



772 W. 26th St., Indianapolis, Indiana. Photo by Kory T. Bell

ONE NAIL AT A TIME: BUILDING DECONSTRUCTION LAW AS A TOOL TO DEMOLISH ABANDONED HOUSING PROBLEMS

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INTRODUCTION

In 2003, the City of Indianapolis declared war.¹ No shots were ever fired, as this battle was not a war in the conventional sense. Instead, the declaration was meant to be a powerful metaphor for a crisis Indianapolis was facing;

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1. See ABANDONED HOUSES WORK GRP., RECLAIMING ABANDONED PROPERTY IN INDIANAPOLIS 2 (Sept. 2004) [hereinafter RECLAIMING ABANDONED PROPERTY], *available at* <http://www.indy.gov/eGov/City/DMD/Planning/Docs/Housing/abandonedhousingreport0904.pdf> (noting initial observations and recommendations for the problem of residential property abandonment in Indianapolis).

unfortunately, the enemy was indeed real, and not merely at the gates—it was already within the city limits. In fact, the enemy was entrenched and forcing new and important policy questions upon city leaders. The enemy was a powerful one: abandoned properties.²

Spurred to act by 2003 survey estimates which showed 7,913 abandoned properties in Indianapolis,³ Mayor Bart Peterson proclaimed the “war” on abandoned houses in Indianapolis and the Marion County metropolitan area.⁴ But long since Mayor Peterson’s declaration in 2003, the war in Indianapolis rages on today.

Unfortunately, Indianapolis is not alone. In many other Rust Belt cities, local leaders have long struggled to rid city blocks of abandoned houses that plague housing stocks by the thousands.⁵ While the wars in these cities have not yet been lost, the enemy seems to be winning on many fronts—today, forced by the sheer size and cost of the problem in extreme cases, some Midwest cities have contemplated mass demolition, in order to literally “shrink” in size as critical volumes of abandoned homes drain city resources.⁶

Indeed, the scope of this problem is immense.⁷ It has been said that, because the causes of housing abandonment are numerous and not fully known, there can be no “silver bullet” to cure the problem, and it must be attacked on many fronts through a wide range of efforts.⁸ Yet, victories remain elusive despite waging wars in this type of fashion; in Indianapolis, for example, city agencies estimate there are presently more than 9,000 abandoned properties within the city.⁹ And the number of abandoned houses is expected to increase.¹⁰

In other words, despite many cities’ best efforts, little headway has been

2. See CITY OF INDIANAPOLIS, ABANDONED PROPERTIES: OUR ACTION PLAN 4 (2009) [hereinafter ACTION PLAN], available at <http://www.indy.gov/eGov/City/DMD/Abandoned/Pages/home.aspx> (follow “Abandoned Housing Initiative Action Plan” hyperlink) (“Establish[ing] a formalized plan and implementation strategy designed to reduce the number of abandoned and vacant houses in the Indianapolis Metropolitan Area”).

3. See RECLAIMING ABANDONED PROPERTY, *supra* note 1, at 4.

4. See *id.* at 5.

5. See, e.g., David Streitfeld, *An Effort to Save Flint, Mich., by Shrinking It*, N.Y. TIMES, Apr. 22, 2009, at A12, available at <http://www.nytimes.com/2009/04/22/business/22flint.html> (discussing the long struggle against abandoned housing in Flint, Michigan and a policy of “planned shrinkage”).

6. See *id.*; Monica Davey, *Detroit Mayor’s Tough Love Poses Risks in Election*, N.Y. TIMES, Sept. 26, 2009, at A11, available at <http://www.nytimes.com/2009/09/26/us/26detroit.html?ref=davebing> (discussing Detroit Mayor, Dave Bing, and his plans to “shrink” Detroit).

7. See ACTION PLAN, *supra* note 2, at 31.

8. See *id.* at 9.

9. See *id.* at 12.

10. See, e.g., Jeff Swiatek, *Mortgage Delinquencies on the Rise Again in Indiana*, INDIANAPOLIS STAR, Aug. 27, 2010, at A8 [hereinafter *Mortgage Delinquencies*] (ranking Indiana twelfth among all states by mortgage delinquency rate after increases during the second quarter of 2010).

made even though there has been ample time for policy experimentation.¹¹ In fact, still today, even the initial step of quantifying the scope of an abandonment problem remains guesswork because cities like Indianapolis have no real-time way to count abandoned houses.¹² Unfortunately for cities, the statistic is extremely difficult to discover or track because it is constantly in flux and hard to characterize.¹³

To make matters worse, current economic conditions have “exacerbated” abandoned housing accumulation in a way not seen in previous decades.¹⁴ Coupled with weakness in the housing markets, high levels of foreclosure, and an oversupply of housing, present trends of housing abandonment strain local government budgets perhaps more than ever.¹⁵ Cities and towns are finding that taxpayers ultimately must bear the external costs of maintaining abandoned properties, but also must contend with less of a property tax base to do so as the city deteriorates.¹⁶ Put another way,

[a]n issue that has yet to be explicitly addressed in the still young life of American cities is, who is responsible for redevelopment of obsolete, bottom-of-the-market, fully depreciated real estate? Thus far the answer has been the host jurisdiction—with some assistance from the federal government, and possibly some from the state government.¹⁷

Accordingly, current local leadership often expresses an increasing sense of urgency and seeks to be “relentless” in taking on this issue, promising to seek innovative solutions.¹⁸ This is not surprising, especially considering that after decades of instituting governmental policies and programs, most of which achieved mixed or little results, abandoned houses continue to vex several of

11. See RECLAIMING ABANDONED PROPERTY, *supra* note 1, at 5 (outlining numerous policy goals in Indianapolis); see generally EUGENE LAUSCH ET AL., ABANDONED PROPERTY IN INDIANA: LEGAL, PRACTICAL, AND POLICY EFFECTS OF 2006 STATUTORY AMENDMENTS 1 (Sept. 2006) (attempting to “explain what Public Law No. 169-2006 (HEA 1102) means, in practice, for county executives and redevelopment commissions” after Indiana enacted statutory changes aimed at addressing abandoned properties).

12. See RECLAIMING ABANDONED PROPERTY, *supra* note 1, at 3.

13. See Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. ST. L. REV. 189, 196 (2008) (pointing to the difficulty in obtaining abandoned housing statistics).

14. See ACTION PLAN, *supra* note 2, at 5.

15. See Samsa, *supra* note 13, at 191; Edward G. Goetz et al., *Pay Now or Pay More Later: St. Paul’s Experience in Rehabilitating Vacant Housing*, CURA REP., Apr. 1998, at 12, 12-13 (concluding that local governments must subsidize attempts to rehabilitate abandoned buildings before seeing a return on public investment).

16. See Goetz et al., *supra* note 15, at 12-13.

17. THOMAS BIER & CHARLIE POST, THE BROOKINGS INST., VACATING THE CITY: AN ANALYSIS OF NEW HOMES VS. HOUSEHOLD GROWTH 9 (Dec. 2003), available at http://www.brookings.edu/es/urban/publications/20031205_bier.pdf.

18. See, e.g., ACTION PLAN, *supra* note 2, at 9.

America's foremost cities: Baltimore,¹⁹ Chicago,²⁰ and Detroit,²¹ among dozens of others.²²

At this point, the effects of abandoned housing are well documented, and it is now known that abandonment renders much more than sporadic eyesores in the form of an empty structure. In truth, abandonment increases municipal costs of services and maintenance, aggravates neighborhood decay, decreases property values, increases crime, and creates hazards to health and safety.²³ Together, it "make[s] already struggling neighborhoods less appealing to prospective homebuyers who can choose where they live. Of all the physical factors blighting the lives of inner-city residents, abandoned properties may be the single most destructive, because they affect so many other conditions. . . ."²⁴ On the way to these realizations, a patchwork of policy suggestions has been applied by local governments.²⁵ Yet abandoned houses persist on a "massive" scale.²⁶

The issue presented is this: How can cities most efficiently remove existing

19. See generally James R. Cohen, *Abandoned Housing: Exploring Lessons From Baltimore*, 12 HOUSING POL'Y DEBATE 415 (2001), available at http://www.knowledgeplex.org/kp/text_document_summary/scholarly_article/relfiles/hpd_1203_cohen.pdf.

20. See generally James O'Shea, *Problem of Vacant Houses Resists Easy Solution*, N.Y. TIMES, Apr. 4, 2010, at A25A, available at <http://www.nytimes.com/2010/04/04/us/04cncbulldoze.html>.

21. See Alex P. Kellogg, *Detroit Shrinks Itself, Historic Homes and All*, WALL ST. J., May 14, 2010, <http://online.wsj.com/article/SB10001424052748703950804575242433435338728.html>.

22. See generally U.S. CONFERENCE OF MAYORS, COMBATING PROBLEMS OF VACANT AND ABANDONED PROPERTIES: BEST PRACTICES IN 27 CITIES (June 2006), available at http://www.usmayors.org/uscm/best_practices/vacantproperties06.pdf (discussing various results found in U.S. cities after addressing abandoned houses).

23. See WILLIAM C. APGAR ET AL., HOME OWNERSHIP PRES. FOUND., THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 2 (Feb. 2005), available at http://www.995hope.org/wp-content/uploads/2011/07/Apgar_Duda_Study_Full_Version.pdf.

Accounting for both the foreclosure costs paid for by [c]ity and [c]ounty agencies, and the impact of foreclosures on area property values, a foreclosure . . . could impose direct costs on local government agencies totaling more than \$34,000 and indirect effects on nearby property owners (in the form of reduced property values and home equity) of as much as an additional \$220,000.

Id. See also Samsa, *supra* note 13, at 193-96 (giving a general overview of the negative effects of abandoned houses).

24. Alan Mallach, *From Eyesores to Assets: CDC Abandoned Property Strategies*, 146 SHELTERFORCE ONLINE (2006), available at <http://www.nhi.org/online/issues/146/researchupdate.html>.

25. See, e.g., David T. Kraut, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. REV. 1139, 1161 (1999) (proposing a Vacant Building Transfer program for properties with substantial code violations).

26. See, e.g., Jonathan Oosting, *Massive Detroit House Auction 'Flops' as Most Foreclosed, Abandoned Properties Go Unsold*, MLIVE (Oct. 26, 2009), http://www.mlive.com/news/detroit/index.ssf/2009/10/detroit_house_auction_flops_as.html.

levels of abandoned houses while deterring abandonment in the future? This Note proposes a simple, creative policy as an answer to this question. The new ideas provide a legal framework creating economic incentives to propel the use of an existing, but under-utilized, demolition industry practice: building deconstruction.

The rationale of this Note is simple: If state and local governments coordinate incentives for property owners to “recycle” (i.e. “deconstruct”) obsolete or deteriorating houses, abandoned structures are less likely to persist, or become abandoned in the first place. Most importantly, the incentives advocated in this Note will induce building deconstruction as the preferred method to eliminate both present and future abandoned structures, which exploits an opportunity that is currently being wasted: creating value from the blight removal process itself. The use of building deconstruction aims to turn abandoned assets into a myriad of community benefits: living wage employment, blight elimination, waste reduction and recycling, building material reuse, among numerous other benefits.²⁷

At heart, time has shown that local government is limited in its capacity to efficiently handle the task, or cost, of managing thousands of properties being thrust upon local streets, the brunt of which is ultimately borne by the local taxpayers.²⁸ In the end, if abandoned housing spirals out of control beyond a critical mass of properties, it becomes unsustainable.²⁹ Traditional strategies targeting the problem—code enforcement, tax foreclosure, land banks, and receivership³⁰—are mostly reactive by definition, only implicated after a law has been violated.

While cities should not do away with current strategies, state and local governments are in need of a practical, preemptive approach. A statutory framework encouraging deconstruction can be such an approach. To do so, the framework should have both present and future aims. In the present, statutes should provide incentives to deconstruct *existing* abandoned structures. Prospectively, statutes should deter *future* abandonment by providing incentives to deconstruct houses near the end of functionality—instead of the current trend of leaving houses to rot the heart of a city.

