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Volume 27 | Issue 4

Note

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1978

### Land Banking Tax Delinquent Property: Reform and Revitalization

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#### Recommended Citation

Note, Land Banking Tax Delinquent Property: Reform and Revitalization, 27 Clev. St. L. Rev. 517 (1978)

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# NOTES

## LAND BANKING TAX DELINQUENT PROPERTY: REFORM AND REVITALIZATION

THE OHIO LEGISLATURE ENACTED House Bill 1327 into law in October, 1976,<sup>1</sup> the stated purposes of which were to establish a workable method of restoring tax delinquent property to the tax rolls and to help rejuvenate and redevelop abandoned areas of cities.<sup>2</sup> To those ends, the bill details in rem foreclosure procedures for qualifying properties and authorizes municipal corporations to establish a land reutilization program (LRP) to take ownership of "nonproductive" tax delinquent lands not disposed of through foreclosure or forfeiture sales.

The role of the LRP is to acquire, manage, and eventually dispose of tax delinquent property. Until the time of disposition, the property will be held in a land bank.<sup>3</sup> The use of land banking in a revitalization program is a departure from prior practice under which land was acquired only upon a showing of present public necessity or for the purpose of controlling growth and development and from the long held belief that the use of property should be controlled largely by the private market.<sup>4</sup>

This note will examine the role of land banking generally in the urban revitalization process, describe the changes made by House Bill 1327 in proceedings for foreclosure of tax liens, outline the mechanism of a land reutilization program, and discuss the viability of an LRP in Ohio as both a method of reducing tax delinquency rates and a tool for redevelopment of the inner city.

### I. URBAN DETERIORATION

To understand the role of land banking of tax delinquent lands in urban revitalization, it is necessary to understand the process of urban deterioration. Tax delinquency is a symptom of the problems of large urban areas. The pull of suburban jobs, the push of inner city crime,<sup>5</sup> and the deterioration of commercial and city services<sup>6</sup> have reversed early population movements so that many large cities now suffer from the effects of increased emigration and

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<sup>1</sup> No. 4-415, 1976 Ohio Laws (amending OHIO REV. CODE ANN. §§ 323.11, 323.21, 2329.27, 5713.08, 5721.03, 5721.18, 5729.19, 5721.25, and 5723.01 and enacting OHIO REV. CODE ANN. §§ 5721.181, 5721.191, 5722.01-.14 (Page Supp. 1978) ).

<sup>2</sup> OHIO REV. CODE ANN. § 5722.02 (Page Supp. 1978); see also S. OLSON & M.L. LACHMAN, *TAX DELINQUENCY IN THE INNER CITY* 151 (1976).

<sup>3</sup> For a definition of "land bank" and a discussion of land banking generally, see note 38-44 *infra* and accompanying text.

<sup>4</sup> Note, *Public Land Banking: A New Praxis for Urban Growth*, 23 CASE W. RES. L. REV. 897, 913 (1972).

<sup>5</sup> Statistics on the increase in Cleveland's crime rate between 1965 and 1974 support the fears of its residents. During the nine year period, the rate of reported crimes per 100,000 persons at least doubled in every category but larceny. S. OLSON & M.L. LACHMAN, *supra* note 2, at 12-13.

<sup>6</sup> Nachbaur, *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 HOW. L.J. 3, 13 (1971).

decreased in-migration. For example, the population of Cleveland dropped from 915,000 in 1950 to 750,000 in 1970, and predictions are that it will drop to 460,000 by 1990.<sup>7</sup> Simultaneously, economic activity has shifted from the city to the suburbs; during the 1960's the number of jobs within the city of Cleveland dropped by 15.4% while the number of jobs in the remainder of surrounding Cuyahoga County increased by 73.2%.<sup>8</sup> As business and industry flee, the city is left with a shrinking tax base and a resultant deterioration of services. The cycle is endless: deteriorated services cause residents and businesses to leave the city, resulting in a diminished tax base which results in a further reduction in services.

Generally speaking, those people left in the cities are those who have been excluded from suburban housing and employment markets.<sup>9</sup> In Cleveland, for example, the racial composition changed dramatically from 1950 to 1970; in 1950, 16.2% of the city's population was black while in 1970, 38.3% of the population was black.<sup>10</sup> The median family income for Cleveland residents in 1970 was \$9,107 while that for the rest of the metropolitan area was \$12,704.<sup>11</sup> In 1975 one out of every five Cleveland families received Aid to Dependent Children.<sup>12</sup> Out-migration occurred most frequently among those segments of the population with incomes higher than the Standard Metropolitan Statistical Area (SMSA) median.<sup>13</sup> The middle class has left the city to those people most in need of services and least able to afford them.

The effect of population trends is most obvious on the housing market. As middle class families move out, the "filtering down" process of housing units begins. The typical pattern starts when those families left behind begin to move into the houses vacated by families an economic level above them. Eventually the poorest families are able to move out of the worst slum areas.

<sup>7</sup> The estimate is that of Professor Edric A. Weld, Jr., research director of Cleveland State University's College of Urban Affairs, who was an early projector of Cleveland's loss of well over 100,000 residents in this decade. *Cleveland's Future: CSU Research Pointing the Way*, CLEVE. ST. U. Q., Summer 1978, at 8.

<sup>8</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 10. The number of jobs in the city dropped by 71,000, while the remainder of Cuyahoga County added 110,000.

<sup>9</sup> Low-income households are excluded from the established suburban housing market because of the inflated cost of that housing. Strict zoning laws prohibit the building of new shacks or minimum standard structures throughout the United States, hence, low-income households are excluded from new communities. S. OLSON & M.L. LACHMAN, *supra* note 2, at 111. The impoverished job seeker is under a number of disadvantages as he/she attempts to find employment in the suburbs for a number of reasons: 1) the poor have low mobility in terms of the area of job search; 2) because employers recruit primarily by word of mouth, minority members will not hear of openings unless the company has a large number of minority employees; 3) because employers pay varied amounts for similar jobs, it is difficult for a ghetto resident to decide whether worthwhile jobs are available and whether he/she is getting the best offer; 4) searching for a job in the suburbs is costly because of lack of public transportation. T. STANBACK, JR. & R. KNIGHT, *SUBURBANIZATION AND THE CITY* 167 (1977).

<sup>10</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 10-11. The non-black population dropped by 40% (766,961 to 463,062), while the black population almost doubled (147,847 to 287,841). The increase in the black population was not due to immigration, but to an excess of births over deaths; both blacks and whites were out-migrating during that period. *Id.*

<sup>11</sup> *Id.* at 11. One-half of Cleveland's families ranked in the bottom one-third of the income distribution for all families in the standard metropolitan statistical area.

<sup>12</sup> *Id.*

<sup>13</sup> Between 1960 and 1970, the number of Cleveland families with incomes above the SMSA median declined from 81,000 to 62,000, a loss of 23% of the families with above-average incomes.

However, because these families do not have the economic capabilities of those preceding them, landlords decide the only way to maintain a profit margin is to reduce the amount of maintenance provided to the building and hence to reduce general overhead.<sup>14</sup> The housing unit deteriorates, becomes less desirable, and produces lower revenue. Poverty, declining population, and increased operating costs make the economics of housing a losing proposition for landlords.<sup>15</sup> In 1970 one out of six Cleveland households had an income of less than \$2,000, a sum far below that needed to pay rents sufficient to encourage landlords to offer well-maintained units.<sup>16</sup>

At the point that rehabilitation or maintenance costs exceed the potential return, the owner/landlord will abandon. In 1974 the Cleveland Bureau of Demolition razed over 4,000 housing units, 1.6% of the city's housing stock.<sup>17</sup> Demolition costs become part of the tax lien against the property, but because abandonment takes place concomitantly with tax delinquency, the demolition costs are seldom recovered.<sup>18</sup> The housing deterioration process results in thousands of abandoned,<sup>19</sup> tax delinquent parcels — vacant lots, ones with structures awaiting demolition, or habitable structures in inhabitable neighborhoods — scattered throughout the city.

Unfortunately, even then the process has not ended because of the infectious effect of abandoned housing on surrounding property.<sup>20</sup> Once rising incomes enable some residents to "move up" into more habitable neighborhoods, the old neighborhood becomes a place from which to escape. Many habitable buildings are then abandoned, not because they are unsafe or unsanitary but because they are in neighborhoods which are expendable. Abandoned buildings trigger a predictable response, especially in landlords: the neighborhood is being abandoned, and further investment of any kind is deemed unwise.<sup>21</sup>

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<sup>14</sup> George Sternlieb's study of abandonment in Newark, N.J., yielded statistics showing the net cash flow for a two-family apartment in that city to be \$0, assuming full occupancy and 100% rent collections. Of course, the owner does have a yearly business loss which is deductible. Sternlieb, *Residential Property Tax Delinquency: A Forerunner of Residential Abandonment*, 1 REAL ESTATE L.J. 256, 266 (1973).

<sup>15</sup> *Id.*

<sup>16</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 15. Owners cannot balance income from middle-income buildings against the losses from low-income ones because the declining population has left vacancies in the middle-income buildings.

<sup>17</sup> *Id.* at 14. Between 1966 and 1974, the city spent over \$4 million on demolition. Since demolition has the positive effect of removing the visual signs of blight, it is therefore encouraged by neighborhood groups. *Id.* One source indicates that there are sufficient funds for demolition; the process is hindered by the roughly seventeen administrative steps involved in the legal procedure. Interview with Joseph Smith, Commissioner of Redevelopment for Cleveland, in Cleveland, Ohio (July, 1978).

<sup>18</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 15.

<sup>19</sup> An abandoned building is defined broadly as "one which has been removed from the housing stock for no apparent alternative profitable reason and for which no succeeding use occurs on the land." G. STERNLIEB & R. BURCHELL, *RESIDENTIAL ABANDONMENT* 277 (1973) (emphasis omitted). Included, then, are standing buildings as well as those which have been demolished because of the owner's fear of continued economic loss and which therefore have ceased performing their shelter function.

<sup>20</sup> "A building and its environment are inextricably interrelated." Nachbaur, *supra* note 6, at 14. One can appreciate the necessity for rapid demolition action given this phenomenon of blight-spreading.

