

Perspectives on Abandoned Houses in a Time of Dystopia

Kermit J. Lind

Abstract

This essay describes various perspectives on abandoned houses in urban neighborhoods and the reactions from those perspectives. It notes how conflicting reactions perpetuate the crisis of blight for individual residents and their communities. It argues that real solutions for management of abandonment must be based in local communities and tailored to local conditions. Priority must be placed on consistent maintenance in compliance with local housing and neighborhood health, safety, and environmental codes. Housing preservation, rehabilitation, and reutilization programs will not succeed without improved and sustained maintenance. Localities will need to take the lead in remodeling residential maintenance using new strategies, methods, and technologies. Role models for that work are emerging.

Abandoned houses are a common sight in residential neighborhoods hardest hit by the mortgage crisis. Legacy cities with declining populations—in particular, Detroit, Chicago, Cleveland, St. Louis, Memphis, Baltimore, Philadelphia, to name a few—are dealing with an extended crisis of abandoned houses that requires repurposing and reconstructing entire neighborhoods.

What one sees in these abandoned houses will depend on the perspective from which they are viewed. Homeowners, investors, neighbors, debt collectors, various municipal and regulatory agencies, courts, taxpayers, speculators, and criminals have different perspectives and see different things when they look at abandoned houses and buildings. Let us consider what they see and how they react.

Homeowners

Homeowners who abandon their homes are usually in a financial crisis beyond their coping capacities. They are financially broke, hounded by debt collectors, oftentimes naïve or misinformed, desperate, and unable or unwilling to continue the responsibilities of home ownership. Worse yet, many of these homeowners cannot voluntarily divest their home ownership by sale or donation because the title to the property is toxic, meaning that it is encumbered with liens exceeding the current market

Kermit J. Lind M.A., J.D. (kermitlind@gmail.com) is Clinical Professor of Law Emeritus of the Cleveland-Marshall College of Law, Cleveland State University. This article was originally published in 29:2 Probate & Property Magazine (Mar.–Apr. 2015). Reprinted by permission.

value. Sometimes these are called *zombie titles*, visible but dead. While lien-holding creditors may get no financial benefit from asserting their rights, they can still hold an empty house hostage in the debtor's name, speculating on an improbable solution, or sell the debt at a discount. Homeowners in this situation remain stuck with a liability from which they cannot escape. These homeowners view their abandoned home as a devastating loss that will haunt them for years to come.

Absentee Owners and Commercial Housing Investors

Absentee owners and commercial housing investors, on the other hand, see their vacant houses as either productive or nonproductive commodities, if they look at them at all. Their interest is in profitable transactions. Paying for upkeep and property taxes on their investment is justified only by expectations of profit. Unprofitable and unmarketable houses are a liability and treated as waste. Corporate and trustee owners, along with their servicers, find little risk in ignoring their legal responsibilities for maintenance of residential properties owned or controlled by their lien rights. Code enforcement and nuisance abatement by municipalities can be evaded by non-resident owners. They are not shy about telling code policing officials and communities that compliance with local housing maintenance codes is not in their business plan. They can abandon the care of unproductive houses, clear their books of the debt owed without removing their lien, and then sell the debt and lien to scavenger debt collectors. Debt collectors rarely have any interest in preserving the collateral they remotely control, since the title, along with the liability, is in someone else's name.

Neighbors near Abandoned Dwellings

Neighbors near abandoned dwellings see abandoned houses as eyesores and as threats to neighborhood safety and to the value of their homes. Housing blight in a neighborhood lowers values below the amount owed on the mortgages. Underwater houses do not sell and short sales are not a solution in a declining market. Over the past decade, some weak market neighborhoods have lost entire blocks of housing to abandonment and blight at huge costs to other homeowners, mortgagees, and municipalities. Neighbors of abandoned houses have virtually no means of defending their property interests from the disaster rising around them. Many are caught between caring for family needs and making payments on a mortgage for a house with no hope of gaining equity in it. The total loss of savings in home equity to millions of middle- and lower-income households in the United States over the past decade surely will add up to trillions of dollars. The cost in terms of quality of life, health, and diminished opportunity is incalculable. There is no bailout for the neighbors losing both their safety and savings to abandonment in their neighborhood.

