquent status.<sup>83</sup> Besides the fact that a tax-delinquent property is likely abandoned, critically, tax-delinquent properties are not supplying the municipality with the income necessary for local operations such as schools, social programs, or emergency services.<sup>84</sup> This pattern is particularly problematic in New Jersey, where property

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<sup>76</sup> NAT’L VACANT PROPS., *supra* note 29, at 4.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Anderson, *supra* note 50, at 1125.

<sup>81</sup> See NAT’L VACANT PROPS., *supra* note 29, at 4.

<sup>82</sup> *Id.*

<sup>83</sup> ALEXANDER, *supra* note 30, at 14.

<sup>84</sup> See Amber Keefer, *Where Does the Money From Property Taxes Go?*, SFGATE (Dec. 19, 2018), <https://homeguides.sfgate.com/money-property-taxes-go-52339.html>.

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taxes account for more than forty-four percent of local government's own-source revenue and over fifty-five percent of the State's revenue.<sup>85</sup>

In New Jersey, when property taxes are not paid, a tax lien will be attached to the property.<sup>86</sup> Municipalities must hold an annual auction, offering for bid a tax sales certificate ("TSC") representing these unpaid property taxes.<sup>87</sup> Generally, this will lead to municipalities and private parties bidding for the rights to the TSC, with the highest bidder winning the rights to the tax lien, and, after fulfilling certain statutory requirements,<sup>88</sup> a right to foreclose on the property.<sup>89</sup> Unfortunately for municipalities, on average, eighty-three percent of the balance due is lost when tax-delinquent properties go through this foreclosure process.<sup>90</sup> Further, while this foreclosure process may provide immediate revenue—although usually only a small proportion of the market value—it does not guarantee that the properties will be put to productive use.<sup>91</sup> Often these properties are bought by speculators with no intent for immediate development and will sit vacant, continuing many of the troubling maintenance and crime-inducing trends.<sup>92</sup>

Further reducing tax revenue,<sup>93</sup> abandoned properties suppress the value of neighboring properties, both on the local block and across the municipality generally.<sup>94</sup> Beyond their unattractive nature, abandoned and blighted buildings can signal that a neighborhood is on the decline and deter investment.<sup>95</sup> A study of Philadelphia showed that properties within 150 feet of a vacant property experience a net loss of

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<sup>85</sup> "Own-source" revenue refers to the revenues collected by state or local government, excluding federal funding. *2015 State & Local Own Source Revenue*, FED. OF TAX ADMINS, <https://www.taxadmin.org/2015-state-and-local-own-source-revenue> (last visited Nov. 2, 2019).

<sup>86</sup> Stark & Stark, *Understanding New Jersey Tax Sale Foreclosure*, N.J. L. BLOG (July 2, 2013), <https://www.njlawblog.com/2013/07/articles/real-estate/understanding-new-jersey-tax-sale-foreclosures>.

<sup>87</sup> *Id.*

<sup>88</sup> See N.J. STAT. ANN. § 54:5.

<sup>89</sup> Stark & Stark, *supra* note 86.

<sup>90</sup> NAT'L VACANT PROPS., *supra* note 29, at 7.

<sup>91</sup> *Id.* at 8.

<sup>92</sup> *Id.*

<sup>93</sup> Property taxes are calculated as a proportion of a property's value. *General Property Tax Information*, NJ DEP'T OF THE TREASURY, <https://www.state.nj.us/treasury/taxation/lpt/genlpt.shtml> (last visited Nov. 2, 2019).

<sup>94</sup> ALEXANDER, *supra* note 30, at 14 (explaining disinvestment can spread to the whole city).

<sup>95</sup> *Id.*

\$7,627 in value.<sup>96</sup> The same study suggested, all else being equal, properties on a block with an abandoned property sold for \$6,715 less than houses on blocks with no abandonment.<sup>97</sup> Considering about 20,000 vacant lots, a study from Southwestern Pennsylvania showed indirect costs from declining property values to cost the community between \$218 million and \$247 million.<sup>98</sup> One vacant, non-taxpaying property will not make or break a municipal budget. But when “the vacancies become contagious as communities become less desirable, localities very quickly find themselves with many vacant homes, none of which are paying property taxes but all still require public expenditures for safety and maintenance.”<sup>99</sup>

Of course, falling property values affect more than just municipal coffers: real property owners are affected in real ways. Falling property values can push a mortgage underwater,<sup>100</sup> stripping homeowners of their hard-earned equity, limiting their borrowing power or ability to respond to financial emergencies.<sup>101</sup> Further, abandoned properties, and their associated effects, lead to harder-to-obtain homeowner insurance policies and increases in already costly premiums.<sup>102</sup>

But further, abandoned properties crack neighborhoods apart, leading to a fragmented and disconnected community.<sup>103</sup> Properties are abandoned, leaving homeowners feeling isolated.<sup>104</sup> In line with the Broken Windows theory, a large number of vacant properties “symbolizes that no one cares”<sup>105</sup> and “signal[s] to the larger community

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<sup>96</sup> TEMPLE UNIV. CTR. FOR PUB. POL’Y & E. PA. ORG. PROJECT, BLIGHT FREE PHILADELPHIA: A PUBLIC-PRIVATE STRATEGY TO CREATE AND ENHANCE NEIGHBORHOOD VALUE 21 (2001), [https://www.communityprogress.net/filebin/pdf/new\\_resrcs/blight\\_free\\_philly.pdf](https://www.communityprogress.net/filebin/pdf/new_resrcs/blight_free_philly.pdf).

<sup>97</sup> *Id.* at 22.

