Enforcement of Property Maintenance: The Heirs’ Property Challenge in Memphis

Panel: Heirs’ Property as a non-Rural Phenomenon
Speaker: Steve Barlow, President, Neighborhood Preservation, Inc.
Who is Steve Barlow?

Current Roles:

- President of Neighborhood Preservation, Inc.
- Part-Time Litigator, City of Memphis
- Co-Director of Anti-Blight Litigation Clinic at Law School
- Robert Wood Johnson Interdisciplinary Research Leadership Fellow
- Board Member, Keep Tennessee Beautiful

Education: JD, MA (Applied Anthropology), BA (Theology)
NPI’s Mission: We clear the path to revitalized Memphis neighborhoods by resolving systemic causes of blighted properties.
What kind of a challenge do blighted properties represent to communities?

• Technical Challenge: With enough funds, you can hire an expert and once the expert’s recommendations are made your problem is solved.

• Adaptive Challenge: Many people and agencies are needed – the way we have always done things needs to change – many systems are broken – there is no single expert who can take us out of this mess . . .

See Introduction to Adaptive Leadership (Heifetz and Linsky)

• Whatever else it takes, I am convinced that without a dedicated and innovative legal team at the helm, efforts to address systems that perpetuate blighted properties will stall.
Necessary (Not Sufficient) Steps in Process of Neighborhood Revitalization

- Blighted and Abandoned Neighborhoods
- Code Enforcement & Litigation
- Neighborhood Plans and Targeting of Resources
- Incentives for Investment & Development
- Revitalized Core Cities
Why Blighted Properties Matter – SCALE
Black Dot=No utilities for >1 year
Blighted Property in Memphis

• 9,500 vacant and abandoned houses
• 3,500 units of abandoned multi-family housing
• More than 15,000 vacant lots
• Code Enforcement addresses (READ CUTS GRASS AT) 10,000 properties each year!
Why Blighted Properties Matter – QUALITY OF LIFE
Why Blighted Properties Matter – HEALTH

- Environmental hazards
- Allergies
- Insect-related illnesses
- Emotional/psychological effects
- May cause higher levels of stress, poorer health, and less preparedness for school
What Can Be Done?

• COLLABORATE AND COMMUNICATE
• SHARE DATA ABOUT PROPERTIES
• STRENGTHEN CODE ENFORCEMENT OPERATIONS
• STREAMLINE PROPERTY TAX FORECLOSURE PROCESS
• BUILD LAND BANKING SYSTEM
• UNDERSTAND MARKET REALITIES AND NEED IS ALWAYS GREATER THAN RESOURCES – TOUGH CHOICES MUST BE MADE
What Have We Done: Stories From Memphis
Blight Charter, Law Clinic & BAM!
The Memphis Neighborhood Blight Elimination Charter was developed in collaboration with a steering committee representing Memphis’ grassroots, public sector, and business communities.
Pledge & Commitment

We, the undersigned members of the Memphis Neighborhood Blight Elimination Charter Steering Committee, pledge our on-going and active support of the Charter’s vision, principles, and goals in guiding our communities and neighborhoods in Memphis to a future without blighted properties.

[Signatures]
“Every neighborhood in Memphis and Shelby County has the right to be free from the negative impacts and influences caused by vacant, abandoned, and blighted properties”

Memphis Blight Elimination Charter
Neighborhood Preservation Law School Clinic

What is Environmental Court – Who is Judge Potter – building on shoulders (started 1980s)
What is Neighborhood Preservation Act;
What is a law school clinic and why did we ask for help;
Current cases – Focus on Heirs’ Property Challenges
Shelby County Environmental Court: One of a Kind

• Source of Authority – Tennessee Private Act (1991 Ch. No. 426, S.B. No. 1046)

• How it differs from General Sessions Court
  • Unlimited jurisdiction in certain cases
  • Appeals to Tennessee Court of Appeals in certain cases

• How it differs from City Court
(a) Any nonprofit corporation as defined in § 13-6-102, or any interested party or neighbor, may bring a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings against the owner of any building or structure that is vacant or occupied by any owner, tenants or residents for failure to comply with that ordinance or regulation.