Municipal Officials and Owners Associations

Municipal officials and owners associations charged with enforcing public health, safety, and welfare regulations see abandoned dwellings as crime scenes. These are the people Joseph Schilling calls “the forgotten first responders” in his excellent article, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Properties*.¹ Abandoned houses are magnets for vandalism, theft, fires, drug trafficking, and more serious crimes, all of which require more and better municipal services.

The rising tide of housing abandonment costs municipalities more for inspections, grass cutting, board-ups, fire and police services, and demolitions. Simultaneously, abandonment depletes municipal tax bases that help pay for these services. Municipalities cannot meet this new policing challenge without new policies and programs. Nor can they stem the spread of neighborhood blight acting alone while legislative and regulatory institutions under the sway of well-financed business interests oppose their policing efforts. Most older legacy cities struggled with economic and population losses before the turn of the century. The mortgage crisis has only added costs and losses, making cities’ situations still more perilous. Most municipal officials do not yet see an end to their abandoned house problem.

Judges, Sheriffs, Bankruptcy Trustees, and Other Officials

Judges, sheriffs, bankruptcy trustees, and other officials who preside over legal transactions related to involuntary deed transfers, taxation, liens, and record registration see only documents that track transactions and claims affecting the legal title. In foreclosures, bankruptcies, and sheriff sales, officials supervise disposition of titles, liens, and other interests without regard to the unlawful condition and actual worth of the subject property. Although sworn to uphold the law, they ignore evidence of the unlawful condition of abandoned houses in the cases they process at their desks because individual officials are charged only with a particular aspect of debt collection, liquidating, and transferring and recording documents. Dealing with unlawful conditions is not their job. This institutional fragmentation and myopia enables owners and creditors alike to neglect property maintenance with impunity and defer the resulting costs to hypothetical future owners, who are likely to be scavengers and speculators unwilling or unable to absorb the costs of deferred maintenance and taxes. The legal system for debt collection and property taxation does paperwork controlling legal interests in abandoned housing without recognizing the harmful condition and real value of the houses controlled by the paperwork.

1. 2 ALB. GOV'T L. REV. 101 (2009).

Buyers, Rehabbers, and Speculators

Bulk buyers, rehabbers, and speculators see an income prospect in abandoned houses. Blighted houses for sale “as is” are viewed as money-makers by various types of buyers. Traditionally, local rehab professionals and do-it-yourself home improvement amateurs absorbed the trickle of mortgage failures in the market. For the past two decades, however, those traditional buyers have been replaced by investors and speculators who see blighted housing as a cheap, fast way to make money with minimal risk of loss or liability. Flipping defective houses has become an industry propelled with textbooks, lectures, and TV infomercials on getting rich quick. The greedy and gullible are advised on how to purchase houses at sheriff sales or from online dealers in bank repossessed properties. These houses are, in turn, sold to people who shop deals on the Internet and “invest” without a single glance at the actual property. These visually impaired buyers and sellers see a mirage of profit. Sometimes abandoned houses are bought in bulk for as low as one dollar and retailed to buyers who also cannot or will not repair them. Those in this business, as a rule, avoid compliance with local housing or building codes and payment of property taxes because they are able to move faster than law enforcers.

