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## The Neighborhood as Commons: Reframing Neighborhood Decline

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# THE NEIGHBORHOOD AS COMMONS: REFRAMING NEIGHBORHOOD DECLINE

Ronald J. Oakerson\* & Jeremy D. W. Clifton\*\*

## ABSTRACT

*Neighborhood decline and the resulting erosion of the urban housing stock in the U.S. are typically viewed as products of forces beyond the control of cities. Yet if urban neighborhoods have the characteristics of a commons, homeowners and landlords may adopt strategic behaviors that lead to a cycle of disinvestment in the housing stock, followed by abandonment. Low-income neighborhoods may be especially vulnerable to this dynamic. If decline is a tragedy of the commons, it is potentially avertible by neighborhood collective action. Using principles drawn from research on common-pool resources, we develop a mode of analysis applicable to the neighborhood commons and apply it to an illustrative case on Buffalo's West Side. Because collective action among neighbors is largely tacit, not based on explicit agreements, it tends to be driven by individual perceptions. The analysis suggests ways to reverse the disinvestment cycle by facilitating collective action: fostering a shared sense of neighborhood responsibility among residents; strategically using neighborhood improvements to alter perceptions and thereby leverage reinvestment in the housing stock; and securing effective neighborhood*

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\* Davidson Distinguished Professor of Social Science & Professor of Political Science, Houghton College. This Article was prepared for presentation to the 1st Thematic Conference on the Urban Commons, sponsored by the International Association for the Study of the Commons in Bologna, Italy, November 6-7, 2015. We are grateful to Sheila Foster and other conference organizers and participants for their helpful comments, as well as to the editors of the *Fordham Urban Law Journal* for their many constructive suggestions. Our debt to Buffalo community organizer Harvey Garrett and Judge Henry Nowak is apparent throughout the Article. The late Elinor ("Lin") Ostrom reviewed an early version of the Article and offered valuable comments. We thank the numerous readers who offered helpful corrections to the emerging argument and spurred us to develop it further. In recognition of the pioneering work of Lin Ostrom on the study of the commons, we dedicate this Article to her memory.

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*access to legitimate means of coercion for the enforcement of housing rules.*

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### INTRODUCTION

Neighborhood decline is a long-standing, perplexing problem in urban America,<sup>1</sup> resulting in an ongoing deterioration of the housing stock, much of it abandoned and eventually demolished.<sup>2</sup> Despite promising indications of urban revival at the turn of the century,<sup>3</sup> the erosion of the housing stock has continued at an alarming rate. Brookings reports that vacant housing increased by 4.5 million units, or forty-four percent, from 2000 to 2010, with vacancies concentrated in older, industrial cities: “[b]oarded houses, abandoned factories and apartment buildings, and vacant storefronts are a

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1. See JAMES A. KUSHNER ET AL., *HOUSING AND COMMUNITY DEVELOPMENT: CASES AND MATERIALS* 410-11 (4th ed. 2011).

2. JOHN A. JAKLE & DAVID WILSON, *DERELICT LANDSCAPES: THE WASTING OF AMERICA’S BUILT ENVIRONMENT* 175-78 (1992).

3. See PAUL S. GROGAN & TONY PROSCIO, *COMEBACK CITIES: A BLUEPRINT FOR NEIGHBORHOOD REVIVAL* (2000).

common part of the landscape in large cities like Detroit, Buffalo, and Philadelphia, and a host of smaller cities.”<sup>4</sup>

Explanations of neighborhood decline have focused largely on factors beyond the control of cities: an aging housing stock, suburbanization, and poverty.<sup>5</sup> The standard model of neighborhood decline is based on income succession: as neighborhoods age, lower-income residents succeed higher-income residents who depart for newer housing elsewhere, leaving behind a housing stock increasingly costly to maintain.<sup>6</sup> Whether as renters or homeowners, a succession of lower-income residents is less and less able to generate income sufficient to maintain the housing stock.<sup>7</sup> In the extreme case, the supply of high-end suburban housing can increase to the point that demand for housing in some urban neighborhoods is reduced to zero, leaving sections of the city worthless and abandoned.<sup>8</sup> Demolition is eventually followed by redevelopment, and the cycle begins again.<sup>9</sup> The root cause of decline for many analysts is poverty.<sup>10</sup> Given a housing market that responds to the demands of affluent residents, the only way to slow neighborhood decline in the succession model is to reduce the number and impact of low-income residents—those who can’t afford to maintain an aging housing stock.

Suppose, however, that neighborhoods are not simply collections of aging houses but a distinct sort of commons, sharing the critical attributes of common-pool resources.<sup>11</sup> If so, neighborhoods are potentially exposed to decline from within, based on an internally-driven, self-reinforcing dynamic of disinvestment that leads to abandonment. Just as the “tragedy of the commons” works its way to an inevitable end no one wants,<sup>12</sup> the neighborhood commons exhibits a remorseless decline ending in abandonment and demolition. Although the biologist-*cum*-social

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4. ALAN MALLACH, BROOKINGS INST., LAYING THE GROUNDWORK FOR CHANGE: DEMOLITION, URBAN STRATEGY, AND POLICY REFORM 6 (2012).

5. GROGAN & PROSCIO, *supra* note 3, at 3.

6. KUSHNER ET AL., *supra* note 1, at 410.

7. *Id.* at 410-11.

8. See George Galster, *On the Nature of Neighbourhood*, 38 URB. STUD. 2111, 2118 (2001).

9. See KUSHNER ET AL., *supra* note 1, at 410-41.

10. See ANTHONY DOWNS, NEIGHBORHOODS AND URBAN DEVELOPMENT 12 (1981); WILLIAM GRIGSBY ET AL., THE DYNAMICS OF NEIGHBORHOOD CHANGE AND DECLINE 58 (1987).

11. See LEE ANNE FENNELL, THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES (2009); RONALD J. OAKERSON, GOVERNING LOCAL PUBLIC ECONOMIES: CREATING THE CIVIC METROPOLIS 47 (1999); Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57 (2011).

12. See Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968).

philosopher Garrett Hardin famously equated the commons with tragedy,<sup>13</sup> subsequent research by Elinor Ostrom and colleagues has shown that tragic outcomes can be averted through the collective action of commons users.<sup>14</sup> If neighborhoods exhibit a tragedy of the commons, it stems not from the nature of the commons but from an inability on the part of residents to act collectively.

How a problem is framed has a direct bearing on how it is addressed. Framing neighborhood decline as a process of “succession,” urban policymakers may choose to watch the inevitable unfold and wait for opportunities to rebuild and redevelop. Housing policy continues to focus on new construction even though, as Kushner and colleagues argue, “one must not lose sight of the need to retain existing stock if housing production is ultimately to meet the demand for housing.”<sup>15</sup> Framed as a commons dynamic, neighborhood decline is no longer understood as an unrelenting process that leads to the wrecking ball but, rather, as a contingent problem subject to internal dynamics as well as external stresses, potentially responsive to neighborhood collective action—provided that neighbors are able to act collectively. It may even be possible for low-income neighborhoods to “remain stable and pleasant” places to live without having “to make everyone middle-class.”<sup>16</sup>

In Part I we review a body of research that critically examined the succession model and found it wanting empirically—unable to explain neighborhood decline. In Part II we develop the concept of the neighborhood commons as an alternative way of framing the process of decline. We illustrate the application of the commons framework to urban neighborhoods in Part III, describing in detail a case of neighborhood decline and turnaround on Buffalo’s West Side. In Part IV, we draw on the principles of commons governance developed by Elinor Ostrom,<sup>17</sup> a political scientist and Nobel Laureate in economics, to analyze and explain the case. We generalize and elaborate our argument in Part V, exploring key aspects of the neighborhood commons to suggest strategic interventions for facilitating neighborhood collective action to forestall urban decline.

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13. *Id.*

14. See ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990).

15. KUSHNER ET AL., *supra* note 1, at 411.

16. See GROGAN & PROSCIO, *supra* note 3, at 2.

17. See OSTROM, *supra* note 14.

### I. SUCCESSION AND DECLINE: PREVIOUS RESEARCH

We begin by examining the empirical validity of the succession model. To do so, we distinguish between “succession,” which refers to the sequence of income groups, and “neighborhood decline,” which is predicted to follow on succession as average household income in the neighborhood decreases. Although neighborhood decline is clearly multidimensional, including both objective and subjective conditions, the succession model focuses on the condition of housing as the crucial dependent variable.<sup>18</sup> The key question is—how and under what circumstance does neighborhood income succession produce unfettered housing deterioration?

Economist William Grigsby and colleagues rejected some oft-cited answers to this question.<sup>19</sup> The succession model assumes that the maintenance requirements of housing increase with age. Not so, they argued: homes, unlike automobiles, can be “maintained almost indefinitely.”<sup>20</sup> Because housing components deteriorate at different rates, each one can be repaired or replaced as needed, so that annual costs rarely exceed a small fraction of original construction costs. Evidence further suggested that decline does not inevitably follow succession. Decline can precede succession and succession can occur without decline ensuing.<sup>21</sup> The authors offered two possible explanations: behavioral factors (“poor housekeeping, theft, vandalism, and assaults”) and externalities.<sup>22</sup> The behavioral category is a mixed bag of variables with various possible sources—some based on the attributes of individual residents, others based on the activities of neighbors, and still others originating from outside the neighborhood. The externality argument is more focused, based on a

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18. Neighborhood decline is often conceptualized to include both a decline in average household income in the neighborhood and the degradation of the housing stock. See JEROME ROTHENBERG ET AL., *THE MAZE OF URBAN HOUSING MARKETS: THEORY, EVIDENCE, AND POLICY* 275-78 (1991). In this article, we do not include demographic changes—such as an increase in the number of low-income residents—as a component of neighborhood decline, focusing instead on the condition of the housing stock. Because the succession model posits an empirical relationship between demographic change as independent variable and housing quality as dependent variable, it is critical to maintain a distinction between the two concepts in order to test the model. Moreover, although neighborhood decline is multidimensional, including not only the condition of the housing stock but also crime rates, urban infrastructure, and public services, as well as subjective qualities such as feelings of security or a sense of belonging, the condition of the housing stock is fundamental because its impact is cumulative. If housing deterioration is unabated, the ultimate impact on a neighborhood is fatal—abandonment and demolition.

19. GRIGSBY ET AL., *supra* note 10.

20. *Id.* at 43.

21. *Id.* at 49.

22. *Id.* at 50.

recognition that the market value of a dwelling is affected not only by its own level of upkeep but also by the upkeep of surrounding structures, so that “property owners in deteriorating neighborhoods are not apt, unilaterally, to make repairs that would be economic only if other owners took steps to improve their structures as well.”<sup>23</sup>

Economist George Galster conducted an elaborate cross-sectional study<sup>24</sup> of the relationship between individual homeowner reinvestment decisions and aggregate neighborhood reinvestment in two cities—Wooster, Ohio, and Minneapolis, Minnesota.<sup>25</sup> He found no evidence that lower household income resulted in a greater incidence of exterior home defects, controlling for other factors.<sup>26</sup> But he found clear evidence that a decline in neighborhood quality<sup>27</sup> strongly tends to discourage homeowners from exterior maintenance.<sup>28</sup> Furthermore, pessimism about the future of the neighborhood was associated with a reduction in annual expenditures on upkeep and an increase in exterior housing defects, especially in low-quality neighborhoods.<sup>29</sup> In particular, existing residents with relatively higher incomes are apt to reduce upkeep as lower-income residents enter, so that decline becomes a self-fulfilling prophecy.<sup>30</sup> Yet, he found that individual homeowners were motivated to invest “significant sums” in housing upkeep if both the homeowner and neighbors exhibited strong neighborhood solidarity<sup>31</sup>—with the effects of solidarity on upkeep estimated in the range of \$142 to \$376 per year during 1975-80.<sup>32</sup>

Behavioral patterns, neighborhood externalities, self-fulfilling prophecies, and solidarity among neighbors are a product of neighborhood dynamics, not factors beyond their control. Nonetheless, the original source of decline may still lie outside urban neighborhoods. In subsequent

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23. *Id.* at 53.