<sup>21</sup> Engaged Scholarship, *supra* note 2, at 1.

## II. TAX DELINQUENCY

The relationship between tax delinquency and abandonment is correlative rather than causative, that is, both are functions of the low-income housing market.<sup>22</sup> The effects of tax delinquency are most impressive when viewed in purely economic terms. In 1966 there were 8,200 tax delinquent parcels in Cleveland,<sup>23</sup> in 1974, 11,000 parcels,<sup>24</sup> and in 1978, 14,357 parcels.<sup>25</sup> Delinquent tax dollars totaled \$33,451,831.13 in 1978,<sup>26</sup> a 50% increase over amounts due in 1974. Because one way to reduce overhead on marginally profitable buildings is to stop paying taxes, much of Cleveland's tax delinquent property is located in deteriorating areas of the city; 27% of delinquent taxes was due on property in only six low-income neighborhoods.<sup>27</sup> In more stable neighborhoods the delinquency rate is 1 to 3%; citywide the 1974 rate was 6.5%.<sup>28</sup> Given the location of the bulk of tax delinquent properties, *i.e.*, deteriorated neighborhoods with continuously declining property values, the estimate is that only 19% of the delinquent taxes will ever be collected.<sup>29</sup>

The longer a piece of property is tax delinquent, the more likely it is that the property will be vacant. This is because tax delinquency is indicative of owner disinterest, and as that disinterest reflects itself in property neglect, tenants leave. Almost immediately the vacant property will be vandalized.<sup>30</sup> It then is usually condemned and demolished by the city, with the demolition costs added to the outstanding tax bill.<sup>31</sup>

The effects of such widespread tax delinquency affect the residents and the municipal government both directly and indirectly. If all delinquent taxes were collected in Cleveland, the Cleveland School District's share would exceed \$20 million.<sup>32</sup> The effects of tax delinquency are not only measured in

<sup>22</sup> In Cleveland, taxes have been ranked fifth as a problem, below tenants, neighborhood problems, energy cost increases, and building inspection problems. *Id.* at 119. In Sternlieb's Newark study, taxes were cited as a decidedly secondary problem by owners; 45.8% of the owners felt tenants to be the major problem, with 25.4% citing taxes as a major problem. It is not the tax burden alone which drives an owner to abandonment. G. STERNLIEB & R. BURCHELL, *supra* note 19, at 319. The relationship between abandonment and mortgage foreclosure is closer than that between tax delinquency and abandonment, probably because programs such as FHA insure tax payments. Sternlieb, *supra* note 14, at 263.

<sup>23</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 1.

<sup>24</sup> *Id.* This represents a 34% increase in eight years.

<sup>25</sup> CLEVELAND CITY PLANNING COMMISSION, Status of Tax-Delinquent Properties, Jan. 1, 1978 (compiled Summer, 1978).

<sup>26</sup> *Id.*

<sup>27</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 21.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Within a few weeks a building can deteriorate to the point of being irretrievable. Nachbaur, *supra* note 6, at 11.

<sup>31</sup> Demolition cases are certified to the Cuyahoga County Auditor as special assessment liens against the property if the owner fails to reimburse the city. S. OLSON & M.L. LACHMAN, *supra* note 2, at 20. In 1975, approximately 40% of the tax delinquent properties in Cleveland were vacant lots. An additional problem is posed by other statistics: 46% of the tax delinquent properties were occupied residential structures. Almost 40% of the tax delinquent occupied structures were owner-occupied; of the remaining tax delinquent properties, 6% contained occupied nonresidential structures, and 8% had vacant buildings on them. *Id.* at 87-88.

<sup>32</sup> This is based on the 1978 real property tax rate of 70.5 mills, with 41.5 mills levied by the School District and a 1978 tax delinquency of \$33,451,831.13.

terms of lost revenues. For example, expenditures for demolition run into the millions of dollars.<sup>33</sup> When large numbers of taxpayers are delinquent, tax rates must be raised if city service levels are to be maintained. Oftentimes an increase in property taxes will bring increased delinquency or will further depress a tenuous property market.

In addition, the administrative burden of foreclosing on large numbers of properties can be overwhelming. Even though in Ohio the prior statutory process provided for property to be brought to sale within three years,<sup>34</sup> the actual time involved has often been nine to ten years.<sup>35</sup> Property was offered at sheriff's sale for two-thirds of the parcel's appraised value but was seldom sold for that amount. Consequently the administrative costs usually were greater than the amount collected.<sup>36</sup> Because the speculator/purchaser has a very small investment in the property, often as little as \$10 per lot, and because the property is not likely to be in an area where property values will inflate, the "redelinquency" rate is extremely high. By 1974 almost 60% of the properties sold at forfeiture sale in 1969 and 1972 were delinquent again.<sup>37</sup> This lengthy tax foreclosure process had several negative effects: 1) it allowed owners to avoid paying taxes because there was no immediate threat of loss; 2) it allowed property to remain delinquent for so long that the amount of taxes due exceeded the value of the property, and the city was forced to abate that portion of taxes due which was in excess of selling price; 3) tax delinquent buildings were often vandalized so badly that they had to be demolished, thus imposing a financial burden on the city; and 4) the costly administrative procedure was repeated again and again on chronically delinquent properties.

### III. LAND BANKING: PRIOR APPLICATIONS

The term "land banking" is used to describe a wide range of activities,

<sup>33</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 15.

<sup>34</sup> OHIO REV. CODE ANN. §§ 5721.01-.29 (Page 1973).

The procedure required was as follows:

(1) A parcel was certified delinquent after taxes had been unpaid for at least two consecutive semiannual collection periods. (2) A certified list of delinquent properties was sent each August to the county treasurer by the county auditor. (3) The auditor published a delinquent land list twice within 60 days. (4) One year after the property had been certified delinquent, the auditor could issue a "delinquent land tax certificate" and send it to the county prosecutor. (5) The county prosecutor then initiated foreclosure proceedings, supposedly within six months after delivery of the certificate. (6) The county prosecutor was required to do a title search on each parcel and notify owners and others with an interest in the property. (7) After the sales price had been set through appraisals and the properties advertised, the sheriff offered the properties for sale.

All of these steps could, conceivably, have been accomplished within three years.

<sup>35</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 39. There are properties which have been delinquent since the 1930's. Interview with Thomas Cables, Assistant County Prosecutor for Cuyahoga County, in Cleveland, Ohio (July, 1978).

<sup>36</sup> Property was reappraised before the second sale and could sell for a minimum of \$10.00 at the auditor's forfeiture sale. In 1969, 1970, and 1971, 189 foreclosed parcels were made available at sheriff's sales; slightly over one-third were sold. In 1973 and 1974, only 23% were sold. Over 80% of the parcels offered at forfeiture sales in 1969 and 1972 were sold because of the lower acceptable bid. S. OLSON & M.L. LACHMAN, *supra* note 2, at 40.

<sup>37</sup> *Id.* at 48. The acceptance of low bids encouraged speculation at the forfeiture sales. One of ten individuals or groups purchased nearly 60% of the parcels at the 1969 and 1972 forfeiture sales; approximately 57% of these parcels became delinquent again. *Id.*

both public and private, in which land is acquired for future use.<sup>38</sup> Until recently land banking activities in the United States have been carried on to further one or more of the following purposes: 1) industrial development;<sup>39</sup> 2) advance land acquisition for public facilities;<sup>40</sup> and 3) housing and urban renewal.<sup>41</sup> These activities come under the rubric of *project land banking*, that is, land banking concerned with the accomplishment of a governmental function.<sup>42</sup> The land generally is not banked for some future use which is to be determined at the later time. This is to be contrasted with *general* land banking, defined as:

the acquisition of developed and undeveloped land, holding of land, and disposition of land for all types of land uses — public and private — without prior specification of the use for particular sites, by a public body whose deliberate purposes are control or metropolitan growth pattern and/or regulation of metropolitan land prices and/or capturing of capital gains and/or regulation of land use.<sup>43</sup>

The differences between project and general land banking are found in the

<sup>38</sup> H. FLECHNER, *LAND BANKING IN THE CONTROL OF URBAN DEVELOPMENT* 3 (1974).

<sup>39</sup> The cities of Philadelphia, Baltimore, and Milwaukee have acquired land, prepared it for industrial use, and subsequently sold it for industrial development. The programs in the respective cities are the Philadelphia Industrial Development Corporation (PIDC), the Baltimore Industrial Development Corporation (BIDC), and Milwaukee Land Bank. The PIDC was created in 1957 as a non-profit corporation whose purpose was to assist private persons in developing industrial sites. Between 1967 and 1972 PIDC was responsible for developing plant space for over 70,000 jobs, over 40% of which were new. It is recognized as the most effective industrial development vehicle in any city in the United States. The BIDC is a newer non-profit corporation which performs management duties of the landbank program for new industrial sites. At the heart of the landbank program is a tax-exempt funding mechanism established by the Maryland General Assembly to provide state guarantees for industrial mortgages. *See generally* H. FLECHNER, *supra* note 38, at 61-63.

<sup>40</sup> Over one-third of the cities with populations over 50,000 carry on some type of advance acquisition activity through the exercise of their powers of eminent domain, although the programs are generally limited to a small geographical area and confined to acquisition of property for schools and parks. Note, *Public Land Banking*, *supra* note 4, at 914. In Montgomery County, Maryland, for example, the advance acquisition of land for school sites has been going on since 1964. In 1968, the county received state approval to purchase, hold, improve, and dispose of real property adjacent to important public facilities. The purpose is to ensure the orderly development of such land; to this end, the county can include restrictions on future sale and lease as land is disposed of to public agencies and private developers. H. FLECHNER, *supra* note 38, at 65-66.

<sup>41</sup> Federal programs have touched on the land banking principle. During the Depression, the Greenbelt Cities Program and the Resettlement Administration provided needed employment through the construction of new towns. *See* N. ROBERTS, *THE GOVERNMENT LAND DEVELOPERS* 194 (1977). With the Housing Act of 1949, 42 U.S.C. § 1457 *et seq.* (1976), the government undertook its most ambitious participation in development as it began to deal with the post-war problems of inner cities through urban renewal programs. The assembly of land for later disposition to public and private agencies for redevelopment was a key element of the program. *Id.* at 195-96.

