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FROM SMART CITIES TO CO-CITIES: EMERGING LEGAL AND POLICY RESPONSES TO URBAN VACANCY

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INTRODUCTION

Under Chicago's Large Lots Program, existing property owners can buy up to two vacant residential lots on their blocks for $1 each. Lots are mapped on a website developed by DataMade, a civic tech developer, and thereafter, buyers can transact seamlessly online.[1] In return, these new owners are required to pay property taxes and

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1. *See* Patrick Barry, *Website Helps Residents Buy $1 Vacant Lots*, LISC CHI. (Apr. 4, 2014), http://archive.lisc-chicago.org/blog/9 [https://perma.cc/CZ95-PUYZ]. *See generally The City of Chicago Sells Vacant Residential Lots for $1 through the Large Lot Program*, LARGE LOTS, https://largelots.org/ [https://perma.cc/L83H-T6AV] (last visited Feb. 29, 2020).

maintain the lot. This program is part of a larger effort by cities to become "smarter" and more efficient through the use of civic technology.[2]

Vacant lots are a ubiquitous feature of the urban landscape today in all kinds of cities (and rural areas), notwithstanding the trend towards urbanization.[3] Catalyzed by racist policies like redlining and blockbusting, many cities like Chicago and its suburbs are still segregated by race and class.[4] In large part because of "white flight" to the suburbs and decades of disinvestment, many African American communities (and other communities of color) could not afford to or were legally restricted from living in high-opportunity areas.[5] These large population moves and historical disinvestment left behind thousands of vacant lots in core Chicago neighborhoods, equivalent to more than 800 acres of vacant land.[6] Chicago is not unlike many cities across the Rust Belt and the Northeast, where "[w]hat we refer to now as 'vacant land' is the legacy of racial segregation, redlining, and urban renewal, and more recently exacerbated by predatory lending, the ensuing mortgage foreclosure crisis, and new discriminatory practices in access to credit."[7]

Today, local governments view the divestment and sale of vacant or abandoned property as an economic necessity.[8] They make attempts to place the land back into productive use, usually by

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2. *See generally* Barry, *supra* note 1.

3. Vacant land constitutes anywhere from 15–20% of older, so-called "legacy" cities such as Philadelphia and Detroit, and consists of thousands of vacant lots which are often concentrated together in a pattern of "hyper vacancy." But even so-called "magnet" cities — like New York, Seattle, Los Angeles, San Francisco, and Washington, D.C. — have their fair share of vacancy, with rates ranging from 5–15%, even as these cities experience unprecedented growth. ALLAN MALLACH, THE EMPTY HOUSE NEXT DOOR: UNDERSTANDING AND REDUCING VACANCY AND HYPERVACANCY IN THE UNITED STATES 1, 4–5, 25 (2018).

4. *See* Whet Moser, *New Deal-Era Maps Show Racist Redlining and Anti-Density Forces at Work*, CHI. MAG. (Dec. 5, 2016), https://www.chicagomag.com/city-life/December-2016/Mapping-Inequality/ [https://perma.cc/S7Q5-SZUX].

5. *See id.*

6. Dimitriy Leksanov, *Community Redevelopment, a Dollar at a Time*, CHI. MAROON (Jan. 10, 2019), https://www.chicagomaroon.com/article/2019/1/11/community-redevelopment-dollar-time/ [https://perma.cc/G4DR-P4T4].

7. Amy Laura Cahn & Paula Z. Segal, *You Can't Common What You Can't See: Towards a Restorative Polycentrism in the Governance of Our Cities*, 43 FORDHAM URB. L.J. 195, 201 (2016) ("For decades, municipal and private landowners have left acres of land in neighborhoods . . . abandoned in cities across the Rust Belt and in the Northeast.")

8. *See* MALLACH, *supra* note 3, at 20.

acquiring title to these properties through tax foreclosures or placing them in a land bank or public receivership until the title is clear for transfer to private investors or developers.[9] Chicago's Large Lots program, and similar programs, are another way of making sure land is put back into productive use.