24. Because a cross-sectional study compares neighborhoods at a point in time, it cannot directly show causation over time, which requires a longitudinal study of the same neighborhoods at different points in time. Cross-sectional studies compensate by increasing the number of neighborhoods studied to include a variety of neighborhoods likely to be at different points in a process of investment or disinvestment.

25. GEORGE C. GALSTER, HOMEOWNERS AND NEIGHBORHOOD REINVESTMENT (1987).

26. *Id.* at 236.

27. Galster’s index of neighborhood quality combines property values, mean household income, and the percentage of dwellings with exterior defects. *Id.* at 85.

28. *Id.* at 197.

29. *Id.* at 229.

30. *Id.* at 237.

31. Neighborhood solidarity refers to a social dimension of neighborhoods measured by residents’ attitudes toward neighbors, including measures of perceived helpfulness, friendliness, similarity, and commonality. *Id.* at 88, 345.

32. *Id.* at 218-19.

work Rothenberg and colleagues,<sup>33</sup> as well as Galster,<sup>34</sup> argue that speculative housing development on the urban fringe aimed at upper-income homeowners destabilizes the metropolitan housing market. The effects of the increase in supply ripple through housing sub-markets from high to low quality, reducing prices and allowing lower income homeowners to enter previously unaffordable neighborhoods. In this modified model of succession, the supply of new suburban housing drives the process of neighborhood decline. Although the dynamic fosters upward mobility in housing as various income groups relocate from less to more desirable neighborhoods, the least desirable neighborhoods in the market are potentially left with vacant and abandoned housing.<sup>35</sup>

Even if external forces prompt neighborhood change, however, it does not follow that decline is inexorable; rather, like a body responding to an externally contracted pathogen, outcomes depend on how neighborhoods respond. Galster saw considerable scope for “collective intervention, whether it comes from informal social processes, non-profit, community-based organizations or the governmental sector.”<sup>36</sup> The efficacy of collective intervention depends, however, on choosing means of regulation that fit the problem and its context.<sup>37</sup> All commons are not alike.<sup>38</sup> Effective collective action turns on the physical sources of commons-like attributes as well as attributes of commons users, both of which vary among different resources and situations.<sup>39</sup> Understanding the particular attributes of neighborhoods that yield their commons-like character is critical to determining effective responses.

## II. IS THE NEIGHBORHOOD A COMMONS?

Whether an urban neighborhood can be usefully construed as a commons is open to question. Aren't neighborhoods divided between private space and public space? Housing and the lot on which it sits is private space, while streets, sidewalks, and neighborhood parks are public spaces. Private space is subject to exclusion and bought and sold on the

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33. See ROTHENBERG ET AL., *supra* note 18, ch. 9; Galster, *supra* note 8.

34. George Galster, *A Structural Diagnosis and Prescription for Detroit's Fiscal Crisis*, 37 J. URB. AFF. 17 (2015).

35. *Id.*

36. Galster, *supra* note 8, at 2122.

37. See Vincent Ostrom & Elinor Ostrom, *Public Goods and Public Choices: The Emergence of Public Economies and Industry Structures*, in THE MEANING OF AMERICAN FEDERALISM: CONSTITUTING A SELF-GOVERNING SOCIETY 187-88 (1991), for a discussion of the regulation of patterns of resource or facility use.

38. See THOMAS C. SCHELLING, MICROMOTIVES AND MACROBEHAVIOR 110-15 (1978).

39. ELINOR OSTROM, UNDERSTANDING INSTITUTIONAL DIVERSITY 244-45 (2005).



market, while public space is open to all and owned by local governments. Where is the commons in this picture?

Imagine two houses. The first is a red-shuttered cottage with a white picket fence and gurgling fountain next to proud homeowners. The second, nestled deep in a bed of weeds, offers a sagging porch, peeling paint, spotty roofing, a few boarded-up windows, and a broken pane through which you can see a squatter starting a fire on the floor boards as his companion prepares a line of heroin on a broken plate. Place these two dwellings a mile apart on a country road and the homeowners are little affected. But suppose we contract the distance. As we move the blighted property closer and closer until it is next door, the value of the homeowner's property plummets. Of more immediate concern, Mom and Dad do not want their children exposed to obvious substance abuse, and they are worried about the fire raging out of control. Unable to sell their house for what they paid for it, they instead rent it out. Since they no longer have any incentive to invest in the property, a home once cherished becomes blighted in less than a decade. After being flipped a few times, it is demolished, leaving another skinny empty lot disfiguring the streetscape.

We argue that urban neighborhoods share the two defining characteristics of a commons: non-excludability and subtractability.<sup>40</sup> Though most often applied to renewable natural resources, the concept of the commons is applicable to any durable asset used in common by multiple persons—roads and parks as well as pastures and fisheries.<sup>41</sup> Commons users are unable to exclude one another from the commons but can subtract from the benefit each user obtains. As shown in Figure 1, the commons is distinguishable from three other types of goods: private goods, which combine excludability and subtractability; public goods, which combine non-excludability and (relative) non-subtractability; and club goods (or toll goods), which combine excludability and non-subtractability.<sup>42</sup> Unlike pure private goods, to which individuals enjoy exclusive access, the commons allows access to multiple users who are unable to exclude one another. Unlike pure public goods, which

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40. We follow Elinor Ostrom's usage with the term "subtractability." See Ostrom & Ostrom, *supra* note 37, at 165-67. Others use the term "rivalry." The difficulty with characterizing use of the commons as inherently rival is that rivalry connotes competition. While it is true that commons use can be and frequently is competitive, it can also be cooperative. The inherent characteristic of the commons is that individual use potentially *subtracts from* the quantity or quality of the resource available to others.

41. Ronald J. Oakerson, *Analyzing the Commons: A Framework*, in MAKING THE COMMONS WORK: THEORY, PRACTICE, AND POLICY 41-59 (Daniel W. Bromley et al. eds., 1992).

42. Ostrom & Ostrom, *supra* note 37, at 164-68. Ostrom & Ostrom use the term "toll goods" for what others label "club goods."

individuals can enjoy without subtracting from the flow of benefits to other users, the commons is subject to overuse or misuse, subtracting from the flow of benefits.

Figure 1: Types of Goods<sup>43</sup>

		Subtractability	
		High	Low
Excludability	High	Private Goods	Club Goods
	Low	Commons	Public Goods

Like public goods and club goods, the commons allows individuals to share the use of a resource or facility, but it is sharing within limits; outside those limits, subtractive use threatens the shared asset that produces joint benefits, as when fishers deplete a fishery,<sup>44</sup> pastoralists overgraze a pasture,<sup>45</sup> or overweight vehicles destroy a road.<sup>46</sup> If an individual user were able to obtain exclusive control of the resource, as in the case of private goods, subtractability would be unproblematic: a single user can limit use without being concerned over the behavior of other users. The commons is more problematic: when subtractability occurs alongside a weak ability to exclude others, individuals must act collectively to constrain use. Collective action among users is feasible when limited to the members of a well-defined community, such as a local fishing village, but when the inability to exclude extends to persons from outside such a community, the resulting “open access” condition destroys the capability for collective action among users.<sup>47</sup>

43. Adapted from OSTROM, *supra* note 39, at 24 fig. 1.3, Four Basic Types of Goods. Ostrom treats what are called here club goods as “toll goods.”

44. See, e.g., Fikret Berkes, *Success and Failure in Marine Coastal Fisheries of Turkey*, in *MAKING THE COMMONS WORK*, *supra* note 41, at 161-82.

45. See ROBERT WADE, *VILLAGE REPUBLICS: ECONOMIC CONDITIONS FOR COLLECTIVE ACTION IN SOUTH INDIA* 59-61 (1994). Wade provides an excellent, succinct discussion of the practical problems associated with open-field management.

46. See, e.g., Ronald J. Oakerson, *Erosion of Public Goods: The Case of Coal-Haul Roads in Eastern Kentucky*, in 2 *RESEARCH IN PUBLIC POLICY ANALYSIS AND MANAGEMENT* 73-102 (1981).

47. Hardin, *supra* note 12, tacitly assumed open access, but many common-pool resources are governed as common property—owned in common by a user community. See Daniel W. Bromley, *The Commons, Property, and Common-Property Regimes*, in *MAKING*

Neighborhoods exhibit weak excludability. Absent extraordinary collective powers, neighborhood residents are unable to exclude any of their neighbors from the neighborhood. Residents cannot be expelled, nor newcomers barred entry. However, the requirement that one purchase or rent property to become a neighborhood householder precludes fully open access, creating a limited and well-defined community of commons residents. New household entrants nevertheless do not need permission from existing residents or property owners. Although zoning can function in an exclusionary manner by influencing the type of housing built, once housing is in place, homeowner entry requires only a willing seller and a willing buyer. Neighborhoods are generally open, however, to simple ingress by anyone—an open-access condition—unless the streets and sidewalks are held privately, gated communities being the growing exception.<sup>48</sup> Cities thrive on such openness, but it can also allow neighborhood entry by unsavory visitors who subtract from the enjoyment of the neighborhood by its residents. Neighborhoods are also subject to crowding, when the number of people occupying housing exceeds capacity.<sup>49</sup>

This quasi-open neighborhood space—its openness constrained by the real estate market—is shared by a well-defined set of residents under conditions of subtractability. The neighborhood commons is multidimensional: it includes an air shed, sound shed, streetscape, and social space, all of which supply a stream of benefits and costs necessarily shared among neighbors. The dimensions combine, however, to influence strongly the market value of neighborhood real estate. Neighbors affect one another's property values and amenities in myriad ways. Legal scholar Lee Ann Fennell cites "lawn maintenance, rubbish control, yard art, external painting, on-site car repairs, and pet-keeping" as potential sources of subtractability, further suggesting that "absent some constraint, owners might shift residential parcels into more intensive and lucrative uses," that

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THE COMMONS WORK, *supra* note 41, at 3-15. Open access is an extreme form of non-excludability, but weak exclusion does not necessarily imply open access. Non-excludability is a characteristic among commons users; even when there is a well-defined community of users, the members of that community may not be able to exclude one another. The commons is necessarily shared, and individual users must take into account the behavior of others on the commons. FENNELL, *supra* note 11, at 54, argues that neighborhoods "fall closer to the limited access end of the spectrum than the open-access end." We agree, but this does not mean that residents are able to practice *neighborhood* exclusion. It means, rather, that the community of residents in the neighborhood is limited and well defined, not open to anyone who wants to pitch a tent.

48. See ROBERT H. NELSON, PRIVATE NEIGHBORHOODS AND THE TRANSFORMATION OF LOCAL GOVERNMENT 30 (2005).

49. See ALEX F. SCHWARTZ, HOUSING POLICY IN THE UNITED STATES 31-32 (3d ed. 2015).

degrade the neighborhood.<sup>50</sup> Neighborhood standards can be expected to differ, however, so that the subtractability of various uses and behaviors must be viewed as context-dependent.<sup>51</sup>

Depending on the prevailing neighborhood standard, subtractability affects the incentives of property owners in two ways. First, a commons user needs assurance that other users will cooperate before agreeing to act collectively; otherwise, an individual contribution is futile. This is the primary collective action problem.<sup>52</sup> Given assurance, however, the same user may still have a strong incentive to defect and free-ride on the benefits provided by others, especially when individual members of the user community cannot be excluded.<sup>53</sup> For this reason, collective action may depend on continuous monitoring and enforcement. In the case of neighborhoods, however, free rider incentives are muted: maintenance and investment on the part of neighbors can increase a homeowner's incentive to maintain and invest. Community development expert William Simon explains: "If your neighbors paint their houses, you will benefit simply because the neighborhood is more attractive (an externality effect); it may also be true that the benefit from painting your house will now be greater than it would have been if they had not painted theirs (a complementary effect)."<sup>54</sup> While performing maintenance produces positive externalities, it also produces complementary benefits that neighbors can claim only if they reciprocate.