<sup>98</sup> ALEXANDER, *supra* note 30, at 16. Although a myriad of variables could affect the pecuniary effects of vacant properties, assuming a loss of \$10,858 per property (\$218 million / 20,077 vacant Southwest P.A. properties = \$10,858), Newark faces a potential loss of about \$65,149,000 (\$10,858 per vacant property \* 6000 vacant Newark properties = \$65,149,175). See *Abandoned Properties*, CITY OF NEWARK, <http://data.ci.newark.nj.us/dataset/abandoned-properties> (last visited Nov. 2, 2019).

<sup>99</sup> Weber, *supra* note 49, at 1153.

<sup>100</sup> An underwater mortgage exists when the outstanding mortgage balance is greater than the property’s free-market value. Julia Kagan, *Underwater Mortgage Defined*, INVESTOPEDIA (last updated Dec. 31, 2020), <https://www.investopedia.com/terms/u/underwater-mortgage.asp>.

<sup>101</sup> See Ashlyn Aiko Nelson, *Bailing Out Underwater Mortgages* (May 2010), [https://oneill.indiana.edu/doc/research/mortgages\\_nelson.pdf](https://oneill.indiana.edu/doc/research/mortgages_nelson.pdf).

<sup>102</sup> NAT’L VACANT PROPS., *supra* note 29, at 11. One insurance agent reported that an abandoned property within 100 feet could lead to the cancellation or non-renewal of a homeowner’s policy. *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

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that a neighborhood is on the decline”<sup>106</sup> and the type of place that “supports crime and poverty.”<sup>107</sup> This, in turn, drives depressed property values, leading to increased abandonment,<sup>108</sup> continuing what has been coined the “spiral of blight.”<sup>109</sup> Abandoned properties lead to social fragmentation, which signals the decline of the neighborhood, which leads to an increase in abandoned properties, which leads to further fragmentation, signaling a further decline in the neighborhood and increased instability in the community.<sup>110</sup> This downward cycle drags residents further from the “American Dream,” reinforcing beliefs that it’s “not for us.”<sup>111</sup>

### III. SOLUTION: LAND BANKING

For fifty years, municipalities have turned to land banking to address the growing number of abandoned properties. At its simplest, a land bank is a public entity that specializes in turning costly abandoned properties into tax-generating community assets. This Part of the Comment provides a brief history of land banking in the United States and subsequently describes what land banking looks like today, how it operates, and what advantages land banks offer municipalities.

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<sup>106</sup> ALEXANDER, *supra* note 30, at 14.

<sup>107</sup> *Id.* at 16.

<sup>108</sup> NAT’L VACANT PROPS., *supra* note 29, at 11.

<sup>109</sup> See generally WESLEY SKOGAN, *DISORDER AND DECLINE* (1990); COLVIN ET AL., *RENEWING THE URBAN LANDSCAPE: THE DILEMMA OF VACANT HOUSING* (2000); BIERETZ & SCHILLING, *PAY FOR SUCCESS AND BLIGHTED PROPERTIES* (2019).

<sup>110</sup> See Robert Klein, *Fast-Track Foreclosure Legislation: A Proactive Solution to Address the Problem of Community Blight*, USFN (May 23, 2017), <https://www.usfn.org/blogpost/1296766/276160/Fast-Track-Foreclosure-Legislation-A-Proactive-Solution-to-Address-the-Problem-of-Community-Blight>.

<sup>111</sup> See Rojas, *supra* note 21; see also Kari Paul, *The American Dream is Even Harder to Achieve Than We Thought*, MKT. WATCH (Sept. 5, 2018), <https://www.marketwatch.com/story/the-american-dream-is-even-harder-to-achieve-than-we-thought-2018-09-04>; Paul J. Gately, *American Dream or American Nightmare? Depends Whom You Ask*, KWTX (Aug. 23, 2019), <https://www.kwtx.com/content/news/American-Dream-or-American-nightmare—Depends-whom-you-ask-558040921.html>.

*A. History of Land Banking*

Land banking, as a tool to combat abandoned properties, first emerged in the late 1960s.<sup>112</sup> Since then, leading land bank expert Frank Alexander<sup>113</sup> describes what he calls three relatively distinct phases of land banking, each improving on the latter.<sup>114</sup> The first generation of land banks formed from 1971 to 1991 and included four programs operating in St. Louis, Cleveland, Louisville, and Atlanta.<sup>115</sup> These land banks were formed to address an increasing inventory of abandoned properties resulting from socioeconomic shifts,<sup>116</sup> including urban sprawl<sup>117</sup> and white flight.<sup>118</sup> Facing declining neighborhoods, particularly in urban centers, and increasing strain on municipal budgets,<sup>119</sup> these land banks dealt with properties stuck in relatively complex tax foreclosure processes, holding them in reserve for future public use.<sup>120</sup> Inefficiencies of the tax foreclosure process led to an increasing amount of abandoned properties in three main ways.<sup>121</sup> First, state law generally required minimum bids at tax foreclosure auctions to equal the value of the tax lien on the property.<sup>122</sup> For many properties, the value of the tax liens was greater than the value of the property itself, leaving the property repugnant to the free market.<sup>123</sup> Second, tax foreclosure auctions largely resulted in sales to speculators who, when priorities changed, would abandon the investment, leaving the properties in a “constant state of repetitive tax foreclosures.”<sup>124</sup> Third, state law directed that any properties not sold at the tax auction would revert to the municipality, leaving the municipality to deal with the costly and unproductive properties.<sup>125</sup> Unfortunately, lacking a

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<sup>112</sup> ALEXANDER, *supra* note 30, at 18.

<sup>113</sup> J.D., Harvard University; ThM, Harvard Divinity School; B.A., University of North Carolina. Frank S. Alexander, CTR. CMTY. PROG., <https://www.communityprogress.net/frank-s—alexander-pages-105.php> (last visited Feb. 14, 2020).

