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UTILIZING THE MUNICIPAL LAND REUTILIZATION LAW: WHY ST. LOUIS CITY SHOULD TAKE CONTROL OF EVERY ABANDONED PROPERTY

INTRODUCTION

In July 2018, St. Louis City Mayor Lyda Krewson announced a plan to reduce the number of vacant lots and buildings in the City.¹ Her research estimates that 25,000 of the 129,000 properties in St. Louis City are vacant and abandoned.² The Saint Louis University Sociology Department calculates the number closer to 50,000.³ Both estimates indicate the vacancies are heavily concentrated in the north and southeast part of the City’s 66.2 square miles.⁴ According to the Mayor, these properties “are not well maintained and have been abandoned.”⁵ All across St. Louis City are uninhabitable homes, crumbling buildings, and overgrown lots.⁶

These properties are directly connected to many tragic injuries and deaths.⁷ “For example, the body of Eric Bearden, who died of acute fentanyl intoxication, was found in an abandoned building near the 3400 block of South Grand in January 2016.”⁸ Months later, gang members hid inside an abandoned home before exchanging gunfire with police near the Walnut Park East neighborhood, a half mile from Walbridge Elementary School.⁹ In July 2017, a City fire

1. Lyda Krewson, *A Plan to Reduce Vacant Lots and Buildings in the City of St. Louis*, CITY OF ST. LOUIS 1 (July 2, 2018), <https://www.stlouis-mo.gov/government/departments/mayor/documents/a-plan-for-reducing-vacant-lots-and-buildings-pdf.cfm> [https://perma.cc/Q2YE-3G NU].

2. *Id.* at 4.

3. Christopher G. Prener, Taylor Harris Braswell & Daniel J. Monti, *St. Louis’s “Urban Prairie”: Vacant Land and the Potential for Revitalization*, J. OF URB. AFF. 1, 2 (June 13, 2018), [https://www.greencitycoalition.org/uploads/8/7/1/3/87139164/vacant_land_urban_prairie_sl_u_paper_\[prener_2018_jua\].pdf](https://www.greencitycoalition.org/uploads/8/7/1/3/87139164/vacant_land_urban_prairie_sl_u_paper_[prener_2018_jua].pdf) (last accessed Jan. 1, 2020) [http://perma.cc/WXW2-2DU5].

4. *Id.*; Krewson, *supra* note 1, at 11.

5. Krewson, *supra* note 1, at 11.

6. *Id.*

7. Dana Malkus, *A Guide to Understanding and Addressing Vacant Property in the City of St. Louis*, RISE COMMUNITY DEVELOPMENT 5 (2018), <http://www.risestl.org/what-we-do/public-documents/vacancy-guide/> [https://perma.cc/6DB7-QWEB].

8. *Id.*

9. Celeste Bott, *The LRA Owns the 12,000 St. Louis Properties No One Wants. And it Can’t Afford to Maintain Them*, ST. LOUIS POST-DISPATCH (Sep. 18, 2018), https://www.stltoday.com/news/local/metro/lra-owns-the-st-louis-properties-no-one-wants-and/article_d2323d80-30c1-5ecf-a255-f2edda3443f0.html [https://perma.cc/C8SS-ED64].

department captain died during a fire in a vacant building near Gravois Park.¹⁰ As the Mayor says, “nothing good happens in a vacant building.”¹¹

St. Louis City owns nearly half of these abandoned properties.¹² As a result, the burden of cutting grass, boarding up exposed windows and doors, and securing crumbling buildings falls to City government.¹³ The other 13,200 abandoned properties are privately owned and harshly neglected.¹⁴ Last year, all 25,000 vacant properties drained \$66 million from the City’s operating budget.¹⁵ Tax delinquency data at the citywide level shows \$12 million owed to the City.¹⁶ The fiscal toll costs the City in other ways, such as the state accreditation of St. Louis Public Schools.¹⁷

As City Hall implements new strategies to better manage government owned property, another 13,200 properties continue to deteriorate.¹⁸ This Comment begins with a brief history of the abandonment issue in St. Louis. Part II explains how St. Louis’ unique tax foreclosure laws allowed the City to take ownership of half the abandoned properties despite limited resources, and the results that followed. Part III highlights the Missouri Supreme Court’s failure to protect due process requirements during the City’s foreclosure endeavor. This Comment concludes with an analysis of the Missouri Supreme Court’s authority on the issue, St. Louis City policy, and encourages City Hall to continue foreclosing on privately owned abandoned properties.

I. HISTORY

Over a century ago, St. Louis touted itself as the nation’s fourth largest city.¹⁹ In 1904, the City hosted the World’s Fair and Summer Olympics.²⁰ The population continued to grow through the Great Depression and World War II, reaching its peak of 859,796 in 1950.²¹ Today, St. Louis City is home to less than 315,000 people.²² The steep population decrease left vast stretches of

10. Malkus, *supra* note 7, at 5.

11. Krewson, *supra* note 1, at 4.

12. *Id.*

13. *Id.* at 11.

14. *Id.*

15. *Id.* at 5.

16. Alexandra Miller et al., *St. Louis Land Bank Assessment: Final Report 19*, ENVTL. PROT. AGENCY 19 (Feb. 2017), https://www.epa.gov/sites/production/files/2017-04/documents/20170215_stllb_finalreport_web_sm.pdf [<https://perma.cc/2DYK-H9TV>].