To begin, Part I looks at Indianapolis, Indiana, and its struggle with abandoned property. Indianapolis provides a representative lens to view this Note’s proposals, though broader application is appropriate. Part II discusses the demolition technique called deconstruction—its definition; why it is underutilized; its challenges; and the economic, environmental, and social benefits it could bring to a city. Using Indiana once again, Part III presents a novel idea for state and local governments to turn abandoned housing into an opportunity using a three-pronged approach of 1) local housing deposits, 2) a

27. See *Deconstruction: Economic Benefits*, WASTE TO WEALTH, <http://www.ilsr.org/recycling/decon/economicbenefits.html> (last visited Mar. 5, 2012).

28. See Samsa, *supra* note 13, at 191.

29. See, e.g., Streitfeld, *supra* note 5.

30. See Samsa, *supra* note 13, at 191-92.

state tax credit, and 3) local ordinances. The three-part approach will provide a powerfully supportive environment for deconstruction, known as the “very viable and under-utilized alternative to demolition.”³¹ While the conclusions presented are bold, they are worth considering over the alternative of “planned shrinkage”³² or a “downward spiral” of decay.³³

In tackling the difficult issue of abandoned housing, this Note will not address the question of how Indianapolis and America’s cities got into this mess, simply because that question is beyond the scope of these pages. Analysts suggest various theories why American cities are littered with abandoned homes, ranging from demographic shifts combined with faltering regional economies,³⁴ to a “great misallocation of resources” as a result of bad federal housing policies; or perhaps the problem lies in cheap loans and lax lending standards, leading to a national oversupply of houses.³⁵ The potential causes are too numerous to be discussed here; the purpose of this Note is to suggest a framework for building deconstruction incentives, which will provide a socially beneficial local weapon against the causes, whatever they may be.

After all, the next door neighbor to an abandoned house merely wants the problem solved immediately, and long range national policy discussions do not help those who have no time to wait.³⁶ What remains left behind after housing abandonment is all that is relevant: thousands upon thousands of decaying structures, abandoned by people who had incentives to do so, which forces the general public to pick up the tab, usually at the local government level.³⁷

Deconstruction will not be a “silver bullet,”³⁸ but even a minor change in abandonment behavior repeated many times over could have a profound social impact on a problem of this magnitude,³⁹ and deconstruction incentives could provide this shift. But ultimately, this Note will show that implementing these suggestions is worthy without a seismic shift, because even if a local government benefits simply through blight clearance; fewer government-owned properties; waste reduction; more raw land for development; sustainable municipal service

31. *Construction & Demolition Wastes*, in CLARK COUNTY COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN 12-1, 12-5 (2008), available at <http://www.clark.wa.gov/recycle/documents/11.08%20Chapter%2012.pdf>.

32. See Streitfeld, *supra* note 5.

33. See Ryan Mills, *Collier Sheriff’s Office Working with Residents to Clean Up Abandoned Homes*, NAPLES NEWS, Apr. 30, 2008, <http://www.naplesnews.com/news/2008/apr/30/collier-sheriffs-office-working-residents-clean-ab/>.

34. See Samsa, *supra* note 13, at 195.

35. Michael Milken, *Toward a New American Century*, WALL ST. J., Oct. 7, 2010, at A23.

36. See Shari Rudavsky, *Neighborhood Call to Action*, INDIANAPOLIS STAR, Sept. 24, 2010, at B1.

37. See Samsa, *supra* note 13, at 191-93.

38. ACTION PLAN, *supra* note 2, at 9.

39. See WES JANZ, DECONSTRUCTING FLINT 6 (June 2007), available at http://issuu.com/onesmallproject/docs/deconstructing_flint (concluding that a small idea repeated thousands of times within the context of deconstruction can significantly reduce waste).

and maintenance costs; reduced crime; or the return of the property to the tax rolls, then the effort may have been worth it. It is certainly time to get creative.

I. THE ABANDONED HOUSING PROBLEM IN INDIANAPOLIS

A. *The Current State of the Problem*

Indianapolis does not want to be the next Flint, Michigan—but it could be. While the cities are different in many respects, the two share a common bond, as do many Midwest cities: both have vast landscapes littered with abandoned housing.⁴⁰ The difference is that the two are at separate stages in terms of dealing with abandonment problems. The story of a city like Flint has advanced to the point of climax: The city is now considering proposals to cut off city services entirely and relocate large numbers of people from sparsely populated areas, in order to demolish whole blocks of abandoned housing.⁴¹ This policy of “planned shrinkage” is a reflection of just how bad things can become if an abandoned housing problem is left unchecked and then meets with external demographic shifts; it literally becomes necessary to resort to “shutting down quadrants of the city.”⁴² In other words, Flint is removing those parts of the city that have died.⁴³

Indianapolis is not at this point, though it cannot likely be known what level of abandonment will lead to a municipal emergency like the one in Flint. The current level of abandoned housing in Indianapolis is now estimated to be in excess of 9,000 properties, which is a comparable number in cities that face crisis levels and emergency decisions.⁴⁴ Yet, mortgage delinquencies continue to be on the rise in Indiana,⁴⁵ so abandoned housing levels could increase even further in Indianapolis in the coming months and years. It seems certain that any further declines in the local housing market or demographic shifts could only worsen the situation. No matter what the future may hold, a quick drive through Indianapolis is all that is needed for a powerful reminder of the current scope of the city’s level of abandonment.⁴⁶

The abandoned housing problem in Indianapolis has not gone unnoticed, and current efforts to manage the problem have largely been in place since 2003.⁴⁷ Still, the number of properties has consistently increased since the 2003 survey

40. See Streitfeld, *supra* note 5.

41. *Id.*

42. *Id.*

43. See Kristin Longley, *Flint Ranks No. 2 on ‘America’s Ten Dead Cities’ List*, MLIVE (Aug. 26, 2010), http://www.mlive.com/news/flint/index.ssf/2010/08/flint_ranks_no_2_on_americas_t.html.

44. See ACTION PLAN, *supra* note 2, at 12; JANZ, *supra* note 39, at 3 (declaring the scale of abandonment in Indianapolis as “significant” and worthy of comparison with Flint, Michigan).

45. See *Mortgage Delinquencies*, *supra* note 10.

46. See ACTION PLAN, *supra* note 2, at 12; JANZ, *supra* note 39, at 3.

47. See generally ACTION PLAN, *supra* note 2 (outlining Indianapolis’s multi-faceted plan to address abandoned properties in the city).

that triggered such concern.⁴⁸ Arguably, this is because the city has employed common, defensive strategies like code enforcement and tax sales for dealing with the issue,⁴⁹ all of which allow the city to function neatly within the statutory construction of Indiana law, but are not well suited to mitigate abandonment because those systems were not designed for this purpose.⁵⁰ As an example, the Mayor of Indianapolis, Greg Ballard, sought to demolish 1,500 properties in 2011 as part of a campaign of code enforcement lawsuits against slumlords.⁵¹ Yet, each one of these targeted properties will almost certainly go through an administrative procedure requiring significant due process and can be delayed at the owner's request or extended for "good cause," and in some cases, challenged by the owner through judicial review.⁵² While the Mayor's goal is ambitious, it could be considered needlessly aggressive and adversarial, pitting government against property owners. Moreover, underlying this strategy, city action cannot be taken until a code provision is violated and, even then, vast enforcement depends upon a code rooted in government's police power, originally designed to merely enforce "maintenance and repair standards appropriate for the community" on a case by case basis.⁵³

B. Preemptive Strategies to "Abandoned" Houses Are Elusive

Simple solutions to large scale abandonment seem to be as elusive as a single definition of abandonment itself.⁵⁴ The City of Indianapolis exemplifies the struggle to simply define the term "abandoned." The City defines an "abandoned property" as "a chronically vacant and uninhabitable unit whose owner is taking no meaningful steps to bring it back into the housing market."⁵⁵ The definition is best explained in the City's words:

Abandonment is different than vacancy, which simply refers to whether a property is occupied or not. Vacancy can be the result of normal

48. *See id.* at 12.

49. *See Samsa, supra* note 13, at 197-201.

50. *See id.*

51. *See* John Tuohy, *City Begins Suing Landlords over Health, Zoning Issues*, INDIANAPOLIS STAR, Jan. 11, 2011, at B2. The goal for 2011 was not reached; rather, by September, 2011, Mayor Ballard now "aim[ed] to have over 600 unsafe buildings under contract for removal by the end of 2011." Press Release, Dep't of Pub. Works, Mayor Ballard Launches Abandoned Structures Initiative to Remove Hundreds of Unsafe, Unsalvageable Houses, Buildings (Aug. 27, 2011), available at <http://www.indy.gov/eGov/City/DPW/RebuildIndy/Projects/Documents/8%2027%2011%20MAMAY%20BALLARD%20LAUNCHES%20ABANDONED%20STRUCTURES%20INITIATIVE%20TO%20REMOVE%20HUNDREDS%20OF%20UNSAFE%20UNSAVAGEABLE%20HOUSES%20BUILDINGS.pdf>. The shortfall of 2011 was pushed forward to the next year by raising the goal for 2012 to 2,000 homes. *See id.*

52. *See* IND. CODE §§ 36-7-9-7 to -8 (2011).

53. *See id.* § 36-7-9-4.5.

54. *See Samsa, supra* note 13, at 194.

55. ACTION PLAN, *supra* note 2, at 9.

turnover and can be temporary or permanent. In contrast, abandonment is characterized by long term or permanent vacancy and by the poor physical condition of a property. To abandon a house is to neglect the responsibilities of ownership related to minimal functional, financial, and physical maintenance of the property.⁵⁶

Difficulties are immediately apparent in defining abandonment in this way. For example, according to this definition, a house never arousing code enforcement authorities can be indefinitely “abandoned” yet remain under private though “neglect[ful]” ownership.⁵⁷ Second, potentially, a house can be *permanently* “vacant” without being “abandoned.”⁵⁸ Moreover, how minimal is “minimal”? What physical condition is “poor”? With such ambiguities, it is extremely difficult to distinguish vacancy from abandonment, or what type of neglected responsibilities separates the two. Most evident in this ambiguity seems to be that there is an unknown threshold crossed in time when an empty house reaches a state of decay such that external costs begin to accrue on the surrounding community. Beyond the threshold, cities are at some point made aware of abandonment chiefly by code violations or unpaid taxes.⁵⁹ But because the distinction is so blurry, there is the possibility of a significant period of harm to the community before the government even knows a property is “abandoned” according to the definition, and an additional, potentially long, period of time before something is done about it.

Thus, when trying to prevent a large accumulation of abandoned properties, it would seem that a broad solution that targets properties *before* abandonment occurs is appropriate. This is especially true in light of the historically mixed results from current efforts, which are mostly post-abandonment tactics. Such a desired remedy could logically come in the form of today’s “urban renewal” statutes using eminent domain as an exercise of the government’s police power.⁶⁰

56. *Id.* Compare *id.*, with IND. CODE § 36-7-36-1, providing the State of Indiana’s lengthy definition of “abandoned structure” in part, as:

(2) Real property that has not been used for a legal purpose for at least six (6) consecutive months and: (A) in the judgment of an enforcement authority, is in need of completion, rehabilitation, or repair, and completion, rehabilitation, or repair work has not taken place on the property for at least six (6) consecutive months; (B) on which at least one (1) installment of property taxes is delinquent; or (C) that has been declared a public nuisance by a hearing authority. (3) Real property that has been declared in writing to be abandoned by the owner, including an estate or a trust that possesses the property. (4) Vacant real property on which a municipal lien has remained unpaid for at least one (1) year.

IND. CODE § 36-7-36-1. One can safely conclude that abandonment is a difficult concept to define and remedy when presented with such elaborate and subjective definitions.

