

Tackling Vacancy and Abandonment: Strategies and Impacts after the Great Recession





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Approaches to Rural Property Vacancy in Law and Policy

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Introduction

Much of the conversation on property vacancy and its associated physical, social, and legal problems focuses on urban issues. This focus on the urban is not without good reason. Cities such as St. Louis, Cleveland, and Atlanta have substantial property vacancy problems and have also led the way on tackling such problems. Efforts to address property vacancy and dilapidation in those and similar cities serve as models and case studies that offer direction to other communities around the country (Eisenberg, 2018; Johnson, 2017).

But property vacancy and dilapidation pose challenges to rural communities as well. Rural residents, rural local governments, scholars of rural studies, policymakers, and other stakeholders would benefit from a more robust discussion of the unique property vacancy issues that rural communities face. Rural communities are shaped by population sparseness, spatial distance, and often dramatically limited resources. Thus, the strategies to address rural property vacancy—while certainly overlapping with strategies in urban contexts—arguably require a lens tailored to their unique geographical and governance circumstances (Steinberg and Housewright, 2019; Fitzgerald-Mumford, 2019; Johnson, 2017; Pruitt 2014).

Although the problem of rural property vacancy is difficult to quantify because of poor documentation, several factors offer reason to believe that rural property vacancy is a more widespread and pressing problem than many may realize. Rural population loss over the past several decades has been concentrated and protracted. This means that certain distressed rural counties have lost dramatic proportions of their populations in recent years. For instance, a recent sociological study concludes that one-third of rural counties have lost approximately one-third of their population since 1950, though in many communities the losses have been much higher (Johnson and Lichter, 2019). Anecdotal evidence from individual towns struggling to address problem properties-or even becoming "ghost towns" after reaching 100 percent vacancy rates—and the harsh impacts of the Great Recession on rural regions also suggest that this problem is relatively widespread. These trends coupled with the contraction of key traditional rural industriesincluding agriculture, manufacturing, and natural resource extraction—indicate that a substantial proportion of the built environment in distressed rural regions is no longer in use (Eisenberg, 2020; Fitzgerald-Mumford, 2019; Johnson and Lichter, 2019; Anderson, 2014). In the limited literature on rural property vacancy, commentators agree that this problem is urgent, understudied, and underaddressed (Skobba, Osinubi, and Tinsley, 2019; Johnson, 2017; Jourdan, Van Zandt, and Adair, 2010).

This article explains how rural property vacancy needs to be viewed as a unique phenomenon, rather than a mere geographic variation or smaller-scale version of the phenomenon of urban property vacancy. It then reviews three unique approaches being used or contemplated for their potential to address rural property vacancy in law and policy: creating regional land banks, anticipating end uses to streamline processes and strategies, and using creative code enforcement strategies. These approaches have emerged over the past decade of tackling rural vacancy and abandonment as rural communities have worked to address this problem. These approaches also stand to inform future efforts among practitioners, reform initiatives, and the broader conversation on property vacancy in general.

Understanding Urban/Rural Differences

Recent trends in rural socioeconomic decline

The United States used to be an overwhelmingly rural country. But a diverse set of factors have driven a relatively rapid, dramatic process of urbanization during the 20th century. These factors include farm mechanization and consolidation, liberalized trade allowing manufacturing plants to relocate, decreased natural resource extraction, and increased renewable energy production. Social trends have contributed to urbanization as well, as younger generations have sought out opportunities and amenities associated with cities (Eisenberg, 2020; Johnson and Lichter, 2019).

Despite modern urbanization trends, rural America remains heavily populated when viewed in absolute terms. Forty-six million people, roughly one-seventh of the national population, live in rural areas. Approximately 72 percent of the land mass of the United States is designated as rural. Thus, although the rural proportion of the population has decreased, there is still a sizable rural population, the needs of which warrant attention. The population remaining in the areas with the most depopulation is, of course, shrinking, and currently stands at roughly 6.2 million residents. But depopulation and its associated challenges are not limited to any one region; it affects the Dakotas, Nebraska, Kansas, Oklahoma, Texas, the northern Great Lakes, the interior of the Southeast, the Mississippi Delta, and mining communities in West Virginia and Kentucky (Johnson and Lichter, 2019).