For residents in communities with significant amounts of vacant land, these parcels are often treated as open access resources, and as a community asset.[10] There are many examples of residents utilizing the lots in ways that add value to the surrounding community and which produce goods for that community.[11] The construction of community gardens or urban farms is one example of this kind of utilization.[12] These resources become essential for the most socially and economically vulnerable communities, as the "public" domain shrinks and basic goods for human survival and flourishing are increasingly out of reach for so many.[13]

While the benefits of selling vacant lots to existing property owners are many, this Essay examines the limits of Chicago's Large Lots Program. In particular, it uses the Large Lots Program as a case study to explore how local governments can address inequality through different uses of urban vacant land in blighted communities. We examine the program through the lens of the tension that exists between "use" and "exchange" value in urban development. As John Logan and Harvey Molotch framed it many decades ago, there has long been a tension in urban markets and growth politics, between local interests who treat land as a commodity for financial return, and those who use land to satisfy the essential needs of everyday life[14]:

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9. *See id.* at 37–38

10. *See* Sheila Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281, 302–06 (2016).

11. *Id.*

12. *Id. See generally* Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57, 94–95 (2011).

13. *See* Bradley Garratt, *The Privatization of Cities' Public Spaces*, GUARDIAN (Aug. 4, 2015), https://www.theguardian.com/cities/2015/aug/04/pops-privately-owned-public-space-cities-direct-action [https://perma.cc/CCQ9-AG7D]; Tracy Jan, *America's Affordable Housing Stock Dropped by 60 Percent between 2010 and 2016*, WASH. POST (Oct. 23, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/10/23/americas-affordable-housing-stock-dropped-by-60-percent-from-2010-to-2016/ [https://perma.cc/3D23-WAC8].

14. JOHN R. LOGAN & HENRY MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 2 (1987) ("For some, places represent residence or production site; for others, places represent a commodity for buying, selling, or renting to someone else."); *see also* Harvey Molotch, *The City as a Growth Machine: Toward a*

"The pursuit of exchange values in the city does not *necessarily* result in the maximization of use values for others. Indeed, the simultaneous push for both goals is inherently contradictory and a continuing source of tension, conflict, and irrational settlements." [15]

The tension between exchange and use value exists today at an even more heightened level in large part because urban land values are at historic highs. The total value of America's urban land is estimated to be $25 trillion, roughly more than double the nation's overall economic output or GDP.[16] Nearly half the total value is packed into just five metro areas: New York, Los Angeles, San Francisco, Washington, D.C., and Chicago, with land in and around the urban center being the most valuable.[17] The rising value of land and resulting economic opportunity is concentrated in a relatively small group of cities around the world, which has led urban scholars to worry about "exclusionary megacities" and "property-centered" urban development and growth that privilege developers, existing property owners, and speculators to the detriment of non-property owners.[18]

Chicago's Large Lots Program arguably aspires to assuage this fear by making urban land available for $1 to existing property owners within the community where that land is located. However, what it does not change are the underlying dynamics of an exclusionary approach to urban land development that is characteristic of the cities where economic opportunity is now so concentrated.[19] The Large Lots program operates, knowingly or unknowingly, to protect the interests of existing property owners and to privilege their access to available urban land in these communities. In doing so, the program also facilitates the exclusion of individuals from opportunities ushered

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Political Economy of Place, 8 AM. J. SOC. 309, 309 (1976) ("[L]and, the basic stuff of place, is a market commodity providing wealth and power.").

15. LOGAN & MOLOTCH, *supra* note 14, at 2.

16. David Albouy et al., *Metropolitan Land Values*, 100 REV. ECON. & STAT. 454, 454, 459 (2018); *see also* Richard Florida, *The Staggering Value of Urban Land*, CITYLAB (Nov. 2, 2017), https://www.citylab.com/equity/2017/11/the-staggering-value-of-urban-land/544706/ [https://perma.cc/UZV7-7P55].

17. *Id.* at 459.

18. *See* Wendell Pritchett & Shitong Qiao, *Exclusionary Megacities*, 91 S. CAL. L. REV. 467, 467–522 (2018).