57. See ACTION PLAN, *supra* note 2, at 9.

58. See *id.*

59. See Samsa, *supra* note 13, at 197-200.

60. See, e.g., IND. CODE § 36-7-14-30; see also *Berman v. Parker*, 348 U.S. 26, 32 (1954)

In fact, Indiana has a statute allowing for just this type of redevelopment. It provides that a redevelopment commission may exercise eminent domain to “plan and undertake urban renewal projects . . . [including a]cquisition of real property and demolition, removal, or rehabilitation of buildings and improvements on the property . . . [to e]liminate uses that are obsolete or otherwise detrimental to the public welfare” or to cure a very broad range of detrimental property conditions, including the expansive term, “blight.”⁶¹ Problems exist with this remedy, however. An Indiana redevelopment commission must first find that an “area in the territory under its jurisdiction is an area needing redevelopment.”⁶² Considering every major territory of urban Indianapolis has significant levels of abandoned properties, the “area needing redevelopment”⁶³ will need to be a large one: Indianapolis itself.⁶⁴ Accordingly, this type of statutory solution does not seem practical or probable now that abandonment has metastasized into nearly every neighborhood on some level.⁶⁵

Still, the use of eminent domain under the police power is very versatile. Perhaps it is conceivable to try and stop abandonment in its tracks with a pre-abandonment eminent domain strategy that takes specific parcels from property owners who simply *may* abandon their property sometime down the road. Turning again to Indiana law, courts have held that so long as the “state’s exercise of eminent domain power is ‘rationally related to a *conceivable* public purpose, the [United States Supreme] Court has never held a compensated taking to be proscribed by the [Fifth Amendment’s] Public Use Clause.”⁶⁶ In fact, “the Court has held that the public use requirement is thus coterminous with the scope of a sovereign’s police powers.”⁶⁷ It is certainly *conceivable* to target property owners who pose a high risk of abandonment. And it is fair to assume that the “public use” for such a strategy would be economically related, with the ultimate goal of transferring the property to a private owner who is non-neglectful of ownership responsibilities such as paying taxes or preventing municipal service cost burdens.

(“An attempt to define [the police power’s] reach or trace its outer limits is fruitless. . . . Public safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs.”).

61. IND. CODE § 36-7-14-30.

62. *Id.* § 36-7-14-15.

63. *Id.* § 36-7-1-3.

64. See *Indianapolis General Data Viewer*, INDYGOV, <http://imaps.indygov.org/prod/GeneralViewer/viewer.htm> (select “vacant houses” in drop down menu; then click “Switch Map Set”) (last visited Mar. 5, 2012) (providing a sobering look at the scale of the housing issue in Indianapolis).

65. See *id.*

66. *Daniels v. Area Plan Comm’n of Allen Cnty.*, 306 F.3d 445, 460 (7th Cir. 2002) (quoting *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984) (citing *Berman v. Parker*, 348 U.S. 26) (1954) (emphasis added)).

67. *Id.* (quoting *Midkiff*, 467 U.S. at 241 (internal quotation marks omitted)).

In *Kelo v. City of New London*,⁶⁸ such economic justifications of the police power were addressed. The United States Supreme Court held that a local government's taking of an individual's private residence did not violate the Fifth Amendment's Takings Clause when a home was transferred to another private party with the intended "public use" of "economic development," defined under a Connecticut statute as a legitimate public purpose.⁶⁹ However, this expanded reading of public use did not sit well in many jurisdictions, including Indiana, and soon after, many state legislators reacted to this decision by limiting their state's definition of public use.⁷⁰ The Indiana legislature enacted statutory changes virtually eliminating "economic development" from the state's definition of a public use, along with similar justifications that include an increase in the tax base, tax revenues, or general economic health.⁷¹ Consequently, this move effectively prevents future Indiana local governments from being able to take and transfer pre-abandoned housing to another private owner in Indiana in cases where the justification is rationally related to "economic development."⁷² Summarily, the police power in Indiana is not coterminous with "public use" any longer, as is the case in similarly reacting jurisdictions. This fact leaves virtually no legal opening for legislators to craft high-volume property-specific police power remedies that address housing abandonment before it occurs.

As one can see, it is difficult to wage a war against abandoned property when even the point of what constitutes abandonment is elusive. Strategies that seek to head off abandonment before it happens are difficult to articulate, likely to run afoul of state laws, or simply be impractically large uses of the police power because of the invasiveness of abandonment. The difficulties often require cities to wait until the point of abandonment is clear. As a result, Indianapolis and other jurisdictions have traditionally focused on the post-abandonment period and employed two smaller scale police power tactics targeting parcels individually.

C. Post Abandonment Approach Number One: Enhanced Enforcement of Indiana's Unsafe Building Law

In the course of upholding a city's demolition order, Judge Carson Prime, in *Combs v. New Albany*,⁷³ eloquently explained the rationale for building code enforcement:

It has never been denied that in the exercise of the police power, property rights may be sacrificed and privileges curtailed. Since public peace and

68. 545 U.S. 469 (2005).

69. *Id.* at 485-86.

70. Erin Elena Smith, *State Reaction to Kelo v. City of New London* 3 (Apr. 2007) (unpublished senior honors thesis, Texas A&M University) (on file with the Texas A&M Office of Honors Programs & Academic Scholarships), available at <http://repository.tamu.edu/bitstream/handle/1969.1/5694/ErinESmithThesis.pdf?sequence=3>.

71. See 2006 Ind. Stat. Ann. Adv. Legis. Serv. 163 (LexisNexis).

72. See *id.*

73. 218 N.E.2d 349 (Ind. App. 1966).

well being are the object of government, any legislation which furthers these aims will not be defeated on the ground that it interferes with the rights of some of its citizens. . . . [Therefore,] “[c]ities and towns have power to establish reasonable regulations for the protection of the lives, health, and property of their citizens, and to enforce compliance with such regulations by fixing penalties [sic] to be imposed upon violators of the regulations. . . . Reasonable regulations are not unconstitutional merely because they affect the uses to which private property may be put. This is not a taking of private property. It is an exercise of the police power.”⁷⁴

Along this line of reasoning, local public officials use regulations as a way of addressing abandoned structures while staying within the confines of state and federal law. The public safety dangers presented by abandoned and neglected buildings provide an easy target. The Indiana Unsafe Building Law authorizes local governments to require the owner of an unsafe building to take corrective action to deal with unsafe building conditions.⁷⁵ Unsafe buildings are expansively defined as those which are a “hazard to the public health; . . . a public nuisance; . . . dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or . . . vacant and not maintained in a manner that would allow human habitation. . . .”⁷⁶ This statute has been publicly declared in Indianapolis as a primary weapon post-abandonment, and it is implemented through the use of orders issued by an administrative enforcement authority.⁷⁷ This tactic of targeting the individual parcel level is the opposite of condemning large swaths of a city using eminent domain and, contrary to requiring compensation to the owner, mandates payment, through lawsuits, *from* the owner for any costs required by any repair or demolition order.⁷⁸ Not coincidentally, it can achieve the same end result of eminent domain blight removal or begin the process of property transference to private hands. Reaching time and again for this arrow in the statutory quiver is exactly what Indianapolis does to principally address abandoned housing.⁷⁹

Through enhanced code enforcement, Indianapolis has stepped up the use of monetary penalties and quickened judicial remedies in an effort to force owners to deal with the abandoned and dangerous structures—or even face the forced

74. *Id.* at 350-51 (quoting *Spitler v. Munster*, 14 N.E.2d 579 (Ind. 1937)).

75. IND. CODE § 36-7-9-5 (2011).

76. *Id.* § 36-7-9-4.

77. *See id.* § 36-7-9-5; ACTION PLAN, *supra* note 2, at 15.

78. *See* IND. CODE § 36-7-9-13.

79. Indianapolis has also announced a desire to transfer property to another party through a process known as receivership, where the city can appoint and transfer the property to a party in order to fix up the premises without requiring the owner’s presence in court. *See* ACTION PLAN, *supra* note 2, at 17-18. For purposes of this Note, receivership will be included under the broad category of code enforcement.

demolition of property.⁸⁰ Supportive Indianapolis residents have become aware of this greater tone of enforcement, and the primary local print news outlet has even encouraged residents to publicly report code violations in an effort to fix problems.⁸¹ In some cases, residents have resorted to neighborhood initiatives requesting further code enforcement upon the numerous abandoned houses surrounding the neighborhood.⁸² These responses are some indication that the Unsafe Building Law is a helpful vehicle for initiating action against a house matching Indianapolis's definition of "abandoned." In theory, an even stricter level of code enforcement than at present could provide a needed sidestep to the reaction to *Kelo* and create a needed single-parcel preemptive tool. The use of fines for even arguable violations could operate as a predictor of abandonment by separating those owners willing to repair or pay, from those owners whose "neglect" is more severe and poses a high abandonment risk. In effect, there is achievement of the goal of "economic development"—property flow to responsible private owners—under the guise of public safety and welfare or code enforcement.

But while code provisions are in fact being increasingly enforced in Indianapolis,⁸³ it also could be considered counterintuitive to do so, let alone increase it from present levels as a predictor of abandonment. This is because each fine, demolition order, or forced board-up raises the carrying costs of property ownership, which could further contribute to the economic forces of abandonment.⁸⁴ After all, a property's unsafe condition, needed repairs, or decayed state may be present due to the very fact that its owner has no money to improve the property.⁸⁵ Further, it is conceivable that any prospective real estate owners who may desire to purchase and bring the properties back to good standing may have less economic incentive to take on properties that have accumulated unpaid city fines, which are a lien on the real estate.⁸⁶ Future purchasers of any government-owned real estate will most likely be deterred by any delinquent penalties and unpaid costs, plus interest, which are added as special assessments on the property's tax bill.⁸⁷ Additionally, it is plausible that investors—or all homeowners for that matter—may be discouraged from ownership or renovation in fear of falling victim to enhanced code enforcement.

In sum, the legal tool of code enforcement is an appropriate way to address extremely unsafe conditions of a property, but it may not be a good way to keep

80. See ACTION PLAN, *supra* note 2, at 15-16.

81. See *Star Watch*, INDIANAPOLIS STAR, <http://www.indystar.com/data/starwatch/> (last visited Mar. 5, 2012).

82. See Rudavsky, *supra* note 36.

83. ACTION PLAN, *supra* note 2, at 16.

84. See *id.* at 17.

85. See Samsa, *supra* note 13, at 198.

86. See IND. CODE § 36-7-9-13 (2011) (showing an example of a lien that can be imposed for an unsafe premises).

87. See *id.* § 36-7-9-13.5 (exhibiting Indiana's statute regarding unpaid costs for unsafe premises).

a property from becoming abandoned by its owner or to predict abandonment. Separately, addressing abandoned homes through enhanced code enforcement, “at best, results in a series of haphazard citations, certainly outside the gambit of a systematic approach.”⁸⁸ If anything, excess code enforcement fines may present a “[t]ipping point,” at which the owner of a house abandons it because the fines presented by code enforcement are the last straw.⁸⁹ While demolition orders through the Unsafe Building Law can remove a problem property, it is also important to note that the locality probably contracts to do so using traditional demolition techniques, the focus of which is not salvaging maximum benefit to the community.

D. Post Abandonment Approach Number Two: Tax Sale

As in many jurisdictions, the other prominent tool that Indianapolis uses to fight abandoned housing is the power to tax. Indiana uses the tax sale process for the seizure and sale of chronically delinquent tax paying, “vacant . . . or abandoned” properties.⁹⁰ Essentially, this process leads to tax liens being placed on properties by the state at the time of assessment, which inure to a respective taxing authority in Indiana.⁹¹ When a property owner becomes delinquent in tax payments, a county publicly auctions off the parcels to willing bidders in an effort to collect unpaid taxes.⁹² High bidders receive tax certificates of sale that are subject to an interest-bearing redemption period.⁹³ The bidding begins at the value of the unpaid tax bill, and the successful bidder receives a tax deed if the tax certificate is not paid off, plus interest, within the redemption period.⁹⁴ From this point, the purchaser may initiate a quiet title action.⁹⁵ Bidding that does not reach the level of unpaid taxes results in the county receiving the certificate of sale, becoming the owner of the property at the end of the redemption period.⁹⁶

While the tax sale has traditionally been a staple in Indianapolis as a means to return abandoned property to the tax base, ever since the increase in abandoned housing reached current levels, county government has struggled to get bidders to purchase these tax certificates—multitudes of parcels at these sales now remain

88. Samsa, *supra* note 13, at 198.

89. See Kraut, *supra* note 25, at 1146; see generally MALCOM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* (2002) (arguing that “little things” contribute significantly to major changes in various aspects of society).