17. Prener, *supra* note 3, at 8.

18. Krewson, *supra* note 1, at 11.

19. Prener, *supra* note 3, at 4.

20. *Id.*

21. Malkus, *supra* note 7, at 5.

22. *Work for the City*, ST. LOUIS CITY <https://www.stlouis-mo.gov/jobs/> (last accessed Jan. 1, 2020).

vacant buildings where homes and businesses once thrived.²³ “As is the case in most older, industrial United States cities, the number of abandoned properties festered for decades.”²⁴

The population decrease is just one of many factors that led to the abandonment issue in St. Louis City.²⁵ Other causes of abandonment include weak real estate markets in many neighborhoods, an aging housing stock, significant sprawl, detrimental public policies such as redlining, predatory or negligent investors, incomplete tax foreclosure, bankruptcy, prolonged or improper probate, and the continued expansion of the suburban footprint around the City.²⁶ By 1979, the New York Times had concluded that “by almost any objective or subjective standard, St. Louis is the premier example of urban abandonment in America.”²⁷ Abandoned properties became magnets for crime and arson, discouraging community engagement and decreasing the residents’ quality of life.²⁸ Further, government condemnation of neighborhoods contributed to a growing culture of widespread disinvestment.²⁹ The 2008 recession and subsequent housing crisis merely exacerbated the problem.³⁰

As residents started to intentionally and unintentionally abandon properties in the 1960s and ‘70s, St. Louis City struggled to collect real estate taxes.³¹ At that time, foreclosure procedures under Missouri Law were expensive and cumbersome, rendering foreclosure sales an inadequate option to address the issue.³² In 1971, the Missouri Legislature responded with the Municipal Land Reutilization Law, a statutory scheme with two major effects.³³ First, it streamlined the tax foreclosure process, allowing St. Louis City to judicially foreclose on tax delinquent properties and sell them to interested parties at public auctions.³⁴ Second, the law created the country’s first land bank known as the

23. Krewson, *supra* note 1, at 4.

24. Jacob Barker, Celeste Bott & Janelle O’Dea, *St. Louis Struggles to Keep up with Rising Tide of Broken, Abandoned Buildings*, ST. LOUIS POST-DISPATCH (Sep. 16, 2018), https://www.stltoday.com/news/local/metro/st-louis-struggles-to-keep-up-with-rising-tide-of/article_fb0c5dd4-bcfa-588d-b2e2-301abbc0a728.html (last accessed Jan. 1, 2020) [<https://perma.cc/XWB2-F6QF>].

25. Malkus, *supra* note 7, at 5.

26. *Id.*

27. Prener, *supra* note 3, at 8.

28. *Id.*

29. Patricia Hureston Lee, *Shattering ‘Blight’ and the Hidden Narratives that Condemn*, 42 SETON HALL LEGIS. J. 29, 30 (2017).

30. James J. Kelly Jr., *A Continuum In Remedies: Reconnecting Vacant Houses to the Market*, 33 ST. LOUIS U. PUB. L. REV. 109, 109 (2013).

31. Dale Sweet, *A User’s Guide to Sherriff’s Real Estate Tax Sales in the City of St. Louis* (April 2013) (unpublished pamphlet) (on file with the Saint Louis University Legal Clinic).

32. *Id.*

33. MO. REV. STAT. §§ 92.700–92.920.

34. MO. REV. STAT. § 92.875.1 (1971).

Land Reutilization Authority, a city-run agency that assumes ownership of properties that go unsold at public auctions.³⁵

II. THE MUNICIPAL LAND REUTILIZATION LAW

A. *The Enactment*

In 1971, the Missouri Legislature enacted The Municipal Land Reutilization Law (“MLRL”), a carefully crafted piece of legislation designed to apply only in St. Louis City.³⁶ The MLRL allowed “all cities not within a county, which now have or may hereafter have a population in excess of five hundred thousand inhabitants . . . to have the collection of delinquent and back real estate taxes regulated and controlled” by Chapter 92 of the Missouri Revised Statutes.³⁷ The Missouri Legislature used specific language to draft the MLRL so the law could only apply in St. Louis City. Since 1875, St. Louis is the only Missouri city not within a county.³⁸ In 1971, St. Louis City’s population totaled over 500,000 inhabitants.³⁹ As such, St. Louis City voters passed an ordinance on December 1st, 1971, electing to operate under Missouri Revised Statutes Sections 92.700–92.920.⁴⁰

Opponents to the MLRL immediately claimed the enactment violated The Missouri Constitution.⁴¹ Article III, § 40(30) of the Constitution requires the general assembly to first find a reasonable basis before enacting “any local or special law” where a general law is applicable.⁴² The provision continues, “whether a general law could have been made applicable is a judicial question, to be judicially determined without regard to any legislative assertion on that subject.”⁴³ The opponents argued that no reasonable basis existed to exclude all other cities located within a county.⁴⁴ The judicial question landed in front of the Missouri Supreme Court.⁴⁵

The Missouri Supreme Court found a reasonable basis to uphold the MLRL and its sole applicability to St. Louis City.⁴⁶ Because St. Louis City is not located within a Missouri county, the City operates as both a city and county, meaning

35. MO. REV. STAT. § 92.875.1 (1971).

36. *Collector of Revenue v. Parcels of Land Encumbered with Delinquent Tax Liens etc.*, 517 S.W.2d 49, 51 (Mo. 1974).

37. *Id.* at 53.

38. *Id.* at 52.

39. *Id.*

40. *Id.*

41. *Collector of Revenue*, 517 S.W.2d at 52.

42. MO. CONST. art. III, § 40(30).

43. *Id.*

44. *Collector of Revenue*, 517 S.W.2d at 52.

45. *Id.*

46. *Id.*

the City is solely responsible for collecting both municipal and state taxes.⁴⁷ In such a city, delinquent taxes prevent the government from carrying out both municipal and state functions.⁴⁸ On the other hand, a city located within a county only collects municipal taxes, while the county collects taxes for state purposes.⁴⁹ The Court believed the MLRL was necessary to help St. Louis City collect real estate taxes and ultimately perform all its government functions.⁵⁰ The opinion reads, “the legislative determination to apply the MLRL to cities not within a county is based upon reason and will, therefore, not be rejected by this court.”⁵¹ The Missouri Supreme Court’s decision marks the beginning of St. Louis City’s tax foreclosure endeavor.

B. *How St. Louis City Tax Foreclosure Works*

In Missouri, real estate taxes are tied to the property itself, so an individual property owner is not personally liable for paying the taxes.⁵² Under the MLRL, St. Louis City can file suit in circuit court to foreclose on tax delinquent property.⁵³ St. Louis County, along with most other Missouri counties,⁵⁴ must use Chapter 140 of the Missouri Statutes for tax foreclosure. Chapter 140 is a nonjudicial foreclosure process that can ultimately take five to six years before property is forfeited.⁵⁵ Thus, the MLRL allows St. Louis City to streamline the foreclosure process by way of the court system, and assume control of tax-delinquent properties in less than a year.⁵⁶

The Collector of Revenue may file suit in circuit court to collect back taxes after one year of tax delinquency.⁵⁷ However, the City’s internal policy generally requires three years of delinquency before initiating foreclosure.⁵⁸

47. *Id.*

48. *Id.*

49. *Collector of Revenue*, 517 S.W.2d at 54.