<sup>42</sup> Project land banking has the following characteristics: 1) it is limited geographically to small areas; 2) it is limited to individual jurisdictions; 3) it is limited in size of holdings; and 4) it is limited in impact on growth patterns and effect on urban problems. H. FLECHNER, *supra* note 38, at 6.

<sup>43</sup> *Id.* at 7. Within this definition can be found the purpose, scale, and method of general land banking. The definition must be modified, however, to conform to the intent of particular programs. It does not, for example, specify the location of land to be acquired (*i.e.*, core, developing, or fringe area); such is left to the formulators of a specific program. General land banking does not exhibit the limitations of project land banking: 1) it can be carried out on a wide geographical scale; 2) there is no limit on the size of holdings; 3) the very purpose of the program

terms "acquisition," "holding," and "disposition." Under general land banking the purpose of the specific site acquired need not be identified at the time of acquisition. A general land bank holds land for possibly twenty or more years, can hold a large inventory, is organized to maintain a large holding for a long period of time, and may grant interim use of the land. Disposition is made at some unspecified future time under circumstances determined at that time.<sup>44</sup> General land banking allows a public body to acquire and hold land without having a designated purpose for that land. The land is acquired in the name of "public purpose," but it can later be sold for private use. The use can be determined and controlled by the public body. Conceivably, large amounts of land could be held for long periods of time.

Congressional support for general land acquisition for public bodies is reflected in the passage of the Urban Growth and New Community Development Act of December 31, 1970,<sup>45</sup> which called for planning for orderly growth, development, and redevelopment of cities.<sup>46</sup> The National Commission on Urban Problems recommended that state governments enact legislation enabling the advance acquisition of land for the following purposes: 1) assuring the continuing availability of sites needed for development; 2) controlling the timing, location, type, and scale of development; 3) preventing urban sprawl; 4) reserving to the public gains in land values resulting from the action of government in promoting and serving development.<sup>47</sup> Land banks were specifically recommended.<sup>48</sup>

Despite the precedent and the encouragement, there has been reluctance

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is to exert a major impact on growth patterns or urban problems; and 4) because land is acquired with no specific predetermined disposition, there is no time limit.

The Model Land Development Code excludes advance land acquisition for specific public facilities from the concept of "land banking." The authors limit the concept to situations where 1) land acquired is not committed to a specific use at the time of acquisition and 2) the amount of land acquired is sufficient to have a substantial effect on urban growth patterns. MODEL LAND DEVELOPMENT CODE art. 6, Commentary (Proposed Official Draft 1975). Such land is described as a "land reserve," with "land banking" used to describe the acquisition and disposition process. *Id.* § 6-101, Note.

<sup>44</sup> H. FLECHNER, *supra* note 38, at 7. Land may be disposed of by sale, lease or other means and may entail attaching certain conditions which will run with the land. *Id.*

<sup>45</sup> Urban Growth and New Community Development Act of 1970, 42 U.S.C. § 4501 *et seq.* (1976) (amended 1977).

<sup>46</sup> In the Statement of Purpose of the Act, it is stated that:

It is the policy of the Congress and the purpose of this chapter to provide for the development of a national urban policy and to encourage the rational, orderly, efficient, and economic growth, development, and redevelopment of our States, metropolitan areas, cities. . . ; and to encourage and support development which will assure our communities and their residents of adequate tax bases, community services, job opportunities, and good housing in well-balanced neighborhoods. . . .

*Id.* § 4501.

Financial and other assistance is provided to encourage development of new communities, including additions to existing communities in a manner which will rely to a major extent on private enterprise; to encourage fullest utilization of the economic potential of older cities; and to encourage revitalization of the nation's urban areas. *Id.* § 4511.

<sup>47</sup> NATIONAL COMMISSION ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY 251-52 (1969). The Commission recommended that the land then be sold or leased at no less than fair market value in accordance with approved plans, with leasing being the preferred method, for it allows re-assembly for future replanning and development. A further recommendation calls for the establishment of a federal revolving fund to aid local governments in purchasing land. As the acquired land is disposed of, the federal contribution would be returned to the fund. *Id.*

<sup>48</sup> *Id.* at 252. The Commission realized that many localities would be unable or unwilling to



on the part of public bodies to engage in widespread land acquisition and banking. There have been only four land acquisition and banking programs involved chiefly in general land banking.<sup>49</sup>

Puerto Rico established the first program in 1961, with the creation of the Puerto Rico Land Administration (PRLA).<sup>50</sup> The PRLA was a response to a difficult and threatening problem: a high population density and an artificial shortage of land resulting from a monopoly by speculators had heavily burdened low and moderate-income families in need of housing and threatened the implementation of a master plan for the country.<sup>51</sup> The PRLA was given broad powers to acquire real property to be kept in reserve or used in the immediate development of public works and social and economic welfare programs.<sup>52</sup> Between 1962 and 1970 more than 24,000 acres were acquired by the PRLA and thousands of low and moderate-income housing units were constructed.<sup>53</sup>

A second program took place in New York. In 1968 the New York state legislature created the New York State Urban Development Corporation (UDC) to combat uncontrolled urban growth, pollution, and urban blight.<sup>54</sup> The corporation had broad powers, including the power to acquire real and personal property and to hold, clear, improve, rehabilitate or otherwise dispose of the same. By 1970 UDC efforts had resulted in the construction of 54 rehabilitation projects which included over 43,000 housing units.<sup>55</sup> However, the withdrawal of federal monies resulting from the moratorium on federal support for low and moderate-income housing plus escalating costs of the projects forced the state legislature to authorize a new State Project Finance Agency<sup>56</sup> to assume the obligations of the UDC and complete projects under construction.<sup>57</sup> No further projects were undertaken.

Under a third program, the Federal Housing and Urban Development

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use land bank programs; it nevertheless urged states to authorize them, so that local governments wishing to experiment with the systems might do so.

The authors of the Model Land Development Code recommend the organization of a State Land Reserve Agency which would adopt a land reserve policy in conjunction with a State Land Planning Agency. MODEL LAND DEVELOPMENT CODE §§ 6-102, 6-103 (Proposed Official Draft 1975). Local government units may finance the acquisition, holding and disposition of the land, which must be in accordance with land reserve policy. *Id.* § 6-501.

<sup>49</sup> Note, *Public Land Banking*, *supra* note 4, at 916.

<sup>50</sup> Puerto Rican Land Administration Act of May 16, 1962, No. 13, P.R. LAWS ANN. tit. 23 § 311f(s) (1964). The programs referred to extend to those undertaken by the PRLA, the Commonwealth of Puerto Rico or its agencies, and by private entities for the benefit of the PRLA or the Commonwealth and include, but are not limited to, housing and industrial development programs. N. ROBERTS, *supra* note 41, at 198.

<sup>51</sup> These problems were cited by the legislative assembly as motives for establishing the PRLA. N. ROBERTS, *supra* note 41, at 234.

<sup>52</sup> Puerto Rican Land Administration Act of May 16, 1962, No. 13, P.R. LAWS ANN. tit. 23, Statement of Motives (1964).

<sup>53</sup> N. ROBERTS, *supra* note 41, at 198; Note, *Public Land Banking*, *supra* note 38, at 922.

<sup>54</sup> New York State Urban Development Corporation Act, N.Y. UNCONSOL. LAWS § 6251 *et seq.* (McKinney 1979).

<sup>55</sup> N. ROBERTS, *supra* note 41, at 199.

<sup>56</sup> New York Project Finance Agency Act, N.Y. UNCONSOL. LAWS § 6361 *et seq.* (McKinney 1979).

<sup>57</sup> N. ROBERTS, *supra* note 41, at 199-200.

Acts of 1968<sup>58</sup> and 1970<sup>59</sup> made community development through land acquisition a possibility. The goal was to encourage the building of new communities and new "town-within-town" projects throughout the nation. Initially, loans were guaranteed to private developers to enable them to obtain long-term capital at lower interest rates; later the guarantees were extended to public development agencies. Plagued by cost overruns, poor scheduling management, and red tape, the government announced in January, 1975, that it would not qualify additional towns under the program. In a recent decision, HUD has decided to terminate the program.<sup>60</sup>

The fourth program, undertaken pursuant to Missouri's Land Reutilization Law,<sup>61</sup> is the most important for purposes of this note because it served as a model for Ohio House Bill 1327. Passed in 1971, the law enabled the city of St. Louis to: 1) foreclose on tax delinquent properties within two years; 2) reduce processing costs by filing one suit against a large number of parcels; and 3) establish a Land Reutilization Authority (LRA) which could purchase, manage, hold, sell, or lease foreclosed property which did not sell for a minimum bid determined by the amount of the back taxes.<sup>62</sup> The Missouri law was the first to combine rapid foreclosure with public acquisition of delinquent lands.<sup>63</sup> The law allows the collector of revenue to join any number of parcels delinquent more than two years in a single action.<sup>64</sup> In rem proceedings are then instituted, eliminating the need for the costly title search and time consuming notice to every interested person, which is required where an in personam procedure is followed. Property not redeemed within sixty days after four weekly publications of a foreclosure notice is offered at

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<sup>58</sup> Pub. L. No. 90-448, § 402, 82 Stat. 476 (1968), codified at 42 U.S.C. § 4501 (1977).

<sup>59</sup> Pub. L. No. 91-609, § 701, 84 Stat. 1770 (1970), codified at 42 U.S.C. § 4501 (1976).

<sup>60</sup> Losses in the eight-year-old New Communities program total \$149 million. Seven of the 13 new town projects will be liquidated, with additional money committed to help the remaining six towns survive. The private developers ran out of money before they could sell enough property to sustain the development, and HUD was left with the responsibility of paying off loans and foreclosing on the projects. *Cleveland Plain Dealer*, Sept. 28, 1978, § A, at 15, col. 1.

<sup>61</sup> MO. ANN. STAT. §§ 92.700-.920 (Vernon Supp. 1977). For a complete discussion of the history of Missouri's Land Reutilization Law, see Lansdorf, *Urban Decay Property Tax Delinquency: A Solution in St. Louis*, 5 URB. LAW 729 (1973).