We argue that homeowners benefit individually from performing maintenance because it (1) maintains or increases property values, (2) sustains or improves the livability of the home, and (3) earns the esteem of neighbors. Therefore, when assured that others will maintain their property, most neighbors maintain their own property out of self-interest. Because complementarities between neighboring properties counteract free rider incentives, the only required sanctions are provided by the market (declining property values), the personal inconvenience associated with a

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50. FENNELL, *supra* note 11, at 67.

51. A "lower" standard does not imply there is no standard; even residents of the poorest neighborhoods may attempt to enforce standards of behavior and upkeep through social pressure. *See, e.g.*, SUDHIR ALLADI VENKATESH, OFF THE BOOKS: THE UNDERGROUND ECONOMY OF THE URBAN POOR 166-213 (2009).

52. C. Ford Runge, *Common Property and Collective Action in Economic Development*, in MAKING THE COMMONS WORK, *supra* note 41, at 17.

53. OSTROM, *supra* note 39, at 24-25.

54. WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT 44 (2001). The fact that free rider incentives are muted does not mean they are eliminated. JAKLE & WILSON, *supra* note 2, at 175, argue that landlords in a degraded neighborhood are especially likely to choose a free rider strategy. If others respond to free riders by reducing maintenance, however, the free rider strategy is ultimately unsuccessful, and the free rider's property value declines along with the rest of the neighborhood.

leaky roof or broken steps (livability), or informal social pressures (a desire for neighborhood esteem). The benefits of individual maintenance are discounted, however, when assurance is missing because neighbors fail to maintain their homes, and neighborhood standards loosen. Virtually all property owners are exposed to economic circumstances that potentially lead to neglect of maintenance in order to meet other, more pressing needs, but circumstances such as unemployment or sudden medical expenses are closer at hand in low-income neighborhoods, or elsewhere as well during an economic downturn. When neighbors reduce their upkeep, whatever the reason, the economic return on maintenance declines but maintenance costs remain the same. Therefore, we argue, the neighborhood commons varies, both across neighborhoods and across time, in its need for monitoring and enforcement of upkeep. In particular, low-income neighborhoods are more likely to require monitoring and enforcement of their own neighborhood standards.

To sum up: an urban neighborhood, where neighbors live in close proximity, is a distinct sort of commons. A residential neighborhood has the defining characteristics of a commons: neighbors both cannot exclude one another from the neighborhood and have the potential to subtract from the value of the neighborhood (as well as add to it). The subtractive behaviors of individual households are reflected in the market value of neighboring property. To limit subtractive behaviors and thereby sustain the value of the neighborhood, neighbors must act collectively. Although tacit, home maintenance in an urban neighborhood is collective action—individual behavior strongly influenced by the behavior of neighbors. The free-rider incentives inherent in collective action are weakened, however, by complementarities among neighbors: instead of free riding on the home maintenance of neighbors, residents realize a greater gain from maintenance when neighbors are also maintaining their property. The problem of collective action in urban neighborhoods is how to sustain mutual assurance, not how to prevent freeriding. Mutual assurance is threatened less by free riders than by holdouts—persons who refuse to cooperate, allowing, in this case, housing to deteriorate regardless of what neighbors do.<sup>55</sup> Collective action is feasible because a limited set of individuals share the neighborhood; not a fully open-access commons, except in the limited case of street ingress and egress, the neighborhood is a

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55. Holdouts and free riders are frequently conflated but reflect quite different strategies, relating to collective action at different points in the process. Free riders seek to take advantage of the contributions of others *ex post*, perhaps by non-compliance with rules previously agreed to, while holdouts frustrate collective action *ex ante* by withholding assurance of participation. Holdouts can become free riders when others choose to act collectively. See VINCENT OSTROM, *THE INTELLECTUAL CRISIS IN AMERICAN PUBLIC ADMINISTRATION* 50 (2d ed. 1989).

well-defined community of householders and property owners. The nature of the community, however, does not guarantee collective action: some property owners may still adopt holdout strategies, leaving urban neighborhoods exposed to the tragedy of the commons. The probability that residents or landlords will face circumstances prompting them to withhold maintenance is higher in low-income neighborhoods.

### III. AN ILLUSTRATIVE CASE ON BUFFALO'S WEST SIDE<sup>56</sup>

In 2002, a handful of West Side residents in Buffalo, NY, formed the West Side Community Collaborative to address problems in a fifteen-block area sandwiched between Richmond Avenue, a major north-south thoroughfare, and the Niagara River. Comprised of approximately 11,000 residents in 5000 homes, the area is one of the most ethnically diverse neighborhoods in the state, consisting of roughly equal parts white, African American, Hispanic, Asian, and mixed race.<sup>57</sup> Six blocks east, Elmwood Avenue, a business corridor parallel to Richmond, was attracting an increasingly affluent population to what came to be called "Elmwood Village." Richmond was a boundary street; realtors distinguished sharply between properties on its east side and west side. Collaborative leader Harvey Garrett (hereinafter "Harvey") described the stark difference observed after crossing Richmond east to west: on the first street west of Richmond, there were

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56. Our account of the case is based primarily on a 2009 interview with Harvey Garrett, Director of the West Side Community Collaborative, which was followed by numerous emails, questions, and walking tours of the area. Interview with Harvey Garrett, Dir., W. Side Cmty. Collaborative, in Buffalo, N.Y. (Oct. 9, 2009) [hereinafter Garrett]. Other sources include the first-hand experience of co-author Jeremy Clifton as a community development practitioner on the West Side from 2007 to 2010, who lived and worked a few blocks northwest of the study area. As an active member of the Collaborative, Clifton attended monthly meetings and worked closely with a wide range of community leaders, who willingly shared their knowledge, contacts, and methods. Many aspects of the narrative we supply here were common knowledge among Collaborative members. Other aspects, such as home prices and the basic chronology of events, were confirmed by various public records, as noted. In addition, we drew upon two extensive interviews with Housing Court Judge Henry Nowak. Interviews with Henry Nowak, Judge, Buffalo Hous. Court, in Buffalo, N.Y. (Nov. 13, 2009 & Feb. 26 2010) [hereinafter Nowak]. Clifton worked alongside Harvey Garrett and others as a Housing Court Community Liaison. Both Garrett and Judge Nowak read drafts of this paper and provided comment.

57. LOCAL INITIATIVES SUPPORT CORP., WEST SIDE COMMUNITY COLLABORATIVE: POOLING AND TARGETING RESOURCES 2 (2005), [https://casesimportal.newark.rutgers.edu/storage/documents/multi\\_level\\_governance\\_networking/nonprofit/case/2004\\_MetLife\\_Awards\\_-\\_West\\_Side\\_Community\\_Collaborative.pdf](https://casesimportal.newark.rutgers.edu/storage/documents/multi_level_governance_networking/nonprofit/case/2004_MetLife_Awards_-_West_Side_Community_Collaborative.pdf) [https://perma.cc/4AKL-5433] [hereinafter LISC]; see also *West Side neighborhood in Buffalo, New York*, CITY-DATA.COM, <http://www.city-data.com/neighborhood/West-Side-Buffalo-NY.html> [https://perma.cc/AG53-XZWW].

[P]rostitutes, drug dealers, several vacant houses, crime, the property values declining, nobody wanted to be there. The next block over . . . [there were] 12 vacant properties in three blocks. Nobody wanted to be there. The next block over . . . [was] one of the most violent neighborhoods on the city's west side . . . . So . . . you had 200,000 . . . dollar houses on Richmond Avenue [while] one block over . . . you could buy a house for 2,000 dollars.<sup>58</sup>

Though the City's response to the deteriorating housing stock was mainly demolition,<sup>59</sup> the housing stock offered opportunity for low-income households. Early residents had built durable housing, and an unusually high percentage of them were doubles—two apartments built one on top of the other.<sup>60</sup> A homeowner would often live in one apartment and rent the other for the mortgage payment.

Initially formed to implement a five-year revitalization plan, the Collaborative became a multi-level association bringing together neighborhood residents and block clubs, community organizations, government agencies, law enforcement, realtors, and banks.<sup>61</sup> It pursued three related objectives: (1) to increase homeownership without excluding responsible tenants and landlords; (2) to turn qualified tenants into homeowners; and (3) to encourage a mixed-income population in order to help build its commercial district (believing that low income populations alone cannot support prosperous commercial districts).<sup>62</sup> The group chose a “block-by-block” strategy: what if they could move the boundary located on Richmond westward, one block at a time? Even if crime and blight were eradicated on a single block in the middle of the West Side, nobody would

58. Garrett, *supra* note 56.

59. *Id.*; see also *Moving Buffalo Forward*, in 1 POLICY BRIEFS FROM THE BROWN ADMINISTRATION 4 (2007) While the City of Buffalo has pursued various programs with different degrees of success, the primary response to the ongoing problem of the deteriorating housing stock has been demolition. For example, Mayor Byron Brown's “5 in 5” Demolition Plan, published in August of 2007, sought to demolish 5000 properties in five years at an estimated cost of \$100 million. By 2010, 4000 homes had been demolished at a cost of \$61 million. See Justin Sondel, *No Vacancy*, CTR. FOR CMTY. PROGRESS (Oct. 19, 2010), <http://www.communityprogress.net/news---events-pages-9.php?id=44> [<https://perma.cc/Q678-KUKR>].

60. Garrett, *supra* note 56. In 2010, there were 20,908 vacant and 112,536 occupied properties in Buffalo. Among the occupied units, 36.1% were two-apartment detached houses, a somewhat distinctive architectural feature especially common on the West Side. See U.S. CENSUS BUREAU, PHYSICAL HOUSING CHARACTERISTICS FOR OCCUPIED HOUSING UNITS 2006-2010 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>; [<https://perma.cc/FR5W-T53J>]; U.S. CENSUS BUREAU, GENERAL HOUSING CHARACTERISTICS: 2010; [https://factfinder.census.gov/bkmk/table/1.0/en/DEC/10\\_SF1/QTH1/1600000US3611000](https://factfinder.census.gov/bkmk/table/1.0/en/DEC/10_SF1/QTH1/1600000US3611000) [<https://perma.cc/RE5A-Q7PG>].

61. Garrett, *supra* note 56; LISC, *supra* note 57.

62. Garrett, *supra* note 56.

relocate there because of too much surrounding risk. Block by block, the group reasoned, investment would encourage investment.<sup>63</sup>

In year one the Collaborative tackled the first three blocks west of Richmond.<sup>64</sup> Residents organized block clubs, whose activities included cleaning up vacant lots, painting both occupied and abandoned houses, planting gardens, picking up trash, repairing sidewalks, fostering communication between residents, and addressing street crime and disorder. The second year the Collaborative did the same for the next three blocks while finding homeowners for the first three.<sup>65</sup>

We focus on Alexis Street,<sup>66</sup> which experienced both decline and renewal within a relatively brief time frame: 2002 to 2010. The study area comprises a *street-block*: fourteen houses and one multi-use facility face each other on opposite sides of the street between intersecting streets at each end of the block. Its residents reflect the diversity found more broadly on the West Side.<sup>67</sup> One of the first blocks the Collaborative targeted for action, it provided a testing ground for strategies later employed across the wider area.

When the Collaborative began work in 2002, paint peeled off nearly uniformly shabby exteriors up and down the street, almost all unpaved areas were overgrown, and police mostly stayed away.<sup>68</sup> A drug gang worked out of two houses occupying the front and rear of one lot, while next door a prostitution ring occupied two houses, also on the front and rear of the lot. One landlord, a non-resident, owned all four houses, each one divided into apartments. The houses were falling apart; even the roofs were caving in. Hoses ran out of windows oozing foul goop. Some apartments had squatters; others, even squatters could not tolerate.<sup>69</sup>

Across the narrow street, the Browns<sup>70</sup> had lived in a house at the rear of their lot, a double lot, for ten years. They rented out one home at the front and another at the rear of their large parcel.<sup>71</sup> Their property was strikingly well-maintained, and they kept a flower garden in the vacant front portion of their lot. Finally, tired of not feeling safe and unable to keep good

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63. *Id.*

64. *Id.*

65. *Id.*

66. In order to preserve the anonymity of residents we use a fictional name for the street.

67. Author's observation (Clifton).

68. Garrett, *supra* note 56.

69. *Id.* Structures on one lot were built in 1900, and structures on the other lot were built in 1920. ZILLOW, <http://www.zillow.com> (last visited Apr. 17, 2017). Web links that would identify specific properties are not included to preserve anonymity.