50. *Id.*

51. *Id.*

52. MO. REV. STAT. § 140.640 (1939); Peter Hoffman et al., *Stimulating Redevelopment by Clearing Tax Sale Titles: A Collective Impact Report by the Neighborhood Initiative of Kansas City, Missouri*, URB. NEIGHBORHOOD INITIATIVE 14 (May 2017) (On file with Saint Louis University Legal Clinic).

53. MO. REV. STAT. § 92.715 (2010).

54. Kansas City collects delinquent taxes through Chapter 141 of the Missouri Revised Statutes. Chapter 141 is a form of judicial foreclosure similar to Chapter 92, except the process requires more than one year of tax delinquency. *See* MO. REV. STAT. §§ 140.010–140.722.

55. Yelena Bosovik, *Land Banks in Missouri: A Comparative Analysis of Statutory Schemes in Kansas City and St. Louis*, 1 BUS. ENTREPRENEURSHIP & TAX. L. REV. 1, 24, 35 (2017).

56. Malkus, *supra* note 7, at 16.

57. MO. REV. STAT. § 92.720 (1971).

58. Krewson, *supra* note 1, at 9; Malkus, *supra* note 7, at 17; Jacob Barker, *Can the Collector of Revenue Help St. Louis Tackle its Vacancy Problem?*, ST. LOUIS POST-DISPATCH (Jan. 6, 2019), https://www.stltoday.com/business/local/can-the-collector-of-revenue-help-st-louis-tackle-its/article_306f8b5e-f303-5332-9d01-4d8889b18325.html [<https://perma.cc/N53E-N8D9>].

Within thirty days after suit is filed, the sheriff must send notice via first-class mail⁵⁹ to the owner's address filed in the county assessor's office.⁶⁰ The sheriff must also publish notice of foreclosure once a week for four weeks in a newspaper of general circulation.⁶¹

The circuit court determines the amount and validity of all liens, the priorities of the respective tax bills, and the amount due—including principal, interest, penalties, attorney fees and costs.⁶² The court then enters a judgement of foreclosure and approves the property for bid at the next tax foreclosure auction.⁶³ The Collector of Revenue must wait six months after judgement is ordered before offering the property at auction.⁶⁴ At least twenty days prior to the auction, the sheriff must again send notice by first-class mail to the owner's address, providing the date, time and location of the auction.⁶⁵ The notice must also include information regarding the owner's right to redeem the property.⁶⁶ At any time before the auction, the owner can stop foreclosure by paying the delinquent taxes or entering into a repayment plan with the City.⁶⁷

Foreclosure auctions occur five times a year at the Civil Courts Building.⁶⁸ The minimum bid must be no less than the amount validated by the circuit court.⁶⁹ If the property is sold at auction, the purchaser moves for a foreclosure confirmation hearing.⁷⁰ The purchaser must then send notice of the hearing by mail to the owner.⁷¹ If the sale is confirmed, the City collects the amount validated and any surplus is paid to the owner.⁷² After the confirmation sale, all encumbrances on the property, with the exception of federal tax liens and easements, are wiped away and title vests in the purchaser.⁷³ Following

59. First-class mail is delivered by the United States Postal Service and does not require signed receipt from the intended recipient.

60. MO. REV. STAT. § 92.760.1 (1989). Section (1) of this provision states:

The collector shall also cause to be prepared and mailed in an envelope with postage prepaid, within thirty days after the filing of such petition, a brief notice of the filing of the suit, to the persons named in the petition as being the owners, according to the records of the assessor for the respective parcels of real estate described in the petition. The notices shall be sent to the addresses of such persons upon the records of the assessor.

Id.

61. MO. REV. STAT. § 92.755 (1971).

62. MO. REV. STAT. § 92.775 (1971).

63. MO. REV. STAT. § 92.810.1 (1993).

64. *Id.*

65. MO. REV. STAT. § 92.810.3 (1993).

66. *Id.*

67. MO. REV. STAT. § 92.815 (1989).

68. *Id.* The fifth sale is considered a "special sale" and occurs every October.

69. MO. REV. STAT. § 92.830.2 (1984).

70. MO. REV. STAT. § 92.840.1 (1989).

71. *Id.*

72. MO. REV. STAT. § 92.840.3 (1989).

73. MO. REV. STAT. § 92.835.2 (1984).

confirmation, the now former property owner “shall be barred and forever foreclosed of all his right, title and interest in and to the real estate.”⁷⁴

C. *The Land Reutilization Authority*

In addition to a streamlined tax foreclosure process, the MLRL also created the nation’s first land bank,⁷⁵ known as the St. Louis Land Reutilization Authority (“LRA”). The LRA represents the thousands of City-owned properties, acting as the owner of last resort for unwanted properties.⁷⁶ When property remains unclaimed during foreclosure, and receives no bid at auction, title transfers to the LRA.⁷⁷ The LRA’s statutory mandate is “to foster the public purpose of returning land which is in a nonrevenue generating nontax producing status, to effective utilization in order to provide housing and jobs for the citizens of any city operating under the provisions of sections 92.700 to 92.920 and new tax revenues for any said city.”⁷⁸

The LRA is statutorily governed by a three-person commission.⁷⁹ The City Mayor, the City Comptroller, and the St. Louis Public Schools Board of Education each appoint one member.⁸⁰ The LRA is staffed by two executives and eight full time employees.⁸¹ The staff is legally obligated to “manage, maintain, protect . . . or otherwise dispose of any such real estate it acquires.”⁸² The LRA’s primary function is to maintain the property and sell it to any interested party at future auctions.⁸³ Maintenance efforts include lawncare,

74. MO. REV. STAT. § 92.750.2 (1971).

75. FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING*, 4 (2d ed. 2015). Land banks are governmental entities that specialize in the conversion of vacant, abandoned, and foreclosed properties into productive use. The primary thrust of all land banks and land banking initiatives is to acquire and maintain properties that have been rejected by the open market and left as growing liabilities for neighborhoods and communities. Land banks now exist in several cities including Kansas City, Detroit, New Orleans, Philadelphia, Cleveland, and Pittsburg.