Taxpayers and the Public

Ultimately, taxpayers and the public are forced to subsidize homeowners and businesses that abandon their legal obligation to keep their property from harming other people and their property. To get a sense of the public costs, consider that in October 2014 the City of Cleveland reported an inventory of 12,000 abandoned buildings, 6,000 of them already condemned and waiting demolition. It anticipated needing \$120 million to demolish its current inventory of abandoned houses in a city of fewer than 400,000 people. Its inner-ring suburbs also have a rising inventory of abandoned houses to dispose of. To deal with this problem, the county is floating a \$50 million dollar bond issue for demolition, and local municipalities are fighting for a share of the proceeds. This is on top of the millions already spent in recent years and the additional millions needed for demolition of future inventories. Officials and civic leaders in Cleveland and Detroit are openly discussing fifty-year plans for cleaning up tax-dead real estate and reimagining how urban land can be sustainably reused.

Meanwhile, taxpayers and elected local government leaders trying to survive the immediate recession are confronted with current solid waste cleanup costs too big to calculate. That would not include the equally incalculable private savings losses to homeowners whose property values are not likely to recover the loss sustained since 2007. Grim facts on the

cost to communities of abandoned houses were reported in a 2011 government study.²

Conflicting Perspectives Must Be Reconciled

Homeowners, lenders, investors, speculators, creditors, debt collectors, neighbors, community advocates, local officials, state officials, federal officials, and public agencies are pursuing different, and often conflicting, objectives in relation to real property abandonment. Governments at the various levels have different agendas, as do courts, prosecutors, and policing agencies, even those within the same jurisdiction. The agencies and institutions of government and public policy are not effective when they work at cross-purposes.

Global financial institutions, government-sponsored enterprises, real estate investment trusts, and their servicing agents also do not share the same vision. Each sector's individual interests compete for profit with procedures that undermine the success of another's business plan. Legions of lawyers and lobbyists are employed to promote competing business interests. Lawyers serving these divergent interests are often dedicated to subordinating all other perspectives of abandoned houses to the one they serve. Neighborhoods and the health, safety, and well-being of housing consumers are the least-served interest.

The risks resulting from this asymmetrical battle between the perspectives of housing consumers and the perspectives of global financial, investment, and real estate businesses make home ownership less possible and less attractive for young families than at any time during the last century. Who wants to be tied to a home when the business interests of absentee owners, investors, debt collectors, and politicians determine your family's health, safety, and security? Measured in quality of life, home ownership is not the sure bet it used to be. Those in the living room and those in the board room need to create a shared vision for stable, resilient residential neighborhoods.

Real Solutions

Real solutions for resilient residential neighborhoods are emerging.³ Professor Weber points to vacant property registration ordinances (VPROs), land banks, fast track tax foreclosures, and housing courts as important innovations for municipalities facing an abandoned house crisis. Other convenient resources showing solutions at work can be found on the web sites of the Center for Community Progress and the Vacant Properties

2. U.S. GOV'T ACCOUNTABILITY OFFICE, *VACANT PROPERTIES: GROWING NUMBER INCREASES COMMUNITIES' COSTS AND CHALLENGES* (Dec. 6, 2011), <http://www.gao.gov/products/GAO-12-34>.

3. See David Weber, *Cities and States Battle Back: Taking the Fight to the Zombie (Mortgages) and Abandoned Properties*. PROB. & PROP., Jan./Feb.. 2015, at 42.

Research Initiative, a program of the Metropolitan Institute of Virginia Tech. The author has participated in the implementation and operation of these types of responses in a number of places. They are certainly important tools when they are well-designed and effectively used, but they are not always successfully deployed. None of them alone is the solution to chronic abandonment. Strategic vision and collaboration between public institutions and community constituents is critical for success.

One might think that the scale and intensity of the abandoned house crisis would compel a massive bailout for those whose home equity was eliminated and for neighborhoods wrecked by the extensive criminal conduct now coming to light in the aftermath of the housing crisis. That is not happening. Instead, the competing perspectives of the various actors described above have resulted in piecemeal responses, none of which is a complete solution. Some piecemeal solutions actually make things worse because they serve only the interests of the politically and economically powerful at the expense of the poorly represented. Real solutions are not possible from only one or even two perspectives. Nor will sound solutions be provided by the public sector alone. Real solutions are being realized in local communities where remedial policies and programs are made and managed by coalitions of local stakeholders with a long-term attachment to the place where they live.