19. *See generally* ENRICO MORETTI, THE NEW GEOGRAPHY OF JOBS (2012); Mark J. Perry, *Many U.S. Metro Areas Have Greater GDP Than Entire Developed Nations*, FOUND. FOR ECON. EDUC. (Oct. 2, 2018), https://fee.org/articles/many-us-metro-areas-have-greater-gdp-than-entire-developed-nations/ [https://perma.cc/9WUZ-93WC].

in by urban agglomeration, including access to resources within their communities that can facilitate their ability to remain and thrive in growing cities.[20]

In this Essay, we propose reforming programs like the Large Lots Program consistent with a framework grounded in land stewardship, in which land use is not dependent on ownership, or its market exchange value, but rather on one's (or a collective's) ability to sustainably use land to provide goods and services that support adjacent communities.[21] In particular, we look to the Co-City Framework[22], a new urban governance model based on the creation and governance of shared and common resources arising out of the collective action and active participation of urban communities in stewarding land and other resources in their communities.[23] According to the framework, common resources or goods occupy a middle ground between public and private resources or property and between the state and the market. These resources can be stewarded, even in the absence of title, by an identified group of people or community who are vested with the duty of maintaining and keeping accessible (or affordable) the resource for future users and generations. As we discuss below, property arrangements such as community land trusts and limited equity cooperatives can be vehicles for property stewardship consistent with the Co-City framework.

The Essay will proceed as follows. Part I offers background on the Chicago program and some critiques that have been lodged against it. Part II discusses an alternative to ownership-based public property disposition: the Co-City Framework. Part III explores how the Co-City Framework might apply to public property disposition in Chicago, returning to how the Large Lots Program may be redesigned to create and foster collective action and stewardship. Part IV discusses the major challenges of stewarding land in cities with a high cost of land and whose purpose of selling lots is to raise large sums to finance their operations. To address these financial barriers, this Part

20. *See* Nicholas Blomley, *Enclosure, Common Right, and the Property of the Poor*, 17 SOC. LEGAL STUD. 311, 311–31 (2008) (recognizing the right of the poor "not to be excluded" from the property of the city).

21. *See* Foster & Iaione, *supra* note 10, at 307–08.

22. *Id.* at 345.

23. The model or framework of the Co-City is contained in the writings of Sheila Foster and Christian Iaione, including their forthcoming book CO-CITIES (2021) (MIT Press), their article, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281 (2016), and book chapter *Ostrom in the City: Design Principles for the Urban Commons*, *in* ROUTLEDGE HANDBOOK OF THE STUDY OF THE COMMONS (Dan Cole et al. eds., 2019).

explores three general strategies, which include creating incentives in zoning and land use laws, encouraging the identification of alternative financing sources, and launching strategic partnerships to build leverageable assets. The Essay concludes by raising two policy reform proposals that may further scale the Co-City approach.

I. BACKGROUND ON THE LARGE LOTS PROGRAM

In March 2014, community organizers in Chicago banded together to propose that anyone who owned property on the block should be able to purchase a vacant lot for a dollar.[24] These organizers built strong partnerships through a neighborhood coalition called the Green Health Neighborhoods Plan.[25] This coalition sought to maximize community resources, such as vacant land, left behind by a mass exodus from the City over the past half-century.[26] Partner organizations included the Chicago Metropolitan Agency for Planning, the Local Initiatives Support Corporation (LISC Chicago), and local officials.[27]

This effort came to be known as Chicago's Large Lots Program, the benefits of which are multifold.[28] When cities transfer ownership of large empty lots to existing property owners in the community, they can repurpose the lots for better use. At least 1250 Chicago lots have been sold through this program.[29] Many empty, desolate lots, some of which had been overrun with trash, sites of illegal dumpings, and stray animals, have been transformed into gardens, housing, and public parks.[30] Better uses, in turn, might mean that the safety of the communities in which these lots are located improves.[31] These uses also provide the kinds of goods and services that many disadvantaged and marginalized communities, most often low-income communities of color, often lack. These goods and services can include healthy food and vegetables in neighborhoods that are food deserts and green or recreational spaces where there are none.

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24. Leksanov, *supra* note 6, at 3.

25. *Id.*

26. *Id.*

27. *Id.*

28. Sharita Forrest, *Chicago's Large Lot Program Sowing Change in Inner-City Communities*, ILL. NEWS BUREAU (Mar. 19, 2019), https://news.illinois.edu/view/6367/764165 [https://perma.cc/XL2R-VL72].