76. Krewson, *supra* note 1, at 9.

77. MO. REV. STAT. § 92.835 (1984).

78. MO. REV. STAT. § 92.875.2 (1971).

79. MO. REV. STAT. § 92.885 (1971).

80. *Id.*

81. Miller et al, *supra* note 16, at 6.

82. MO. REV. STAT. § 92.900 (1984). The full text of the statute reads, [t]he land reutilization commissioners shall have power, and it shall be their duty, to manage, maintain, protect, rent, lease, repair, insure, alter, hold and return, assemble, sell, trade, acquire, exchange or otherwise dispose of any real estate, on terms and conditions as may be determined in the sole discretion of the commissioners. The land reutilization commissioners may assemble tracts or parcels of real estate for public parks or any other purposes and to such end may exchange or acquire parcels, and otherwise effectuate such purposes by agreement with any taxing authority.

Id. § 92.900.4 (1984).

83. Miller et al, *supra* note 16, at 21; Krewson, *supra* note 1, at 11.

boarding up windows, and removing the property's fire-code violations.⁸⁴ After obtaining title, the LRA can offer the properties at any future foreclosure auction.⁸⁵

The LRA's only dedicated source of funding is revenue obtained from the properties sold at future auctions.⁸⁶ Unlike Kansas City's land bank, which is funded with government money, the St. Louis City budget does not allocate any money to the LRA.⁸⁷ The LRA's operating budget in years 2015-2016 averaged approximately \$800,000.⁸⁸ The budget is grossly insufficient for proper functions of the LRA. The estimated cost to mow all the current City-owned property seven times a year is \$225,000.⁸⁹ Additionally, board-ups cost the City over \$200 per building and nearly half a million dollars per year.⁹⁰ As a result, many properties in the LRA's inventory are harshly neglected, as if they belonged to a private owner.

Approximately forty-six percent of the LRA's property has never received a purchase offer from a private buyer.⁹¹ For the properties that receive purchase offers, the LRA accepts only a portion. The LRA only accepted forty percent of offers made on its properties in 2011.⁹² However, studies show ninety percent of offers were accepted the following year.⁹³ Since 2007, 6,148 properties were added to the LRA's inventory after going unclaimed in tax foreclosure.⁹⁴ Over the same period, 4,688 properties were sold to private owners.⁹⁵ For every tax delinquent property transferred to the LRA, revenue does not increase, yet the agency receives one more property to maintain. Simultaneously, the City deficit increases by the amount of tax delinquency it fails to collect.

As a result of limited resources and an inconsistent internal process, multiple entities have studied the LRA and reported findings. In 2015, the Center For Community Progress⁹⁶ evaluated systemic policy, assessed inventory, and

84. Krewson, *supra* note 1, at 9.

85. MO. REV. STAT. § 92.895 (1984).

86. Miller et al, *supra* note 16, at 22.

87. *Id.*

88. *Id.*

89. *Id.* at 21, 36.

90. Malkus, *supra* note 7, at 5.

91. Krewson, *supra* note 1, at 9.

92. See Haleigh Albers, *Promoting Private Land Ownership in St. Louis: A Data Update On The Land Reutilization Authority*, SHOW-ME-INSTITUTE (Dec. 2013), https://showmeinstitute.org/sites/default/files/191978599-Case-Study-Promoting-Private-Land-Ownership-In-Saint-Louis-A-Data-Update-On-The-Land-Reutilization-Authority_0.pdf [<https://perma.cc/3DEB-R3FQ>].

93. *Id.*

94. Krewson, *supra* note 1, at 4.

95. *Id.*

96. See *Developing a Shared Vision and Strategies to Address Vacancy and Abandonment in the City of St. Louis*, CTR. CMTY. PROGRESS 5-6 (2016), https://www.communityprogress.net/file/bin/20160707_STL_Report_Draft_FINAL_STL_REVIEW.pdf [<https://perma.cc/NT99-WC6E>].

provided large scale recommendations for forward progress of the LRA.⁹⁷ The following year, the Environmental Protection Agency contracted with a community development consultant to review LRA operations and perform a city-wide evaluation of the abandonment issue.⁹⁸ Both organizations recommended the LRA create and publish a policies and procedures manual to create transparency.⁹⁹ Additionally, both organizations concluded that the LRA was “deeply constrained” by the staffing and financial resources available to perform its daily functions.¹⁰⁰

LRA improvement is a prominent feature in the Mayor’s recent plan to reduce vacancies.¹⁰¹ For example, the “Mow to Own” program established in 2016 allows residential property owners living next door to LRA vacant lots to acquire the property for a \$125 administration fee and the commitment to responsibly maintain the lot for two years.¹⁰² The LRA also updated its website, making it easier for current and potential residents to discover available properties.¹⁰³ Moreover, St. Louis City voters recently passed “Prop NS,” a bill providing the LRA with a \$40 million bond to protect properties from weather exposure.¹⁰⁴ As LRA resources slowly expand, the MLRL process still suffers a major unaddressed defect: outdated notice provisions.

III. DUE PROCESS UNDER THE FOURTEENTH AMENDMENT

In St. Louis City, every person or entity holding a property interest is entitled to notice of foreclosure three separate times: (1) notice of the foreclosure suit, (2) notice of the upcoming foreclosure auction, and (3) notice of the confirmation hearing if property is sold at auction.¹⁰⁵ Interest holders often include citizens, banks, and other lending institutions. The MLRL authorizes notice by first-class mail.¹⁰⁶ Serving notice via first-class mail implicates serious due process concerns, especially in the context of abandoned properties. The following cases show how the United States Supreme Court analyzes due

“Founded in 2010, the Center for Community Progress is the only national nonprofit 501(c)(3) organization solely dedicated to building a future in which entrenched, systemic blight no longer exists in American communities.” *Id.* at 2. The CCP selects “communities that are deemed ready to engage in a forward-thinking technical assistance process to assess, reform, develop, and/or implement systems to address large vacancy and abandonment issues in their community.” *Id.* at 4.

97. *Id.*

98. Miller et al, *supra* note 16, at 16–17.

99. *Id.* at 28.