Responsible Maintenance of Dwelling Places

Responsible maintenance of dwelling places is the legal and equitable obligation of those who own or control housing. It is also essential to the long-term viability of a housing finance industry that both consumers and investors can trust. Everyone with a legal interest in dwellings, including creditors, depends on maintenance of housing for themselves and for their economic interests. Those harmed when property maintenance responsibilities are abandoned include the creditors and investors in neighboring dwellings whose paying debtors may default on their mortgage loans and maintenance when their home's value plummets. Maintenance issues are omnipresent in the scenario of the concentration and spread of subprime loans, rapid defaults, rising foreclosures, low-value sheriff sales, and the dumping of bank "real estate owned" properties to speculators. Maintenance is abandoned early in the sequence and the possession of dwellings is subsequently abandoned. The breakdown of maintenance begins a decline toward blight from which recovery costs more than the market value of the repaired property.

The breakdown of maintenance can also thwart the success of efforts to prevent foreclosures. Help for distressed homeowners—financial counseling, foreclosure mediation, loan modifications, short sales, and low-cost rehab loans, for instance—is unlikely to succeed where distressed homeowners are surrounded by dilapidated and unmarketable houses. Maintaining one house at a time will not succeed when maintenance is not the neighborhood norm. Housing preservation programs, rehab projects,

new construction in-fill, and homeowner repair loan programs, among others, all need a well-maintained environment around them to be successful. Responsible maintenance is one of the fundamental requirements of a thriving community's sustainability.

Better Housing and Neighborhood Environmental Code Compliance

Better housing and neighborhood environmental code compliance is essential for stopping rampant abandonment and creeping dystopia. Unfortunately, the code compliance apparatus as currently constituted in most communities is not capable of dealing with large-scale abandoned, worthless housing. Sometimes one or two of the component parts of a compliance system may be exemplary; but those parts cannot make up for failures in other parts. The various local government compliance and enforcement agencies exercising police power in cities operate in separate silos and often at cross-purposes. Several different departments—fire, health, residential maintenance, zoning, and building—may conduct inspections, issue administrative violation notices, and file cases in the same court, with no awareness of each other's actions involving the same parties and property. Prosecutors may bring cases repeatedly against the same defendant at the same property for the same offense resulting in the same small fines. An occupancy permit may be issued by a licensing office for a dwelling waiting for demolition because it is only necessary to pay the fee to authorize occupancy. This is licensing of lawless conduct, not law enforcement.

Code compliance is thwarted when each agency pursues its limited mission without regard to the people and property who depend on effective law enforcement for a healthy, safe, and secure residency. The departmental and institutional vision of each enforcement task is focused on that one task, mindless of how that task relates to the ultimate objective of code compliance. It is a nearly universal complaint of both department managers and field compliance officers that narrowly defined work rules are a major impediment to successfully serving and protecting the community. In short, there is insufficient coordination in public safety operations to constitute a reliable system able to ensure compliance with neighborhood housing, health, and safety laws, especially compliance by absentee owners and controlling lien holders.

The marginalization and disparagement of local first responders, those housing, fire and health officers, prosecutors, and municipal courts exercising the local police powers make housing abuse easy and cheap for the lawless. More often than not, these officers try to provide for the quality of life that is necessary for a civilized community's health, safety, and property protection. They cannot operate effectively, however, without other departments and institutions. Code enforcement procedures depend on information kept by the array of authorities who keep title and tax records and preside over bankruptcies, mortgage

debt collection, and court-ordered property transfers. At the very least, all these governmental offices need to recognize how their operations make an impact beyond their immediate tasks. Shortsighted perspectives impede successful compliance policing.