Tenn. Code Ann. § 13-6-106 (West)
Neighborhood Preservation Legal Clinic

• Partnership between the University of Memphis School of Law and the City of Memphis Attorney’s Office launched in January 2015
• Represents City in Tennessee Neighborhood Preservation Act cases
• Students experience lawyering from the standpoint of the municipal lawyer and municipal administration
• Students handle all aspects of casework under supervision
• Students participate in weekly seminar
  • Study applicable law and policy, code enforcement strategies, and challenges surrounding vacant, abandoned and neglected properties
• Students present workshops and trainings
  • City Counsel
  • Memphis Code Enforcement
  • Neighborhood Groups
• Only law school clinic of its kind
Neighborhood Preservation Clinic: Results*

- 560+ New NPA lawsuits filed
  - More than 200 new lawsuits filed by Clinic students
  - Total current lawsuits: 730+
- 174 Completed, court-rehabilitation rehabilitations of previously condemned houses
- 228 Court-ordered demolitions
- 75 Cases referred to administrative condemnation due to complexities of personal service
- 35 Cases dismissed due to intervening tax sale

*Since January 2015
Neighborhood Preservation Clinic: Notable Accomplishment

Pendleton Arms Apartments

• 15 two-story buildings with 168 apartment units
• Stretching over 9.6 acres near Charjean Park and Airways Middle School
• Vacant for 10 years
• Single-asset Owner located in Sandy, Utah
• Demolition commenced in August 2016 (now complete)
Approx. **15,000** parcels with County taxes more than 3 years delinquent

“Tax Sale Eligible”

Approx. **15%**

(1,500 per year) parcels selected for Tax Sale

Approx **15%**

(225/yr) bought by private parties

Approx **85%**

(1275/yr) parcels Purchased by County

Current Shelby Co. Land Bank inventory over **4,500** parcels

**Present Memphis/Shelby County Tax Sale & Land Bank Cycle**

Approx. **650** parcels/yr sold to highest bidder

Approx. **111** parcels/yr donated to nonprofit for nominal fee

**915** per year parcels transferred to Shelby Co. Land Bank

One Year Redemption Period

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One Year Redemption Period
Heirs’ Property in the Memphis Enforcement Context

- ALL WE CARE ABOUT IS COMPLIANCE – We want to FIND AN ACCOUNTABLE OWNER to make repairs or demolish a (usually) residential structure.
- If we can’t get voluntary compliance, we need jurisdiction and service (for administrative or court enforcement) (SEE SLIDE 35).
- What if DECEDENT’S heirs:
  - Don’t Want the Property?
  - Don’t Agree on Disposition?
  - Cannot be found?
- USUALLY – Our Cases Arise LONG After decedent’s death - SEVERE Dilapidation.
- What about EQUITY?
- Predatory Lending Situations
- Mortgage Walk-Away Situations
Heirs’ Property in the Memphis Enforcement Context

• Additional Tools and Approaches Needed, But What is the City’s Role in these?
  • Better People Finding Capacity!
  • Partition Suits?
  • Eminent Domain?
  • Quiet Title Actions?
  • Probate Action?
  • Coordinated Property Tax Sales?

• What about Prevention?
  • Will Clinics?
  • Transfer on Death Deeds?

• Neighborhood Stabilization Impacts **Likely** with Early Intervention

[A] 107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

[A] 108.3 Notice. Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner, owner’s authorized agent or the person or persons responsible for the structure or equipment in accordance with Section 107.3. If the notice pertains to equipment, it shall be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

SECTION 107 NOTICES AND ORDERS

[A] 107.1 Notice to person responsible. Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 108.3.

[A] 107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner or owner’s authorized agent of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.
T. C. A. § 13-6-106 (c) In the civil action, notice shall comply with Tennessee Rules of Civil Procedure, Rule 4. Additionally, notice shall require that a copy of the complaint be posted in a conspicuous place on the building and that the complaint be published in the local paper.

**READ (In Shelby County, Tennessee Environmental Court):** Actual Personal Service
A Story of Hope – Believe It Can Be Different!!
WE ALL HAVE A SECRET BIG IDEA FOR MEMPHIS

Join Mary Baker and Ray Brown at Canees Elementary Garden and post your idea to Create Memphis today.

#CreateMemphis
ioby.org/memphis
HOW TO REACH ME

Steve Barlow, President
Neighborhood Preservation, Inc.
901.605.8209 (call or text)
steve@npimemphis.org

See also:
www.MemphisFightsBlight.com
www.NPIMemphis.org