70. All names of residents are fictitious.

71. Zillow suggests the structures on this lot were built in 1940. ZILLOW, *supra* note 69. Web links that would identify specific properties are not included to preserve anonymity.



quality tenants, they were on the verge of leaving in 2002.<sup>72</sup> Down the block a large deteriorating two-story complex housed a combination of offices and apartments. At one end of the block was a nineteenth century tavern,<sup>73</sup> fronting on the intersecting street. In 2002, a late-partying clientele often kept residents awake at night and occasionally wandered away from the tavern's patio to defecate on neighbors' lawns.<sup>74</sup> In 2003, the New York State smoking ban pushed more rowdiness into the street.<sup>75</sup>

Just prior to the Collaborative's intervention, a house at one end of the block that fronted on the intersecting street sold to a young, low-income couple for \$2000.<sup>76</sup> An enormous 3334 square foot<sup>77</sup> single-family dwelling divided into multiple apartments, it was for many years a drug house and had fallen into disrepair. Immediately upon purchase, the new owners completely remodeled the interior and replaced the roof, while slowly improving the exterior. However, their work did not spark further improvement on the street.<sup>78</sup>

The Collaborative identified the drug gang and prostitution ring as priority concerns.<sup>79</sup> Fear of the gang was a critical problem because it inhibited neighborhood communication. Neighbors could not meet openly, and residents stayed off their front porches. In the Collaborative's view, however, the root of the problem was the property owner, not his troublesome tenants. Focusing on the drug-dealers and prostitutes would have meant relying mainly on police and the criminal justice system. Instead, the Collaborative found a reliable partner in Buffalo's Housing Court, which hears all housing-related cases.<sup>80</sup> Graffiti, uncut grass,

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72. Garrett, *supra* note 56.

73. Source for date is the tavern's website. Web links that would identify specific properties are not included to preserve anonymity.

74. Garrett, *supra* note 56; confirmed by anonymous Alexis resident.

75. *Id.* While the 1997 Erie County Clean Air Act did limit smoking in the workplace, bars were exempted. Erie County, N.Y., Erie County Clean Air Act (1997), <http://www2.erie.gov/law/index.php?q=erie-county039s-clean-air-act> [https://perma.cc/VN95-7S2R]. For coverage of the statewide 2003 ban, see Winnie Hu, *New York State Adopts Strict Ban on Workplace Smoking*, N.Y. TIMES (Mar. 27, 2003), <http://www.nytimes.com/2003/03/27/nyregion/new-york-state-adopts-strict-ban-on-workplace-smoking.html> [https://perma.cc/LR2S-BTAS].

76. Garrett, *supra* note 56. Zillow reports that this lot was sold for \$2050. This \$50 difference was the only discrepancy we found between Harvey's first-hand account of the Alexis Street story and what we could gather from public records. ZILLOW, *supra* note 69. Web links that would identify specific properties are not included to preserve anonymity.

77. ZILLOW, *supra* note 69.

78. Garrett, *supra* note 56.

79. *Id.*

80. *Id.*; see also *infra* Section V.C.

peeling paint, and sagging porches are not only indicators of neglect—they are housing code violations.<sup>81</sup>

The first step was to get the attention of the city’s housing inspectors. Harvey reports, “Because the city had given up on the area west of Richmond, inspectors did not think it [inspecting the properties] was worth their time.”<sup>82</sup> The Collaborative responded by monitoring the inspection process itself—repeatedly calling inspectors, visiting the properties with them, taking photographs, and showing up in court with prints.<sup>83</sup>

Once the properties were in court, the Collaborative discovered that for two decades all four houses had been repeatedly cited for similar violations.<sup>84</sup> Each time, they were dismissed for “substantial compliance,” which meant that owners had demonstrated progress and it was simply assumed they would finish.<sup>85</sup> This time, on the advice of neighborhood residents, the judge gave the owner four options: he could (1) fully repair the houses; (2) demolish the houses; (3) transfer the properties to someone the court was confident would repair and maintain them; or (4) go to jail.<sup>86</sup> During the next several court hearings, neighborhood residents provided evidence that the landlord had patched holes in walls with bits of salvaged roofing material and applied mismatched leftover paint.<sup>87</sup> When the judge made it clear that jail time was imminent, the landlord put the properties on the market for \$100,000; no buyers were interested.<sup>88</sup> At this point the Collaborative sought the assistance of a private, nonprofit housing agency,<sup>89</sup> which made an offer of \$15,000. He accepted.<sup>90</sup>

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81. *See infra* notes 171-72 and accompanying text.

82. Garrett, *supra* note 56. For a related discussion of “regulatory slippage” in cities, see Foster, *supra* note 11.

83. *See* Garrett, *supra* note 56. Confirmed by anonymous West Side residents who took photos, printed them, and brought them to court.

84. *See id.* A major factor contributing to the decline in motivation for inspectors to inspect these properties was that inspection did not seem to make an impact. *See id.*

85. *Id.* In Buffalo, Housing Inspectors conduct an initial re-inspection of properties violating the housing code. If progress is being made, they can cite “substantial compliance” and the case does not come before housing court. CITY OF BUFFALO, N.Y., CODE ch. 264, *Rental Dwelling Unit Registration* (2013), <http://www.mcs360.com/documents/compliancedoc/VPR/VPR%20Ordinance%20-%20Buffalo,%20NY.pdf> [<https://perma.cc/9KT2-DT7Z>]. After the case comes before the court, the judge can do the same at her discretion. Nowak, *supra* note 56.

86. Garrett, *supra* note 56; *see also* Nowak, *supra* note 56.

87. Garrett, *supra* note 56.

88. *See id.*

89. Such agencies typically provide an array of housing-related services with both governmental and nongovernmental support.

90. Garrett, *supra* note 56.

As the new landlord, the housing agency evicted the prostitution ring and drug gang without incident.<sup>91</sup> Two houses, one on the front of a lot and the other at the rear of an adjacent lot, were deemed to be unsalvageable and were demolished. Following a period of inactivity, during which time Collaborative members grew increasingly frustrated and insistent on action,<sup>92</sup> the housing agency began investing what would eventually become \$200,000 in repairs on both properties, including extensive exterior work.<sup>93</sup> One house was renovated within a year, but renovations on the second house were delayed, eventually spanning four construction seasons.<sup>94</sup> In the meantime a donor provided paint at cost, and the Collaborative began to repaint exteriors up and down the block. At their own expense they also put up a tall fence to hide the un-renovated structure while pushing the housing agency to begin renovations.<sup>95</sup> Householders planted gardens and used available materials, such as an old wine press and granite slabs, to add character to the streetscape. In a fairly short time the street began to look more attractive.

In 2003 real estate activity and investment began to increase. Next door to the former drug house, an old carriage house built at the start of the twentieth century had stood vacant and deteriorating for years. It sold in June 2003 for approximately \$6000.<sup>96</sup> The new owners stripped off nasty green paint to expose pleasing brick. Once well-maintained housing replaced the former hives of criminality and blight, the long-suffering Browns began to re-invest. Starting in 2003, after the housing agency made its purchase, they re-sided, re-painted, and re-roofed their home, added a new driveway, and installed new windows in all three of their housing structures.<sup>97</sup> Wanda was a tenant who lived next door to the Browns; raising her son across the street from the prostitution ring and drug

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91. *Id.*

92. See Marilyn Rodgers, *West Side Babes*, BUFFALO RISING (Sept. 27, 2007), <https://www.buffalorising.com/2007/09/west-side-babes/> [https://perma.cc/F3K3-8QYM]. Based in part on this experience, the Collaborative changed tactics. Instead of seeking external, non-profit, or government-funded investors, they would prioritize finding other buyers, especially homeowners.

93. *Id.*

94. E-mail from Harvey Garrett, Dir., W. Side Cmty. Collaborative, to the authors (Dec. 13, 2010, 10:55 AM) (on file with authors). Timeline identified by public records. REALTOR, [www.realtor.com](http://www.realtor.com) (last visited Apr. 17, 2017). Web links that would identify specific properties are not included to preserve anonymity.

95. E-mail from Harvey Garrett, Dir., W. Side Cmty. Collaborative, to the authors (Dec. 13, 2010, 10:55 AM) (on file with authors).

96. Garrett, *supra* note 56. Price and date confirmed by public records. REALTOR, *supra* note 94. Web links that would identify specific properties are not included to preserve anonymity.

97. Garrett, *supra* note 56.

gang, she expressed a determination never to buy property on the block. In 2004, she purchased a renovated house from the housing agency for \$67,500 and, moreover, became a block club leader.<sup>98</sup> Wanda's house was a double, allowing her to rent the lower apartment for \$500 a month and cover most of her mortgage payment.<sup>99</sup>

Over the next two years real estate activity accelerated, and five dwellings were converted from rental to homeowner status. In 2005 two houses sold for around \$30,000.<sup>100</sup> In 2006, one of those houses sold again for \$80,000. Renovations on the remaining housing-agency property were completed in 2006 and sold to a homeowner for \$75,000.<sup>101</sup> Between 2008 and 2010 four houses were sold (some were repeat sales) as real estate prices on the block increased, reaching more than \$150,000 by the end of the period.<sup>102</sup> By 2010, only one rental property owned by a nonresident landlord remained.<sup>103</sup>

As the street improved, the multipurpose complex that occupied much of one side of the block remained in a state of neglect. When asked to invest in the property (or sell it to somebody who would), the owners were initially reluctant.<sup>104</sup> Once the owners recognized that the street was improving, however, they too began to reinvest in their property. By 2010, the owners had moved their offices back into the building. Down the block, the corner tavern proved more resistant. After the neighbors worked with their city council representative to obtain removal of its troublesome patio, tensions continued.<sup>105</sup> Since 2008, however, the tavern's new owners have embraced street improvement, adding flowers and trees, and installing bicycle racks. The patio was also rebuilt with neighborhood approval. By 2010 the tavern was hosting the monthly meeting of the Alexis Street Block Club.<sup>106</sup>

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98. *Id.* In the experience of co-author Clifton, homeownership often but not always is associated with increased involvement in local block clubs.

99. *Id.*

100. *See* ZILLOW, *supra* note 69. Web links that would identify specific properties are not included to preserve anonymity.

101. Garrett, *supra* note 56. Sale and price confirmed by public records. ZILLOW, *supra* note 69. Web links that would identify specific properties are not included to preserve anonymity.

102. Garrett, *supra* note 56. Price and date confirmed by public records. ZILLOW, *supra* note 69. Web links that would identify specific properties are not included to preserve anonymity.

103. Garrett, *supra* note 56.

104. *Id.*

105. *Id.*

106. *Id.* Co-author Clifton witnessed these beautification efforts and joined the Alexis Street Block Club at one of their meetings.

Community problems have not ceased on Alexis Street. For example, in 2010 the local council member was pulled into a dispute involving one resident slandering another. A block club member wrote, “[a]fter . . . seeing this neighborhood go from a dump and drug filled dangerous neighborhood to a vibrant community, I say no more throwing sand in the sand box.”<sup>107</sup> Though problems continue, their character has changed—now associated more with the perennial issues of dealing with annoying neighbors in a dense urban space.

The Collaborative eventually worked across a wider area, proceeding block by block. Although each block presented particular challenges and opportunities, the approach that the Collaborative followed on Alexis Street was largely replicated elsewhere.<sup>108</sup> Today, the area is an active real estate market. Home values in the Collaborative’s zip code (which encompasses most of the West Side) increased by ninety percent between 2004 and 2015.<sup>109</sup> Although the Collaborative’s contribution to the change cannot be separately estimated, and other neighborhood organizations were also at work in the same area, the perception of the area among homebuyers has clearly been transformed.