<sup>114</sup> ALEXANDER, *supra* note 30, at 18.

<sup>115</sup> *Id.* at 19.

<sup>116</sup> *Id.* at 18.

<sup>117</sup> See Edward Ziegler, *Urban Sprawl, Growth Management in the United States*, 11 VA. J. SOC. POL’Y & L. 26, 28 (2003).

<sup>118</sup> See generally Alana Semuels, *White Flight Never Ended*, ATLANTIC (July 30, 2015), <https://www.theatlantic.com/business/archive/2015/07/white-flight-alive-and-well/399980/>.

<sup>119</sup> See *supra*, Section II.B.

<sup>120</sup> ALEXANDER, *supra* note 30, at 18.

<sup>121</sup> *Id.* at 19.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

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dedicated source of funding and dealing with archaic and rigid tax foreclosure laws, these land banks only managed a fraction of the annual volume of problem properties, falling short of their potential.<sup>126</sup> During this time, land banking gained national traction with the Federal Aviation Administration recommending the use of land banks to support future airport development.<sup>127</sup>

The second generation of land banks, formed from 1991 to 2008 in Michigan and Ohio, were marked by legislative amendments directly addressing the shortcomings of the first generation.<sup>128</sup> These amendments broadened the land bank's powers, allowing them to take proactive steps to manage and flip problem properties into public assets.<sup>129</sup> Further, these amendments greatly increased the efficiency of land banks by relaxing tax foreclosure procedures and grouping abandoned properties together, allowing for their disposition in a single judicial hearing.<sup>130</sup> Other legislative initiatives provided explicit funding mandates and halted the sale of tax liens to private parties, thus internalizing the benefits of the tax penalties and interest.<sup>131</sup>

The third and current generation of land banking "was built upon a relatively standard template for land bank legislation and enhanced programs designed to respond to the consequences of the Great Recession."<sup>132</sup> While dealing with abandoned properties is and has been largely an operation of local government, the 2008 Recession thrust the growing crisis into the national spotlight. When Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"),<sup>133</sup> land banking was recognized for the first time in federal legislation.<sup>134</sup> HERA expressly authorized the use of emergency stimulus funds for the creation and operation of land banks to manage foreclosed homes.<sup>135</sup> Current land banking initiatives, including the New Jersey legislation, emphasize flexibility, allowing for the creation of innovative tools to

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<sup>126</sup> ALEXANDER, *supra* note 30, at 19–20.

<sup>127</sup> Lyn Lloyd Creswell, *Airport Policy in the United States: The Need for Accountability, Planning, and Leadership*, 19 *TRANSP. L.J.* 1, 82 (1990).

<sup>128</sup> ALEXANDER, *supra* note 30, at 18.

<sup>129</sup> *Id.* at 21.

<sup>130</sup> *Id.* at 20.

<sup>131</sup> *Id.* at 21.

<sup>132</sup> *Id.* at 18.

<sup>133</sup> Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008).

<sup>134</sup> ALEXANDER, *supra* note 30, at 23.

<sup>135</sup> Pub. L. No. 110-289 § 2301(c)(3)(C).

address the municipality's specific needs.<sup>136</sup> These initiatives prioritize what the community needs most, whether the development of affordable housing, converting industrial properties into entirely new uses, or creating community spaces, such as parks or gardens.<sup>137</sup>

B. *What Do Land Banks Look Like Today?*

In response to increasing numbers of vacant properties—causing decreased property values, increased municipal upkeep costs, and significant negative effects on community cohesiveness—an increasing number of municipalities have turned to land banking.<sup>138</sup> A land bank is a public entity created by a municipality to convert costly abandoned properties to tax-generating private properties or community assets.<sup>139</sup> A land bank acts as a central depository for “vacant, abandoned, tax delinquent, or public nuisance properties.”<sup>140</sup> A land bank is generally endowed with special powers permitting it to efficiently gain, manage, and clear a title of any impediments to sale.<sup>141</sup> In 2012, approximately 150 land banks were operating in the United States.<sup>142</sup> As of January 2018, the number of active land banks has increased to 170.<sup>143</sup>

The main purpose of a land bank is to place abandoned properties back on the tax role, not merely to amass and retain public property.<sup>144</sup> To do this, a land bank will take title to a delinquent property, rehabilitate it, and dispose of it by sale to a new owner.<sup>145</sup> A state's enabling statute will set forth the limits on the processes a land bank may employ to acquire and dispose of a property.<sup>146</sup> Generally, land banks gain properties through voluntary transfers, such as a donation or sale, or through involuntary transfers, such as tax lien foreclosure or abandonment statutes.<sup>147</sup> For example, in New York, a land bank can

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<sup>136</sup> See Luke Telander, *The State of Land Banks in 2015: An Interview with Frank Alexander*, CTR. CMTY. PROGRESS (June 30, 2015), <https://www.communityprogress.net/blog/land-banks-land-banking-interview-frank-alexander>.

<sup>137</sup> *Id.*

<sup>138</sup> ALEXANDER, *supra* note 30, at 16.

<sup>139</sup> Bacher & Byerly Williams, *supra* note 68, at 896.

<sup>140</sup> Zale, *supra* note 57, at 297.

<sup>141</sup> Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 245, 275 (2015).

<sup>142</sup> Zale, *supra* note 57, at 298.

<sup>143</sup> *Frequently Asked Questions on Land Banking*, CTR. FOR CMTY. PROGRESS, <https://www.communityprogress.net/land-bank-faq-pages-449.php> (last visited Nov. 2, 2019).

<sup>144</sup> Anderson, *supra* note 50, at 1173; Weber, *supra* note 49, at 1153.