90. See generally IND. CODE §§ 6-1.1-22 to -25 (outlining the statutory framework for the collection of property tax, delinquent property tax sale, and property redemption processes in Indiana).

91. See *id.* § 6-1.1-24.

92. See *id.* § 6-1.1-22-13.

93. See *id.* §§ 6-1.1-24-9; 6-1.1-25-2.

94. See *id.* §§ 6-1.1-24-5; 6-1.1-25-1.

95. See *id.* § 6-1.1-25-14.

96. See *id.* § 6-1.1-24-6.

unsold.⁹⁷ Huge levels of back taxes, along with the poor condition of many houses, leave little economic incentive for private parties to purchase these parcels when the total costs of purchase, rehabilitation, and maintenance far exceed the market value of the property.⁹⁸ These recent failures of the tax sale process due to the abundance of abandoned homes in Indianapolis may very well be a canary in the coal mine for the severity of Indianapolis's problem. This process also suffers from inherent time delays caused by the length of the property tax cycle. A property is not placed on a list for sale until it is tax delinquent and only then "after January 1 of each calendar year in which a tax sale will be held in a county and not later than fifty-one (51) days after the first tax payment due date in that calendar year."⁹⁹

While the tax sale process may work well for collecting property taxes from owners of properties in good condition, or in times when supply of neglected property does not dwarf demand, the tax sale is not well suited to fight abandonment. It, like Indiana's Unsafe Building Law, was not designed for preempting a tide of dilapidated abandoned housing or removing thousands of properties from county ownership.¹⁰⁰

E. A Supplemental Approach: The Indy Land Bank

The Indy Land Bank was created by statute for the purpose of serving as a virtual repository for abandoned houses and empty lots obtained by Indianapolis through the tax sale process, or in conjunction with code enforcement.¹⁰¹ This "bank," which is essentially a website, temporarily "holds" property with the ultimate goal of rehabilitating houses and collecting taxes as soon as possible, with a secondary goal of "strategically" assembling parcels to achieve redevelopment objectives.¹⁰²

The Indy Land Bank does have some productive uses, such as serving as a one-stop shop for an inventory of all property that Indianapolis would like to return to private hands.¹⁰³ Another may be that aggregated location information regarding Indianapolis-owned abandoned housing is preferable to spreading it across multiple agencies. Indeed, Indianapolis believes consolidated information

97. See Jeff Swiatek, *Center Township Properties Excite Few Bidders at Tax Sale*, INDIANAPOLIS STAR, Oct. 8, 2010, at A8 [hereinafter *Township Properties*].

98. See Francesca Jarosz, *In the Bad Economy, Thousands of Homes Have Become Empty Shells Relegated to Tax Sales, Leaving the County with an . . . Unwanted Surplus*, INDIANAPOLIS STAR, Aug. 31, 2010, at A1.

99. IND. CODE § 6-1.1-24-1.

100. See Samsa, *supra* note 13, at 197.

101. See ACTION PLAN, *supra* note 2, at 24; see generally *About the Land Bank*, INDY LAND BANK, <http://www.indylandbank.com/about.shtml> (last visited Mar. 5, 2012).

102. ACTION PLAN, *supra* note 2, at 24.

103. See Samsa, *supra* note 13, at 213-29 (providing an in depth discussion of the various forms of land banks, and stating that, generally, "[a] land bank is an agency that oversees the acquisition, management and disposal of problem properties for the purpose of strategic re-use").

could be valuable for potential property developers.¹⁰⁴ The Indy Land Bank also can efficiently identify willing adjacent-landowner purchasers to sell property to them for a nominal fee,¹⁰⁵ which is indeed another way to return a property back to a tax paying status.¹⁰⁶

But any land bank approach begins long after abandonment and only works at the speed of the code enforcement and tax sale process that “banks” the properties.¹⁰⁷ This means the property likely must first clear either the administrative process of code enforcement or the annual tax cycle, or both. This hardly seems fast enough to tackle thousands of dilapidated properties at once, some of which may not meet the definition of abandonment—meaning some may be out of reach of the tax sale process because they are, in fact, dilapidated and decaying structures unknown to code enforcers, but current on their property taxes. Or, perhaps a property cycles in and out of tax delinquency, but persists as a vacant, boarded-up eyesore whose owner obeys the building code.

Additionally, when the city holds property in the Indy Land Bank, it incurs costs of property maintenance according to Indiana’s own Unsafe Building Law standards, let alone any costs of rehabilitation incurred by the land bank.¹⁰⁸ Thus, Indianapolis probably wants to avoid a very high number of properties in the land bank, because it means avoiding a high maintenance cost to the city in a time of tight budgets.¹⁰⁹ Yet, placing a high number of properties in the land bank is what is needed to tackle large amounts of abandoned property. Essentially, Indianapolis becomes a victim of its own stepped up code enforcement costs as soon as it places a property in the land bank. Indianapolis has publicly acknowledged this heightened cost of adherence to the Unsafe Building Law when property is placed in the land bank.¹¹⁰ This striking acknowledgement seems to verify the earlier conclusion that enhanced code enforcement aggravates the economic forces of abandonment, not the other way around.

Finally, the Indy Land Bank’s existence arguably rests on the assumption that there will be future demand for the properties that are acquired by and held within it, along with future desire from private or non-profit owners to develop the properties.¹¹¹ This may not be a sound assumption in an environment where Indianapolis real estate markets are weak, where there is an oversupply of houses, or where there is regional economic difficulty.¹¹² The recent failures of tax sale

104. See INDY LAND BANK, <http://www.indylandbank.com/> (last visited Mar. 5, 2012).

105. See *id.*

106. See *Policies and Procedures*, INDY LAND BANK, <http://indylandbank.com/policies.shtml> (last visited Mar. 5, 2012).

107. See *id.* (describing the Indy Land Bank’s acquisition process as primarily beginning after tax delinquency, tax sale, and statutory redemption periods, unless land is donated or purchased from Marion County Surplus).

108. See ACTION PLAN, *supra* note 2, at 24.

109. See *id.*

110. See *id.*

111. See *Policies and Procedures*, *supra* note 106.

112. See *supra* notes 14-15, 98 and accompanying text.

auctions provide little hope that people will purchase a large volume of properties located in the Indy Land Bank.¹¹³ Thus, the land bank may well be a valuable informational and organizational tool for policymakers, as well as an efficient way to transfer clear titled property to non-profits, adjacent landowners, or law enforcement officers,¹¹⁴ but may accomplish little else. At its current level of use, the Indy Land Bank does not operate as a high volume remedy for reducing large quantities of housing.¹¹⁵ Confronted with thousands of houses, the land bank stands to be a virtual repository for thousands of government-owned abandoned properties if there is no future demand for its supply.

F. The Missing Approach: Deconstruction

In 2009, Indianapolis published an “Action Plan” for tackling the problem of abandoned houses, yet nowhere in the plan did the city mention the possible benefits of building deconstruction or any effort to study or use it as a tool to stem the tide of property abandonment.¹¹⁶ A slightly more encouraging consideration of deconstruction was given by the city in response to a public comment as part of a 2009 proposal for federal Community Development Block Grant funds. There, Indianapolis claimed that “[c]urrently the [c]ity is researching environmentally friendly deconstruction. If employed, this strategy will encourage green deconstruction on all future demolition projects. There is no precedent . . . within community and economic development in the City of Indianapolis” for using deconstruction to address abandoned properties.¹¹⁷

While the use of deconstruction in Indianapolis is unprecedented, this cannot be said for other cities or Indiana in general. For example, Cleveland has conducted pilot studies to examine deconstruction of abandoned housing,¹¹⁸ and several cities across the country have model statutes requiring levels of deconstruction to be performed at demolitions within their municipalities.¹¹⁹ Far from having nothing to build on, Indianapolis could certainly learn from this

113. See *Township Properties*, *supra* note 97.

114. See *Policies and Procedures*, *supra* note 106.

115. At the time of this writing, the Indy Land Bank listed only forty-two properties on its website available for acquisition. See *Available Property*, INDY LAND BANK, <http://www.indylandbank.com/> (select “Available Property” hyperlink in top toolbar) (last visited Mar. 5, 2012).

116. See generally ACTION PLAN, *supra* note 2 (omitting the topic of deconstruction entirely from the city’s comprehensive plan to address abandoned property in Indianapolis).

117. CITY OF INDIANAPOLIS, CDBG-R SUBSTANTIAL AMENDMENT 4 (2009) [hereinafter CDBG-R AMENDMENT], available at <http://indy.gov/eGov/City/DMD/Community/Grants/Documents/CDBG-R%20Amendment%20070909.pdf>.

118. See generally Jon Mooallem, *This Old Recyclable House*, N.Y. TIMES, Sept. 28, 2008, at MM58, available at <http://www.nytimes.com/2008/09/28/magazine/28house-t.html>.

119. See, e.g., RECYCLE WORKS: A PROGRAM OF SAN MATEO CNTY., UNDERSTANDING C & D RECYCLING REQUIREMENTS, available at http://www.recycleworks.org/pdf/CD_office_guide_pg_4_5.pdf (last visited Mar. 5, 2012).

information or adopt best practices for the use of deconstruction as a tool. While most model deconstruction ordinances were created out of necessity because of diminishing landfill space,¹²⁰ they could also be potentially useful to Indianapolis as a way to explore the removal of city-owned abandoned structures.

Perhaps most glaring is the fact that the state of Indiana has already successfully experimented with deconstruction in the industrial context through the Indiana Department of Environmental Management's Brownfields Program.¹²¹ In Ligonier, Indiana, funds partially provided by the state were paid to deconstruct a three-story former wire assembly plant structure.¹²² The national and state award-winning project sold one hundred tons of reusable material per week during the project and sold and reused 1.6 million bricks at a historic church, a lighthouse on the Great Lakes, and multi-million dollar homes in six states.¹²³ The project recycled three hundred tons of steel, copper, aluminum, and brass.¹²⁴ The deconstruction experiment in Ligonier is best summed up in the Indiana Finance Authority's own words: "[b]y recycling valuable construction and demolition materials, only an estimated [five to ten] percent of the building materials will go to a landfill. This is a great example of how thinking 'green' can bring cost savings, new jobs, and community enhancement."¹²⁵ Despite such precedent, deconstruction has not thus far been given serious consideration or support in Indianapolis.

II. WHAT IS DECONSTRUCTION?

A. *The Process: Systematic Disassembly*

So what is deconstruction, precisely? Deconstruction is a "new term to describe an old process—the selective dismantling or removal of materials from buildings before or instead of some elements of traditional demolition."¹²⁶ Put differently, deconstruction is "construction in reverse," involving the "selective and systematic disassembling of buildings with the specific goal of generating a supply of materials suitable for reuse."¹²⁷ Basically, in deconstruction, a group

120. See, e.g., ALAMEDA CNTY. WASTE MGMT. AUTH. & ALAMEDA CNTY. SOURCE REDUCTION & RECYCLING BD., INNOVATION, LEADERSHIP, STEWARDSHIP 1 (2002), available at <http://www.stopwaste.org/docs/1635221022005ar90-00.pdf>.

121. See *Brownfields Program*, INDIANA FIN. AUTH., <http://www.in.gov/ifa/brownfields/> (last visited Mar. 5, 2012).

122. See *Green Redevelopment in Ligonier: Former Essex Wire Site*, INDIANA FIN. AUTH., <http://www.in.gov/ifa/brownfields/2576.htm> (last visited Mar. 5, 2012).