Substantial proportions of the remaining rural population are now saddled with social and economic challenges that once were considered to be solely "inner-city" problems. Today, the regions with the highest levels of concentrated chronic poverty are rural. These regions have been hit hard by high rates of unemployment and the opioid epidemic. These trends place struggling rural communities in a Catch-22 of sorts in working to address their problems, including vacant properties: As distressed areas struggle, they are often in the process of losing the capacity to address their struggles, as tax revenues flow away and the population's suffering is compounded. Building code enforcement and other measures to prevent and address property vacancy often seem like the least of residents' and local governments' worries. Thus, a realistic, creative discussion of rural property vacancy should take these conditions into account (Eisenberg, 2018; Conn, 2017).

Population sparseness, size, and limited resources

Vacant properties are, by and large, a local government issue, and urban and rural local governments could arguably be viewed as fundamentally different. According to the U.S. Census Bureau, rural municipalities have populations of fewer than 2,500 residents. Localities larger than that but still smaller than 50,000 residents are considered "urban clusters." And a place is officially "urbanized" if it has a population of more than 50,000 (Ratcliffe et al. 2016). Thus, rural property vacancy may be an issue to be tackled by a literal village, the leadership of which may be constituted by a handful of volunteers with other jobs and limited expertise. This is a different scenario than the city of St. Louis, with a population of several hundred thousand people, attempting to address its vacant properties. Even though St. Louis and similar cities face their own very meaningful challenges, many rural communities lack comparable budgets, expertise, community groups, and other resources to put to the task.

In her research on this topic, law student Mairead Fitzgerald-Mumford explains, "The solutions proposed in much of the existing vacant-property literature cannot be adopted wholesale into a suburban or rural context" (Fitzgerald-Mumford, 2019, p. 1801). In addition to differing local government capacities, the economics of rural land and rural property markets are different from those in urban contexts. In contrast to urban land, rural land is often a low-value burden rather than a commodity. Rural localities have often worked hard to attract development by limiting land-use controls to accommodate developers and make otherwise unattractive land as cheap as possible. Thus, a vacant property in an urban center—even a struggling one—is more likely to end up being reused than a vacant property in a remote, sprawling locality.

Optimal approaches to property vacancy in rural communities will therefore need to aim for a few overarching objectives. Since rural communities in tackling their problem properties may well be attempting to "do something with nothing," their approaches cannot be overly resource intensive. Municipal land banks, public nuisance lawsuits, condemnation, and other aggressive local government processes may be more suited to the urban context where more resources are available to public actors. Processes that involve a limited amount of investment by the local government, that are neither too complex nor too costly, and that take into account limited regional markets may be likelier to succeed (Eisenberg, 2016).

Approaches to Addressing Rural Property Vacancy in Law, Policy, and Community Initiatives

This section discusses three approaches that have received increasing attention as possible tools that make sense in the context of rural property vacancy. These approaches include regional land banks, the "market-anticipatory" approach, and creative approaches to code enforcement. Each of these holds demonstrable promise as a legal or policy strategy for addressing rural property vacancy in that they focus on consolidating scarce resources, streamlining processes, and accounting for limited local markets for property reuse.

Regional land banks

One of the main themes of the literature on rural property vacancy over the past decade is that the "land bank revolution" of the past 10 years could do more to include rural communities. Land banks are typically defined as "governmental or nonprofit entities that acquire, hold, and manage foreclosed or abandoned properties" (Johnson, 2017, p. 1064). They are usually created at the municipal level, and their use has been gaining popularity throughout the country since the Great Recession.

The use of land banks has proliferated along a timeline of three phases or "generations." First-generation land banks started the land bank movement in the 1970s in Atlanta, St. Louis, Cleveland, and Louisville. After these cities led the way, more state-level legislation began to follow in step during the 2000s, with legislative initiatives coming out of Michigan and Ohio that largely mirrored the first programs. Most recently and since the Great Recession, the third generation has been the most widespread, as laws enabling land banks have been passed in New York, Georgia, Missouri, Pennsylvania, Tennessee, Nebraska, Alabama, and West Virginia, among others (Johnson, 2017; Alexander, 2015).

The limited literature on rural property vacancy seems to have reached a consensus that rural communities stand to benefit more from regional land banks-and legislation that enables and supports regional property vacancy initiatives-than from the more urban-oriented models of the first land bank generation. Municipal land banks are often not a realistic option in the rural context. Land banks require public or quasi-public resources to acquire, rehabilitate, and redistribute properties-resources that many municipalities lack. In most states, land banks also require enabling state legislation in order to be created. County-level or regional land banks may make more sense than municipal ones for many rural communities because they open the door to joint uses of resources (Eisenberg, 2018; Johnson, 2017; Eisenberg, 2016; Jourdan, Van Zandt, and Adair, 2010).