100. Miller et al, *supra* note 16, at 10.

101. Krewson, *supra* note 1, at 9–10.

102. *Id.*

103. *Id.*

104. Krewson, *supra* note 1, at 13.

105. MO. REV. STAT. §§ 92.755 (1971), 92.760 (1989), 92.810 (1993).

106. MO. REV. STAT. § 92.760 (1989).

process during tax foreclosure, and the Missouri Supreme Court's failure to properly interpret binding authority.

A. *Supreme Court Authority on Notice Provisions*

Both the United States and Missouri Constitutions make clear that no person may be deprived property without due process of law.¹⁰⁷ A long line of cases before the United States Supreme Court established the analysis for States' method of serving notice.¹⁰⁸ In *Mullane v. Central Hanover Bank & Trust Co.*,¹⁰⁹ the Court held that prior to an action affecting an interest in life, liberty, or property protected by the Due Process Clause of the Fifth Amendment, a State must provide "notice reasonably calculated, under all the circumstances, to apprise any interested parties of the pendency of the action and afford them an opportunity to present their objections."¹¹⁰

The established framework in *Mullane* guided the Court's analysis during a tax foreclosure dispute in 1983.¹¹¹ In *Mennonite Board of Missions v. Adams*, an Indiana county initiated proceedings to sell a tax delinquent property at auction.¹¹² The county provided notice as required under the State statute,¹¹³ it sent mail to the property owner's address, and published announcement of the upcoming foreclosure sale.¹¹⁴ The property owner received notice of the sale, however, the property owner never informed his mortgage company.¹¹⁵ As a result, the only notice available to the mortgage company was published

107. U.S. CONST. amend XIV § 1; MO. CONST. art. 1 § 10.

108. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Robinson v. Hanrahan*, 409 U.S. 38 (1972); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983) (O'Connor; Rehnquist, dissenting); *Dusenbery v. United States*, 534 U.S. 161 (2002); *Jones v. Flowers*, 547 U.S. 220 (2006) (Thomas; Scalia; Kennedy, dissenting).

109. 399 U.S. at 318. The Court found that published notice of an action to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were known. *Id.* at 312. The Court explained that notice by publication was not reasonably calculated to provide actual notice of the pending proceeding and was therefore inadequate to inform those who could be notified by more effective means such as certified mail. *Id.* at 316.

110. *Id.* at 314.

111. *Mennonite Bd. Of Missions*, 462 U.S. at 791.

112. *Id.* at 794.

113. IND. CODE § 6-1.1-24.9(d) (2019). The full section of the statute reads, "Not later than fifteen (15) days after the date of the county treasurer's certification under subsection (a), the county auditor shall mail by certified mail, return receipt requested, a copy of the list described in subsection (b) to each mortgagee and purchaser under an installment land contract recorded in the office of the county recorder who requests from the county auditor by certified mail a copy of the list."

Id.

114. *Mennonite Bd. Of Missions*, 462 U.S. at 794.

115. *Id.*

notice.¹¹⁶ Importantly, the mortgage company was identified as an interested party in the county public records.¹¹⁷ The mortgage company filed suit to set aside the sale, claiming a violation of their constitutionally protected right to due process.¹¹⁸ The Court held that when an address is reasonably ascertainable in the records available to the State, due process requires the State to mail notice.¹¹⁹ The Court reasoned that due process requires “an inexpensive and efficient mechanism such as mail service” as a minimum constitutional precondition to a proceeding that will adversely affect a reasonably ascertainable interested party.¹²⁰ Accordingly, the Court set aside the foreclosure sale and the mortgage company retained its property interest.¹²¹ Twenty years after evaluating who is entitled to notice in *Mennonite*, the Supreme Court addressed the question of how to properly serve parties holding a property interest.

In 2006, the Supreme Court evaluated the adequacy of notice prior to a State extinguishing a property owner’s interest.¹²² In *Jones v. Flowers*, an Arkansas county initiated proceedings to sell a tax-delinquent property at auction.¹²³ The county sent certified-mail¹²⁴ to the address listed in the public records.¹²⁵ However, since nobody was home to sign for the letter, the notice returned undelivered.¹²⁶ The Court held that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice before the property is sold, if practicable to do so.¹²⁷ The Court identified two reasonable steps available to the State.¹²⁸ First, after certified-mail is returned undelivered, the county could send regular mail to the address.¹²⁹ Second, it could post notice on the property’s front door.¹³⁰ The Court recognized that “due process does not require that a property owner receive

116. *Id.*

117. *Id.* at 798.

118. *Id.* at 795.

119. *Mennonite Bd. Of Missions*, 462 U.S. at 800.

120. *Id.* at 799.

121. *Id.*

122. *Jones*, 547 U.S. at 229.

123. *Id.* at 223.

124. ARK. CODE ANN. § 26-37-301(a)(1) (2019). “Notice to Owner. After receiving tax-delinquent land, the Commissioner of State Lands shall notify the owner, at the owner’s last known address as certified by the county, by certified mail, of the owner’s right to redeem by paying all taxes, penalties, interest, and costs, including the cost of the notice.” *Id.* Certified Mail is a special USPS service that provides the person sending the mail piece with an official receipt showing proof the item was mailed. When the mail piece is delivered, the carrier requires a signature from the recipient.

125. *Jones*, 547 U.S. at 231.

126. *Id.* at 223–24.

127. *Id.* at 223, 232, 234.

128. *Id.* at 234.

129. *Id.*

130. *Jones*, 547 U.S. at 235.

actual notice before the government may take his property.”¹³¹ Rather, due process requires the government to provide “reasonably calculated” notice.¹³² The Court also recognized that “[p]eople must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property.”¹³³ However, prior to forcing a citizen to satisfy his debt through foreclosure, due process requires the government to provide adequate notice of the impending action.¹³⁴ The Court ultimately concluded that because the county’s notice letter was returned undelivered, due process required the county to perform one of the reasonable follow-up measures available.¹³⁵

B. The Missouri Supreme Court’s Interpretation

In 2011, the Missouri Supreme Court attempted to apply the United States Supreme Court’s due process analysis to a tax foreclosure dispute arising under the MLRL.¹³⁶ Mohammad Bhatti failed to pay real estate taxes for three years on a house he owned in St. Louis City.¹³⁷ Pursuant to the MLRL, the Collector of Revenue filed suit to foreclosure on the delinquent property.¹³⁸ The St. Louis City Sheriff sent notice of the pending foreclosure auction via first-class mail to Bhatti’s last known address, which was listed as the delinquent property in the county assessor’s records.¹³⁹

Bhatti never received the sheriff’s notice.¹⁴⁰ He claimed to live elsewhere during the delinquent period while renovating his home.¹⁴¹ A real estate agent testified that a for sale sign was posted in the property’s front yard.¹⁴² However, Bhatti never notified the county assessor of any change in his mailing address.¹⁴³ Without notice of his property in the foreclosure process, Bhatti lacked any knowledge of the pending action.¹⁴⁴ The property sold at auction for \$7,600.¹⁴⁵ The purchaser then successfully filed a motion in circuit court to confirm the

131. *Id.* at 226.