#### IV. GOVERNING THE NEIGHBORHOOD COMMONS

Neighborhood decline was well underway on Alexis Street in 2002, led by criminal activity in degraded housing, which prompted residents to adopt strategies of housing disinvestment.<sup>110</sup> Yet by 2006 a turnaround was underway, as disinvestment gave way to renewed investment in the neighborhood. Clearly there was collective intervention, as Galster

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107. E-mail from [name removed to preserve anonymity] to Harvey Garret and others [names removed to preserve anonymity] (July 21, 2010, 8:11 AM) (on file with co-author Clifton).

108. Garrett, *supra* note 56. But see the discussion of an open-air drug market on one West Side street, *infra* notes 189-190 and accompanying text.

109. See an interactive graphic on zip code 14213 in Ted Mellnik et. al., *America’s Great Housing Divide: Are You A Winner or Loser?*, WASH. POST (Apr. 28, 2016), <https://www.washingtonpost.com/graphics/business/wonk/housing/overview/> [<https://perma.cc/B5UR-U5VG>]. Based on an unconfirmed source at the Buffalo-Niagara Association of Realtors who conducted research at the Collaborative’s request, average home prices within the Collaborative’s focus area increased by 313% compared to 200% for the West Side generally between 2000 and 2010. A local newspaper reported the following in 2008: “According to an analysis completed by the Local Initiatives Support Corporation using Buffalo Niagara Association of Realtors data, neighborhoods west of Richmond have been the fastest growing real estate market in the city for several years. Sales prices have increased 114 percent from 2000 through 2006 in the West Side Community Collaborative area. For the city as a whole, values increased 27 percent during the same time.” *West Side Rising*, BUFFALO RISING (Dec. 24, 2008), <https://www.buffalorising.com/2008/12/west-side-rising/> [<https://perma.cc/26Q4-Z52B>].

110. See Garrett, *supra* note 56.

suggests,<sup>111</sup> but how and why did it work?<sup>112</sup> If neighborhood decline responds to collective intervention, it becomes important to understand how to design interventions that work in diverse contexts and can be sustained in the long term. Drawing on systematic field studies of various common-pool resources around the world, Elinor Ostrom distilled a set of eight institutional design principles associated with sustainable, user-governed resource management.<sup>113</sup> We use these principles as a template for analyzing the Alexis Street experience.

### A. Principle 1: Clear Boundaries

*Effective commons governance requires clear boundaries around the commons*, which allow individuals to identify whose use lies within the resource system.<sup>114</sup> On Alexis Street the commons is primarily a street-block, clearly defined by intersecting streets. Householders easily recognize one another as members of a small and intimate community. Galster found that neighborhood quality directly affects upkeep behavior “only when the neighborhood is defined at a very localized (i.e., block-face) geographic scale.”<sup>115</sup> The dynamic observed on Alexis Street was limited mainly to a single block and bounded by it. Because a neighborhood is not a fully open-access commons, the street-block defines a limited community of people who need to act collectively.<sup>116</sup>

Rather than functioning as one large, undifferentiated commons, a city is partially partitioned by many identifiable boundaries, such as rivers, train tracks, highways, and especially surface streets. Though permeable, these physical boundaries limit, to some extent, the impact of use-related interdependencies among parcels of property. Wide avenues such as Richmond—the eastern border of the West Side—can function as a boundary that runs down the middle of the street. On narrower streets, such as Alexis, the block-commons consists of both sides of a street: the street-block. Overall, a city is a configuration of interconnected blocks; each street-block is potentially a separable commons, though separable to

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111. See *supra* note 36 and accompanying text.

112. A single case may, of course, be exceptional. We use the case not to demonstrate the workability of commons remedies (well established in natural resource contexts around the world, see OSTROM, *supra* note 39) but to illustrate the mode of analysis that commons theory brings to neighborhood decline.

113. *Id.* at 258-59.

114. *Id.* at 260-62.

115. GALSTER, *supra* note 25, at 223. Galster’s reference to a “block-face” is similar to our focus on a street-block. See *id.* at 79.

116. Note that the street-block is not a club good; residents are unable to exclude other residents, who gain entry to the neighborhood through the housing market.

differing degrees. The street-block (in Galster's terms, the block-face)<sup>117</sup> appears to be the relevant unit of collective action for the purpose of housing upkeep.

### B. Principle 2: Proportional Sharing of Benefits and Costs

*Effective commons governance requires that the costs of collective action be shared among members of the community in rough proportion to the benefits each member receives.*<sup>118</sup> On Alexis Street, collective action allowed property owners to realize benefits commensurate with the costs of their property maintenance or re-investment. As argued above, the neighborhood-commons poses mainly an assurance problem.<sup>119</sup> Once solved, homeowners realize complementary benefits when they also invest in their own property rather than behaving as free riders.

### C. Principles 3 and 4: Rule Making and Monitoring

*Effective commons governance requires that the user community participate in making the rules that govern resource use, monitor user behavior, and invoke the rules.*<sup>120</sup> Unlike many natural resource communities around the world,<sup>121</sup> city residents lack authority to make and enforce their own neighborhood rules. Rather, the rules governing property maintenance come from city and state governments in the form of housing codes. The uniformity of housing-related rules is potentially a weakness in governing the neighborhood commons given the diversity of neighborhood standards and circumstances.<sup>122</sup> However, Alexis Street residents did closely monitor compliance with rules and participated in the process of

117. GALSTER, *supra* note 25, at 79.

118. See OSTROM, *supra* note 39, at 262-63.

119. See Runge, *supra* note 52 and accompanying text.

120. See OSTROM, *supra* note 39, at 263-66. The use of rules entails four legal processes: prescribing, invoking, applying, and enforcing rules. See *id.*, at 59, 61; Ronald J. Oakerson, *Representation: A Slender Thread?*, in INSTITUTIONAL DIVERSITY IN SELF-GOVERNING SOCIETIES: THE BLOOMINGTON SCHOOL AND BEYOND 71, 74-76 (Filippo Sabetti & Dario Castiglione eds., 2017). Prescription is legislative work, application is judicial work, and enforcement is executive work. Invoking rules is perhaps executive work but is often carried out by citizens. It is closely related to rules of standing in court. Formally, housing rules are invoked by city inspectors, who write the citations that require offenders to appear in court. Informally, however, Alexis Street residents participated in the process of invoking rules by bringing violations to the attention of inspectors and obtaining recognition as neighborhood representatives in housing court. See *infra* Section V.C.

121. See OSTROM, *supra* note 39, at 263-65.

122. For example, lot sizes vary among neighborhoods, but building codes or area zoning may dictate a larger lot size than found in some neighborhoods. If a house in such a neighborhood is lost to fire, nothing can be built on the lot that remains. Though empty lots can be put to good use, such as community gardens, they can also detract from the streetscape and thus contribute to decline. Numerous examples exist on Buffalo's West Side.

invoking the rules in court, advising on application and enforcement.<sup>123</sup> On Alexis Street, code enforcement was not a product of routine regulation by a government agency. Rather, it was a process driven by neighborhood initiative and participation, in effect adding a coercive capability to otherwise voluntary collective action among neighbors.<sup>124</sup>

#### D. Principle 5: Available Sanctions

*Effective commons governance requires graduated sanctions to constrain user behavior.*<sup>125</sup> Potential code enforcement sanctions were effectively used on Alexis Street to leverage a holdout owner into abandoning his position. Landlords who rent to drug dealers and prostitutes in a residential neighborhood are the classic “dog in the manger,” as Vincent Ostrom characterized the behavior of holdouts on the commons,<sup>126</sup> pursuing their own benefit while ignoring costs to others. Their behavior signals the breakdown of collective action in the neighborhood, the reverse of the mutual assurance required to sustain housing upkeep. Yet within Housing Court the holdout was given ample opportunity to comply with existing rules, and less punitive actions were always preferred.<sup>127</sup> In this sense, sanctions were graduated. Outside the courtroom the Collaborative typically sought cooperation from property owners, including absentee landlords, before seeking coercion.<sup>128</sup> This approach often allowed residents to proceed with improvements without the costly time-delay involved in legal proceedings.

#### E. Principle 6: Conflict Resolution

*Effective commons governance requires that members of the user community have low-cost access to conflict-resolution facilities.*<sup>129</sup> On Alexis Street, recourse to an independent, authoritative third-party—

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123. See the discussion of Housing Court, *infra* Section V.C.

124. Coercive capabilities always entail some risk of misuse. One can imagine a neighborhood composed of busybodies who seek to intrude on one another’s upkeep decisions to their mutual dissatisfaction. Some degree of conflict seems almost inevitable in the application of rules, underscoring the need for access to conflict-resolution facilities. See *infra* Section IV.E. The ability of neighbors to invoke rules in court does not allow them to decide how those rules apply or what enforcement actions would be appropriate.

125. OSTROM, *supra* note 39, at 266-67.

126. OSTROM, *supra* note 55, at 50. Ostrom described the “dog in the manger” strategy as pursuing one’s own advantage while disregarding the consequences for others. It also entails using a resource meant for one purpose for an entirely different and conflicting purpose. In commons terms, it is highly subtractive behavior. *The Dog in the Manger* is one of Aesop’s Fables: when the dog insists on sleeping in the manger, the ox goes hungry.

127. Nowak, *supra* note 56; see *infra* Section V.C.

128. Garrett, *supra* note 56.

129. OSTROM, *supra* note 39, at 267-68.



Housing Court—allowed the neighborhood to resolve disputes among property owners in accordance with established rules. No member of the community needed to confront criminal gangs, who nonetheless lost their ability to intimidate residents. Third parties other than courts can also be important. Alexis Street residents effectively secured the assistance of their city council representative to resolve a conflict with the corner tavern, also by invoking established rules—not in court, but in a political venue.<sup>130</sup>

#### F. Principle 7: External Recognition

*Effective commons governance requires that external authorities recognize the user community's right to organize and act collectively.*<sup>131</sup> The City of Buffalo recognizes block clubs as legitimate organizations representing neighborhood interests.<sup>132</sup> On Alexis Street, however, Housing Court provided the crucial recognition for neighborhood monitoring through the appointment of neighborhood residents as Community Liaisons.<sup>133</sup>

#### G. Principle 8: Nested Organization

*If the commons is large and complex, with nested levels of interaction among actors, effective commons governance requires that collective action occur at multiple, nested levels.*<sup>134</sup> Alexis Street residents did not act alone. They were supported by a more inclusive group operating at a larger scale on the West Side—the West Side Community Collaborative. Cities are a complex, layered commons, in which small-scale effects confined to a street-block are nested within larger scale effects extending to an urban district, such as the West Side. Adjacent blocks and streets affect one another, as the Collaborative's block-by-block strategy recognized. Although the primary unit of collective action for the purpose of housing upkeep is the street-block, the surrounding neighborhood clearly has an interest in fostering and assisting collective action on any given block. Once housing blight has permeated a street-block, housing on an adjacent block is easily affected. There is no single, ideal level of collective action among the complex relationships on the urban commons; the layered nature of the urban commons requires more than a single level of collective organization.<sup>135</sup> On the West Side, block clubs were nested within the

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130. See *supra* note 105 and accompanying text.

131. OSTROM, *supra* note 39, at 268-69.

132. See *Block Clubs or Tenant Council*, CITY OF BUFFALO, [http://www.ci.buffalo.ny.us/Home/CityServices/BlocksClubs\\_TenantCouncil](http://www.ci.buffalo.ny.us/Home/CityServices/BlocksClubs_TenantCouncil) [<https://perma.cc/VAR4-LJMT>].

133. See *infra* Section V.C.

134. OSTROM, *supra* note 39, at 269-70.

135. See Galster, *supra* note 8, at 2114.

Collaborative and other West Side organizations enabling residents to take account of both small-scale and larger scale effects. The Collaborative brought greater social capital, and the housing agency, greater financial capital, to bear on a particular street-block than its residents could muster alone.