<sup>62</sup> The legislation applies only to St. Louis because, under the statute, only cities with a population in excess of 500,000 and not within a county are affected. The statute was challenged on constitutional grounds because only St. Louis fell within the required definition. It was upheld in *City of St. Louis v. Parcels of Land Encumbered with Delinquent Tax Liens* Serial No. 1-047 and 1-048, 517 S.W.2d 49 (Mo. 1974).

<sup>63</sup> Individual aspects of Missouri's legislation can be found in the statutes of other states. Eight western states have a foreclosure procedure under which, after a five year redemption period, delinquent properties are sold to the state rather than to private purchasers. South Dakota, Minnesota, and Maryland give taxing bodies the right to limit the advertising and owner-notification components of foreclosure. Maryland cities are permitted to purchase lands not sold at foreclosure sales, but there is a long redemption period following the sale, and the purchaser must obtain clear title to the foreclosed parcel. Some states allow tax collection agencies to hire private attorneys to help with collection, while others permit consolidated suits rather than requiring individual ones. See generally S. OLSON & M.L. LACHMAN, *supra* note 2, at 54-55.

<sup>64</sup> While any number of parcels may be included, the collector of revenue usually joins 500. It costs approximately the same amount to sue on 500 parcels at one time as it does to close against 25 individual parcels. The collector initially included only properties delinquent before 1968, choosing every delinquent property on each consecutive city block. The same computerized selection process was then used for parcels delinquent for just two to four years. *Id.* at 57.

sheriff's sale. If there is no bid equal to the full amount of the tax bills, penalties, attorney's fees, and administrative costs, the LRA bids the full amount and obtains title. The LRA has taken title to both occupied and vacant structures.<sup>65</sup>

The LRA has successfully reduced tax delinquency in St. Louis. The amount of property tax collected was 96% of the total potential tax in 1975, up from 90% in 1971,<sup>66</sup> and it has been unusual for properties sold at sheriff's sale or by the LRA to become delinquent again.<sup>67</sup> Of the 8,757 tax delinquent parcels acted upon between 1972 and 1975, 4,869 had forfeited to the LRA, approximately 20% of which had structural improvements.<sup>68</sup> The agency received revenues from the sale and management of properties and had a budget surplus of \$200,000 in 1975.<sup>69</sup> Thus while tax delinquency has decreased, the land obtained by the LRA is not being used for redevelopment or revitalization efforts as yet.

#### IV. OHIO'S SOLUTION

Ohio House Bill 1327 was proposed as part of the answer to the tax delinquency and abandonment problems of cities. As enacted, the law first alters the foreclosure process. Under judicial interpretations of the prior statute, an action to foreclose because of failure to pay back taxes was deemed an in rem action,<sup>70</sup> but an in personam procedure was followed to execute foreclosure.<sup>71</sup> The result was that it was necessary for the county prosecutor to conduct a title search, to make every interested person or entity party to the suit, and to provide each party with specific notice.<sup>72</sup> This procedure will remain in effect for those properties on which foreclosure proceedings are

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<sup>65</sup> *Id.* at 58-59. In 1976, the city had not begun to foreclose on properties which became delinquent after 1971; the delinquent buildings on which the city had foreclosed were severely deteriorated, and most of the properties were vacant or contained unoccupied buildings. Consequently, the LRA had not taken title to large numbers of occupied buildings. However, the LRA was receiving rents from at least 50 occupied residential buildings. A private realty firm collected the rents, retaining five percent of the income as a management fee. Buildings managed by the LRA are not kept up to the housing code, but the LRA does attempt to maintain safe conditions. New tenants are not accepted as former ones leave; approximately 10 percent of the LRA's housing units are occupied by squatters. *Id.* at 60.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 61.

<sup>68</sup> This is the result of 21 lawsuits processed between January, 1972, and the spring of 1975. Of the 8,757 parcels involved, 1,581 had been redeemed by their owners and 1,120 were being redeemed on two-year installment contracts. *Id.* at 60.

<sup>69</sup> *Id.* at 56. The LRA has no long-term disposition plan. As of 1976, its primary uses for land were 1) holding land for urban renewal and for development of an industrial park, 2) holding 40% of the land in an area designated for a new town, and 3) homesteading viable properties. *Id.*

<sup>70</sup> In *Hunter v. Brier*, 173 Ohio St. 158, 180 N.E.2d 603 (1962), the Ohio Supreme Court declared a proceeding to foreclose a tax lien on land instituted under the provisions of Ohio Revised Code section 5721.18 to be essentially one in rem operating on the land itself rather than on the title thereto.

<sup>71</sup> OHIO REV. CODE ANN. § 5721.18 (Page 1973), as amended (Page Supp. 1978).

<sup>72</sup> Under Ohio law, a property owner does not have to list his/her name on the general tax list. Approximately 40% of the taxpayers choose instead to pick up their bills in person. Interview with Thomas Cables, Assistant County Prosecutor of Cuyahoga County, in Cleveland, Ohio (July, 1978). This situation made the giving of notice as required under the prior law an almost impossible task.

commenced by the filing of a complaint before the end of the third year from the date on which the delinquency is first certified.<sup>73</sup> However, the new law establishes a specific statutory procedure for tax foreclosure proceedings on parcels certified delinquent for at least three years. Those actions are now in rem,<sup>74</sup> and all persons are bound to know the property may be sold with no more than newspaper notice to anyone except the person shown as owner on the tax records.<sup>75</sup> Within thirty days after the filing of the complaint by the county prosecutor,<sup>76</sup> the clerk of courts must have a foreclosure notice published once a week for three consecutive weeks<sup>77</sup> and must send notice to each person listed on the complaint as the last known owner.<sup>78</sup> If an answer<sup>79</sup> is not filed with the clerk within thirty days by any person claiming to own or have other interest in the property, a default judgment may be taken on the parcel.<sup>80</sup> The delinquent land tax certificate filed by the auditor with the

<sup>73</sup> Property is not declared delinquent until taxes have been unpaid for two consecutive semi-annual collection periods. OHIO REV. CODE ANN. § 5721.01 (Page 1973). The auditor certifies the list of all delinquent lands in the county after each August settlement. OHIO REV. CODE ANN. § 5721.03 (Page Supp. 1978).

<sup>74</sup> OHIO REV. CODE ANN. § 5721.18(B) (Page Supp. 1978). If there is no name listed on the tax records, none need be listed in the complaint. Because of this change, individual defendants need not be identified and joined. S. OLSON & M.L. LACHMAN, *supra* note 2, at 151. The need for a costly time-consuming title search is also eliminated.

<sup>75</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 151.

<sup>76</sup> Section 5721.18(B) details those elements which must be included in the complaint filed by the county prosecutor:

- 1) permanent parcel number for each parcel;
- 2) full street address, when available;
- 3) description of each parcel in the delinquent land tax certificate;
- 4) name and address of last known owner if on the general tax list;
- 5) taxes, assessments, and penalties due on the parcel;
- 6) allegation that a delinquent land tax certificate has been filed by the county auditor for each parcel;
- 7) allegation that the amount due is unpaid and is a lien against the property; and
- 8) prayer that the court order parcels sold by foreclosure sale.

OHIO REV. CODE ANN. § 5721.18(B) (Page Supp. 1978); *see generally* S. OLSON & M.L. LACHMAN, *supra* note 2, at 152.

<sup>77</sup> OHIO REV. CODE ANN. § 5721.18(B)(1) (Page Supp. 1978). After the third publication the publisher must file an affidavit with the clerk of court stating the fact of the publication and including a copy of the foreclosure notice as it appeared.

<sup>78</sup> *Id.* The form should follow substantially that set forth in Ohio Revised Code section 5721.181. The clerk is to enter the fact of the mailing upon the appearance docket. Where the name and address of the last known owner are not set forth in the complaint, the county auditor must file an affidavit with the clerk of court stating that the name and address do not appear on the general tax list.

<sup>79</sup> The answer must contain the caption and number of the case and serial number of the parcel concerned. The answer must assert the interest claimed in the parcel and any defense or objection to the foreclosure of the state's lien. The answer must be filed with the clerk of court and a copy served on the county prosecutor not later than 60 days after the date of the first publication of notice of foreclosure. *Id.* § 5721.18(B)(2).

<sup>80</sup> *Id.* According to the statute, the default judgment "is valid and effective with respect to all persons owning or claiming any right, title, or interest in, or lien upon, any such parcel, notwithstanding that one or more of such persons are minors, incompetents, absentees or nonresidents of the state, or convicts in confinement." *Id.* (emphasis added). In *Covey v. Town of Somers*, 351 U.S. 141 (1956), the Supreme Court held that notice by publication to a person known to be incompetent and without the protection of a guardian does not meet the requirements of due process under the fourteenth amendment. The case was distinguished in *Nelson v. City of New York*, 352 U.S. 103 (1956), where the Court held that, given the number of parcels involved, the city could not be charged with notice of appellant's particular

prosecutor is considered to be prima facie evidence<sup>81</sup> of the amount and validity of the taxes, assessments, penalties, and charges due on the parcel;<sup>82</sup> this amount is the minimum figure for which the parcel may be sold.<sup>83</sup>

Under either form of proceeding an advertisement for sale of delinquent parcels must be published,<sup>84</sup> and the date of a second sale must be given for properties not sold.<sup>85</sup> The statute details the disbursements of the funds received from any parcels which are sold.<sup>86</sup> Tax delinquent lands not receiving minimum bids at either of the two sales are forfeited to the state in the absence of a municipal plan to the contrary. The forfeited lands remain on the tax list with the auditor offering them for sale annually.<sup>87</sup>

The new law also establishes a mechanism through which an "electing municipal corporation" (EMC) can establish a Land Reutilization Program (LRP) to aid in returning "nonproductive"<sup>88</sup> tax delinquent land to the tax rolls. Pursuant to Ohio Revised Code section 5722.02, the EMC must enact an ordinance which states that the existence of nonproductive land in the municipal corporation makes necessary the creation of an LRP to encourage the return of the nonproductive land to a tax generating status or the devotion thereof to public use. From the date of the ordinance, the foreclosure, sale, management, and disposition of all such land in the municipal corporation is to be governed by provisions of the bill relating to LRPs.<sup>89</sup>

The municipal corporation is considered to have made a minimum bid on circumstances. It would appear, then, that the Court will look to such circumstances as size and population of area in deciding whether such a provision is valid.