132. *Id.*

133. *Id.* at 234.

134. *Id.*

135. *Jones*, 547 U.S. at 238.

136. *In re* Foreclosures of Liens for Delinquent Land Taxes by Action v. Bhatti, 334 S.W.3d 444, 445 (Mo. 2011).

137. *Id.* at 446.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Bhatti*, 334 S.W.3d at 446.

142. *Id.*

143. *Id.*

144. *Id.* at 447.

145. *Id.* at 446.

sale.¹⁴⁶ At that moment, Bhatti was deemed “forever barred of all his rights, title and interest” to the parcel.¹⁴⁷

Five months after the confirmation sale, Bhatti pursued the only viable remedy to save his property.¹⁴⁸ He filed a motion to set aside the judgement, asserting a violation of his constitutional right to due process.¹⁴⁹ The Court concluded that because the sheriff sent notice to the address on file with the county assessor, and no evidence indicated the notice letter was returned undelivered, the sheriff’s notice was “reasonably calculated” and constitutionally compliant.¹⁵⁰ Without knowledge that Bhatti never received the first-class mail, the sheriff did not need to perform any additional steps.¹⁵¹

The majority opinion explicitly stated, “this Court regrets the result in this case . . . but Bhatti’s loss of real estate was the result of multiple negligent acts.”¹⁵² First, Bhatti negligently failed to pay his real estate taxes for three years.¹⁵³ Second, he provided an incorrect address for the purpose of delinquency and foreclosure notification, and never updated his address or filed a forwarding address with the post office.¹⁵⁴ Third, while pursuing his constitutional rights, he failed to follow United States Supreme Court authority requiring him to show that the notice sent was not “reasonably calculated” to apprise him of the pending action.¹⁵⁵ The Court reasoned that despite the unfair result, neither the sheriff nor the courts could assume responsibility for Bhatti’s multiple mistakes.¹⁵⁶ “With hundreds of properties subject to tax foreclosure in St. Louis City, notions of due process and statutory law do not require the sheriff to take any further steps to find property owners, absent knowledge that notice was not received.”¹⁵⁷ Ultimately, the Court found no legal basis to conclude that

146. *Bhatti*, 334 S.W.3d at 446.

147. *Id.* See also *Beckham v. Bond (In re Beckham)*, 447 B.R. 603, 608 (Bankr. E.D. Mo. 2011). In this case, a property owner failed to pay real estate taxes on the property where he resided. *Id.* at 604. However, his mailing address on file listed a different property he owned in the State. *Id.* at 605. The Collector mailed notice of the foreclosure suit to the address filed with the State. *Id.* Because the owner did not live there, he never received notice of the foreclosure suit on the property he resided. *Id.* The property sold at auction, and the Court upheld the sale as the Collector complied with the statute. *Id.* at 607.

148. *Bhatti*, 334 S.W.3d at 446.

149. *Id.*

150. *Id.* at 448.

151. *Id.* at 449.

152. *Id.*

153. *Bhatti*, 334 S.W.3d at 450.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.* at 451.

procedures under the MLRL, as applied to Bhatti, violated his right to due process.¹⁵⁸

C. *The Dissent*

Former Missouri Supreme Court Judge turned Saint Louis University Law Professor, Michael A. Wolff, dissented in the case: “The United States Supreme Court for 60 years has been sending out binding precedents explaining the due process requirements for notice—including notice by mail—but the principal opinion has marked them ‘return to sender.’ I respectfully dissent.”¹⁵⁹ Judge Wolff highlighted the tragic result in Bhatti’s case.

At the time of foreclosure and sale, Bhatti had the property listed with a realtor for \$169,000.¹⁶⁰ After the property sold at the foreclosure auction and the City collected the delinquent amount, Bhatti received just over \$6,000.¹⁶¹ In the entire case, first-class mail was the only means the City used to notify Bhatti.¹⁶² Over the three years that this case spanned, the government spent a total of \$1.28 attempting to send notice.¹⁶³ However, because Bhatti could not prove the City knew the first-class mail was never delivered, the majority held that the notice efforts met constitutional standards.¹⁶⁴ The dissent conversely asserted, “where the method of notice is less than the traditional service of process, *Mullane* requires it be the best practicable The notice attempts in this case failed to meet the binding requirement.”¹⁶⁵

Judge Wolff properly concluded, “the government, no matter how much its city is in distress, is not permitted to seize an owner’s property without notice The taking of property without notice is unconstitutional, un-American and, I hope un-St. Louis.”¹⁶⁶ The Missouri Supreme Court’s failure to prevent St. Louis City from unconstitutionally seizing property under the MLRL created ambivalence towards future utilization of the law.

158. *Bhatti*, 334 S.W.3d at 451.

159. *Id.*

160. *Id.* at 452.

161. *Id.* at 451–52.

162. *Id.* at 452.

163. *Bhatti*, 334 S.W.3d at 452.

164. *Id.*

165. *Id.* at 451.

166. *Id.* at 453–54.

III. ANALYSIS

A. *The Municipal Land Reutilization Law*

1. The Principle

The MLRL combines two competing yet fundamental principles. The first principle is an individual's right to property. The metaphor of property as a bundle of rights dominates contemporary property law. Scholars disagree over precisely which rights the bundle contains.¹⁶⁷ The rights most commonly identified with the property bundle include the right to exclude others, the right to possess, use, alienate, manage, receive income, and maintain quiet enjoyment.¹⁶⁸ Notably absent from this bundle is the right to evade property taxes and abandon the property, leaving it to crumble, invite crime, and damage the surrounding community.