<sup>145</sup> Weber, *supra* note 49, at 1153.

<sup>146</sup> Zale, *supra* note 57, at 308.

<sup>147</sup> *Id.*



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acquire properties through gift, devise, transfer, exchange, purchase, or foreclosure.<sup>148</sup>

Land banks do not compete with the free market. A land bank will only process a property that is not attractive to free-market forces, generally because the property's liabilities are greater than its fair-market value.<sup>149</sup> To reduce a property's liabilities, thus attracting free-market attention, a land bank will generally deploy one of two strategies. First, during the period of public ownership, the land bank can physically rehabilitate the property by demolishing blighted buildings or clearing environmental containments, thus removing physical liabilities unattractive to the free market.<sup>150</sup> Second, an important and unique feature, the land bank will clear tax liens attached to the property.<sup>151</sup> The ability to clear tax liens is an enormous benefit because it will allow the land bank to pass on a clean title, ensuring the new owner can avoid costly litigation.<sup>152</sup>

Additionally, land banks can replace public tax lien auctions.<sup>153</sup> Land banks are a better alternative for two reasons. First, properties at tax auctions are often sold for pennies on the dollar, leading to a municipality recouping only a fraction of the property's value.<sup>154</sup> Second, as mentioned before, tax auction properties are commonly bought by speculators who have no intention of developing the property.<sup>155</sup> Simply waiting for a future return, the speculator does not invest in the property, allowing it to sit vacant and distressed.<sup>156</sup> Although this will place a property back on a municipality's tax roll, the property's value is depressed and continues to contribute to the cyclical problem of community decay.<sup>157</sup>

Further, land banks can organize large-scale projects and increase neighborhood livability by assembling adjacent parcels of land to create assets such as grocery stores or green spaces.<sup>158</sup> This strategy has been particularly effective in older industrial cities like Newark. For example, in Flint, Cleveland, and Philadelphia, land banking entities have spearheaded projects to build bike paths, parks, natural collections for

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<sup>148</sup> Weber, *supra* note 49, at 1153.

<sup>149</sup> ALEXANDER, *supra* note 30, at 30.

<sup>150</sup> Anderson, *supra* note 50, at 1173.

<sup>151</sup> Weber, *supra* note 49, at 1154.

<sup>152</sup> *Id.*

<sup>153</sup> Bacher & Byerly Williams, *supra* note 68, at 896.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *See id.*; SKOGAN, *supra* note 109.

<sup>158</sup> Anderson, *supra* note 50, at 1173.

stormwater, solar fields, and wetlands.<sup>159</sup> Depending on a municipality's needs or goals, land banks could address shortages in affordable housing or commercial spaces.<sup>160</sup> To raise funds for these public projects, a land bank can rely on foreclosure fees, land-sale proceeds, and government and not-for-profit grants.<sup>161</sup>

#### IV. NEW JERSEY LAND BANKING STATUTE

On July 11, 2019, appearing alongside the Mayor of Newark and local community leaders, Governor Phil Murphy signed the New Jersey Land Bank Law.<sup>162</sup> As a fitting backdrop, a fenced-in, blighted strip mall loomed in the background on the busy South Orange Avenue within Newark's West Ward.<sup>163</sup> Down the block, a recently burned building sat charred and crumbling next to a local restaurant.<sup>164</sup> Champions of the legislation expect the bill to address these sorts of properties by equipping municipalities with the power to form a not-for-profit or public entity to act as a land bank.<sup>165</sup> The hope is to allow "municipalities to create positive redevelopment plans" to "expedite the [property] turnover process," and help municipalities "find productive uses for [abandoned] properties," such as combating the "[s]tate's critical housing shortage."<sup>166</sup>

An enabling statute,<sup>167</sup> such as the one signed by Governor Murphy, is usually required because land banking is not a traditional power of local government.<sup>168</sup> A state's enabling statute sets forth the land bank's various powers, but typically includes those needed to acquire, destroy, or transfer properties.<sup>169</sup> Enabling statutes work as a constraint on

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Governor Murphy Signs Legislation to Permit Municipal Land Banking, STATE OF N.J. (July 11, 2019), <https://www.nj.gov/governor/news/news/562019/approved/20190711a.shtml>.

<sup>163</sup> Joshua Burd, *Murphy Signs 'Land Bank' Bill Allowing Cities to Assemble, Reposition Blighted Property*, REAL ESTATE NJ (July 11, 2019), <https://re-nj.com/murphy-signs-land-bank-bill-allowing-cities-to-assemble-revive-blighted-property>.

<sup>164</sup> Rebecca Panico, *Land Bank Bill Signed in Newark Creates Framework for Abandoned Property Database*, TAPINTO.NET (July 11, 2019), <https://www.tapinto.net/sections/real-estate/articles/land-bank-bill-signed-in-newark-creates-framework-for-abandoned-property-database-2>.

<sup>165</sup> Burd, *supra* note 163.

<sup>166</sup> *Id.*

<sup>167</sup> An enabling statute is a legislative act that gives new powers to an entity to do something it previously could not. *Enabling Statute*, BALLOTPEDIA, [https://ballotpedia.org/Enabling\\_statute](https://ballotpedia.org/Enabling_statute) (last visited Nov. 2, 2019).

<sup>168</sup> Alexander, *supra* note 141, at 275.

<sup>169</sup> Zale, *supra* note 57, at 298.