<sup>81</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 154.

<sup>82</sup> OHIO REV. CODE ANN. § 5721.18(B)(3) (Page Supp. 1978). When an answer has been filed, the court may, within its discretion or if so requested, sever the proceedings of the individual parcel. The timely, costly, and perhaps unrealistic appraisal process for all proceedings, in rem and in personam, has been eliminated, except where the court might order such after the offering of the parcel the second time. *Id.*

<sup>83</sup> *Id.* § 5721.19.

<sup>84</sup> *Id.* Each parcel is to be advertised and sold in the manner provided by law for the sale of real property on execution. *Id.* The form for the advertisement of sale is specified by the code. *Id.* § 5721.191.

<sup>85</sup> *Id.* § 5721.19. This section changes prior law; notice of the two required sales is included in one advertisement. It also permits the court to order any number of parcels appraised, advertised, and sold together; prior law required each parcel to be sold separately.

<sup>86</sup> *Id.* The proceeds are to be applied in the following order: 1) the costs incurred in any proceeding filed against such parcel pursuant to section 5721.18; 2) the amount found due for taxes, assessments, penalties, and charges and entered in the findings by the court; and 3) the amount of taxes and assessments accruing after the entry of the finding and before sale. *Id.*

<sup>87</sup> The new law alters the procedure for property conveyed while under foreclosure proceedings. Instead of requiring that a new foreclosure action be brought against the new owner, it provides that the proceedings are not nullified. *Id.* § 5721.18(C). The law also alters the redemption procedure. Redemption is permitted between the commencement of the foreclosure proceedings and confirmation of the foreclosure sale. The amount due can be paid in five consecutive, substantially equal semiannual installments. Upon default of any payment, the court shall order the parcel sold. *Id.* § 5721.25.

<sup>88</sup> "Nonproductive" land is defined as:

any parcel of delinquent land with respect to which foreclosure proceedings have been instituted, and upon which there are either:

- (1) no buildings or other structures or
- (2) unoccupied buildings or other structures against which the municipal corporation has instituted proceedings for removal or demolition of the structure.

*Id.* § 5722.01(E).

<sup>89</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 155.

any nonproductive lands not sold at the foreclosure sale after the second offering.<sup>90</sup> However, the amount bid is not payable until the land is disposed of by the LRP.<sup>91</sup> Title passes to the municipal corporation free of all liens and encumbrances except easements and covenants of record.<sup>92</sup> Since the lands held are declared to be public property, they are exempt from property taxes as long as the LRP retains them.<sup>93</sup>

The process is the same with respect to productive lands which had been forfeited to the state.<sup>94</sup> Should those lands become nonproductive, the municipal corporation is allowed to select those lands from the county auditor's list. Those properties are advertised separately, and the municipal corporation is deemed to have made the minimum bid absent other buyers.<sup>95</sup> Again the amount is not payable until the property is sold by the LRP.<sup>96</sup>

The duties of the municipal corporation are broadly stated:

- 1) manage, maintain and protect, or temporarily use for a public purpose, such land in a manner deemed appropriate;
- 2) compile and maintain a written inventory of the lands;
- 3) study, analyze, and evaluate potential uses of lands;
- 4) plan for and encourage the disposition of the lands at times deemed appropriate;
- 5) maintain records of all transactions, expenditures, and revenues.<sup>97</sup>

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<sup>90</sup> OHIO REV. CODE ANN. § 5722.03 (Page Supp. 1978).

<sup>91</sup> Upon receipt of the deed to a parcel the municipal corporation must pay the costs incurred in any proceeding under section 5721.18. *Id.* The county auditor is to receive such payment and charge such amount to the taxing districts in direct proportion to their interests in the taxes, assessments, charges, and penalties on the parcel. At the next apportionment of funds, the auditor is to withhold the amount charged to each taxing district and credit that amount to the general fund of the EMC. *Id.*

<sup>92</sup> *Id.* Title will not be invalidated because of any irregularity, informality, or omission in any proceedings under Ohio Revised Code chapters 5721 or 5722 or in any process of taxation as long as the irregularity, informality, or omission did not undermine the provisions requiring notice to persons with an interest in the property. *Id.*

<sup>93</sup> *Id.* § 5722.11. The lands are deemed real property used for a public purpose and hence exempt until sold.

<sup>94</sup> *Id.* § 5722.04. It would appear that once the LRP is operating as organized, most parcels will be picked up by the municipality at the sheriff's sale. However, there could conceivably be a situation where an occupied parcel is not purchased, remains on the auditor's list for some period, is eventually classified as "nonproductive," and is then claimed by the EMC.

<sup>95</sup> *Id.* Under previous law, the minimum bid at the auditor's sale was \$10.00; under the new law, however, the minimum bid which the auditor must receive is one sufficient to pay taxes, assessments, penalties, and costs of the property. *Id.* § 5722.01(D).

<sup>96</sup> *Id.* § 5722.04. Distribution of proceeds from a sale by the LRP is as follows:

- 1) to the EMC, to reimburse for expenses incurred in the acquisition, administration, management, maintenance, and disposition of the land;
- 2) to the county treasurer, to reimburse the taxing districts which have been charged by the county auditor with the costs of foreclosure pursuant to Ohio Revised Code section 5722.03 or costs of forfeiture pursuant to section 5722.04;
- 3) to the county treasurer, for disbursement to the taxing districts, the amount representing the taxes, assessments, penalties, and charges due on such land, and the taxes, assessments, penalties, and charges which would have been due during the period the land was tax exempt; and

- 4) to the EMC, to fund the LRP, the balance remaining.

*Id.* § 5722.08.

<sup>97</sup> *Id.* § 5722.06. The bookkeeping requirements imposed upon the LRP are substantial and demand a sophisticated system of organization. It is essential in protecting the public interest that the system be one which gives ready access to the public a record of all the parcels available.

The LRP is given varied disposition powers. It can consolidate or subdivide parcels to assemble desirable tracts, sell to any private interest at any time without competitive bidding, but at a price no lower than fair market value, or, with the consent of the taxing subdivisions entitled to a share of the proceeds of the sale, devote the lands to public use.<sup>98</sup>

The law requires the establishment of several advisory committees, including a taxing district committee made up of representatives from taxing subdivisions having an interest in the taxes, assessments, and penalties due on the land, and neighborhood committees, to be organized to provide for consultation and advice regarding the program.<sup>99</sup>

The LRP, with the consent of the county auditor, can accept a conveyance in lieu of foreclosure.<sup>100</sup> The owner must, however, pay all expenses incurred by the county in connection with the foreclosure proceedings and must assure the municipal corporation that it will receive clear title.<sup>101</sup>

The LRP may retain land for a maximum of fifteen years.<sup>102</sup> During the sixteenth year, the land must be offered at auction, and if it is not sold, it must be offered every three years thereafter until it is sold.<sup>103</sup>

The constitutionality of statutes similar to Ohio Revised Code section 5721.181, authorizing in rem foreclosure, has been challenged on the ground that, because there is no actual personal notice required, they effect a deprivation of property without due process.<sup>104</sup> These challenges have been unanimously rejected by the courts,<sup>105</sup> often on the ground that when taxes are not paid for the statutory period, owners are presumed to know that proceedings against the property are likely.<sup>106</sup> The due process requirement of notice is relaxed because of the supreme right of the state to levy and collect taxes essential to its maintenance, and the legislature is given broad power to resort to necessary remedies.<sup>107</sup>

<sup>98</sup> *Id.* § 5722.07. Since the land cannot be disposed of for less than its fair market value, it would appear that, for the next several years, the selling price would be minimal.

<sup>99</sup> *Id.* § 5722.09. It must be remembered that the municipal corporation is holding and administering the property for its own benefit and for the benefit of other taxing districts with an interest in the taxes, assessments, etc. due on the parcel. Each interested taxing district appoints its own representatives. The committee's members serve without compensation; the committee is to meet at least quarterly. *Id.* § 5722.09(A).

The neighborhood committees must be comprised of persons living or owning property within each neighborhood affected by the program. Each committee must have from five to nine members and must be appointed by the chief executive officer of the EMC to serve a two-year term. The neighborhood committees are to make general recommendations and to consider specific interim use plans. *Id.* § 5722.09(B).

<sup>100</sup> *Id.* § 5722.10. The owners or the EMC shall pay all expenses incurred in foreclosure proceedings. Upon disposition of the land by the EMC, the lien on the title for all delinquent taxes, assessments, etc. will be removed.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* § 5722.13. The statute specifies the content and timing of notices of sale. It further requires that each parcel be sold for an amount equal to the greater of two-thirds of its fair market value or the total amount of accrued taxes, assessments, penalties, charges and costs incurred by the EMC in the acquisition, maintenance, and disposal of each parcel plus some amount which represents the parcel's share of the costs of the LRP. *Id.*

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

<sup>104</sup> See Annot., 160 A.L.R. 1026 (1946) and the cases collected therein.

<sup>105</sup> See, e.g., *Winona & St. Peter Land Co. v. Minnesota*, 159 U.S. 526 (1895); *Seminole Fruit & Land Co. v. Scott*, 291 F. 179 (S.D. Fla. 1923).

<sup>106</sup> *Longyear v. Toolan*, 209 U.S. 414, 418 (1908).

<sup>107</sup> *Longyear v. Toolan*, 209 U.S. 414, 418 (1908).

The constitutionality of section 5721.181 has recently been upheld, with little discussion, in an unpublished opinion from the court of appeals for Lucas County.<sup>108</sup> Should the Ohio Supreme Court consider the question, it is not to be expected that the statute would be invalidated.