The competing principle is a government's duty to protect the community from the pervasive effects of abandonment. Importantly, tax delinquency does not amount to abandonment. The best definition of abandonment is "a property where the owner has stopped carrying out at least one of the significant responsibilities of property ownership, as a result of which the property is vacant."¹⁶⁹ Tax delinquency merely deprives a government revenue to carry out public functions. Abandonment threatens the safety of residents, creates health hazards, diminishes property values, and perpetuates an image that promotes criminal behavior and discourages redevelopment.¹⁷⁰ St. Louis City is the quintessential example of a community suffering from abandonment.

Judge Wolff's dissent in *Bhatti* recognized that St. Louis City passed the MLRL to combat the ongoing abandonment issue in the area.¹⁷¹ The MLRL's purpose is not to solely collect tax revenue from delinquent properties. The expedited foreclosure process under the MLRL is a means for local government to acquire title and maintain the thousands of properties in St. Louis City nobody wants.¹⁷² In *Jones*, the United States Supreme Court stated that a government is justified in holding its citizens' accountable for not paying their taxes by foreclosing on the property.¹⁷³ In St. Louis City, the government is absolutely

167. Craig Anthony Arnold, *The Reconstitution of Property: Property as a Web of Interests*, 26 HARV. ENVTL. L. REV. 281, 285 (2002).

168. *Id.*

169. ALAN MALLACH, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS, 1 (2006).

170. James J. Kelly Jr., *Refreshing the heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment*, 13 J. OF AFFORDABLE HOUSING COMM. DEV. L. 210, 210, 213.

171. *Bhatti*, 334 S.W.3d at 452–53.

172. Bott, *supra* note 9.

173. *Jones*, 547 U.S. at 234.

justified using foreclosure laws under the MLRL to collect taxes and address the ongoing abandonment issue. The pervasive effects of abandonment, which according to the Mayor have plagued St. Louis City for decades,¹⁷⁴ significantly outweigh property rights held by a tax delinquent and absent owner. St. Louis City should utilize the MLRL as a tool to foreclose on tax delinquent and abandoned property, and return it to productive use.

2. The Argument

The Mayor's Office believes that 25,000 properties in St. Louis City are abandoned. Half of these properties sit in the LRA's inventory. The other half remains in the hands of private owners, continuing to deteriorate and receiving no attention. Many of these owners are displaced and have no interest in keeping their property. Foreclosing on the privately owned, abandoned properties through the MLRL is a step, not a solution, towards addressing the abandonment issue in St. Louis City.

The MLRL's statutory scheme grants the Collector of Revenue a tremendous amount of power with the ability to foreclose on a property after one-year of tax delinquency.¹⁷⁵ However, despite receiving an additional \$5,000 in compensation,¹⁷⁶ the Collector of Revenue is not required by statute to foreclose at any time. The decision is left to the Office's sole discretion. The discretionary power is an asset to local government. The Collector of Revenue should bring the unwanted, privately owned properties into the LRA inventory. Transferring title of these properties into the LRA's inventory gives the City a complete picture of all unwanted properties. Owning all the abandoned properties allows the City to better strategize with non-profit organizations and private investors who may become interested in several properties. Moreover, the Mayor's Office already expects these properties to end up in the LRA's inventory.¹⁷⁷

The most legitimate argument¹⁷⁸ against loading up the LRA inventory is the agency's current lack of resources. The LRA desperately needs additional funding and staffing. However, stakeholders are aware of the need. Prop NS will increase the LRA's revenue and provide opportunities for the agency to develop strategies that can reduce the number of abandoned properties. As other initiatives expand the LRA's resources, the City needs ownership of all 25,000 properties the Mayor identifies as abandoned. Transferring the privately-owned

174. Krewson, *supra* note 1, at 4.

175. MO. REV. STAT. § 92.720 (2019).

176. MO. REV. STAT. § 92.916.4 (2019).

177. Krewson, *supra* note 1, at 11.

178. Barker, *supra* note 58. Other arguments assert that the Collector of Revenue should not commit resources to a service that does not immediately generate tax revenue. Further, some people believe the government should not foreclose on an individual's right to property without a quick solution to rehabilitate the property. *Id.*

properties into the agency's inventory allows the agency to allocate future resources in an efficient and strategic manner. The City cannot demolish or maintain a property without title. Leaving these properties in the hands of private owners allows the pervasive effects of abandonment to spread. The LRA, despite limited resources, is a better owner for abandoned property than an absentee owner.

3. The Policy

Foreclosing on the thousands of privately-owned, abandoned properties is an enormous task for the City. The overwhelming challenge is determining which properties are truly abandoned as opposed to the properties that are just tax delinquent. Thus, the Collector of Revenue should initiate foreclosure proceedings on all privately-owned properties that are five years tax delinquent. The current LRA director wisely acknowledges that just because a property owner fails to pay taxes in year one does not mean the owner will not pay taxes the following year.¹⁷⁹ Properties less than three years tax delinquent, absent additional facts, should not be a target for the City at this time.

Visiting the property is the best way to determine if a property is truly abandoned. The Mayor's Office did not publish how it determined which properties are abandoned. Regardless, City Hall cannot be expected to visit the thousands of privately owned, abandoned properties and assess the property. Instead, the Collector of Revenue should send notice of foreclosure through first-class and certified mail to all properties that are five-years tax delinquent. The United States Postal Service can also post notice of foreclosure on the property. The notice should include information on how to contact City Hall and stop the foreclosure process on the property.

The City needs to send a message that St. Louis will not tolerate both tax evasion and abandonment. If the property is truly abandoned, the property will transfer to the LRA with no objection. If the property owner wants to keep the interest, they carry the burden of communicating with the City and entering into a repayment plan. No owner can reasonably expect to escape five years of real estate taxes and ignore notice of foreclosure posted on the property, and still retain the interest.

Other private-side legal tools exist to address abandonment. The Abandoned Housing Act, nuisance statutes, and receivership are a few examples. Proponents of these tools view them as a way for the community to take control of privately owned, abandoned properties without City involvement. The City cannot ask or rely on citizens to utilize these tools to take control of properties over five years tax delinquent. These are the properties in the worst condition. Despite no fault of the current City leaders, these properties are now the City's problem. Foreclosing on these properties sooner and bringing them into the LRA's

179. *Id.*

inventory gives the City control of all the properties that ultimately need a plan for revitalization.