Unlike a resource commons, the neighborhood is both produced and consumed by neighborhood residents and property owners.<sup>136</sup> Applied to urban neighborhoods, the commons model includes in the same frame two sets of activities usually analyzed separately: property upkeep and property use. Residents contribute to the neighborhood in a variety of ways, whether by painting the fence or planting flowers, or by abstaining from behaviors that subtract from the enjoyment of neighbors, especially those that make the neighborhood feel unsafe. The turnaround on Alexis Street did not occur until highly subtractive behaviors ended, and residents, as well as visitors and potential buyers, could see visible and sustained improvement. In particular, interior renovation was not sufficient.<sup>137</sup> Consistent with Galster's findings,<sup>138</sup> observable changes transformed perceptions of the block and its future.

#### V. FACILITATING COLLECTIVE ACTION

The ordinary act of painting your house is collective action in the urban context. Note the tacit nature of collective action among neighbors: decisions related to housing upkeep are strongly influenced by the behavior of those who inhabit the same street-block, but there is no explicit agreement among neighbors to maintain their property. Assured of positive behavior by your neighbors, you gain from upkeep, but lacking that assurance, you may choose to defer maintenance expenses. Assurance is nonetheless tacit, based on mutual perceptions rather than an explicit bargain. The presence of a holdout that declines to observe neighborhood standards—a dog in the manger who ignores neighborhood consequences—is especially threatening in this context. Collective action breaks down, and a vicious circle of disinvestment sets in. When this happens, neighbors need some way to restart collective action on the block, recreating the mutual assurance on which housing upkeep depends.

The history of neighborhood decline and continued erosion of the housing stock in the United States<sup>139</sup> suggests that collective action related to housing upkeep has broken down in many urban neighborhoods. Moreover, the erosion of the housing stock has occurred in the presence of

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136. *See id.* at 2116.

137. *See supra* note 78 and accompanying text.

138. *See generally* GALSTER, *supra* note 25.

139. *See supra* note 4 and accompanying text.

municipal institutions intended to prevent it—housing codes and a corps of city inspectors to cite violators in courts.<sup>140</sup> The study of common-pool resources suggests that direct user involvement in the regulatory process is a more effective means of sustaining the resource than a reliance on the exclusive exercise of authority by government agents.<sup>141</sup> The commons avoids tragedy when users act collectively.

Garrett Hardin touted two institutional remedies for the tragedy of the commons: private property and administrative regulation.<sup>142</sup> Both turn out to be ineffective in stemming the erosion of the urban housing stock. The housing market treats the neighborhood as divisible among homeowners, leaving spillovers to be regulated by city authorities through the services of building inspectors. Markets hasten neighborhood decline in the presence of highly subtractive users—adjusting housing prices in the neighborhood downward, further dampening residents' incentives to reinvest. At the same time, city inspectors may be unresponsive to the highly local conditions present on specific city blocks.

We argue that the strongest incentives to address neighborhood decline lie with neighborhood homeowners. Like natural resource users who have strong incentives to overcome barriers to collective action when their livelihoods are at stake,<sup>143</sup> homeowners, whose principal capital investment is most often the home,<sup>144</sup> may have equally strong incentives to act when their property values are at stake. But overcoming the barriers to collective action can be costly, sometimes prohibitively so.<sup>145</sup> If selling out is perceived to be the better strategy, the tragedy of the neighborhood commons accelerates.

When collective action is tacit, it is especially sensitive to issues of perception. Two factors underlie perception: direct observations and the mental models used to interpret those observations.<sup>146</sup> Altering perceptions depends on altering one or both of those factors. The West Side Community Collaborative addressed both: changing what residents could see—evicting drug dealers and prostitutes, removing trash, renovating structures, painting exteriors—and modifying how residents thought about their neighborhood, implicitly, we argue, urging them to think of their

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140. See KUSHNER ET AL., *supra* note 1, at 418-22.

141. OSTROM, *supra* note 14, at 93.

142. Hardin, *supra* note 12, at 1244-45.

143. OSTROM, *supra* note 14, at 26, 34.

144. FENNELL, *supra* note 11, at 174.

145. See OSTROM, *supra* note 14, at 40.

146. For a lucid discussion of the factors underlying perception see the bestseller by *New York Times* columnist David Brooks. DAVID BROOKS, *THE SOCIAL ANIMAL: THE HIDDEN SOURCES OF LOVE, CHARACTER, AND ACHIEVEMENT* 180-82 (2012).

particular block as a commons. Changing observables requires direct action, while changing mental models relies on communication and dialogue. Moreover, each factor interacts with the other. Changing one's mental model can lead to direct action, while the success of direct action can reinforce a change in mental models.

Facilitating collective action among urban neighbors depends both on changing observables and on changing the mental models individuals use to assign meaning to observables. Based on the Collaborative's wider experience on the West Side, we suggest three intervention strategies: (1) fostering a shared sense of responsibility among neighbors for the neighborhood commons—a basic change in the mental models that residents use to conceptualize the neighborhood and their relation to it; (2) leveraging investment, neighbor-to-neighbor—taking direct action to alter observables that influence perception; and (3) enabling neighbors to access coercion collectively and as a group obtain the enforcement of housing rules—an institutional strategy for dealing with holdouts whose behavior is highly subtractive. By invoking the formal rules related to housing upkeep, neighbors make explicit the otherwise tacit expectations that enable a neighborhood to sustain the maintenance of the housing stock.

#### A. Obstacles to Neighborhood Responsibility

The Collaborative encountered five main obstacles to the acceptance of joint responsibility on the West Side: weak incentives, feelings of isolation, narrow conceptions of responsibility, the law surrounding private property, and, paradoxically, a strong sense of punitive justice.

##### 1. Incentives

One factor strongly affecting the incentive to participate in collective action is homeownership. Renters are less likely to view themselves as permanent residents whose long-term interests are tied to the condition of the neighborhood. Some significant degree of homeownership on each street-block seems to be a necessary condition of collective action at that level.<sup>147</sup> As Alexis Street turned around, homeownership increased, and some renters became homeowners on the same block.<sup>148</sup>

##### 2. Isolation

Even homeowners residing on the same street-block may have difficulty acting collectively. The costs of collective action include substantial time and effort. Feelings of solidarity among neighbors reduce those costs, as feelings of isolation increase them. When residents saw members of the

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147. See ROTHENBERG ET AL., *supra* note 18, at 287.

148. See KUSHNER ET. AL., *supra* note 1 and accompanying text.

Collaborative planting a garden or cleaning a vacant lot on the West Side, they would often exclaim, “Thank God you are here! I’ve been fighting this battle by myself for years.”<sup>149</sup> Residents who feel isolated are unable to act collectively. Galster found that low solidarity—perceived helpfulness, friendliness, similarity, and commonality among neighbors—discourages home maintenance.<sup>150</sup> External assistance, such as the Collaborative provided on Alexis Street, can overcome feelings of isolation, displacing a mental model of oneself as an isolated individual with a model of oneself as a member of a functional community.

### 3. *Boundaries of Responsibility*

All individuals must determine the limit of their responsibility for others. One is clearly responsible for one’s own house and grounds, especially if one is a homeowner, but this is a privatized sense of responsibility, the sort characterized by Alexis de Tocqueville in his classic account of New England towns as “a narrow selfishness, marked out by four sunk fences and a quickset hedge.”<sup>151</sup> It was a broader sense of responsibility that impressed Tocqueville about New England, a willingness to take a proportionate responsibility for the care of the village.<sup>152</sup> In order to recognize the decline of their block as a problem shared in common with others, not “my problem” but “our problem,” neighbors must modify their mental models to extend the scope of their responsibility beyond their own property lines. As a neighborhood deteriorates individual residents may assume, without communication, that others do not care about their shared urban space and mirror that attitude themselves.<sup>153</sup> One obstacle to joint responsibility may be neighborhood decline itself.

A narrowly defined sense of responsibility is reinforced by the design of municipal institutions. Centralized municipalities foster the idea that City

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149. Garrett, *supra* note 56; personal observation by co-author Clifton.

150. GALSTER, *supra* note 25, at 218-19.

151. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 319 (Francis Bowen ed., Henry Reeve trans., Cambridge: Sever and Francis 1850).

152. *Id.* at 69-71.

153. Neighbors’ responses to one another may reflect correspondence bias, in social psychology “the tendency to draw inferences about a person’s unique and enduring dispositions from behaviors that can be entirely explained by the situations in which they occur.” Daniel T. Gilbert & Patrick S. Malone, *The Correspondence Bias*, 117 *PSYCHOL. BULL.* 21, 21 (1995), [http://www.danielgilbert.com/Gilbert%20&%20Malone%20\(CORRESPONDENCE%20BIAS\).pdf](http://www.danielgilbert.com/Gilbert%20&%20Malone%20(CORRESPONDENCE%20BIAS).pdf) [<https://perma.cc/9MWF-24K9>]. We argue that neighborhood decline convinces people to disinvest. Correspondence bias could be the psychological mechanism through which neighbors misinterpret the motivations and values of neighbors they see disinvesting. As a result, they disinvest too, which in turn is misconstrued by others. As a result, to paraphrase Harvey, ‘nobody cares because nobody else seems to care, when in fact everybody cares.’ Garrett, *supra* note 56.

Hall is responsible for the neighborhood, not neighborhood residents acting collectively. Residents come to believe that if something is wrong, one should call the City and wait for officials to act, and if the City fails to act, the response is to complain bitterly.<sup>154</sup> The Collaborative operated on a contrary principle—that citizens are more productive when they spend their time “doing stuff” instead of seeking funding or trying to get others to act in their interest.<sup>155</sup> Inaction from City Hall should not be allowed to get in the way of neighborhood action. Residents must be willing to mobilize their own resources and turn them into fresh coats of paint, new plantings, boarded-up vacant structures, and other completed items on a long to-do list.

#### 4. *The Law of Trespass*

When a threat to neighborhood wellbeing is located on private property, legal conceptions—in particular the law of trespass—inhibit residents from taking direct action to address the threat. As Fennell notes, “owners of real estate usually have the right to prohibit others from entering their property, even when the trespass would cause no damage.”<sup>156</sup> Getting residents to take direct action often required some convincing; many residents are paralyzed by respect for private property—a mental model that is notoriously strong in American culture. A striking challenge to this mentality in declining neighborhoods is the abandoned house—an invitation to criminal activity and squatting that poses a fire hazard.<sup>157</sup> Usually, when a vacant house needed to be sealed the Collaborative thought it prudent to ask the city to do it initially, while advising residents to monitor the property and, at the first sign of forced entry, reseal it themselves.<sup>158</sup> Yet, if neighbors continually wait for the city—the only entity lawfully empowered to board up privately-owned property—squatters (we conjecture) will continue to make the rational calculation that a few weeks of shelter is worth the few minutes it might take to pry off a board. However, the local citizen who within hours is able to spot the point of entry and then secure it will dissuade potential squatters, who are unlikely to spend time breaking into a house when they can sleep in another abandoned property that is not so closely watched. The Collaborative assumed that one can seal, clean, paint, and mow the lawn without any

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154. Garrett, *supra* note 56.

155. *Id.*

156. FENNELL, *supra* note 11, at 88.

157. JAKLE & WILSON, *supra* note 2, at 190, reported that sixty percent of arson fires in the United States in 1987 were in vacant buildings.

158. Garrett, *supra* note 56.

legitimate party reacting negatively, including the absent owner.<sup>159</sup>

Recourse to direct action exposes the mismatch between the nature of an urban neighborhood and the legal institutions (as well as cultural norms) used to organize and govern its use. As Fennell argues, private property in the urban context is not as private as it might seem.<sup>160</sup> Property law treats each parcel as private property, subject to the law of trespass, trumped only by the action of a distant City Hall.<sup>161</sup> In order to act responsibly from a neighborhood standpoint, residents must often act outside those conventional legal and cultural boundaries.