Modernization of Obsolete Code Compliance Policies and Procedures

Modernization of obsolete code compliance policies and procedures is a critical need. Housing inspectors, prosecutors, and municipal judges need new, policies, procedures, information, and information technologies for dealing with problems such as flipping ownership, disposable real estate businesses, remote defendants, repeat offenders, corporate violators, toxic titles, fraudulent conveyances, and mortgage fraud. Cities need to reorganize and streamline old, arthritic bureaucracies for more nimble, mobile, and effective policing. Law departments and prosecutors need to become fully engaged in the struggle against housing and neighborhood blight. Law departments usually see themselves as defenders of municipal clients, not legal enablers for municipal officers who have problems to solve.

Financially able owners and parties legally responsible for housing conditions should not escape their legal obligation to maintain the condition of their real property and to comply with court orders requiring compliance after conviction or judgment. Intentional and repeat offenders should not be enabled to neglect housing maintenance responsibilities because of weak, toothless enforcement. Creditors with the legal means to control and maintain their collateral should ensure that the collateral's condition does not destroy the value of neighboring houses or other lenders' collateral. On the other hand, financially strapped owners who can demonstrate the will and skill to comply with correction notices should have access to resources to help them do so.

It is essential that local lawmakers recognize the dominant role business entities now play in housing markets and that some of these are huge and remote corporations with deep pockets and convoluted business plans to evade local laws and law enforcement. The Cleveland Municipal Housing Court's innovative efforts to adjudicate and sentence absentee owners and defiant corporations over the past fifteen years have made national news on numerous occasions.⁴ Municipal courts in Memphis, Baltimore, Buffalo, Chicago, Detroit, and Boston have had similar challenges

4. See Raymond L. Pianka, *Cleveland Housing Court—A Problem-Solving Court Adapts to New Challenges*, FUTURE TRENDS IN STATE COURTS (Nat'l Ctr. for State Courts 2012), http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Courts-and-the-Community/~/_/media/Microsites/Files/Future%20Trends%202012/PDFs/ClevelandHousingCt_Pianka.ashx.

over the years. Effective municipal courts are necessary to ensure the rule of law protects neighborhoods and communities.

Enforcement officers need to act strategically to obtain maximum compliance with the limited resources available. Focusing on repeat offenders with the highest volume of violations will lead to more benefit for neighborhoods than random or complaint-driven enforcement. Using civil actions as well as criminal prosecution should be an option. Prosecutors need to seek creative sentencing that is remedial and compliance oriented, not merely punitive. Sentencing of guilty defendants with multiple properties should aim to get all of the defendants' houses into compliance as a condition for mitigating sentences. Assessing puny fines to close cases faster for the same repeat offender is not a solution. It permits lawless conduct at an affordable business expense. Law enforcers and their community constituents need compliance, not fines or fast dockets. Getting property owners and community organizations involved in promoting voluntary compliance and providing compliance assistance to willing but needy homeowners is another useful strategy. Ultimately, the stability of neighborhoods depends on the compliance that good policing achieves more than it depends on the punishment of irresponsible defendants.

Hard-pressed municipalities are trying to avoid being manipulated by private interests into absorbing losses and costs of mortgage failures. For instance, New Jersey enacted Senate Bill 1229 last year to give its municipalities more authority to regulate vacant residential property and hold foreclosing creditors responsible for maintenance costs.⁵ A few municipal jurisdictions in Ohio and Massachusetts require a bond to be posted by mortgage foreclosure plaintiffs in order to guarantee the payment of maintenance costs is not foisted onto the taxpayers. New tools are needed to protect taxpayers from subsidizing those who have engaged in a failed business transaction.

Code compliance is essential for neighborhood recovery strategies because rehab or repairs, vacant property registration ordinances, land banking, fast foreclosures, mandatory mediation, consumer counseling, and other assistance will be successful only in an environment where housing is responsibly maintained in marketable condition for its lawful, intended purpose. Where vacant land in residential neighborhoods with shrinking population is put to novel uses—community gardens, urban farms, green space amenities, storm water management, pocket parks, to name a few—new code compliance policies will be needed to sustain reimaged neighborhoods.