B. Notice Provisions

Every interest holder in a property is entitled to due process. The notice provisions as written under the MLRL do not comply with United States Supreme Court authority. The statutes authorize notice by first-class mail, without language requiring additional reasonable steps. For some unknown reason, the Missouri Legislature chose not to update the MLRL notice provisions after *Jones*. Meanwhile, some states require that notice be posted on the property or at the property owner's last known address.¹⁸⁰ Other states at least require posting notice on the property when certified mail is returned undelivered.¹⁸¹ The City should not wait for the Missouri Legislature to act in accordance with United States Supreme Court authority. Rather, constitutionally complaint due process should come from the City's internal method of serving notice.

Properly serving notice is a critical step to ensure a clear title after the foreclosure process. Although nearly all encumbrances are removed from the property during foreclosure, potential investors and insurance companies are reluctant to pursue an interest in foreclosed properties. The hesitation is a result of an insufficient notice process. Nobody wants to invest money in a property they could lose in court months later.

According to the Missouri Supreme Court, first-class mail that does not require a signature is a constitutionally compliant method of notice. However, the City should take additional steps when serving notice on all interested parties. After compiling the list of properties over five-years tax delinquent, the City should hire a title company to gather every ascertainable address of all parties holding an interest in property. Send both first-class and certified mail to those addresses. Several notices will return undelivered. Notice must then be posted on the actual property. Performing these tasks will require a significant amount of time. The delay gives all interested parties a chance to redeem their property interest. Sending multiple forms of notice is more than "reasonably calculated" to apprise every party of their interest. The sheriff can then offer these properties at auction and allow them to transfer into the LRA's inventory. After title is transferred, the City obtains a clear title that can be advertised to potential residents and investors.

180. DEL. CODE ANN., tit. 9, §§ 8724 (West 2019), 8772 (West 2019); GA. CODE ANN. § 48-4-1(a)(1) (West 2019); HAW. REV. STAT. ANN. § 246-56 (West 1998); MD. CODE ANN., Tax-Prop. § 14-836(b)(4)(2) (LexisNexis 2017).

181. FLA. STAT. § 197.522(2)(a) (2019); MINN. STAT. § 281.23(subd. 6) (2006); S.C. CODE ANN. § 12-51-40(c) (2015); MISS. CODE ANN. § 27-43-3 (2013); NEV. REV. STAT. ANN. § 361.595 (West 2019).

C. The Missouri Supreme Court

In the United States Supreme Court, interest holders benefit from a safeguard when deprived of property without due process. The *Mennonite* and *Jones* Courts protected an interest holder's right to due process and set aside foreclosure sales when notice was not "reasonably calculated." The Missouri Supreme Court failed to follow binding authority, and the result deprived Mohammad Bhatti a property he committed resources to maintain.

The jury is still out as to whether Mohammad Bhatti purposely evaded property taxes while trying to sell his home or rather he was suffering from financial hardship. The facts also state that he owned other properties in St. Louis City during his case.¹⁸² The verdict is irrelevant. Mohammad Bhatti did not receive reasonably calculated notice of foreclosure. The City should have sent certified mail multiple times to the property. Sending certified mail is inexpensive. If the many notice attempts returned undelivered, that property is one that needs notice of foreclosure posted on the property. However, the City is not to blame for the tragic result in Bhatti's case.

The Missouri Supreme Court cannot let this happen. Missouri Courts need to act as a safeguard against the unjust taking of property. The outdated MLRL statutes are not a substitute for binding authority. Foreclosing on thousands of abandoned properties, while using multiple methods of service, is an enormous task for the City. If a property slips through the cracks, the courts must be there to bail out the City and protect a property owner's right to due process. Local government alone cannot adequately tackle all of the challenges faced with abandonment. Similar to all other stakeholders, Missouri courts play a role. The Missouri Supreme Court failed its role in Mohammad Bhatti's case.

Judge Wolff is correct in all regards. Bhatti did not receive reasonably calculated notice. The City is legally obligated, not by Missouri law but by United States Supreme Court authority, to take additional steps of notice. More importantly, Judge Wolff correctly states, "the taking of property without due process is un-St. Louis."¹⁸³ St. Louis City did not want to deprive Bhatti of an unabandoned property. The City simply lacked any knowledge of the foreclosed property's condition, a result that occurs when deploying the bare minimum for serving notice.

CONCLUSION

St. Louis has a serious property abandonment issue. As the population continues to decrease, the problem only worsens. Abandoned properties invite crime and harm the surrounding community. The City possesses a tool to take

182. *Bhatti*, 334 S.W.3d at 450.

183. *Id.* at 453–54.

responsibility for these properties and restore them to productive use. However, outdated statutes and reckless internal policy can turn the tool into a weapon.

St. Louis City should own every piece of abandoned property over five-years tax delinquent. After accomplishing this task, the City can then focus on the remaining privately-owned, abandoned properties. Ownership allows the City to coordinate and strategically return these properties to productive use in the shortest amount of time possible. The City already incurs the financial and societal strain of abandonment. Taking ownership gives the community a chance for forward progress. However, the process of taking ownership must meet due process requirements. Data-driven decision making is key to the process.

Through the MLRL, the City is capable of foreclosing on all properties over five-years tax delinquent. Nearly all of these properties have been abandoned. For those that are not abandoned, the interest holder carries a burden to start communicating with the City. The City has the power to justly grow new fruits from its long rotten and abandoned trees. The question is, how ready does the City want to be when the entire St. Louis community collectively decides it no longer wants to be considered “by almost any objective or subjective standard . . . the premier example of urban abandonment in America.”¹⁸⁴

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184. Prener, *supra* note 3, at 8.

* JD/MBA Candidate, 2020, Saint Louis University School of Law. As a St. Louis native, the issues discussed in this Comment are very important to me. I would like to thank my advisor, Professor Dana Malkus, for her guidance during my research. I would also like to thank Professor Malkus for all her efforts towards the vacancy conversation in St. Louis City. Finally, I would like to thank the members of the Saint Louis University Law Journal for their labors on this Comment.