123. *Id.*

124. *Id.*

125. *Id.*

126. U.S. DEP'T OF HOUS. & URBAN DEV., A GUIDE TO DECONSTRUCTION iii (Feb. 2000) [hereinafter DECONSTRUCTION GUIDE], available at <http://www.huduser.org/Publications/PDF/decon.pdf>.

127. John S. Manuel, *Unbuilding for the Environment*, 111 ENVTL. HEALTH PERSP. A880,

of people take apart a structure by hand so carefully that nails are often taken from every board one nail at a time, or walls are taken down brick by brick.¹²⁸ Taking apart buildings, by hand, for reuse and recycling is in contrast to traditional demolition techniques, where buildings are knocked down with large construction equipment and the resulting debris is dumped in a landfill.¹²⁹

Instead of traditional demolition's focus on saving time or labor costs, the primary goal in building deconstruction is the reuse of materials, so buildings are carefully taken apart in a methodical fashion to maximize the recapture of building materials and construction components.¹³⁰ Some case studies have shown that deconstruction can divert ninety percent of waste away from a landfill that would ordinarily result from traditional demolition.¹³¹ Because deconstruction roughly follows the construction process in reverse order, those items that were installed first in construction will be removed last in deconstruction.¹³² Doing things in this manner enables efficient sorting and separation of materials for reuse, recycling, and disposal at the time of removal.¹³³

B. Learning From History: The Principle of Embodied Energy

Dismantling a structure with a mind toward salvage and reuse is well rooted in human history as an economical and environmentally sound practice that leads to numerous economic and social benefits: it can be seen as early as Egyptian building material reuse,¹³⁴ Roman Empire road construction,¹³⁵ or as recent as pre-World War II American wood-framed building deconstruction.¹³⁶ The fact that deconstruction is found so prevalently in human history seems to suggest what our ancestors knew about the technique, but we have forgotten as people have become more affluent and building materials have become cheaper and more

A881 (2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241780/pdf/ehp0111-a00880.pdf>.

128. See Mooallem, *supra* note 118.

129. See DECONSTRUCTION GUIDE, *supra* note 126, at 1.

130. See *id.*

131. See Spenser Villwock, *Integrity and Bliss Through Deconstruction*, CONSERVATION MAG., Fall 2008, at 12, 12, available at <http://conservationcenter.org/assets/docs/articles-waste/integrity-and-bliss-through-deconstruction.pdf>.

132. BRADLEY GUY & SEAN MCLENDON, CTR. FOR CONSTR. AND ENV'T, UNIV. OF FLA., BUILDING DECONSTRUCTION: REUSE AND RECYCLING OF BUILDING MATERIALS 4 (2000), available at <http://www.recyclecddebris.com/rCDd/Resources/Documents/CSGReuseRecycling.pdf>.

133. *Id.*

134. See Elaine Sullivan, *Construction Methods*, DIGITAL KARNAK 1, 11-12 (2008), available at <http://dlib.etc.ucla.edu/projects/Karnak/assets/media/resources/ConstructionMethodsAndBuildingMaterials/guide.pdf>.

135. See Manuel, *supra* note 127, at A881.

136. See Bob Falk, *Wood-Framed Building Deconstruction: A Source of Lumber for Construction?*, 52 FOREST PRODUCTS J. 8, 10 (2002), available at <http://www.fpl.fs.fed.us/documnts/pdf2002/falk02a.pdf>.

disposable¹³⁷: when a building is no longer fit for use, it does not mean that all of its parts and components are useless.¹³⁸

In fact, the contents of a building may consist of numerous components that still have useful lives.¹³⁹ For example, wood can be reused in new construction framing, hardwood flooring, siding, or ground up for mulch or fuel.¹⁴⁰ Scrap metal can easily be taken to processors to be melted down and returned to fabrication.¹⁴¹ Concrete and asphalt are readily ground into rubble for reuse as fill, road base, or road patch.¹⁴² Beyond this, many structures contain architecturally significant components, antique fixtures, or other high quality furnishings that can be marketed or reused upon recovery.¹⁴³

In addition, deconstruction is arguably preferable over traditional demolition because a more fundamental principle is seemingly rejected when a building is demolished without an eye toward salvage and reuse maximization. This principle is that the construction materials originally used to create the structure contain embodied energy—which is “defined as the total energy required in the creation of a building, including the direct energy used in the construction and assembly process, and the indirect energy that is required to manufacture the materials and components of the building.”¹⁴⁴ In other words, reusing and recycling existing materials the structure is made from is much more energy-efficient than manufacturing and producing new, virgin materials to reconstruct another building.¹⁴⁵ While most agree that buildings are not meant to be permanent structures, by demolishing and landfilling construction debris, society fails to recognize that some of the materials the structures consist of may have life spans well beyond that of the building as a whole.¹⁴⁶ By not recognizing the principle of embodied energy, demolition waste is arguably generated in an extravagant and decadent fashion by today’s society. Every time a structure is knocked down and landfilled, we waste resources by burying them.¹⁴⁷

137. See Mooallem, *supra* note 118.

138. See DECONSTRUCTION GUIDE, *supra* note 126, at 1 (indicating that indeed “[m]ost old buildings have some systems and materials with useful lives”).

139. See Manuel, *supra* note 127, at A883 (identifying multiple reuse strategies for C & D materials).

140. See *id.*

141. *Id.*

142. See *id.*

143. See *id.*

144. PHILIP CROWTHER, DESIGN FOR DISASSEMBLY TO RECOVER EMBODIED ENERGY 2 (1999), available at <http://eprints.qut.edu.au/2846/1/Crowther-PLEA1999.PDF>.

145. See *id.* at 2-5.

146. See *id.* at 4-5.

147. See U.S. ENVTL. PROT. AGENCY, FY2002 OSWER INNOVATION PILOT RESULTS FACT SHEET 1 (July 2010), available at http://www.epa.gov/oswer/docs/iwg/building_decon_reuse.pdf (stating that “continued disposal of building materials uses landfill space and buries potential resources rather than extracting their value for productive reuse”).

C. Environmental and Social Benefits of Deconstruction

Perhaps the most intriguing aspect of deconstruction is what it can bring to a community and society as a whole simply through the basic techniques that it employs. As discussed, deconstruction leads to a reduction in waste generation and a conservation of local landfill space, because building materials are reused rather than discarded.¹⁴⁸ To drive the point home, however, it is worth mentioning that estimates of building-related waste generated each year in the United States reach 136 million tons.¹⁴⁹ Demolition waste is said to account for fifty-four percent of this waste stream, and it is estimated that only .2 percent is currently being recaptured.¹⁵⁰

Equally important, because of its labor-intensive process, deconstruction implicitly supports dual community objectives of alleviating unemployment in conjunction with reducing local blight.¹⁵¹ Deconstruction projects employ scores of workers, such as workers to disassemble structures, recover materials, sort, salvage, and haul; these jobs provide direct, living wage employment and worker job training, especially in the area of construction trades.¹⁵² Thus, in an environment that is conducive to multiple deconstruction projects, small business creation takes place, not only in deconstruction trades, but also in secondary level materials reuse, resale, and salvage industries.¹⁵³

Several other societal benefits, albeit less measurable, can also be used to support deconstruction as the desired option for addressing abandoned housing on a broad scale. First, there are reduced costs to the local population, such as costs not incurred for new landfills.¹⁵⁴ This is a significant point, given that Flint, Michigan was estimated to generate 260,000 cubic yards per year of demolished housing waste—this is “equivalent to a standard city block in Manhattan covered with a block of house debris the height of a 3-story building. . . . [e]very year.”¹⁵⁵ Without deconstruction, nearly all of that waste goes in the ground.

Second, on its face, deconstruction’s focus on materials reuse reduces local energy consumption, because fewer new materials need to be manufactured

148. See DECONSTRUCTION GUIDE, *supra* note 126, at 1.

149. See Manuel, *supra* note 127, at A881.

150. Stephani L. Miller, *Mind the Waste: Deconstruction vs. Demolition*, CUSTOM HOME, May 2008, available at <http://www.remodeling.hw.net/reuse/mind-the-waste-deconstruction-vs-demolition.aspx>.

151. See DECONSTRUCTION GUIDE, *supra* note 126, at 2 (indicating that “[d]econstruction can be a way of keeping resources in the community and a way of developing job and small business opportunities”).

152. See *id.* at 1.

153. See *id.* at 12 (providing links to several secondary building material industry websites that benefit from deconstruction).

154. See GUY & MCLENDON, *supra* note 132, at 20 (concluding that “[t]here are future costs which accrue to the municipality or to the owner of the landfill that are not included in the costs of disposal”).

155. JANZ, *supra* note 39, at 6.

within or transported to the locality.¹⁵⁶ This conserves natural resources used by the local construction industry because virgin materials do not need to be harvested for manufacture or purchased by local builders.¹⁵⁷ Third, and even more localized, there is less destructive site impact at deconstruction project sites versus traditional demolition sites due to the absence of the use of heavy wrecking equipment.¹⁵⁸ Basically, the lack of bulldozers, wrecking balls, backhoes, and heavy equipment leaves ground cover, trees, and vegetation in place at the site of the abandoned structure.¹⁵⁹ This minimizes environmental and vegetative degradation, and also eliminates health hazards by not spreading lead paint dust to surrounding streets and blocks.¹⁶⁰ Fourth, materials that are salvaged on deconstruction projects are often donated as tax deductible donations to local non-profit organizations, much to the benefit of the community whose citizens may repurchase reusable building materials at often less than half of their retail value.¹⁶¹

Finally, public housing authorities benefit from readily available opportunities to train laborers in the construction trades, as well as having an abundance of second-hand building materials for the cost efficient repair of existing public housing.¹⁶² Surely this is why federal policy has long encouraged incorporating technologies such as deconstruction in notices of federal funding availability for the revitalization of public housing.¹⁶³

Taken together, the possible benefits that accrue from the use of deconstruction seem to be immense, and it is not hard to see how these benefits could strengthen a local economy. Few would argue against keeping reused and recycled building material resources in the community and out of landfills, and it is difficult to dispute creation of jobs providing valuable skills training and paying living wages, a portion of which is likely returned to the community

156. See CROWTHER, *supra* note 144, 2-3.

157. See *id.* at 5 (concluding that designing buildings for disassembly will have the added benefit of reducing the depletion of natural resources); Manuel, *supra* note 127, at A886 (adding that “[d]econstruction and subsequent reuse of materials also benefits the environment by reducing the demand for raw materials such as wood and iron ore”).

158. See DECONSTRUCTION GUIDE, *supra* note 126, at 1 (advising that deconstruction “can reduce site impacts in terms of dust, soil compaction, and loss of vegetation or ground cover”).

159. See *id.*

160. See Mark R. Farfel et al., *A Study of Urban Housing Demolition as a Source of Lead in Ambient Dust on Sidewalks, Streets, and Alleys*, 99 ENVTL. RES. 204, 213 (2005), available at http://www.mapleleafcommunity.org/files/waldo/2005-10_Farfel_Lead-dustfall.pdf.

161. See GUY & MCLENDON, *supra* note 132, at 5.

162. See DECONSTRUCTION GUIDE, *supra* note 126, at 11.

163. See, e.g., HOPE VI Main Street Grants Notice of Funding Availability, 73 Fed. Reg. 36,380, 36,386 (June 26, 2008) (“HUD encourages the applicant to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or ‘deconstruction’ of housing units, recycling of demolition debris, and reusing of salvage materials in new construction.”).

through consumption and taxes.¹⁶⁴ Perhaps most crucially, abandoned buildings get removed along the way.