#### V. HOUSE BILL 1327 AS A REFORM MEASURE

As noted, the stated purposes of the bill are to establish a workable method of restoring tax delinquent property to the tax rolls and to help rejuvenate and redevelop abandoned areas of cities.<sup>109</sup> The St. Louis figures indicate that the "quick take" procedure can positively affect the rate of tax payment.<sup>110</sup> Owners, in fear of losing their property, have paid tax bills on time. However, given the analysis of the economically weak inner city real estate market, one would conclude that only those property owners who are delinquent because of temporary difficulty or because they are planning to sell the property and pay taxes at that time will be pressed by the threat of rapid foreclosure. Those owners who are delinquent because their profit margins are less than the yearly taxes or who are planning eventual abandonment will not be forced to "pay up;" either the owners do not have the money or paying the taxes is not economically wise. Rather, rapid foreclosure may foster abandonment, leaving the local government with unmarketable, abandoned buildings to manage or forcing displacement of tenants who may be unable to find substitute housing. Because owner/occupiers are an important stabilizing

<sup>108</sup> *Gess v. Certain Parcels of Land Encumbered with Delinquent Tax Liens*, No. 1-78-070 (Ohio 6th Dist. Ct. App., filed Jan. 26, 1979). In *Gess*, the owner living on the property in question moved, notifying the county treasurer of his new address by a notation on the back of his tax bill. He did not, however, change his address on the county auditor's tax list, from which the tax bills were computed. (The background information of the case was obtained through a telephone interview with Nicholas Batt, Assistant County Prosecutor of Lucas County (March 4, 1979)).

The property was certified delinquent by the county auditor in 1973. In 1976 the owner received a tax statement from the county treasurer at his new address. The closing date on the statement was February 13, 1976, and it showed a total tax due of \$743.29. In November, 1976, the owner paid \$500.00 to the treasurer to be applied to the due taxes. He maintained that he did not receive another statement from the treasurer. In August, 1977, the treasurer filed a complaint pursuant to Ohio Revised Code section 5721.18 to foreclose the lien on the duplex property. The in rem proceeding was used because the taxes had been delinquent more than three years. Notice of foreclosure action proceedings was sent by the Lucas County Clerk of Courts to the owner at the address set forth in the complaint, i.e., the address derived from the auditor's tax list. The envelope was returned stamped "address unknown." The notice by newspaper publication requirement was met.

In May, 1977, the common pleas court entered a judgment finding that notice of the foreclosure proceedings had been properly published and ordered foreclosure at a sheriff's sale. In February, 1978, the common pleas court entered final judgment, confirming the sale of appellant's property for \$750.00. A week later the displaced owner heard of the sale and attempted to tender the balance due on the delinquency. When such was refused, appellant instituted an action to vacate the proceedings and sale. In March, 1978, the common pleas court overruled the motion, reaffirming the proceedings and sale.

On appeal, the owner's argument was premised on the treasurer's having had constructive notice of appellant's change of address. The court of appeals dismissed the contention, stating that a change in the treasurer's record did not bring about a change in the auditor's tax list. The court stated that compliance with the procedures divests the owner of his interest and equity of redemption in the parcel upon the sale of the property even though the owner never received the foreclosure notice.

The court dismissed appellant's due process argument by finding, with little discussion, that such was satisfied. The court held that personal service was not required and that the taxpayers have a full opportunity to be heard if they exercise due diligence.



factor in declining neighborhoods,<sup>111</sup> the rapid foreclosure method should be limited to properties which are not owner occupied.

One of the commendable aspects of Ohio's LRP is that it is restricted to acquiring "nonproductive" lands, and hence LRPs will not acquire any improved properties, occupied or unoccupied. This relieves the city from the possibility of becoming a slum landlord with the accompanying problems of having to rehabilitate occupied substandard housing or allowing tenants to live in housing which is below code. The tort liability of the city is also minimized by this measure.

Certainly the Ohio legislation does much to restore to the public part of the large investment it has in tax delinquent and abandoned properties by giving it title to the property. Prior to the enactment of the legislation, the administrative cost for bringing properties to the point of sheriff's sale was \$489 per parcel;<sup>112</sup> the cost of bringing the properties to the point of forfeiture sales was estimated at \$400 per parcel.<sup>113</sup> These costs do not include the time spent by the auditor's, treasurer's, and prosecutor's offices. Only 5% of the parcels sold at the 1969 and 1972 forfeiture sales produced more than \$500 each.<sup>114</sup> When the sale price of a parcel does not equal the outstanding tax liens on it, the remaining taxes are abated. Sheriff's sales in 1969, 1970, and 1971 yielded \$74,000 in delinquent taxes; over \$142,000 had to be abated.<sup>115</sup> At the 1969 and 1972 forfeiture sales, \$72,000 was raised, but over \$300,000 was abated.<sup>116</sup> Given the fact that over 50% of parcels sold at foreclosure sales are delinquent again within two to four years,<sup>117</sup> it is obvious that the tax foreclosure method previously used was not repaying the public investment.

The method as reformed by House Bill 1327 trims administrative costs by modifying the publication requirement, authorizing in rem proceedings, allowing consolidation of actions on numerous parcels into one action, and eliminating the ten dollar minimum bid at forfeiture sales. Most important, in those situations where the municipality has authorized an LRP, delinquent properties will not be recycled through the delinquency process. Properties not having a value equal to the lien will not be purchased by private interests but will pass to the city. Thus the repetition of administrative costs will be alleviated, and the public will not continue to subsidize delinquent property owners.<sup>118</sup>

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<sup>111</sup> The drafters of the legislation recommended that foreclosure not be accelerated for improved properties. They argued that displacement of owner-occupiers would remove a valuable stabilizing effect from deteriorating neighborhoods and that eventually the local government would become "housers of last resort." S. OLSON & M.L. LACHMAN, *supra* note 2, at 126-27.

<sup>112</sup> *Id.* at 44 (1974 cost). Only 23 percent of the parcels offered were sold, and hence substantial administrative costs were incurred on properties which did not sell. Those costs increase as each parcel is offered a second or third time. *Id.* at 46.

<sup>113</sup> *Id.* at 135. At \$400.00 per parcel, the administrative costs for disposing of the 437 parcels would total over \$160,000.00.

<sup>114</sup> *Id.* at 44.

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

<sup>116</sup> *Id.* at 46.

<sup>117</sup> *Id.* at 48.

<sup>118</sup> The city will have to maintain the property acquired, but such maintenance costs will be minimal because the land is vacant. In many cases, the city will already have spent money razing

The results under the new law have been mixed. Several counties in Ohio have been able to reduce foreclosure time to between four and six months.<sup>119</sup> In Cuyahoga County, however, the LRP established by the City of Cleveland<sup>120</sup> has as yet received title to only a few properties through sheriff's sale proceedings.<sup>121</sup> However, the problem in Cuyahoga County appears to be administrative, related to the large volume of properties needing to be processed and unfamiliarity with the new procedures.<sup>122</sup>

## VI. HOUSE BILL 1327 AS A REVITALIZATION PROGRAM

It would appear that the revised tax foreclosure process results in needed reform. There are questions to be resolved, however, about the acquisition and holding of land by a municipality and questions to be raised about the viability of the program as a step toward inner city revitalization.

Historically, it has been the belief in this country that private initiative should determine uses to which land is put<sup>123</sup> and that land not needed for public purposes should remain in private hands. However, it has been pointed out that land acquisition to control or plan growth and to remove blight has been practiced for many years under the guise of urban renewal, industrial development banks, new town, and town-within-town programs.<sup>124</sup> Land banking of tax delinquent property is a new concept in that the emphasis is on the *use* of land, not on the *non-use* associated with controlled growth. Perhaps it would be ideal if private enterprise could undertake the task of revitalizing the central cities, but there is a low probability of achieving revitalization through actions of the private market alone because of the low economic

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the abandoned buildings or clearing the land of a nuisance, money which was added to the tax lien and hence never repaid.

The city is exposed to minimal liability on the vacant lands. Beyond that imposed under the nuisance statute, *see* OHIO REV. CODE ANN. § 723.01 (Page 1976), there is no liability where the property is maintained within a governmental capacity unless liability is imposed by statute. Under the nuisance statute, the city's liability is limited to land devoted to public use and to persons entitled to use or using the property for purposes created. *Crisafi v. Cleveland*, 169 Ohio St. 137, 158 N.E.2d 379 (1959). A city's negligence must relate to the condition of the city premises and to the damages resulting from defects in the condition of those premises.

<sup>119</sup> Lucas County foreclosed on 1,000 parcels and disposed of 200 at sheriff's sales before the program was halted by a suit challenging the constitutionality of the law; the timing from foreclosure to sale was four months. Franklin County foreclosed on 30 properties and sold 25 of them in less than six months. Hamilton and Montgomery counties report similar timing. *Cleveland Press*, Sept. 25, 1978, § A, at 4, col. 1.

<sup>120</sup> CLEVELAND, OHIO, ORDINANCES 207.76 (Oct. 1976).

<sup>121</sup> Ninety-six parcels had been received through the forfeiture process as of August, 1978. Many of these parcels are ones with little marketability, for example, narrow strips of land. As of August, the county prosecutor's office had filed on 1800 parcels of land under the new procedure; it is unknown how many of those parcels qualify for the LRP. The Assistant County Prosecutor attributes the delay to the time needed to educate those involved and to the huge backlog of cases. He maintains that foreclosure can be accomplished within six months as soon as the process begins to run smoothly. Interview with Thomas Cables, Assistant County Prosecutor of Cuyahoga County, in Cleveland, Ohio (Sept. 1978).

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

<sup>123</sup> Note, *Public Land Banking*, *supra* note 4, at 913. Furthermore, governments have been unwilling to bear the costs of acquisition of land when the uses of that land could be regulated through the exercise of police power at a minimal cost. The obvious advantage of the LRP is the virtual no-cost acquisition.