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government power, establishing the procedures to be followed and limiting the situations or methods through which the government may acquire or dispose of properties.<sup>170</sup> In forming a land bank, Newark should prioritize solutions to systemic problems and place a premium on community involvement and clarity.<sup>171</sup> No two community needs are identical and, as such, no cookie-cutter land bank solution exists.<sup>172</sup> “The success of land banks, and land banking, lies both in their targeted approach to complex issues of abandonment as well as their flexibility to be adapted to local conditions.”<sup>173</sup>

This Part will summarize New Jersey’s land banking enabling statute, known as the New Jersey Land Bank Law (“the Act”),<sup>174</sup> and briefly suggest how the Act could be best utilized in Newark. The Part will briefly consider The New Jersey Legislature’s (“the Legislature”) findings, purpose, and specific definitions. Subsequently, the Act’s remaining sections will be grouped into categories describing the (1) authority, (2) operating procedures, and (3) transparency requirements of a New Jersey land banking entity.

#### A. Legislative Findings and Purpose

The Legislature’s findings and purposes are outlined in Section 2 of the Act.<sup>175</sup> These findings are important to consider as they set forth the Legislature’s goals by framing the Legislature’s intent and laying out the basis for their belief that a specific piece of legislation is necessary.<sup>176</sup> Further, should the legislation come under litigious attack, courts will often respect the legislation’s findings, granting a wide berth of deference.<sup>177</sup>

The Act explains that due to economic conditions leading to excessive foreclosure and vacancy rates,<sup>178</sup> it is necessary to allow municipalities to designate entities to acquire, maintain, and dispose of vacant and abandoned properties.<sup>179</sup> Further, the Legislature

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<sup>170</sup> *Id.* at 307–08.

<sup>171</sup> *See* ALEXANDER, *supra* note 30, at 28.

<sup>172</sup> *Id.* at 18.

<sup>173</sup> *Id.* at 18–19.

<sup>174</sup> 2019 N.J. Laws 159 § 1.

<sup>175</sup> § 2.

<sup>176</sup> *See* DEBORAH J. FOX & MEYERS NAVE, *THE ROLE OF LEGISLATIVE FINDINGS* 4 (2013), <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2013/2013-Annual-Conference-City-Attorneys-Track/9-2013-Annual-Deborah-Fox-The-Role-of-Legislative.aspx>.

<sup>177</sup> *See, e.g., In re Adoption of N.J.A.C. 5:96, 74 A.3d 893, 915* (2013).

<sup>178</sup> 2019 N.J. Laws 159 § 2(a).

<sup>179</sup> § 2(g).

recognized the persistent “proliferation” of abandoned properties was impeding municipalities’ economic growth, particularly in the state’s oldest cities,<sup>180</sup> such as Newark.<sup>181</sup> Moving beyond direct economic problems, the Legislature explicitly recognized the indirect negative effects of these properties on public health, property values, and municipal revenues.<sup>182</sup>

The Legislature characterizes land banking as a tool allowing municipalities to control the inventory of abandoned properties to “facilitate their restoration to productive use” and minimize harm done to a community.<sup>183</sup> The Act indicates a preference for municipalities to ensure the reuse of abandoned properties to create “the greatest long-term benefit to the physical, social and economic condition of the municipality,”<sup>184</sup> rather than allowing abandoned properties and their blighting effects to continue passing hands without development.<sup>185</sup> Authorizing land banks to fulfill these objectives, a municipality may provide tax-exempt status to properties for as long as the land banking entities hold them.<sup>186</sup>

Presumably addressing criticism and concerns from past gubernatorial administrations,<sup>187</sup> the Legislature’s desire for transparency appears to be an important and driving consideration in the framing and enactment of the Act. The Act highlights the importance of involving community members in identifying blighted or abandoned properties and finds that an interactive, online mapping database could facilitate that goal.<sup>188</sup> Further, “to ensure that land banking activities are conducted in an honest and open manner,” land banking agreements are to be included within an interactive mapping database, whether or not the property continues to be vacant, for easy public viewing.<sup>189</sup> This proposition is particularly illuminating, as any land banking agreement would be accessible to the public via New Jersey’s Open Public Record

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<sup>180</sup> § 2(b).

<sup>181</sup> See *Newark*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Newark-New-Jersey> (last visited Nov. 2, 2019) (noting that Newark was founded in 1666 and incorporated as a city in 1836).

<sup>183</sup> 2019 N.J. Laws 159 § 2(b).

<sup>184</sup> § 2(d).

<sup>185</sup> § 2(g).

<sup>186</sup> § 2(c).

<sup>187</sup> § 2(h).

<sup>188</sup> See Panico, *supra* note 164 (stating that former Governor Chris Christie vetoed land banking legislature twice stating “land banks had been used as ‘vehicles of fraud and kickback schemes’”).

<sup>189</sup> 2019 N.J. Laws 159 § 2(e).

<sup>190</sup> § 2(f).

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Act.<sup>190</sup> This requirement obviates the often tedious and time-consuming process of submitting an official records request.<sup>191</sup>

*B. Municipalities' Authority Over Operating Procedures*

The Legislature designed the Land Bank Act broadly to allow a municipality to tailor the procedures of a land banking entity to the municipality's specific needs. These broad discretionary powers include substantial control over the formation of the land banking agreement, protections against a land bank entity's fraud or abuse, and flexible funding strategies for the operations of the land bank.

The Act confers to municipalities the explicit authority to form and manage a land banking entity through the creation of a land bank agreement.<sup>192</sup> Of particular importance here, a municipality could one-sidedly determine the terms of the land bank agreement.<sup>193</sup> This agreement will dictate how and what properties the bank can acquire,<sup>194</sup> how the entity may develop and dispose of the properties, and what is to be done with any pecuniary gains of the program.<sup>195</sup> Further, the municipality may enter into the land bank agreement with either a redevelopment entity<sup>196</sup> or a not-for-profit organization of its choice.<sup>197</sup> Providing flexibility in its operations, the land bank entity may modify its governing documents to support the changing needs of the land bank entity, as long as the changes follow the land bank agreement between the municipality and entity.<sup>198</sup>

To protect the municipality, the Act reserves the municipality's right to terminate the land banking agreement for any and all reasons, so long as one year's notice is given.<sup>199</sup> In this event, properties held by

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<sup>190</sup> See generally Open Public Records Act, N.J.S.A. § 47:1A.