E. The Perceived Drawbacks of Deconstruction

Deconstruction has numerous and often unique challenges. For example, animal feces combined with lead dust can make for a challenging work environment.¹⁶⁵ These odd variables are representative of just a couple of the many unique challenges that are present when old, abandoned, poor quality homes in some of America's worst neighborhoods are taken apart by hand. These types of obstacles can often be traced to the fact that "following WWI and WWII, 'small poorly constructed housing was quickly erected on narrow lots, close to the factories that provided employment.' These never were high quality houses. It can be argued that these buildings, long ago, fulfilled their original mission"¹⁶⁶ and what is left is not always salvageable. What may be left is often stolen by "scrappers"—people who enter buildings to illicitly harvest valuable materials—meaning "[w]hat remains is a carcass that was once a home, but today is less than a house."¹⁶⁷

Said another way, despite the laundry list of benefits, deconstruction is not without plenty of hurdles. Beginning with the technique itself, because deconstruction literally takes a building apart piece-by-piece, it takes more time than traditional demolition, making deconstruction less desirable for developers who may be under time-sensitive conditions.¹⁶⁸ Second, deconstruction is labor intensive, so labor costs are greater to pay ten or twelve workers to work for two weeks, versus "what a piece of hydraulic machinery accomplishes before lunch."¹⁶⁹

While it would be relatively easy to dismiss deconstruction on these premises, thinking in these terms alone fails to account for other variables that work the total equation toward a closer economic balance than may be imagined. In actuality, deconstruction has already historically been cost competitive with traditional demolition by utilizing a combination of tax deductible donations, on and off-site material salvage and resale, and large savings from landfill disposal costs, all of which work to counter the higher labor costs inherent in deconstruction.¹⁷⁰ Test cases comparing demolition with deconstruction have shown that landfill disposal costs often represent over fifty percent of the total cost of demolition, compared with approximately ten percent of total costs for

164. See DECONSTRUCTION GUIDE, *supra* note 126, at 1-2 (noting the ability of deconstruction to keep resources in the community and develop jobs and businesses).

165. See GUY & MCLENDON, *supra* note 132, at 13 (providing an interesting look at a deconstruction case study of an aging home with biohazards at 711 NW 7th Avenue).

166. JANZ, *supra* note 39, at 5 (internal citation omitted).

167. *Id.* at 6.

168. See Falk, *supra* note 136, at 11.

169. Mooallem, *supra* note 118; see also DECONSTRUCTION GUIDE, *supra* note 126, at 13.

170. See GUY & MCLENDON, *supra* note 132, at 24.

deconstruction.¹⁷¹ Looking at the numbers in this fashion, the economics show that even a small increase for the cost to dispose demolition waste into a landfill quickly makes deconstruction a more profitable alternative to demolition. Even when considering conservative estimates of salvageable material, deconstruction has indeed been shown to be thirty percent cheaper in some cases over traditional demolition on a per-square-foot basis because of the ability to reclaim materials.¹⁷²

Sometimes, however, finding salvageable materials can be a challenge in a severely dilapidated housing stock, and many tax-favorable charities that accept building materials do not accept contaminated, degraded, or poor quality materials comprising some abandoned houses.¹⁷³ But this element should not deter serious consideration of supporting deconstruction, because only now in the shadow of today's increasing need for a solution to abandoned housing are modern economic models of profit-based deconstruction being created.¹⁷⁴ While deconstruction has a rich history, it is not yet a widespread profit-based activity.¹⁷⁵ It is reasonable to envision that innovative solutions for recycling and reuse of even the most decayed building materials could evolve along with new markets for second-hand materials if the cost to dispose inside a landfill rises significantly.

Another challenge to employing deconstruction exists in the fact that very little thought has been given to how society would take apart its buildings long after construction. This means that building materials are often presently secured with engineered materials, chemical adhesives, or other methods that lead to damage upon component removal, loss in salvage value, and increased disassembly time.¹⁷⁶ Yet in the same way that regulations have guided the elimination of asbestos and lead paint in construction, one could easily imagine regulations that seek to mandate a balance of efficiency in construction with efficiency in future disassembly. Already, ideas for "design for disassembly" are taking shape in the building material and construction industry so that maximum economic value can be achieved through future construction materials recovery and structure disassembly.¹⁷⁷

Since older pre-regulation residential housing is often filled with health hazards such as lead-based paint and asbestos, deconstruction's hands-on approach to disassembly brings humans in close contact with these hazards,

171. *See id.* at 18.

172. *See id.*

173. *See* JANZ, *supra* note 39, at 5.

174. *See* Falk, *supra* note 136, at 14 (finding that "[b]ecause deconstruction is not yet a widespread activity, economic models are only now being developed").

175. *See id.*

176. *See id.* at 11.

177. *See generally* BRAD GUY & NICHOLAS CIARIMBOLI, DESIGN FOR DISASSEMBLY IN THE BUILT ENVIRONMENT: A GUIDE TO CLOSED-LOOP DESIGN AND BUILDING, available at <http://www.lifecyclebuilding.org/files/DfDseattle.pdf> ("DfD is intended to create buildings to reduce new materials consumption and waste in their construction, renovation and demolition. . . .").

presenting safety, regulatory, and cost hurdles.¹⁷⁸ But regulations and costs for removal and disposal of these hazardous materials govern both deconstruction and demolition evenly, leaving both on equal footing in this respect.¹⁷⁹

Rather than viewing deconstruction as having a fatal flaw presented by preventatively higher labor costs, it is more appropriate to view the technique as presenting a complex, but surmountable, web of technical issues that must be balanced to make a project efficient, timely, and cost effective.¹⁸⁰ Thus, while deconstruction requires tremendous organization, trained supervision, and coordination to maximize reuse and recycling of materials during the process, all of these aspects present opportunities for extensive worker job training and employment.¹⁸¹

Alternatively, it is arguable that a process offering so many benefits outside of the realm of economics should not be considered solely on those terms. Plainly, exploring deconstruction is worthwhile because many returns may be only measurable in “sustainable solutions that create social value.”¹⁸² This theory is consistent with a “social entrepreneurship model [that works] to find a double bottom line,” both economically and socially valuable, when examining large social problems.¹⁸³

In summary, the challenges facing deconstruction are many but not prohibitive, and it seems reasonable to conclude that deconstruction could benefit from legal or economic incentives in order to make the process more profitable and preferable than traditional demolition.

III. INCENTIVES MATTER: MAKING EYESORES WORTH MONEY

A. What Sea Captains and Abandoned Houses Have in Common: A Need for Incentives

With all the challenges involved, why would anyone deconstruct a house? The answer: incentives. To illustrate, consider a tale of eighteenth century sea captains.

In the 1700's the British government hired sea captains to ship convicted

178. See GUY & MCLENDON, *supra* note 132, at 6-8; Falk, *supra* note 136, at 12.

179. See GUY & MCLENDON, *supra* note 132, at 18, tbl.10 (showing a summary of equal hazardous materials disposal costs for both demolition and deconstruction).

180. See *id.* at 5-10 (laying out an explanation of a multitude of detailed protocols and technical issues necessary for a successful deconstruction project).

181. See DECONSTRUCTION GUIDE, *supra* note 126, at 10-11 (indicating that “[t]aking a building apart can be one of the best ways to develop skills in the construction trades”).

182. See *The New Heroes: What is Social Entrepreneurship?*, PBS, <http://www.pbs.org/opb/thenewheroes/whatis/> (last visited Mar. 5, 2012).

183. Chad Blair, *Social Entrepreneurship Key to Grove Farm's Bottom Line*, PAC.BUS.NEWS, Nov. 15, 2009, <http://www.bizjournals.com/pacific/stories/2009/11/16/focus14.html> (internal citation omitted).

felons to Australia.¹⁸⁴ After some time, it was clear that the sea captains were not good caretakers of the convicts on board, as many would arrive in Australia other than the way they boarded—that is, they were arriving dead.¹⁸⁵ On one especially terrible trip, approximately one third of the inmates died, with the rest beaten, malnourished, or ill.¹⁸⁶ It was quickly apparent the onboard conditions during these voyages were horrible.¹⁸⁷ News of these voyages began to spread in England, and it became a public scandal.¹⁸⁸ The British government tried to cure the problem, and despite repeated efforts, could not.¹⁸⁹ They tried everything: requiring a physician onboard, citrus for scurvy, among other remedies.¹⁹⁰ Even the clergy reached out to the sea captains, appealing to their humanity.¹⁹¹ But nothing seemed to work—that is until an economist came along.¹⁹² The economist suggested a simple remedy: Instead of paying the captains for each prisoner that walked onto their ships, try paying them for the prisoners who walked *off* the ship at their destination.¹⁹³ Immediately, the survival rate increased ninety-nine percent.¹⁹⁴ By simply rewarding the sea captains to keep their prisoners alive, incentives were realigned to achieve the desired result.¹⁹⁵ The captains had good incentives before, but those were the wrong incentives to achieve an undesired result, which ultimately was starving the prisoners in order to sell their intended food in Australia.¹⁹⁶ And so it goes toward understanding “the first lesson in economics: incentives matter.”¹⁹⁷ Get the incentives right and you can cure a host of social ills.¹⁹⁸

In the same way that the sea captains changed their behavior to reach the desired result, an alignment of incentives to reward the use of deconstruction can help cities like Indianapolis achieve the desired result of eliminating abandoned housing. Instead of leaving all of the wrong incentives in place—which, in the past, have led to persistent abandonment—if a city and state work together to implement a comprehensive deconstruction policy that rewards property owners for removing structures at the end of a house’s life cycle, the desired removal of abandoned housing can be achieved, while simultaneously accruing benefits of

184. See *Morning Edition*, National Public Radio (Sept. 10, 2010) (transcript available at <http://www.npr.org/templates/transcript/transcript.php?storyId=129757852>).

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

local building deconstruction.

More clearly, what if abandoned houses could be “redeemed” for the amount of a deposit plus the value of salvageable materials? And what if the manner in which they were taken down helped to benefit and diminish burdens to the community? If it seems a bit of a stretch, consider that similar ideas are already in place—and working—in our society today. An example already exists to solve problems of waste generation. One need only look in an unexpected place—on a soda or beer bottle.

*B. The Bottle Bill Analogy*¹⁹⁹

Across the country laws have been passed, appropriately named “bottle bills” or “container deposit laws,”²⁰⁰ which seek to discourage consumers from discarding packaging containers as waste and instead to encourage them to redeem the containers for a return of a monetary deposit.²⁰¹ Since their inception, bottle bills have been enacted in many jurisdictions and have demonstrated a number of positive attributes, both economic and environmental.²⁰² Simply put, a bottle bill “create[s] a privately-funded collection infrastructure for beverage containers and make[s] producers and consumers (rather than taxpayers) responsible for their packaging waste.”²⁰³

It is easy to see how replacing a few words in that definition could apply to houses. The idea has three parts, and the goal of the idea will be to stimulate private parties within the general public to view an abandoned structure as an opportunity instead of an eyesore—an asset whose removal is financially rewarded.

C. The Three-Tiered Incentive System: Deposits, Credit, and Local Laws

1. *Tier One: The Local Abandoned Housing Deposit.*—The first and most crucial aspect in a framework using deconstruction to address abandoned housing revolves around what could be called an “abandoned housing deposit.” Local governments, using ordinances, should establish a mandatory deposit program that requires a monetary deposit to own property in that jurisdiction, much in the same fashion that bottle bills collect a deposit for packaging from producers and consumers of that packaging.²⁰⁴ The basic purpose is to shift the cost of

199. See GUY & MCLENDON, *supra* note 132, at 6 (describing the C & D deposit in San Jose, CA).

200. See *What is a Bottle Bill?*, BOTTLE BILL RESOURCE GUIDE, <http://www.bottlebill.org/about/whatis.htm> (last visited Mar. 5, 2012).

201. See, e.g., OR. REV. STAT. ANN. § 459A.705 (West 2011).

202. See *Benefits of Bottle Bills*, BOTTLE BILL RESOURCE GUIDE, <http://www.bottlebill.org/about/benefits.htm> (last visited Mar. 5, 2012).

203. *What is a Bottle Bill?*, *supra* note 200.