<sup>124</sup> *See* notes 39-41 *supra* and accompanying text.

value of the property involved. The major reason that tax delinquent property exists is because it is not marketable land; if owners were not operating on marginal profits, they would not find taxes a burden.<sup>125</sup> Hence it is unrealistic to think that the private market will undertake a revitalization project through the assembling of lands which may never be marketable.<sup>126</sup>

Given a sound foreclosure method which, because of the weak inner city real estate market, would deliver large numbers of delinquent parcels to an LRP, is land banking a viable program for revitalizing deteriorated central cities? There is a possibility that eventually the municipal government, through the guise of the LRP, may own a large amount of the city. As of 1978 there were over 5,000 delinquent parcels of land in Cleveland which would qualify for the in rem foreclosure,<sup>127</sup> meaning over 2,000 parcels would be available for the LRP.<sup>128</sup> As long as rapid out-migration continues, the number of abandoned buildings with no interested purchaser will increase and with it the incidence of tax delinquency. In 1973 and 1974 only 23% of the parcels offered at sheriff's sales were sold.<sup>129</sup> Although over 80% of the parcels offered at auditor's sales in 1969 and 1972 were sold, only 5% were purchased for over \$500, and one-third brought prices of less than \$50.<sup>130</sup> The new legislation does not allow for such bargain purchases; it can only follow that less property will receive the minimum bid, and more property will end up in the LRP.<sup>131</sup> Therefore, the LRP will have a great deal of responsibility for, and power in, shaping the future of the city.

The key to the success of a land banking program in revitalizing a city lies in the ultimate positive, creative disposition of that land. It would be foolhardy for a city to draw up formal disposition plans at present; there are unanswerable questions as to the amount of land to be acquired and its location. However, it is essential that guidelines be laid out. A policy must be established which will keep the disposition of a parcel from resting upon political favoritism. Should each parcel be sold as quickly as possible? What role should the development office play in determining the uses to which the

<sup>125</sup> In 1975, tax level was indicated as fifth in a list of operating problems of inner-city landlords; this contrasts greatly with Sternlieb's 1971 study in Newark where tax level was ranked first on the list. S. OLSON & M.L. LACHMAN, *supra* note 2, at 119.

<sup>126</sup> One argument raised by opponents of the LRP is that speculators will buy up foreclosed property which falls in the middle of LRP acquisitions with the hope of making a profit when the property is sold to a developer. Such speculation is doubtful because, again, the property may not be marketable for 20 years.

<sup>127</sup> CLEVELAND CITY PLANNING COMMISSIONER, Status of Tax-Delinquent Properties, Jan. 1, 1978 (compiled Summer, 1978).

<sup>128</sup> This assumes that 40% of the total number of properties delinquent are vacant, the percentage indicated by Walt Kosin, Cleveland Redevelopment Coordinator, as that applying to properties delinquent in 1976. Interview with Walt Kosin, Redevelopment Coordinator of Cleveland Community Development, in Cleveland, Ohio (Sept. 1978).

<sup>129</sup> S. OLSON & M.L. LACHMAN, *supra* note 2, at 133.

<sup>130</sup> *Id.* The forfeiture sales purchase prices will not cover administrative costs; taxes, assessments, penalties, and charges due must be abated by the city.

<sup>131</sup> All nonproductive land not receiving the minimum bid at foreclosure or forfeiture sales will pass to the LRP; there is no screening or selection process. One land bank expert estimates that 60% of the land in an area of landbank operation should be held by the landbank authority in order to have an effective program. H. FLECHNER, *supra* note 38, at 78. The statistics apply where the landbank is being used to control growth and may not be applicable to the situation where it is being used for urban revitalization.

land should be put? The bill specifies that land can be sold without competitive bidding.<sup>132</sup> What then will keep a parcel from automatically going to a councilman's brother? The neighborhood advisory committees required by the legislation should be organized quickly and made an integral part of all but purely administrative functions. The executive and legislative branches of government must be willing to experiment with development plans which are responsive to the changing role of the city and the lifestyle of its potential residents.

The tentative uses of the land fall into the general categories of industrial, commercial, and residential. Once again planning for the disposition of land which has not yet been acquired necessarily involves a great deal of speculation, but an examination of the economic forces at work in cities raises critical issues which must be considered in such planning.

There is no debate that industry is leaving the central cities. This is the result of two factors: 1) a displacement of traditional unskilled manufacturing techniques by ever-increasing technological advancement and 2) a loss of low wage manufacturing jobs to small towns, rural areas, and foreign countries.<sup>133</sup> Production and factory jobs have been disappearing from the Cleveland economy at a rate of 9,300 per year.<sup>134</sup> Firms move for many reasons: lower taxes, opportunities to modernize and expand, adequate parking, lower property costs, greater access to suppliers and customers, improved exit from the metropolitan area, easier recruiting of professionals and managers. Simultaneously those city residents with sufficient income are leaving for the suburbs as quickly as possible. Since it is probable that there are employees with upgraded skills, the industry finds the people needed to meet its demands in the suburbs. It is difficult to determine whether people follow jobs or jobs follow people,<sup>135</sup> but the combined effect in terms of the non-skilled worker results in a city which is obsolete as a place to work as well as a place to live.

Thus there appears to be little chance that large, new industries will be

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<sup>132</sup> OHIO REV. CODE ANN. § 5722.07 (Page Supp. 1978). Competitive bidding is required in the purchase, lease, or lease with option to purchase situations. OHIO REV. CODE ANN. § 307.86 (Page 1953). In *Eikenbary v. City of Dayton*, 3 Ohio App. 2d 295, 210 N.E.2d 402 (1964), the court held that competitive bidding was not required where the city was selling land for an urban renewal project. There, the city was offering land for redevelopment, but also "buying" a plan for redevelopment. The court held that the city need only give interested parties an equal opportunity to bid. It appears, then, that precedent has been set for an exception to the general competitive bidding requirement for the LRP, since it too will be "buying" a redevelopment plan.

<sup>133</sup> T. STANBACK, JR. & R. KNIGHT, *supra* note 9, at 21. Manufacturing is declining in importance as a source of employment expansion in cities and suburbs, although in many areas it continues as the principal source of employment (in Cleveland and St. Louis, for example, it accounted for 42.7% and 38.1%, respectively, of the total share of employment in 1970). Not only are industries shifting to new parts of the country and the world, but remaining industries are expanding in employment only modestly. Although manufacturing continues to grow in the suburbs, the growth rate is short of the overall employment increases. *Id.* at 64-65.

<sup>134</sup> *Cleveland's Future*, *supra* note 7, at 8. This situation has occurred as many corporations headquartered in the city have closed their Cleveland manufacturing plants.

<sup>135</sup> Ironically, the upgrading of economic activity within the city has resulted in an outward movement of residents; when a job is upgraded, the job holder attempts to upgrade his/her residence. T. STANBACK, JR. & R. KNIGHT, *supra* note 9, at 16. This is especially true where there is little attractive or interesting housing available in the city for middle and upper middle-class job holders.

attracted by a land bank. It is possible, however, that some small industries interested in expanding or some new ones with limited capital to invest will be attracted by such a program. This is the place where an interested, involved neighborhood advisory committee can be invaluable in locating, contacting, and recruiting those concerns within their immediate neighborhoods.<sup>136</sup>

The non-manufacturing side of Ohio's urban economy must be considered, a side that is supplying 7,100 jobs per year in Cleveland alone to replace those lost in manufacturing.<sup>137</sup> Included in the developing area of non-manufacturing fields are advanced services, professional, technical, and manufacturing services for corporation clients and local, consumer, governmental, and cultural services for residents of the region. The jobs associated with these fields are much higher paying than industrial ones, and with an increase in the number of higher-income residents will come an increase in what is known as local sector jobs, those which involve the production of goods and services for local residents.

As manufacturing activities have closed out and as better paid workers have moved to the suburbs, the local sector support jobs have become more suburban.<sup>138</sup> Because local sector wages are lower than manufacturing ones, the jobs tend to be filled by people living in the immediate vicinity; low wage workers cannot afford to travel far to work, need transportation systems, and most often have knowledge only of job openings closest to them.<sup>139</sup> There has been, then, a "sorting out" of functions within metropolitan areas with suburbs picking up manufacturing, some back-office and wholesaling/distributing activities, and local sector activities.<sup>140</sup> Central cities are moving toward service economies, which means the central business district will continue to have a role as a work place.

With an expanding need for legal, engineering, accounting, advertising, and other services will come the professional, skilled, and semi-skilled workers to fill the need. Perhaps the most imminent use of land banking in Ohio will be to provide space to house the needed new services and the

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<sup>136</sup> Obviously, it is essential from a public relations standpoint to have neighborhood input and support because the entrance of new industry or the expansion of existing facilities can affect the general quality of the neighborhood with such problems as increased traffic, noise, and pollution.

<sup>137</sup> On Campus, Cleveland State University Office of Information Services, April 4, 1977, at 1, col. 1 (quoting Professor Richard V. Knight, Cleveland State University College of Urban Affairs). The production worker's job brings approximately \$7,000 in income to the city annually, while the corporate headquarters job brings approximately \$35,000 per year. In economic terms, therefore, the area can afford to lose five production jobs for every one headquarters job obtained. *Id.*

<sup>138</sup> T. STANBACK, JR. & R. KNIGHT, *supra* note 9, at 17. Obviously, consumer services will locate around above-average-income households. A recent study indicates that Cleveland lost 36% of its commercial stores between 1950 and 1974, generally because merchants were moving their stores from the city to the suburbs. The number of stores has declined from 18,121 to 11,638. Cleveland Plain Dealer, Sept. 28, 1978, § A, at 15, col. 1.

<sup>139</sup> T. STANBACK, JR. & R. KNIGHT, *supra* note 9, at 16. Because local sector jobs are low-paying, they will be filled by the second and third wage earners of these above-average-income households which are "subsidized" by the highly paid household head whose job will most often be in the city. *Id.* at 16-17. The result in the relocation of the local sector is to pull city residents to the suburbs to shop at new shopping centers and discount stores, and further losses are endured by the stores left in the city neighborhoods. *Id.* at 17.