<sup>191</sup> See Editorial: *OPRA is Not Working the Way the Legislature Intended*, N.J. ADV. MEDIA (Jan. 17, 2019), [https://www.nj.com/opinion/2015/03/editorial\\_opra\\_is\\_not\\_working\\_the\\_way\\_the\\_legislat.html](https://www.nj.com/opinion/2015/03/editorial_opra_is_not_working_the_way_the_legislat.html); Terrence T. McDonald, *Obtaining Salary Info from Public Agencies Remains a Struggle*, N.J. ADV. MEDIA (Jan. 17, 2019), [https://www.nj.com/hudson/2015/03/opra\\_sunshine\\_week.html](https://www.nj.com/hudson/2015/03/opra_sunshine_week.html).

<sup>192</sup> 2019 N.J. Laws 159 § 2(e).

<sup>193</sup> § 5(a).

<sup>194</sup> Section 6 of the Land Bank Act details this process, specifying that the land bank entity may "acquire properties on its behalf through contribution, gift, grant, bequest, purchase or otherwise" and act as the municipality's agent in purchases tax liens or foreclosure sales. § 6(a)-(b).

<sup>195</sup> § 5(a).

<sup>196</sup> § 4(a).

<sup>197</sup> § 4(b). This section requires that the municipality's chief financial officer serve on the board of the nonprofit entity. *Id.*

<sup>198</sup> § 10.

<sup>199</sup> § 14(a)(1).

the land bank will be returned to the municipality, while those properly conveyed to private parties will not be affected.<sup>200</sup> The municipality may immediately terminate the agreement, without providing notice, if the land bank violates its duty of loyalty to the municipality or its residents, knowingly violates a criminal law, or performs some act or omission returning an improper personal benefit to a director or officer of the entity.<sup>201</sup> To prevent ownership disputes, the municipality can provide that all properties acquired by the land bank shall be held in trust, by the entity, for the benefit of the municipality.<sup>202</sup> Further, any conveyance of public land from the municipality to the land bank entity will “be conditioned on the municipality’s ability to regain control of the properties.”<sup>203</sup>

After taking title to the abandoned property, the land bank should create a maintenance and repair plan.<sup>204</sup> Here, it may be appropriate to condition the disposition of any property on adherence to the development plan. If the entity does not follow the plan and develop the property, the property should revert to the land bank entity. Moreover, where appropriate, and particularly in residential neighborhoods, the land bank should include ideas and opinions of residents and community nonprofits such as the Community Development Corporation operating in the neighborhood. Upon receipt of a property, the land bank should work with community members to create and execute a plan for the disposition of property. Abandoned properties are costly to municipalities. To stymie these costs, an effective land bank must facilitate the sale and development of these properties. Although a sale to a private party may place a property on the tax roll, if that property remains undeveloped and blighted, the property value will not increase, and the property will continue to have negative effects on the surrounding community. Municipalities turn to land banks to “prevent speculators from buying up and sitting on properties that then could become neighborhood hazards.”<sup>205</sup> Therefore, it is crucial to ensure the private party commits to investment and rehabilitation upon purchase of the property.

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<sup>200</sup> § 14(a)(1)-(2).

<sup>201</sup> § 14(b)(1)-(3).

<sup>202</sup> § 6(b).

<sup>203</sup> § 7(a).

<sup>204</sup> Bacher & Byerly Williams, *supra* note 68, at 897.

<sup>205</sup> Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63, 106 (2011).

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Further, the Act allows great flexibility in deciding how to fund the land bank entity's operations. This is of particular importance as the efficiency and success of earlier land banks operating in other parts of the country were significantly limited by inadequate funding.<sup>206</sup> Addressing funding concerns, municipalities may allow the entity to hold properties tax free.<sup>207</sup> Further, to fund development projects, the municipality may provide a limited series of payments to the entity<sup>208</sup> or allow the entity to take on debt.<sup>209</sup>

The statute contemplates and permits the creation of regional land banks and, as such, Newark should work with local municipalities to create a regional land bank. A larger regional land bank offers numerous advantages including the creation of more competitive grant funding applications, assisting neighborhoods that may cross municipal lines, free flow of data, and the ability to form comprehensive regional strategies.<sup>210</sup> In fact, Newark has a history of working with the region to address housing crises. In 2007, recognizing the rising rates of foreclosures, Newark partnered with Essex County, not-for-profit organizations, and local municipalities to create a "foreclosure prevention taskforce."<sup>211</sup> Cognizant that their housing markets were intertwined, the partners recognized the importance of creating a regional strategy to a regional problem.<sup>212</sup> By pooling their resources, they made their federal and state grant applications more competitive, securing more resources than they would have been able to on their own.<sup>213</sup> For example, the partners secured significant funds from the Federal Neighborhood Stabilization Program to acquire and redevelop foreclosed properties that may have otherwise become sources of abandonment and blight.<sup>214</sup> Importantly, the Act allows a land bank entity to serve multiple municipalities at once.<sup>215</sup> This will allow municipalities to pool the resources noted above, creating a larger and more effective entity capable of undertaking projects otherwise financially out of reach. Additionally, a municipality may assign any tax lien held to the land bank on terms the "municipality deems

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<sup>206</sup> See ALEXANDER, *supra* note 30, at 20.