### 5. *A Punitive Sense of Justice*

Sometimes neighborhood responsibility means performing the responsibilities of neighbors, such as painting a house its owner cannot afford to paint—or is too stingy to paint. West Side residents often resisted this strategy, arguing instead for punishing non-cooperators—in commons terms, holdouts. The urge to punish, we argue, derives from a mental model that sees punitive justice as a first priority in most social circumstances. The Collaborative followed a different strategy: punitive measures were sought only when useful as a means of preserving the neighborhood.<sup>162</sup> This approach can be viewed as an extension of the principle of graduated sanctions for governing the commons to include generosity and forgiveness as a means of fostering solidarity.<sup>163</sup>

Fostering neighborhood responsibility requires ongoing discussion among neighborhood residents. The Collaborative provided a forum for such discussions on the West Side. The concept of the neighborhood as commons can contribute to such a process by providing residents with a mental model for understanding the nature of the neighborhood and their role as commons users in its governance. In maintaining a sense of community, however, there is no substitute for ongoing communication. Neighborhood associations and block clubs play a key role in this process.

Given a shared sense of responsibility for the neighborhood, residents of declining neighborhoods need strategies for reversing a cycle of disinvestment—leveraging housing upkeep in an environment that has discouraged it. We turn next to this issue.

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159. *Id.*

160. FENNELL, *supra* note 11, at 88.

161. *Id.* at 148-49. Fennell emphasizes the dichotomous nature of private property and public power, which (we argue) leaves little or no middle ground for neighbors to act directly to protect their interests.

162. Garrett, *supra* note 56.

163. *See supra* Section IV.D.

## B. Leveraging Investment

Reversing the tragedy of the neighborhood-commons requires making housing investments that encourage others to invest as well. Housing maintenance and investment in an urban neighborhood are strategic decisions in the sense that individual homeowner decisions depend on the decisions of others on the street-block.<sup>164</sup> We argue that this interdependency can lead either to a cycle of disinvestment or a cycle of re-investment. Both are subject to threshold effects as well as perception issues. Threshold effects occur when changes are discontinuous. In an urban neighborhood neighbors may tolerate lack of housing upkeep by others up to a point, after which it affects their own upkeep decisions. Those decisions are affected by how residents perceive their neighborhood and its future—perceptions that are influenced by signaling events, i.e., observables that send signals to neighbors indicating trends: perhaps the abandonment of a house or a lawn left uncut for an entire summer, or the reverse, the renovation of a longstanding eyesore.

The strategic homeowner does not strictly follow her preferences when deciding whether or how to invest in the home. Instead of making decisions about housing maintenance and upgrades based solely on the condition of the property and personal preferences, homeowners take into account the condition and use of surrounding property. For example, because the condition of surrounding property limits the visual effect of exterior investment, homeowners in a degraded neighborhood may choose to upgrade interiors but not exteriors.<sup>165</sup>

Complementarities make it possible to use an initial investment to leverage further investment among neighbors. Because a homeowner may realize a greater return from painting her house when her neighbor also paints her house, painting can spread through the neighborhood—blight in reverse.<sup>166</sup> Homeowners who are willing to risk going first can leverage improvements from others.

Some individuals may choose to invest in neighborhood property despite prevailing disinvestment; we call them counter-investors, persons who invest against the neighborhood trend. Counter-investment potentially can reverse a disinvestment cycle by encouraging others also to invest, but counter-investments must be carefully selected for their leveraging

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164. Political scientists are well aware of the “strategic voter,” who votes not for her first preference but for an acceptable candidate others are also perceived to support. Urbanists need to be equally aware of the “strategic homeowner.”

165. As a community organizer living on the West Side, co-author Jeremy Clifton was invited into dozens of homes. He noticed that quite often a poorly maintained exterior was not indicative of a poorly maintained interior.

166. See SIMON, *supra* note 54, and accompanying text.



potential. If the neighborhood is a commons, it follows that counter-investment should improve what neighbors share most in common. This means improving primarily the most visible portions of the streetscape—the street, front yards, and front facades—observables that inform homeowner decisions: “Should I move away? Should I put on a new roof? Should I mow my lawn today?” Backyard and interior improvements, like remodeling and weatherization, we conjecture, do little or nothing to alter neighbors’ upkeep decisions (just as Alexis Street continued to decline after new residents renovated the interior of their home on the corner).<sup>167</sup>

Though it is difficult to identify precisely, a threshold must be crossed before expectations on a street-block flip and the cycle of disinvestment reverses, altering the perceptions not only of block residents but also of external actors, including real estate brokers. This threshold will be somewhat different for different persons, depending on individual tolerance for neighborhood disarray or individual reading of neighborhood signals that indicate a turnaround. Differing thresholds were apparent on Alexis Street.<sup>168</sup> Some people only need one new investment to begin to reinvest (the Browns); others need a little more evidence (Wanda). Still others need nearly everyone to reinvest before they reinvest (the tavern).<sup>169</sup> Differing thresholds among neighbors are compatible with neighborhood turnaround as long as investment momentum is picked up and maintained by individuals until a second threshold—a group threshold—is crossed. In the end the evidence of turnaround is obvious and the common perception emerges that ‘this is a good place to invest and everyone thinks so.’

### C. Obtaining Enforcement

Like most commons, neighborhoods are rule-governed spaces. Cities use their police powers to regulate land use, housing, and public behavior.<sup>170</sup> Of greatest interest for neighborhood decline is the housing code, which stipulates various conditions that housing is required to satisfy.<sup>171</sup> Many of these rules obviously are unenforced—the extent of

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167. See Garrett, *supra* note 56.

168. See *supra* Part III.

169. See Garrett, *supra* note 56 and accompanying text.

170. See KUSHNER ET AL., *supra* note 1, at 413-15.

171. See CITY OF BUFFALO, N.Y. CODE, chs. 242, 341-7. Ch. 242-9C contains a list of defective conditions. Ch. 341, *Property Maintenance*, also addresses the conditions of surrounding grounds. Housing standards are also found in numerous other chapters scattered throughout the code, cross-referenced in ch. 242, as well as in provisions of state law. See, e.g., New York State Fire Prevention and Building Code Act, N.Y. EXEC. LAW §§ 370-83 (McKinney 2015).

neighborhood decline being the prime evidence.<sup>172</sup> Neighborhood collective action may often hinge on rule enforcement to deal with holdouts, raising the question of the neighborhood's access to coercion.

Unusual among cities, Buffalo has a separate Housing Court, created by state law in 1978.<sup>173</sup> The law provides wide discretion to housing judges:

Regardless of the relief originally sought by a party, the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest . . . . The court may retain continuing jurisdiction of any action or proceeding relating to a building until all violations of law have been removed.<sup>174</sup>

Yet, the creation of an institution with discretion does not guarantee that it will be effectively used. Inspectors can write citations and the court can fine violators, but the deterioration of the housing stock will proceed if the court does not deal effectively with persistent violators in a manner that alters neighborhood perceptions of decline—exactly what occurred on Alexis Street prior to Judge Nowak's arrival on the bench.<sup>175</sup>

In 2003, just as the West Side Community Collaborative was getting underway, Henry Nowak was assigned to preside over Buffalo's Housing Court as a newly elected member of the panel of judges that comprise City Court.<sup>176</sup> Judge Nowak conceived of Housing Court as a problem-solving venue. If its role were mainly punitive, he maintains, there would be no point in having a separate court: "But," he notes, "if you want to get the roof fixed, you need a special court and special legislation."<sup>177</sup> In his personal copy of the legislation, Judge Nowak had circled and re-circled the "or" in "to accomplish compliance *or* to protect and promote the public

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172. The Buffalo City Code requires that "[e]xterior and interior surfaces, including but not limited to foundations, roofs, floors, walls, ceilings, doors, windows and fixtures of buildings and structures, shall be maintained: (1) In a clean, safe and sanitary manner; and (2) Free of substantial deterioration or graffiti." CITY OF BUFFALO, N.Y. CODE, ch. 341-7B, *supra* note 171. Violations of these requirements were apparent on Alexis Street and can be observed in many parts of the West Side.

173. Others include Cleveland, Pittsburgh, Boston, and New York City. *See* KUSHNER ET AL., *supra* note 1, at 433-36.

174. Buffalo, N.Y., Buffalo City Court Act, art. X, § 204 (1978).

175. *See supra* Part III.

176. This account of Housing Court is based primarily on the authors' interviews with Judge Henry Nowak in 2010, as well as co-author Jeremy Clifton's experience as a Housing Court Community Liaison on the West Side from 2007 to 2010. Nowak, *supra* note 56. Nowak left the court in 2010 for the New York State Supreme Court in Erie County.

177. *Id.*

interest.”<sup>178</sup> How to determine the public interest and bring it to bear in court was the institutional puzzle he had to solve.

In the seven years that followed, beginning with the Alexis Street case, Judge Nowak greatly expanded the scope of the court in two basic ways. First, he moved away from a punitive approach toward one based on problem solving.<sup>179</sup> Just as the Collaborative found at the neighborhood level, punishment and problem solving are often antithetical. Nowak acknowledged that many of the defendants brought before him were slumlords, drug dealers, or gangsters. “There is one way,” he said, “I can guarantee you the property will not be fixed: if I throw him [the owner] in jail.”<sup>180</sup> Likewise, instead of simply imposing fines, he used the threat of fines as leverage to push reluctant property owners to invest in their property or sell it to somebody who would, as he did with the delinquent owner of four properties on Alexis Street.<sup>181</sup> Owners could mitigate their fines if they made repairs, and with full compliance an owner could usually avoid penalties entirely.

Although previous analysts have treated code enforcement as a potential contributor to housing abandonment, driving up costs for landlords unable to recover those costs from low-income renters,<sup>182</sup> the problem-solving nature of Housing Court achieved the reverse. Unfortunately, a problem-solving focus is much more labor intensive. Nowak estimated that a typical case required twenty or more appearances to be resolved.<sup>183</sup>

Nowak’s second basic change focused on neighborhood involvement, needed if Housing Court was to be a problem-solving venue. Echoing Jane Jacobs, he notes that citizens are the “best eyes and ears” on the street; they often know the offending property’s history and can keep close tabs on it in the future.<sup>184</sup> Neighborhood involvement does not just happen, however, and initially it did not happen in Judge Nowak’s courtroom. He remedied this in two ways: first, by rearranging the court calendar, at the suggestion of neighborhood leaders, so that they knew when cases from their neighborhood would be heard; and, second, by appointing Housing Court Community Liaisons.<sup>185</sup>

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178. *Id.* (emphasis added).

179. *Id.*

180. *Id.*

181. *Id.*; Garrett, *supra* note 56.

182. See GRIGSBY ET AL., *supra* note 10, at 54.

183. Nowak, *supra* note 56.

184. See JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961).

185. Nowak, *supra* note 56. Harvey Garrett was the first Housing Court Liaison, representing the area served by the West Side Community Collaborative. See Garrett, *supra* note 56. Alexis Street provided one of the first tests of Judge Nowak’s problem-solving approach. See *supra* Part III.

When Judge Nowak began scheduling cases by district, each of the city's nine districts was allotted a morning or afternoon. In the judge's words, "everything changed."<sup>186</sup> Community members knew the details of the properties intimately and had valuable information about them, including their history and current condition. They began coming to court because they realized that, as Harvey notes, "for two hours a week [one could] see every single case in your area."<sup>187</sup> The scheduling change also made it easier for the neighborhood to work with city inspectors. As Clifton observed, the hallway outside of Housing Court became a place of lively exchange, where neighbors buttonholed inspectors, contact information was obtained, and services discussed. Furthermore, often the judge would direct defendants to talk to community members so they could be connected to resources.

Eventually, Housing Court Liaisons numbered some twenty-five community residents from around the city, including co-author Jeremy Clifton. The liaisons were recruited from various community-based organizations—AmeriCorps, block clubs, and others—and trained by the court. Training was straightforward. The group did not know, and did not need to know, many details about the actual housing codes because all properties still went through qualified inspectors. As Clifton observed, the typical process still involved citizen request, inspection by a city housing inspector, re-inspection, write-up for court, and judge-mandated follow-up inspections. Judge Nowak summarized all that the liaisons needed to know about the housing code on more than one occasion, "Everything . . . should be in good repair."<sup>188</sup> Instead, the group was trained to understand the inspections process and help fellow residents to understand it, navigate it, request inspections, gather additional information, and share the results with the court. Each week, liaisons touched base with block club members concerning various properties. They also walked their neighborhoods, often on the morning before the afternoon Judge Nowak had assigned cases from the district, to visit properties, gather neighborhood concerns, and take pictures.