<sup>140</sup> *Id.* at 170. The interrelationship between the functions of the city and the suburbs is crucial; neither is performing *all* functions, and neither can operate independently of the other.

people who provide them. External factors which help to make this a realistic possibility include:

- 1) marriages are later and families smaller, and the city, therefore, becomes a more attractive place to live because of the cultural and entertainment possibilities available;<sup>141</sup>
- 2) with a changing age structure will come a decrease in crime and less fear about living in the central city;<sup>142</sup>
- 3) implementation of no-growth policies by suburbs and the rapidly rising cost of new housing may bring a reversal in the filtering process.<sup>143</sup>

An LRP can eventually make available to private developers the space needed for new housing which will accommodate the needs of people who want the advantages of an urban setting. With commitment and careful planning a "town within a town" could emerge which could offer housing for a cross-section of socio-economic groups, bring local sector job opportunities back into city neighborhoods via a return of the corner store, experiment with vehicular and pedestrian traffic plans, and in essence utilize the results of the multitude of studies on urban problems.<sup>144</sup>

There are limitations on the powers granted the Land Revitalization Programs in Ohio which might ultimately affect its effectiveness. Land

<sup>141</sup> *Id.* at 186. The city offers greater urbanity as well as closer proximity to work. These are positive factors for those young Americans whose life styles and values differ from those of previous generations. With young women engaging in careers outside of the home and young men resisting work patterns which require extensive commuting, cities will have the opportunity to provide housing competitive with that of the suburbs.

<sup>142</sup> *Id.* at 187. The success of new or renovated urban housing depends to a large extent upon the control of crime within the city. There are three relevant observations on the prevalence of crime in large cities:

- 1) crime is more prevalent in large cities; the rate is almost five times higher in cities with populations over 250,000 than in cities with populations between 10,000 and 25,000;
- 2) the crime rate is growing most rapidly in suburbs and smaller cities; the increase in violent crime from 1970-73 was two percent for cities over 250,000 but 40 percent for suburban areas;
- 3) young males are more prone to commit criminal acts than any other group.

*Id.* at 186.

The city's position is thus improving and will continue to do so as the age structure changes. One author projects a 54% decrease in the 15-19 year old population from 1975-1990. WELD, *THE POPULATION OF YOUNG ADULTS IN CUYAHOGA COUNTY, 1960-1990: EXPECTED CHANGE AND IMPLICATIONS* 15 (1978). The social problems which have plagued cities — unemployment, crime, welfare loads — will be greatly affected.

<sup>143</sup> T. STANBACK, JR. & R. KNIGHT, *supra* note 9, at 189. Recent studies have given some indication of the cost of adding new residences. In Denver, it was estimated that taxpayers had to pay \$21,000 for community services for each new residence. A Minneapolis-St. Paul study revealed that \$1 billion in infrastructure costs could be saved from development costs of \$3.7 billion by building housing on undeveloped land in the city where infrastructure is in place rather than in the suburbs where it would have to be developed. *Id.* Of course where suburban expansion is nothing more than "filling in" existing empty space and where the infrastructure of a city is obsolete and in need of rehabilitation before new residences can be served, the cost of building in the suburbs may not exceed that of building in the city. *Id.* at 189-90.

There are, however, costs of suburbanization which are difficult to measure: the costs of blight, abandonment, and center city crime which are manifested in social stress, public health problems, and welfare increases.

<sup>144</sup> The Ohio City area of Cleveland's west side is a perfect example of the results flowing from commitment. The area has been attracting an increasing number of middle and upper middle-class young professionals. City banks have invested over \$12 million in the area with no defaults. Interview with Joseph Smith, Commissioner of Redevelopment of Cleveland, in Cleveland, Ohio (July, 1978).

banking advocates would argue that the Ohio law does not go far enough in that it does not grant the LRP purchase or eminent domain powers.<sup>145</sup> Certainly there would be legal issues to be resolved in the granting of such powers. Municipalities in Ohio have been given the power of eminent domain, and Community Urban Redevelopment Programs established pursuant to Ohio Revised Code chapter 1728 are empowered to "acquire."<sup>146</sup> One question is whether acquisition by a land bank is "taking" for a public "use"<sup>147</sup> when the land is not blighted. The Ohio courts have allowed municipalities wide discretion in determining that land was taken for a public use.<sup>148</sup> The courts generally will not interfere unless there is a showing of arbitrariness, even where there is an incidental nonpublic use of property or benefit from the taking.

In Ohio, an LRP is not empowered to purchase property. The issue is complicated by the need for funds with which to acquire desired land. Acquiring and holding land out of productive use indefinitely or disposing of land below market value while essentially subsidizing public or private uses may result in financial losses.<sup>149</sup> Absent federal aid and given the precarious financial position of most large cities, large scale acquisition is not likely.

<sup>145</sup> See N. ROBERTS, *supra* note 41, at 232; see also H. FLECHNER, *supra* note 38, at 33, stating that "the power of eminent domain is necessary for an effective landbanking program." Condemnation is helpful in assembling contiguous parcels or controlling development proposals. Because condemnation is politically unpopular and expensive, however, it must be seen as a last resort.

<sup>146</sup> *Bruestle v. Rich*, 159 Ohio St. 13, 23, 110 N.E.2d 778, 786-87 (1953). Municipal corporations are permitted to appropriate private property for public purposes provided that they follow statutory procedures. The municipality must pass a resolution that a specific taking is necessary. OHIO REV. CODE ANN. § 719.32 (Page 1976). The phrase "all powers of local self government" in OHIO CONST. art. 18, § 3 has been interpreted to include the power of eminent domain. *Sun Oil Co. v. Village of Euclid*, 164 Ohio St. 265, 130 N.E.2d 336 (1955).

A municipal corporation may sell or lease land constituting or part of a blighted area to a Community Urban Redevelopment Corporation. OHIO REV. CODE ANN. § 1728.03 (Page 1978). Granting the power to an LRP would seem to be consistent with existing law.

<sup>147</sup> Condemnation proceedings are constitutionally limited to lands taken for "public use." U.S. CONST. amend. V. In a leading case, *Berman v. Parker*, 348 U.S. 26 (1954), "public use" was interpreted to include public "purpose" or "benefit." The Court held the District of Columbia Redevelopment Act constitutional in its authorization of the taking of commercial property under the power of eminent domain pursuant to a plan to redevelop an area so as to eliminate and prevent slum and substandard housing conditions. The Court responded to the argument that the property was to be resold or leased to private individuals by stating that once the public purpose was established, the means of executing the project was left to the determination of the legislature. *Id.* at 35-36.

<sup>148</sup> See, e.g., *Bruestle v. Rich*, 159 Ohio St. 13, 110 N.E.2d 778 (1953); *Eikenbary v. City of Dayton*, 3 Ohio App. 2d 295, 210 N.E.2d 402 (1964). These decisions, although limited to urban renewal situations, support the argument that non-blighted property taken for a landbank is taken for a public purpose. Legislation granting eminent domain power to an LRP should indicate the public purpose involved.

The only judicial decision on the use of the power of eminent domain in a landbanking program comes out of Puerto Rico. The Puerto Rican supreme court upheld the legislation creating the Puerto Rican Land Authority, which had authority to acquire land through condemnation and hold that land for an indefinite time to fulfill land banking activities. *Commonwealth v. Rosso*, 95 P.R.R. 488 (1967), *appeal dismissed*, 393 U.S. 14 (1968). See notes 50-53 *supra* and accompanying text.

<sup>149</sup> Note, *Public Land Banking*, *supra* note 4, at 964. An obvious benefit of banking tax delinquent land is that, since much of the land has no immediate productive use, the municipality is not in a position where it will suffer losses while subsidizing the program.

However, the LRP will need purchase power so that it can complete the acquisition of needed parcels.

At this time, the city has an effective acquisition tool in housing and building code enforcement.<sup>150</sup> Through rigid code enforcement the city can require owners to maintain a specified minimum standard of habitability. If the owner complies with the code, much needed standard housing will be available. However, if the owner does not comply with the code, the city can use its condemnation power and thus acquire the property. Rigid code enforcement can thus become an acquisition tool for the LRP.

More important is the fact that an LRP is not permitted to lease properties except to another political subdivision.<sup>151</sup> Because of the difficulty in developing long range plans for the use of banked land, leasing would allow some flexibility in development and would allow the public to benefit from any appreciation in the value of the property, *i.e.*, for any natural inflation which might occur.<sup>152</sup> Leasing might also encourage more rapid involvement of the private sector because the tenant would not face the economic risks inherent in the purchase of potentially unmarketable land.

Finally, the requirement that the land be disposed of within fifteen years is unrealistic. Any revitalization efforts of substantial impact are far in the future; to force the LRP to relinquish land at a point when it might lack a few parcels crucial to a plan is shortsighted. That time limit should be removed.

## VII. CONCLUSION

Ohio House Bill 1327 brings much needed reform to the tax foreclosure and forfeiture processes; its success as a reform measure seems assured. The banking of tax delinquent property is a creative approach to turning a serious problem into unlimited potential. Land banking has proved a successful means of controlling growth and has allowed for the development of innovative urban settings. It could well be the key to urban revitalization. Its success as a revitalization measure is not as predictable.

Coordination among city offices is essential. The executive officer, city council, and development office must have some shared understanding of the social and economic factors at work in the city and a joint commitment to adjusting the city around those factors. If the days of cities as huge manufacturing centers are truly gone, city government must accept that as fact and concentrate on the city's emerging role.

Although it is a good first step, House Bill 1327 does not go far enough. Amendments should be made to grant to LRPs the power of eminent domain,

<sup>150</sup> Nachbaur, *supra* note 6, at 42. Code enforcement is also an effective tool for dealing with speculators; owners will have to invest in the building to meet minimum code requirements or be sanctioned for violations.

<sup>151</sup> OHIO REV. CODE ANN. § 5722.07 (Page Supp. 1978). The lease must be approved by the legislative authorities of those taxing districts entitled to share in the proceeds from the sale of the property. The leasing political subdivision must devote the property to public use, and the rental can be less than fair market value. *Id.*

<sup>152</sup> The LRP is allowed to put the property to temporary public use, such as parks or parking lots, allowing the public to enjoy some benefit from the property. *Id.* § 5722.07.



purchase power, and the power to lease acquired land. The fifteen year maximum holding period should be removed. If the LRP is to be treated seriously as a revitalization program, it must be given room for flexibility in acquisition and disposition. The power of eminent domain would solve any problem of speculators holding on to the last parcel needed for a project. Leasing would allow the public to gain some monetary benefit during the holding period and establish a *use* rather than a *non-use* pattern for the property. Purchase power will allow the LRP to acquire parcels of the needed size. An unlimited holding period will allow for long range, flexible planning.

The author is not so naive as to see the imminent rising of the phoenix. However, every possible solution to inner city problems must be given serious effort and support.

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