5. N.J. STAT. ANN. § 40:48-2.12s.

Effective Role Models

From the author's experience, the most effective response to the problem of abandoned vacant houses is a sustained collaboration between civic groups and public managers at the local community level, a coalition of the willing and determined. The best example of such a coordinated civic and public collaboration is the Vacant Abandoned Property Action Council in Cleveland started in 2005. The author has observed similar coordinated collaborations in Baltimore, Philadelphia, Memphis, and Buffalo. These collaborative responses are not exactly alike or have the same results, but each is a game-changer for its community.

In these examples, senior and managerial staff of public safety, municipal law enforcement, and community-based nonprofit public interest agencies lead the reform needed to cope with local neighborhood housing disasters. When a determined coalition of policy and program managers communicate regularly across organizational boundaries and bureaucratic silos, they can avoid unintended conflicts with each other, coordinate policy advocacy, partner in program planning, and work strategically toward common objectives. Combining their perspectives produces synergy and a more complete perception of what is working, what is failing to work, and what has to be done to make effective improvements. Not everyone who should be included is likely to be willing or permitted to collaborate. Some government agencies and community groups prefer to remain insular and defensive. Yet those who do collaborate can make a significant impact by acting strategically together.

The sharing of data and research in such a coalition is its most important activity. Access to reliable and current real property information is essential for stabilizing neighborhoods. Shared knowledge of what is happening, to whom, by whom, and when is at the heart of acting in strategic coordination. It is the means for seeing housing and neighborhood problems from multiple perspectives. Sharing a common real property information system makes data-driven planning and objective evaluation possible.

Right now, no system is better than the one provided to its Cleveland area subscribers by the Case Western Reserve University Center on Urban Poverty and Community Development.⁶ Its users produce researched scholarship; investigative reports; and the history and real property trends of individual buildings, streets, neighborhoods, zip codes, and communities. It tracks title transfers, code violations, building permits, property tax status, foreclosures, sheriff sales, REO portfolios, demolitions, and more. It illuminates many things otherwise hidden from view by the fragmented public data sources.

6. Case W. Reserve Univ., NEO CANDO, <http://neocando.case.edu> (last visited June 2, 2015).

No place provides more detailed studies of the policy and program responses to the mortgage crisis faced by legacy cities than the Vacant Property Research Network at Virginia Tech. Under the direction of attorney and professor Joseph Schilling, this institute has completed and is publishing detailed reports on how Cleveland, Baltimore, and Philadelphia are responding to the crises of housing abandonment.⁷ Its other reports show in detail how resilience and recovery are being achieved. Its studies and resources describe different policies and programs used to deal with a variety of housing styles, densities, preservation, and land reuse possibilities. Another resource accessible online is the Center for Community Progress, which publishes cutting edge work by leading community development scholars and practitioners.⁸ These are important sources of new hope for communities in recovery.

Conclusion

Gathering serious civic and public experts to collaborate using all available relevant data to study problems and deploy strategic solutions at the local community level is our best hope against the current dystopian trend, a trend perpetuated by conflicting perspectives and interests. What will emerge out of this time of housing and neighborhood dystopia can be communities and residential neighborhoods more resilient than before. It starts with better vision.

7. See Vacant Prop. Research Network, *Cleveland and Cuyahoga County—A Resilient Region's Response to Vacant Properties* (May 2014), <http://vacantpropertyresearch.com/wp-content/uploads/2014/05/VPRN-Cleveland-Case-Study-2014.pdf>; Vacant Prop. Research Network, *Philadelphia's Vacant Property Journey: Fostering Collaborative Alliances with Converging Policy Reform*, (Sept. 2013), http://vacantpropertyresearch.com/wp-content/uploads/2013/09/Philly-Layout_V5.pdf.

8. See Ctr. for Cmty. Progress, www.communityprogress.net (last visited June 2, 2015).