For example, Jourdan, Van Zandt, and Adair observed after the housing and foreclosure crisis that the focus of land banking policies in Texas "fail[ed] to fully comprehend how the current housing crisis has affected smaller communities that are often harder hit by vacant and abandoned property because of already limited tax bases and lack of market demand for new and better-quality affordable living opportunities for local residents" (Jourdan, Van Zandt, and Adair, 2010, p. 153). The authors noted that because local rural governments often lack the resources of larger municipalities, viewing rural property vacancy through a regional lens made sense for two main reasons. On a regional basis, the scope of the rural property vacancy problem could be better understood. For example, a handful of problem properties in one small town might seem like a small problem not warranting intervention. But expanding the lens of assessment of the problem-revealing proliferations of such clusters on a regional basis-could also help establish a more holistic view of the regional challenges involved with property vacancy. Second, regional initiatives could also allow local governments to pool funds or draw on existing regional entities, such as planning or economic development agencies, which may have more resources and expertise to pursue land banking activities than small municipalities (Jourdan, Van Zandt, and Adair, 2010).

Another promise regional land banks hold for rural communities is the creation of more robust markets for acquiring and redistributing properties. By expanding opportunities for land banks to acquire diverse properties in a dispersed area, a land bank has a greater chance of selling any given property to a new user, helping to overcome limited markets for buyers of rehabilitated properties in any particular rural locality. Increased opportunities for sales can help open revenue streams to the entity, meaning that sales in one area could potentially help finance property remediation efforts in another area.

During the initial land bank boom, most states did not enable the creation of county or regional land banks. The most recent generation of land banking seems to have incorporated rural considerations into enabling legislation more than the first two. New York, Georgia, and Pennsylvania seem particularly interesting as leaders in the movement to incorporate regional land banks more centrally into property vacancy initiatives. As of 2019, New York State had 20 county or regional land banks, and Georgia and Pennsylvania each had 15 county or regional land banks. Many of these were relatively new, created since 2013. Tennessee has only two land banks, but they are both county or regional land banks (Bollwahn, 2019). Although more empirical research is needed to assess these programs' efficacy in addressing rural property vacancy, their existence is, at the very least, a sign of efforts toward geographic inclusivity in state-level initiatives to address property vacancy.

The "market-anticipatory" approach

Some commentators have observed that rural communities are not in a position to bide their time and hope that local markets sort out any particular problem property. While an urban vacant property may have interested investors even if it is unattractive in some way, owing to adjacent population density and higher growth potential, a vacant rural property may be more likely to simply sit, unused and burdensome, forever. Similarly, while urban local governments may be able to invest some of their own time and resources in addressing a vacant property with the anticipation that a future tenant or owner will put the property into productive use, rural communities are not in as much of a position to start down a resource-intensive path with the mere hope of a positive outcome (Eisenberg, 2016; Fitzgerald-Mumford, 2019).

One tactic rural communities have used with some success is what Fitzgerald-Mumford calls the "marketanticipatory" approach. This approach involves making a determination as to the new reuse and tenant for a property in question *first* and then "identify[ing] the path of least resistance" and the means to removing the barriers to putting the property into that tenant's hands (Fitzgerald-Mumford, 2019, p. 1802). She recommends that the first step be a diagnostic to determine the highest-value use for the property. For example, perhaps an abandoned retail store should still be used for retail, or perhaps its best use has shifted to something else, such as an office facility or senior center. The next step is finding an appropriate tenant or new owner. The third is working to reduce as much as possible the transaction costs of putting the property into the new owner's hands (Fitzgerald-Mumford, 2019).

Various complexities affect this process and will make it unique to each property's and community's context. The question also arises as to whether the local government will be acquiring the property itself, with a view to a rapid turnaround for a new end-use, or whether the local government is acting as more of a facilitator between the current owner and a prospective one, which is along the lines of Fitzgerald-Mumford's prescribed process (Fitzgerald-Mumford, 2019). But the principle seems like an important one for reshaping rural processes in tackling rural property vacancy: Rather than starting the process without a view to the end result, rural local governments can determine the end result and then seek to streamline their processes to arrive there. Anecdotal data from the City of Spencer, West Virginia, population 3,000, also suggest that this approach is worth deeper consideration as a potentially helpful tool, both philosophically and practically, for the unique context of rural property vacancy where markets are thin. In 2014-2015, researchers and practitioners at West Virginia University College of Law interviewed stakeholders from small municipalities about their challenges and success stories in tackling their problem properties. An interview with Spencer's city attorney, Tom Whittier, reflects an approach that sounds similar to Fitzgerald-Mumford's "market-anticipatory" approach (Anderson et al. 2015).