<sup>207</sup> 2019 N.J. Laws 159 § 13.

<sup>208</sup> § 16(a)(1).

<sup>209</sup> § 8(a).

<sup>210</sup> See Steil, *supra* note 205, at 104.

<sup>211</sup> *Id.*

<sup>212</sup> Steil, *supra* note 205, at 105.

<sup>213</sup> See *id.*

<sup>214</sup> *Id.*, at 104.

<sup>215</sup> 2019 N.J. Laws 159 § 15.

reasonable.”<sup>216</sup> This will expedite the acquisition of tax-delinquent properties while avoiding steep losses incurred at a tax foreclosure auction.<sup>217</sup>

To best utilize the legislative reforms described in this Section, Newark should prioritize adequate staffing to ensure efficient operation and maximized benefits. Obtaining, securing, rehabilitating, and disposing of abandoned properties will require high-level administration.<sup>218</sup> No matter what specific goals Newark prioritizes in the formation of its land bank, if the land bank is underfunded and understaffed, no matter the broad powers available, the land bank will be ineffective. Weak land banks fall short of their potential, often unloading assets at far less than the assets are worth.<sup>219</sup> “It is a familiar lesson: sometimes you need a little money to make a little money.”<sup>220</sup>

Due to the state of a property or its structures, a land bank may be forced to demolish. A land bank utilizing its right to destroy can turn negative liabilities—abandoned properties municipalities would otherwise pay to upkeep—into positive assets, including green spaces like parks or community gardens.<sup>221</sup> In other situations, however, it may be more costly to the city to demolish the property and most beneficial to maintain or secure.<sup>222</sup> A default of demolition may lead to unnecessarily destroying community assets and affect the overall composition of the community. A land bank must mitigate the right to destroy with clear development guidelines. Leaving properties vacant does not provide economic benefits, invites crime, and detracts from community cohesiveness.<sup>223</sup> Exercising the right to destroy is often an attractive strategy as it makes the immediate problem disappear, leaving a clean slate.<sup>224</sup> But, destruction alone is not enough. “Unless something positive is added to the community, the simplicity of destruction may be its greatest weakness: while ‘removal of a negative harm is itself a positive achievement . . . not all positive achievements are equal.’”<sup>225</sup> Choosing to destroy will disproportionately affect those

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<sup>216</sup> § 7(b).

<sup>217</sup> See *supra*, text accompanying note 154.

<sup>218</sup> Anderson, *supra* note 50, at 1173.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> Zale, *supra* note 57, at 298.

<sup>222</sup> See Weber, *supra* note 49, at 1153.

<sup>223</sup> Zale, *supra* note 57, at 311–12.

<sup>224</sup> Zale, *supra* note 57, at 312.

<sup>225</sup> Zale, *supra* note 57, at 313.



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with the smallest voices in governmental affairs: people of color, low-income individuals, and, particularly, those at the intersection.<sup>226</sup>

The Land Bank Act provides the municipality with a maximum amount of control over the land bank entity's formation, operations, and funding. This allows the municipality to tailor the land bank to its specific needs while simultaneously protecting public assets, maximizing the municipality's desired returns.

### C. Land Bank Transparency Requirements

Land bank legislation in New Jersey is not a new idea. Twice in previous legislative sessions, bills were introduced, debated, and passed.<sup>227</sup> But, when the bills went to then-Governor Chris Christie's desk, he vetoed them, stating land banks had "been used as vehicles for fraud and kick-back schemes."<sup>228</sup> Although Governor Christie's vetoes were met with stinging criticism from the sponsoring assemblywoman,<sup>229</sup> what would become the current law was amended to include increased transparency requirements. These requirements include a public comment period, the formation of a community advisory board, the creation of an interactive online mapping system, and the promulgation of required annual reports.<sup>230</sup>

Before a municipality may vote to finalize a land bank agreement, it must "hold a public meeting to solicit the advice of the public on the substance and intent of the land banking agreement."<sup>231</sup> Further, the municipal ordinance establishing the land bank must include specific "findings establishing the need for land bank activity in the municipality, the public purpose that the municipality intends the land bank entity to pursue, and the qualifications of the land bank entity to carry out the responsibilities."<sup>232</sup>

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<sup>226</sup> See Danyelle Solomon et al., *Systematic Inequality and American Democracy*, CTR. FOR AMER. PROG. (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy>.

<sup>227</sup> Panico, *supra* note 164.

<sup>228</sup> Veto Letter from Chris Christie, Gov., N.J., to Gen. Assemb., N.J. (Sept. 11, 2013), <https://static.votesmart.org/static/vetotext/50086.pdf>.

<sup>229</sup> See *Jasey Decries Christie's Land Bank Bill Veto, Says Call for State Oversight Creates Unnecessary Bureaucratic Red Tape for Towns*, N.J. ASSEMB. DEMS., <https://www.assemblydems.com/jasey-decries-christies-land-bank-bill-veto-says-call-for-state-oversight-creates-unnecessary-bureaucratic-red-tape-for-towns> (last visited Jan. 9, 2020).

<sup>230</sup> See 2019 N.J. Laws 159 §§ 5(b), 11(a), 11(c)(1), 11(d).

<sup>231</sup> § 5(b).

<sup>232</sup> § 5(c).