204. See *id.*, describing a container deposit system as follows:

When a retailer buys beverages from a distributor, a deposit is paid to the distributor for each can or bottle purchased. The consumer pays the deposit to the retailer when buying

managing abandoned housing away from the taxpayers and local government and instead set up a collection infrastructure that takes deposits from the users of housing that, in turn, will be forfeited or refunded upon certain behaviors.

In simple terms, if an owner abandons a property in the future, the deposit itself is also abandoned. While exactly who *pays* the deposit will most likely remain negotiable in property transfers, the buyer obtains credit for the deposit. For preexisting houses in a jurisdiction, incremental portions could be specially assessed to gradually fund those properties' deposits over time. In all cases, the money continues to belong to the homeowner and is to be refunded should that owner sell the property interest, with the subsequent owner becoming responsible for replenishing the deposit on the property.

Deposited funds will flow in and out with real estate transfers, but will gradually accumulate and be held in a general fund by the local government. The amount of the required deposit should reflect some or all of the removal costs of the particular structure, should it be deconstructed. To properly reflect the direct relationship of increased deconstruction labor costs and size of dwellings, the deposit value will likely be dependent upon the square footage of a structure. Since each successive property transfer will be at a future point in time, the current cost of deconstruction can be continuously updated to protect against any rising costs of deconstruction. In essence, this system of fund accumulation is what could be considered the funding, or "front-end," of the deposit program. Like when purchasing beverages, one must pay a deposit to buy a house.

At the other end of the program, a deposit refund system would be put in place that pays the costs for deconstruction of local residential structures that a property owner chooses to demolish. By using deposits to cover the cost of deconstruction, the system effectively operates as completely subsidizing the entire cost of residential structure removal for property owners. This is what would be considered the payment, or "back-end," of the deposit program.

Importantly, a property need not have a deposit registered for it to have deconstruction paid for, as perfect overlap of properties with deposits, compared with those needing to be deconstructed, is not likely to be achieved immediately. For example, government-owned properties at tax sales may not yet have a deposit on the property, yet the local government's willingness to cover the cost of property removal may significantly encourage interest in purchasing those houses now that demolishing the structure is essentially free.²⁰⁵

the beverage. When the consumer returns the empty beverage container to the retail store, to a redemption center, or to a reverse vending machine, the deposit is refunded. The retailer recoups the deposit from the distributor, plus an additional handling fee in most U.S. states. The handling fee, which generally ranges from 1-3 cents, helps cover the cost of handling the containers.

205. *Id.* For added incentives, an exception to the deposit funding requirement would be appropriate for house purchasers who intend to deconstruct properties immediately, in addition to a consideration of the forgiveness of unpaid taxes for immediate deconstruction of government-owned properties. However, these owners would still receive funds from the "back-end" portion of the program, truly "redeeming" a house for cash payments akin to recycling bottles or cans.

In all, present housing transfers within the local market will generate deposits to fund the deconstruction demolitions of older ones. The idea has merit for several reasons, any of which make the proposal worth consideration. Arguably, building material waste should be treated no differently than beverage packaging waste. Left unchecked, they both end up in the landfill and most arguments in favor of bottle bill type programs are applicable to housing deposits as well. First, the cash payments of deconstruction refunds are paid by the collection of a deposit—not a tax. This should be self-evident in that the deposit is fully refundable, unlike a tax. This fact makes the system probably more politically acceptable in many jurisdictions where tax increases are not on the political or economic horizon. Only negligent property owners that abandon structures are “taxed” in this system, for it is only those owners’ deposit that is forfeited.²⁰⁶ Second, in the same fashion as bottle bills, the system shifts the costs of abandonment away from the community and onto those who abandon housing. Correspondingly, this means the externalities of an abandoned house are no longer borne by the entire local community, but shifted to the negligent producers and consumers of housing.²⁰⁷ Third, the success of bottle bills makes it plausible and pragmatic to implement a deposit program shown to be effective in other areas of society.

Any use of traditional demolition or, of course, abandonment does not merit a deposit refund, because the heart of a locality’s deposit policy should seek to shift preference toward deconstruction as a demolition technique. To analogize this with bottle bills, you do not get a refund of the deposit if you bury the bottle in a landfill or throw it out the car window. Only when a “consumer returns the empty beverage container to the retail store, to a redemption center, or to a reverse vending machine, the deposit is refunded.”²⁰⁸ So it will go with houses. You get paid to deconstruct, nothing else will do. While some may argue that this may face resistance in the demolition industry, “[i]t’s not as if demolition contractors have anything against [deconstruction,] recycling or reuse . . . [i]t’s largely a question of economics.”²⁰⁹ This ordinance helps shift those economics. Moreover, there are sufficient levels of recorded real estate transfers²¹⁰ in many

This Note assumes a deposit system for market-based real estate transactions only. Therefore, also potentially excepted from the deposit requirement should be certain non-“arms-length,” non-market transfers, such as intra-family transfers or inheritance.

206. See BLACK’S LAW DICTIONARY 1594 (9th ed. 2009) (“[Tax: a] charge, . . . [usually] monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue.”).

207. See *Externalities*, ENVTL. LITERACY COUNCIL, <http://www.enviroliteracy.org/article.php/1289.html> (last visited Mar. 5, 2012) (“Externalities are unintentional side effects of an activity affecting people other than those directly involved in the activity.”).

208. *What is a Bottle Bill?*, *supra* note 200.

209. See Manuel, *supra* note 127, at A887 (internal citation omitted).

210. See, e.g., *Market Data*, MIBOR HOME, http://www.mibor.com/media/monthly_stats.asp (last visited Mar. 6, 2012) (showing, for example, 455 and 630 closed real estate sales for the off-peak months of January 2011 and 2012, respectively, in Marion County, Indiana alone).

jurisdictions to quickly ramp up deconstruction rebate funding.²¹¹

But in the end, one must also include in the equation the benefits to the community of blight removal itself. Aside from simply eliminating abandoned housing, surely revenues will be recaptured from currently lost property tax revenue; after all, levels of tax delinquent, abandoned parcels may decrease due to the fact that owners can cheaply remove blighted structures and remain current with lower property taxes on the now raw land with accordingly lower assessed values.²¹² There are also savings that will be realized in local government budgets from the current drag of maintenance costs for government-owned abandoned property.²¹³ Also, after deconstruction is stepped up, depressed tax assessments are likely to be less frequent, due to removal of blighted structures “next door” that diminish neighboring property values.²¹⁴ It is possible that local tax revenues may actually increase, as sales tax and taxable income rise from the creation of deconstruction jobs and small businesses operating in resale, recycling, and salvage.²¹⁵ Also, common hidden costs of abandoned structures or traditional demolition will no longer be thrust upon the community, such as crime or new landfill space expenses.²¹⁶ Finally, like in many deposit programs, some deposits

211. The system must be a “closed loop” funded by real estate sales and cannot function with deficit spending beyond the pace of real estate sales. For example, A buys Blackacre and pays a deposit to the city; C “redeems” a house and is paid by the city to deconstruct an abandoned house with A’s funds; A then sells Blackacre to B and is thus owed a deposit refund; A’s deposit funds are now refunded with B’s new deposit on Blackacre required by the purchase.

212. See Jarosz, *supra* note 98 (reporting an initial \$39 million loss in tax revenue from unsold, tax-delinquent properties, while “the public cost to care for those houses, the majority of which likely are abandoned or vacant, is millions higher”).

213. See ACTION PLAN, *supra* note 2, at 24.

214. See BRIAN A. MIKELBANK, SPATIAL ANALYSIS OF THE IMPACT OF VACANT, ABANDONED AND FORECLOSED PROPERTIES 16 (2008), available at http://www.clevelandfed.org/Community_Development/publications/Spatial_Analysis_Impact_Vacant_Abandoned_Foreclosed_Properties.pdf.

When vacancy and abandonment does occur . . . the city could curb value loss by demolishing . . . abandoned properties as quickly as possible. . . . An abandoned house that is allowed to remain so for two or three years would negatively impact every sale in its vicinity over that time period. Swift action to remove the blight would limit the negative impact, and potentially even turn its impact to a neighborhood gain through increased green space, reinvestment, or both.

Id.

215. See DECONSTRUCTION GUIDE, *supra* note 126, at 1 (explaining that “[d]ue to its labor intensive nature, deconstruction can also lead to the creation of new jobs and businesses. Reduced unemployment strengthens the local economy directly as well as indirectly in areas such as retail sales and housing”).

216. See Manuel, *supra* note 127, at A883 (commenting on how stricter regulations and land scarcity are increasing cost of future landfill space); Samsa, *supra* note 13, at 196 (claiming that abandoned houses “perpetuate an image of the neighborhood which promotes criminal behavior and discourages redevelopment”).

may not ever be redeemed, helping to build a possible surplus of funds to deal with the problem in the future.

The deposit system can be best summed up in this way: If an abandoned house is redeemable for cash like aluminum cans and glass bottles, redeemability of vacant and abandoned structures will reduce and prevent the accumulation of abandoned structures within a city. A private owner will be less likely to abandon a property when that means forfeiting one's deposit, and less likely to forgo an opportunity for a cash payment that offsets the cost of "recycling" the structure.

2. *Tier Two: The Indiana State Donated Building Material Tax Credit.*— Standing alone, the refund of a cash deposit from local government will likely deter some of the economic forces of abandonment, but an added boost to incentives is deliverable through a state tax credit for building materials donated to charitable organizations. This is where the state of Indiana comes in.

In conjunction with local housing deposit programs, the state of Indiana should authorize a state tax credit for the fair market value of donated building materials. When used with the refund of a deposit, this state tax credit complements the value of local deposit programs and helps make deconstruction the preferred local method of demolition.

In essence, if the state provides a tax credit for the value of recovered building materials, it creates incentives for demolition contractors to use the most cost efficient, yet greatest amount of care, in disassembling a structure. In effect, every salvageable building component or material will represent cash back into the pocket of a homeowner. Thus, contractors may seek to drive down the cost of deconstruction, because an efficient deconstruction operation will mean providing the greatest tax credit to customers, and lowering costs will mean more successful bids against competitors for deconstruction projects.

This proposed credit should be a hundred-percent, non-refundable state tax credit for materials donated to 501(c)²¹⁷ organizations with core housing missions, such as Habitat for Humanity.²¹⁸ A dollar-for-dollar non-refundable credit could vitally increase economic preference for deconstruction. At present, the economics of deconstruction are already competitive with traditional demolition using only federal income tax deductions and salvage resale as ways of offsetting higher labor costs. This is true in spite of the fact that federal law currently only allows a portion of in kind²¹⁹ charitable contributions to be deducted²²⁰ and currently does not allow for the deduction of demolition expenses.²²¹ Note that

217. See I.R.C. § 501(c)(3) (2006).

218. See *Learn About Us*, HABITAT FOR HUMANITY OF GREATER INDIANAPOLIS, <http://www.indyhabitat.org/learn-about-us/> (last visited Mar. 4, 2012) (providing general information regarding the organization).

219. See BLACK'S LAW DICTIONARY 857 (9th ed. 2009) (defining in kind as "[i]n goods or services rather than money").

220. See I.R.C. § 170(a)(1) ("There shall be allowed as a deduction any charitable contribution . . . payment of which is made within the taxable year.").

221. See *id.* § 280B.

charitable donations of building materials²²² have been limited to a federal tax deduction,²²³ and not a credit, which is a much more valuable economic incentive.²²⁴ A state credit will unlock the typically landfilled value of many building materials. In effect, a credit for any salvageable materials that are donated for resale to a charity allows the property owner to “sell” the materials to the state of Indiana. The state of Indiana “buys” them in the form of this tax credit in recognition of the value gained from not having thousands of abandoned properties in the state, or a gigantic stream of demolition waste in its soil. It also recognizes the market value of the embodied energy in those building materials.

While this credit may not seem significant at first, the salvage value of building materials is potentially very valuable as a way of reducing tax liability.²²⁵ Case studies have shown that even homes as small as 500 square feet can have salvage values of over \$9,000,²²⁶ while one deconstruction company reported appraised values of materials at \$38,302 for an 800 square foot house.²²⁷ Used in combination with a deposit refund covering the cost of property removal, one can begin to see how a credit rewarding a property owner for donating these materials in a dollar for dollar fashion suddenly makes an abandoned house look very valuable—despite its presence as an eyesore.