Whittier's approach involves streamlining processes as much as possible and focusing on end uses first. He described "using legal proceedings as 'the last resort." Rather, he identified problem properties, prioritized them, and then, along with the mayor, contacted the owners to try "to work out a deal based on the particular problem." These conversations range "from simply encouraging the owner to make repairs to trying to convince the owner that the building poses substantial liability and title should be transferred to the City." According to Whittier, "[t]his has been ... to date, our most successful method of taking care of these buildings. They get donated to the city for a small amount, then the city demolishes about ten buildings a year" (Anderson et al. 2015, p. 43).

Whittier and the mayor did not want the city saddled with the costs of holding and maintaining these properties, or even the full cost of demolition, so they also prioritized seeking out potential new end users early on. They spoke to residents neighboring the problem properties. Before starting a demolition, they would ask, "If they tear down this building, will you buy this lot?" Local government officials acquainted themselves with neighboring houses and sought to negotiate deals, "maybe selling half to one adjacent property owner and half to another, so the City can recoup a substantial amount of its demolition costs." Residents were often interested in acquiring the lots for parking or for expanding their own lots. Whittier attributed his success to avoiding the slow pace and conflict associated with formal legal processes and using the prospect of legal processes for leverage in negotiations while ultimately persuading property owners to "solve their own problems." Thus, perhaps ironically, one of the most effective legal strategies for rural communities to address problem properties may be the strategy that avoids using the legal system altogether (Anderson et al. 2015, p. 43).

Creative code enforcement strategies

Whittier incorporated another approach that he credited as helping to use scarce resources more efficiently: shar-

ing a code enforcement officer with a neighboring town. When Spencer officials were unable to find a local person willing to be certified, they "worked something out with [nearby] Parkersburg to use their certified code official." Spencer officials took advantage of using informal inspections as a first step, and triggering more formal processes as a "last resort" (Anderson et al. 2015, p. 43).

State legislation on intergovernmental agreements may be a potential legal barrier to rural communities taking advantage of this approach, and it is one potential topic worthy of more consideration in the context of reform with a view to facilitating remediation of rural blight. Intergovernmental agreements (IGAs) are often the necessary avenue for two small municipalities to formally agree to sharing resources. Most states allow local governments to enter IGAs, but Delaware, Alaska, and Hawaii do not. Statutory requirements for entering IGAs may also be difficult for small rural localities to navigate, especially if the closest potential collaborator is located across state lines. States seeking to empower rural localities to enter IGAs could provide technical assistance for doing so, expand local government contracting authorities, and simplify processes for entering IGAs (Eisenberg, 2018).

Other commentators have also observed the potential for creative code enforcement options to benefit rural communities' blight-remediation efforts. Code enforcement can encounter unique challenges in rural communities. Residents are more likely to know each other than in cities, making actual enforcement of the code more interpersonally and politically uncomfortable and stressful. There may be less of an understanding of the existence or importance of the building code. Rural politics may be more likely to involve skepticism of government involvement in property matters. Thus, it is important that small towns adopt strategies that are effective in light of their own circumstances (Slaughter, 2018; Eisenberg, 2016; Pruitt 2014).

A few context-specific strategies for improving code enforcement efforts hold promise for rural communities. Community development practitioner Kyle Slaughter recommends several steps that rural local government officials can take. First, messaging is important: Officials can emphasize the benefits of code compliance to their communities, rather than the punishment for noncompliance. Second, enforcement can be shaped as a community-level effort rather than a task limited to an enforcement officer. For example, the community can be involved in and learn about code compliance through clean-up days and programs to assist the elderly in maintaining their properties. Third, Slaughter recommends a measured approach involving "incremental steps that slowly grow the community enforcement program to the right size" (Slaughter, 2017).

Conclusion

Rural communities have unique needs for preventing and addressing vacant and dilapidated properties. Population sparseness, limited local markets, and limited local government resources all shape the landscape for practitioners and officials seeking to take on this problem. But more lessons about legal frameworks, legal strategies, and policy approaches that hold promise for rural communities are emerging. Regional land banks, market-anticipatory approaches, and creative code enforcement practices are three examples of approaches that seem to better account for rural conditions than approaches created and tested solely in urban environments. More research needs to be done to understand the prevalence of rural property vacancy, the barriers to addressing it, and the successful strategies being used around the country.

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