In court, the liaisons confirmed implementation of court orders, including the work of city inspectors, property owners, police, and tenants. They sat in reserved front-row seats, and Judge Nowak gave them an opportunity to provide input on every case. Sometimes they had no input to give, but usually they could provide timely information on the current state of the property, the opinions of the neighbors, or the history of the

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186. Nowak, *supra* note 56.

187. Garrett, *supra* note 56.

188. Nowak, *supra* note 56.

property. In short, liaisons had no actual power but enjoyed extraordinary access to a judge with broad powers.

As daily monitors of their neighborhoods, liaisons could also identify emerging problems in a timely manner. For example, in January 2008, when co-author Clifton was making his usual rounds visiting properties that would appear in court that week, he noticed something suspicious. One property appeared newly unoccupied, as there was no path through snow that had fallen several days before, either shoveled or packed down. There was, however, one track of suspiciously solitary footprints running down the side of the house. Clifton followed them, and they ended at a broken window—a sign of unauthorized entry. Then he realized he could hear the sound of rushing water. Glancing about for some sign of a stream, he noticed the sound was coming from the window. Grabbing the window ledge, he hoisted himself up to discover a waterfall roaring down a flight of stairs. He called the water company directly, but they would not turn off the water because the bill was in good standing. However, in court that afternoon, a liaison relayed this information to Judge Nowak, who ordered the water company to turn off the water. Apparently, at the beginning of the month the tenants had moved out without notifying the landlord, turned off the heat, and the pipes had burst. Timely citizen access to coercion was useful in correcting an obvious problem that, if left unchecked, could broadly and negatively impact an already struggling block.

Liaisons often recommended court inaction. For instance, inspectors may cite a house with numerous and extensive violations; however, it may also be the newly purchased, first home of a low-income family who will need months, perhaps years, to correct the violations. After making sure the neighbors are on board, a liaison can report to the court that the property is being slowly rehabilitated, and the neighbors would like the court to give the owner time to finish. Indeed, the most frequent input that co-author Clifton gave the court was to request additional time on behalf of a low-income homeowner. More time was almost always granted. In this way a low-income family has a chance to succeed instead of being forced to pay fines and/or sell the property to someone who has the capital to correct the violations quickly. Another example of recommended inaction included properties in court because of specific health problems. For example, a lawn might be overgrown because an elderly man broke his hip and had been unable to secure assistance. Often a liaison can connect the elderly or disabled with a local resident willing to lend a hand during the summer. Judge Nowak was sensitive to these contextual issues.

Housing Court works well to constrain holdouts when the offending parties own or occupy housing in the neighborhood, but that is not always

the case. Three blocks west of Richmond, on 19<sup>th</sup> Street, the Collaborative encountered an open-air Saturday drug market.<sup>189</sup> Unlike the limited access to the neighborhood for residents, mediated by the real estate market, the street market emerged as a result of open access to the street.<sup>190</sup> Open access is much more problematic than the limited access available to residents because of the difficulty in identifying offenders and the higher costs of monitoring.<sup>191</sup> The Collaborative organized neighborhood cleanups to coincide with the Saturday drug market.<sup>192</sup> Responding to the Collaborative's initiative, the Erie County District Attorney's office declared a "no plea bargain" policy for drug arrests made on the street, and Family Court agreed to haul teenage drug-runners into court instead of sending them to a probation officer.<sup>193</sup> The drug market soon disappeared from the neighborhood.<sup>194</sup>

Organized as a problem-solving venue, Housing Court was accessible to neighborhood residents, reliant on neighborhood knowledge and resident monitoring, and sensitive to neighborhood conditions calling for differing degrees of leniency or strictness of enforcement. The court's ability to constrain the holdout position often taken by landlords was clearly instrumental in curtailing neighborhood decline on the West Side, as illustrated in our detailed account of Alexis Street.<sup>195</sup> However, the court's strength—a heavy reliance on judicial discretion that provides ample flexibility in dealing with individual cases—is also a potential source of weakness; sustaining the neighborhood-friendly approach taken by Judge Nowak depends on the development of a problem-solving tradition in the court that can survive a succession of judges.

Conceivably, more can be done to strengthen the capacity for collective action in urban neighborhoods. Suburban neighborhoods often have institutional arrangements capable of addressing holdout problems—homeowners associations (HOAs), in which membership is compulsory, organized by means of deed covenants put in place by subdivision developers and enforceable in court.<sup>196</sup> The purpose of these institutions is congruent with the need for collective action in urban neighborhoods—both aim at maintaining property values and sustaining neighborhood

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189. LISC, *supra* note 57.

190. *See supra* Part II.

191. *See supra* note 47 for a discussion of excludability in neighborhoods.

192. LISC, *supra* note 57.

193. *Id.*

194. For its work on 19th Street, the Collaborative won a MetLife Community-Police Partnership Award. *Id.*

195. *See supra* Part III.

196. *See* NELSON, *supra* note 48.

amenities. By institutionalizing the process of collective action, HOAs move neighborhood collective action out of the tacit dimension. The negative externalities most suburban homeowners face, however, pale in comparison to those that confront urban residents; yet it is urban neighborhoods that typically lack coercive capabilities. The creation of compulsory homeowners associations in urban neighborhoods would require unanimity among property owners in the neighborhood in order to add the appropriate covenant to each and every deed—a requirement almost sure to face insurmountable holdout problems.<sup>197</sup> State enabling legislation would be needed to create a capacity for neighborhood incorporation by majority or supermajority vote.<sup>198</sup> An urban neighborhood incorporated on a homeowner association model would have the ability to make housing rules and collectively invoke those rules in court without having to rely on city inspectors.<sup>199</sup> Such an institution comes closer to fulfilling Ostrom's principles of sustainable commons governance, in particular Principle 5, by endowing urban neighborhoods with independent rule-making and rule-invoking authority.<sup>200</sup>

#### CONCLUSION

Elinor Ostrom's principles of commons governance can readily be adapted to the study of the neighborhood commons in American cities. By using the street-block as the primary unit of analysis one can perceive the relevant relationships among neighbors and observe their decision-making dynamic over time. Moreover, subject to further research, the West Side experience strongly suggests that neighborhood blight is a block-level problem that responds to block-level remedies. Voluntary associations of householders—block clubs—can coordinate collective action and strategic investment among neighbors, monitor neighborhood behavior, and invoke housing-related rules. At the same time, larger-scale neighborhood organizations can bring the social capital of a wider district to bear on the issues addressed at the street-block level.

Neighborhoods are not inherently helpless in the face of external forces that drive neighborhood decline, as often thought. The succession of neighborhood income levels from higher to lower, driven in part by

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197. *See id.* at 265.

198. *See id.* at 266-67.

199. Judge Nowak sought legislation from city council that would allow individual residents to seek judicial action against neighboring property owners without the participation of city inspectors, to no avail. *Id.*

200. *See supra* Part IV. Incorporated neighborhoods could be assigned a range of limited powers, e.g., a share of the municipal property tax in the manner of business improvement districts (BIDs) and possibly eminent domain powers. *See Foster, supra* note 11, for a discussion of institutional options.

suburbanization, need not lead inevitably to the erosion of the urban housing stock: what matters is how neighborhoods respond to these and other external forces. Neighbors that can sustain a collective response, providing mutual assurance of housing upkeep, can forestall decline or even reverse decline already underway. The ability of neighborhoods to act collectively, especially at the level of the street-block, is critical to an effective neighborhood response.

Neighborhood collective action, however, is not spontaneous but depends on specific enabling conditions. A host of factors discourage residents from taking responsibility for their neighborhood: lack of homeownership and the long-term interest it fosters in favorable neighborhood conditions; isolation from neighbors and a resulting lack of trust; narrow conceptions of self-interest that exclude the wellbeing of neighbors; the law of trespass, which inhibits residents from taking direct action when neighboring property poses a threat; and a strong sense of punitive justice, which prompts residents to punish holdouts rather than compensate for their non-cooperation when possible.<sup>201</sup> Overcoming these factors requires residents to alter the mental models they use to conceptualize the neighborhood, which, in turn, requires ongoing communication among neighbors, sufficient to sustain a shared sense of neighborhood responsibility. The concept of the neighborhood as commons is useful not only as a tool of analysis for community organizers but also as a mental model for city dwellers, one that reshapes the way they understand their neighborhoods.

Residents who seek to encourage upkeep on the part of their neighbors may need to modify their own investment strategies in favor of observables—prioritizing external improvements that the neighbors can see over internal improvements that remain invisible from the outside. One effective way to encourage your neighbor to paint her house is to paint your own. The same consideration applies to cutting the grass, planting flowers, and picking up litter.

For the hard cases, however, that require neighbors to confront holdouts whose behavior manifestly threatens the future of the neighborhood, what is required is access to coercion. This is what Buffalo's Housing Court provided through its neighborhood-friendly approach: easing access by residents by scheduling neighborhood cases on a regular day of the week and using neighborhood liaisons as housing monitors—the eyes and ears of the court—and as advisors to the court on the appropriateness of court orders and sanctions.<sup>202</sup> The key is not the use of coercion in routine ways

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201. See FENNELL, *supra* note 161 and accompanying text.

202. See *supra* Section V.C.



by city administrators but, rather, neighborhood access to coercion as part of a problem-solving process. Buffalo's Housing Court added a coercive capability to the otherwise voluntary instruments of collective action available to neighborhood residents, enabling them to monitor the application and enforcement of the housing code in their neighborhood.

Critics of the approach described here may be inclined to dismiss any effort to reverse neighborhood decline as gentrification—succession in reverse. Although a full discussion lies beyond the scope of this paper, gentrification can threaten the preservation of stable neighborhoods for low-income residents.<sup>203</sup> When “gentrification” is used loosely to refer to any degree of displacement of lower income residents by higher income residents, however, nearly any process of neighborhood improvement may qualify as gentrification. If instead we reserve “gentrification” for a high degree of displacement, we conjecture that a major contributing factor is the scale of development. Large-scale developments aimed at a high-income clientele can have a large impact on the composition and character of a lower-income neighborhood. Much like resisting neighborhood decline, resisting gentrification at the hands of large-scale developers may also turn upon neighborhood collective action, albeit of a different sort and on a district level rather than a street-block.<sup>204</sup>

In the meantime, much of the housing stock in urban America continues to be lost to blight, abandonment, and demolition. Factors both external and internal to cities and their neighborhoods are at work. When internal factors weigh heavily, commons research suggests practical remedies: tragedy can be averted—provided that neighborhood residents act collectively. An important priority for urban policy is then to facilitate collective action, block by block.

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203. For a summary of gentrification research, see Justin Feldman, *Gentrification, Urban Displacement, and Affordable Housing: Overview and Research Roundup*, JOURNALIST'S RES. (Aug. 15, 2014), <https://journalistsresource.org/studies/economics/real-estate/gentrification-urban-displacement-affordable-housing-overview-research-roundup> [<https://perma.cc/43BM-DYFN>].

204. For example, a downtown neighborhood in Buffalo called the Fruit Belt, feeling threatened by gentrification, has proposed using two hundred vacant properties owned by the City in the neighborhood to create a community land trust. The neighborhood-governed land trust would retain ownership of the land while leasing parcels to individuals who would purchase and own housing on a parcel. *See* P'SHIP FOR THE PUB. GOOD, A PLAN THAT BEARS FRUIT: A COMMUNITY LAND TRUST AND OTHER TOOLS FOR NEIGHBORHOOD REVITALIZATION IN THE FRUIT BELT (2016), [https://ppgbuffalo.org/files/documents/environment/land\\_use/environment-\\_a\\_plan\\_that\\_bears\\_fruit.pdf](https://ppgbuffalo.org/files/documents/environment/land_use/environment-_a_plan_that_bears_fruit.pdf) [<https://perma.cc/H589-J9VJ>].