Though a credit could possibly reduce state tax revenue, the underlying policy of this credit aligns with the express intentions of state legislatures and thus may be worth some expense, especially considering taxpayers already pay for the costs of abandonment. In Indiana for example, this new policy focusing on building material recovery aligns with state statutes that seek remedies which are “preferred over incineration and landfill disposal as [a] solid waste management method[]”²²⁸ and provide a way of curing the avowed “substantial problem”²²⁹ of abandoned housing. In addition, a state policy of charitable donation has implications for stimulating the state and local economy because it will keep affordable housing materials, jobs, and resources in the state and its communities.²³⁰ While the proposal may not be without a cost, Indiana recently reported a state general fund surplus of \$677 million with which to enact a new tax credit.²³¹ Indiana could also place a ceiling on the amount claimable by any

222. See *Support Habitat*, HABITAT FOR HUMANITY OF GREATER INDIANAPOLIS, <http://www.indyhabitat.org/support-habitat/> (last visited Mar. 5, 2012).

223. See I.R.C. § 170(a)(1).

224. See Kimberly Lankford, *Tax Credit v. Deduction*, KIPLINGER, Mar. 19, 2007, <http://www.kiplinger.com/columns/ask/archive/2007/q0319.htm> (explaining the difference between a tax credit and tax deduction).

225. See *Deconstruction*, REUSE PEOPLE, <http://thereusepeople.org/Deconstruction> (last visited Mar. 5, 2012) (showing actual appraised values of donations made from deconstructed properties).

226. See GUY & MCLENDON, *supra* note 132, at 11-12.

227. See *Deconstruction*, *supra* note 225.

228. IND. CODE § 13-19-1-1 (2011).

229. *Id.* § 36-7-9-4.5.

230. See DECONSTRUCTION GUIDE, *supra* note 126, at 1-2.

231. STATE BUDGET COMM., STATE OF INDIANA BUDGET REPORT 3 (2011), *available at*

taxpayer as in, for example, Indiana's credit for contributions to the state's "college choice 529 education savings plan."²³²

Perhaps another way of funding of this tax credit would be to continue Governor Mitch Daniels's suspensions and cuts to Indiana's recycling grants and loan programs.²³³ Yet another avenue would be to increase Indiana's "tipping fees" that are charged to dispose of waste in landfills.²³⁴ Following the lead of other states, this could be accomplished through a dramatic increase in solid waste management fees that the state requires to fund the Solid Waste Management Fund; as of 2010 these rates were set at only fifty cents per ton.²³⁵ Given that total "tipping fees" in some urban areas reach well over \$100 per ton,²³⁶ Indiana has a lot of room to expand charges in this area. However, funding proposals for a building material tax credit are beyond the scope of this Note. In any event, should any of the ideas presented here be considered inappropriate, those closest to state budget decisionmaking could undoubtedly propose alternate funding sources.

Another problem with the state tax credit may exist for extremely dilapidated structures with minimal salvage tax credit value. While they would receive the local deposit refund, they would not benefit greatly from the donation of salvageable building materials. It is a fact that not every property is a good candidate for traditional deconstruction because materials may be of poor quality or contain elevated levels of hazards such as lead or asbestos.²³⁷ It is also possible that the structure is mainly comprised of deteriorated elements that charities will not accept.²³⁸

However, this fact could be addressed by setting a minimum base level of a credit that provides a reasonable rate of return for the deconstructing property owner in this type of case. In order to ensure incentives for the worst properties, there should be a minimum level of credit claimable over and above the local deposit so that tax liability can still be reduced. This minimum level would reflect the reality that many properties have nominal salvage value that would not benefit from the tax credit, however, an owner still is rewarded for ridding the state of an extremely blighted structure while maintaining property tax-paying

http://www.in.gov/sba/files/as_2011_whole.pdf.

232. See IND. CODE § 6-3-3-12.

233. See IND. DEP'T OF ENVTL. MGMT., IND. RECYCLING GRANT PROGRAM FY2010 ANNUAL REPORT 1 (2010) [hereinafter RECYCLING GRANT PROGRAM], available at http://www.in.gov/recycle/files/recycling_grants_2010_annual_report.pdf.

234. See Manuel, *supra* note 127, at A882.

235. See RECYCLING GRANT PROGRAM, *supra* note 233, at 1; see also Paul Snyder, *Homebuilders Fear Landfill Fee Increase*, DAILY REPORTER, May 28, 2009, <http://dailyreporter.com/blog/2009/05/28/homebuilders-fear-landfill-fee-increase/> ("Under the finance committee's proposal, Wisconsin's tipping fee, which is a state charge for dumping garbage in landfills, would increase from \$5.89 per ton to \$13 per ton.").

236. See Manuel, *supra* note 127, at A882.

237. See JANZ, *supra* note 39, at 5.

238. See *id.*

ownership of the land.

By allowing taxpayers to reduce tax liability through donation of building materials reclaimed by deconstruction, the state of Indiana helps coordinate the policy of repositioning blight into opportunity. In some cases, between the federal deduction, the local deposit refund, and the new state credit, a buyer purchasing tax delinquent property may get land underneath the abandoned structure for free, significantly encouraging development.²³⁹ It seems like a small price to pay to fund such a credit if the property remains in private, property tax-paying hands, and the sight or costs of an abandoned house are never thrust onto the people of Indiana or its cities. Most of all, cities like Indianapolis will be less likely to face the hard choices of places like Flint, Michigan.

3. *Tier Three: Local Policies and Ordinances to Support the System.*—There are a few other steps at the local level to fully complete the comprehensive policy incentives for boosting deconstruction statewide. While they are not necessary as part of the deposit/credit approach described above, they will operate as a foundational third level of support for those systems if put in place.

These ideas follow from a sampling of nationwide ordinances that already seek to boost deconstruction or maximize recycling, reuse, and waste diversion. For example, an ordinance simply mandating deconstruction for any government-owned houses or those scheduled for demolition in the land bank would be a simple start for increasing demand of deconstruction services.²⁴⁰ Perhaps land banks should lessen the focus on rehabilitation of homes altogether and adopt policies of immediate deconstruction of land bank-owned homes to minimize external neighborhood costs.²⁴¹ After all, demolition will be one less cost a buyer of land bank property will incur, making it cheaper for time sensitive, financed projects that seek land on which to break ground immediately.²⁴² Thus, in

239. Consider a hypothetical case of a tax delinquent, abandoned house sold for \$11,000 to an investor who intends to deconstruct the building and deconstruction expenses are \$8,000: A local deposit refund of \$8,000, combined with a state building material credit of \$8,000 and federal deduction benefit of \$3,000 could effectively mean that three levels of government contributed toward full payment of the price of the land, building, and building removal. In return, the parcel is now in a raw land state, under private ownership, and returned to the tax base at a new raw-land assessed value. Indeed, it may even be considered profitable to remove the structure with this combination of incentives—this sort of buyer could receive unpaid tax and penalty forgiveness, which directly reduces cash outlay at purchase.

240. See CDBG-R AMENDMENT, *supra* note 117, at 4 (proposing approximately \$700,000 toward traditional demolition of abandoned structures, and mentioning only that “the City is researching environmentally friendly deconstruction. If employed, this strategy *will encourage* green deconstruction on all future demolition projects. There is no precedent at this time within community and economic development in the City of Indianapolis.” (emphasis added)).

241. See MIKELBANK, *supra* note 214, at 16 (“When vacancy and abandonment does occur, these results show that the city could curb value loss by demolishing or rehabilitating abandoned properties as quickly as possible.”).

242. See Falk, *supra* note 136, at 11 (“The time constraints of the new property developer (and their financial backers) often make deconstruction an obstacle.”).

Indianapolis, Mayor Ballard's policy of increased demolition could continue, but instead require deconstruction techniques rather than traditional demolition.²⁴³

Further, ordinances could require deconstruction for *all* demolition or construction contract with local government or incorporate it as a requirement in requests for work proposals, in addition to requiring it during any code enforcement demolition order.²⁴⁴ Additionally, as is done in some jurisdictions, any private construction or demolition activity within a city could require by ordinance utilization of deconstruction to the greatest extent possible.²⁴⁵ This requirement is often facilitated by its own mandated deposit program which requires large construction projects to leave a waste diversion deposit with authorities until a required waste diversion ratio is proven for that job site.²⁴⁶ Finally, permits with shorter waiting times could be granted for projects guaranteeing enhanced waste diversion ratios or only utilizing deconstruction techniques.²⁴⁷

These are but a sampling of local ordinance ideas that other jurisdictions have in place and could help nurture the use of deconstruction at a local level. The possibilities for supportive local laws are only limited by the imaginations of those charged with writing local ordinances. Creative input by these people closest to the problem will provide a crucial foundation for the state tax credit and city deposit program to function.

CONCLUSION

Solutions to the immense problem of abandoned housing accumulation in American cities are elusive. Absent creative solutions, a large burden continues to be exacted on society in the form of economic and social costs. The causes of abandonment are varied and largely unknown; accordingly, one "silver bullet"²⁴⁸ solution is not likely to be found. As a result, various legal mechanisms not originally designed to solve this problem are used at the state and local level to

243. See ACTION PLAN, *supra* note 2, at 19.

244. See DECONSTRUCTION GUIDE, *supra* note 126, at 2.

245. See, e.g., IOWA DNR WASTE MGMT., MODEL DECONSTRUCTION ORDINANCE 3, available at http://www.iowadnr.gov/portals/idnr/uploads/waste/cndord_constuct.pdf.

Proper management of construction and demolition waste created by deconstruction of buildings: 1) help the state and [city] [county] achieve solid waste reduction, 2) conserve facility resources, 3) extend the useful life of the facility, 4) improve site and worker safety, and 5) minimize tonnage fees payable to the State of Iowa, thus reducing the costs of facility operational costs and moderating fees charged for use of the facility.

Id.

246. See, e.g., CITY OF SAN JOSE, CAL., MUN. CODE § 9.10.2410(B) (2011), available at <http://www.sanjoseca.gov/index.asp> (follow "Municipal Code" hyperlink in right hand column) ("[E]ach person who applies for a building permit . . . shall remit a diversion deposit in the amount set forth by resolution of the city council.").

247. See GUY & MCLENDON, *supra* note 132, at 6.

248. ACTION PLAN, *supra* note 2, at 9.

address the issue, often to no avail. These mechanisms most often operate after a house has been abandoned by its owner, long after costs to society begin to accrue. Together, these approaches treat symptoms of the disease rather than seeking a preventative vaccine. Most significantly, not only have current approaches done little to preempt and eradicate high levels of abandoned housing in American cities, none simultaneously attempt to turn the problem into an opportunity.

Building deconstruction addresses abandoned housing problems from a different direction than current efforts. Not only will laws encouraging deconstruction seek to eliminate abandonment before it exists, but the practice itself reaps economic and social benefits while seeking to cure the present problem. But deconstruction poses unique challenges as compared to traditional demolition of dilapidated houses. Yet, these challenges are not insurmountable. Economic incentives provided by a building material tax credit, housing deposits, and supportive ordinances help boost deconstruction beyond mere competitiveness against traditional demolition. While not without hurdles or potential costs, this type of policy is analogous to the way government already tackles consumer waste generation, or promotes promising businesses or industries with tax credits for research and development.

Moreover, because of the hidden social costs to the public from abandoned housing, perhaps deconstruction and laws supporting it should not be considered on economic terms alone. An abandoned property imposes measurable costs on the entire taxpaying public and sacrifices estimable levels of revenue, but its costs to society in blighted neighborhoods and dying cities cannot likely be measured. Additionally, constructing and demolishing buildings in a throw-away fashion compounds an environmental toll to the public at an unknown rate. For all of these reasons, a system of laws that use building deconstruction to help fight the war against abandoned houses should be supported.