Further involving the public, the land bank entity must form a community advisory board within six months of its creation, consisting of representatives of community associations and not-for-profit organizations with an active presence within the operational location of the land bank.<sup>233</sup> To ensure the effectiveness of the community advisory board, the land bank must provide the board with sufficient information about its operations to ensure the board can shape informed opinions and decisions.<sup>234</sup> In coordination with the board, the land bank must create a publicly available database listing all available and disposed land bank properties.<sup>235</sup> Furthermore, the land bank is “encouraged” to include on the publicly available website with all vacant or abandoned properties, a community feedback option, and an interactive map.<sup>236</sup> The community advisory board must release a report on “the accuracy, integrity, accessibility, and comprehensiveness of the database,” including a conspicuous notice of any failure to include any of the “encouraged” requirements.<sup>237</sup>

Newark should ensure the community advisory board includes various municipal departments, interested businesses, nonprofits, community development corporations, and citizens. Including businesses and community development corporations would allow the task force to pool professional resources and expertise. Including citizens and nonprofits ensures the voices of residents are heard and considered. This task force should develop strategic plans, identify current operating problems, and brainstorm future project ideas.<sup>238</sup> This task force should include members from anchor institutions, like local universities, as they hold major stakes in the community.<sup>239</sup> The advisory board could be modeled after the successful Cleveland<sup>240</sup> or Newburg<sup>241</sup> land bank programs, featuring broad community representation.

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<sup>233</sup> § 11(a).

<sup>234</sup> § 11(b).

<sup>235</sup> § 11(c)(1).

<sup>236</sup> § 11(c)(2)(a)–(c).

<sup>237</sup> § 11(d).

<sup>238</sup> Bacher & Byerly Williams, *supra* note 68, at 879.

<sup>239</sup> Bacher & Byerly Williams, *supra* note 68, at 884.

<sup>240</sup> See, e.g., *Collaboration and Partnerships*, CUYAHOGA LAND BANK, <http://cuyahogalandbank.org/collaboration.php> (last visited Oct. 18, 2019); Bacher & Byerly Williams, *supra* note 68, at 878–80.

<sup>241</sup> See, e.g., *Who Are We?*, NEWBURG COMM’Y LAND BANK, <https://www.newburghcommunitylandbank.org/team> (last visited Oct. 18, 2019); Bacher & Byerly Williams, *supra* note 68, at 880.

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When a lack of clear information exists, large commercial entities will benefit most because they can deploy significant resources to figure out how to work the system. The Newark land bank should consider simplifying and clarifying the property disposition process by creating flow charts or checklists for consumer use, hosting regular community trainings, pre-application workshops, and the like.<sup>242</sup> This will assist local community members in participating in the land banking process, ensuring the benefits of the program are shared equitably throughout the community.

“One of the most common characteristics shared by communities with large numbers of vacant, abandoned, and tax-delinquent properties is simply the lack of clear data on the nature and magnitude of the problem.”<sup>243</sup> Furthermore, there is rarely a centralized database revealing the extent and location of problem properties.<sup>244</sup> Often, the initial barrier to flipping abandoned properties into community assets is simply a lack of awareness of the extent of the problem.<sup>245</sup> Therefore, the land bank should create a clear and accessible online inventory of vacant and abandoned properties.<sup>246</sup> This database could convert the existing abandoned property data set into a clear and easy-to-navigate webpage. Currently, the data set is clunky, hard to operate, and nearly impossible to search for helpful information.<sup>247</sup> The Newark database could model the Cook County Land Bank database, utilizing an interactive map and easy-to-navigate database.<sup>248</sup>

After formation and to ensure the greatest return to the community, Newark should host at least quarterly meetings to continually include community member’s voices. “An effective decision-making process considers the differing interests of all stakeholders and makes a good-faith attempt to accommodate and satisfy as many interests as possible.”<sup>249</sup> For example, the land bank operating in Richmond, Virginia, conducted numerous meetings of its Citizens’ Advisory Panel, which offered citizen input on desired neighborhood

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<sup>242</sup> Bacher & Byerly Williams, *supra* note 68, at 897.

<sup>243</sup> ALEXANDER, *supra* note 30, at 29.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> See *Abandoned Properties*, CITY OF NEWARK, <http://data.ci.newark.nj.us/dataset/abandoned-properties/resource/796e2a01-d459-4574-9a48-23805fe0c3e0> (last visited Jan. 10, 2019).

<sup>248</sup> See *Cook County Land Bank Authority*, CCLBA, <https://public-cclba.epropertyplus.com/landmgmtpub/app/base/propertySearch?searchInfo> (last visited Jan. 10, 2019).

<sup>249</sup> Bacher & Byerly Williams, *supra* note 68, at 885.

projects.<sup>250</sup> In Poughkeepsie, New York, land bank leaders held focus group meetings to discover what the community needed most.<sup>251</sup> In Newburgh, New York, meetings were held every two months to inform the public on project progress and receive feedback on current and future project ideas.<sup>252</sup> These quarterly meetings should be community friendly, hosted outside workday hours, providing light food and refreshment, and child care programs to attract the greatest number of community stakeholders.

#### V. CONCLUSION

Newark has the potential to be a leader in land banking policy, both in the state of New Jersey and nationally. The recently passed enabling statute will allow Newark to tailor a land bank entity to address its greatest needs. Newark, like other legacy cities, has a large number of vacant industrial and residential properties with few interested suitors.<sup>253</sup> By utilizing the Land Bank Act, these properties, currently plaguing communities and neighborhoods, can be converted from costly liabilities to equitable and productive community assets.

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<sup>250</sup> See *Citizens' Advisory Panel (CAP)*, RICHMOND LAND BANK, <https://www.richmondlandbank.com/citizens-advisory-panel>.

<sup>251</sup> Bacher & Byerly Williams, *supra* note 68, at 886.

<sup>252</sup> *Board Meetings*, NEWBURGH CMTY. LAND BANK, <https://www.newburghcommunitylandbank.org/board-meetings> (last visited Oct. 16, 2019).

<sup>253</sup> Zale, *supra* note 57, at 305.