29. Nona Tepper, *The Collateral Damage of $1 Vacant Lots*, CHI. MAG. (Nov. 19, 2018), http://www.chicagomag.com/city-life/November-2018/The-Collateral-Damage-of-Large-Lots/ [https://perma.cc/WY2N-GKJJ].

30. Forrest, *supra* note 28.

31. Tepper, *supra* note 29.

To address concerns that new owners will simply purchase property for speculative purposes, the Large Lots Program has two key provisions.[32] The first is that lots must be held for at least five years to prevent flipping.[33] The second is that only existing property owners can purchase them, thus, in theory, preventing outside investors from entering the market.[34] Given the success of this program, other cities are excited about adopting similar programs. For instance, officials from Rochester, Kansas City, and New Orleans have inquired about the program and indicated an interest in adopting a similar one in their cities.[35]

Yet, despite its benefits, the Large Lots Program suffers from at least two significant drawbacks. First, because the program is limited to existing property owners, it forgoes the opportunity to expand property ownership to residents who have not only lived in communities but also have labored to maintain empty lots and to put them to productive uses, as identified in the example of Luerlis Gutierrez below. Second, while the program requires purchasers to own property on the same block of the vacant lot, it does not appear to require purchasers to *live* on that block.[36] Based on our interviews with city officials, the reason for the latter policy is that some community members own their relative's home in the neighborhood, but do not live on the block where those properties are located, and pushed to have access to the program. One unintended consequence of this policy choice, however, is that developers and outside speculators are purchasing multiple properties in the area, but keeping lots empty.[37]

32. Barry, *supra* note 1.

33. *Id.*

34. *Id.*

35. Robert Channik, *4,000 Vacant Lots on Sale for $1 to Chicago Homeowners*, CHI. TRIB. (Nov. 28, 2016), https://www.chicagotribune.com/business/ct-chicago-large-lots-expansion-1129-biz-20161128-story.html [https://perma.cc/FRE4-E83X] (citing Peter Strazzabosco, the Deputy Commissioner for Chicago).

36. *Large Lots Program*, CHI., https://www.chicago.gov/city/en/depts/dcd/supp_info/large-lot-program.html [https://perma.cc/39UX-HS2N] (last visited Mar. 22, 2020) ("Up to two lots are available per application. Applicants must own property on the same block; be current on property taxes; and have no financial obligations to the City, among other requirements.")

37. Leksanov, *supra* note 6 ("Developers who own properties throughout the city have begun exploiting these parameters, creating a different kind of vacancy in which absentee owners are the lots' caretakers.")

Luerlis Gutierrez, for example, for years, would excitedly send weekly pictures of her garden to her friends back home in Cuba, showing blooming flowers and vegetation.[38] Over the past decade, she and a handful of local neighbors turned an abandoned lot near their homes into a vibrant community named Fulton Garden. Today, Fulton Garden has been destroyed, half of it fenced off and cluttered with weeds and trash.[39] The Large Lots Program sold half of Gutierrez's garden to a local property owner, who also owns three properties in the neighborhood that have remained empty. Citing liability concerns, this owner prevented Gutierrez from tending to the garden.[40] One Fulton Garden member commented, "It's just like if somebody comes in and takes your child away."[41] *Chicago Magazine* also reported that change of ownership under the Large Lots Program has destroyed at least two other community gardens, leaving those lots vacant and harming the policy goals of the program.[42] Purchases can thus rip apart community revitalization efforts, as was the case of Gutierrez's Fulton Garden.

To its credit, the City has recognized the risk of the program to residents like Gutierrez. It has also recognized the labor of residents like Gutierrez, who have transformed abandoned lots into productive uses for the surrounding community. With assistance from local community leaders, Chicago aldermen now place community gardens on a "do not sell" list.[43] Nevertheless, residents like Gutierrez believe this effort is insufficient. Gutierrez argues that the lots for sale through the Large Lots Program should be for residents who are "sitting in the community, working with the community, engaging the community."[44] A community-based leader involved with founding the Large Lots Program agrees. Ivan Cazarin, who worked alongside Teamwork Englewood and the City of Chicago, argues that the emergence of owners of property next to vacant lots but who do not live in the community "undermines the spirit of the program."[45] In other words, both Gutierrez and Cazarin believe the Large Lots Program should favor those who will steward the property for the

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38. Tepper, *supra* note 29.
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. Online Interview with Ivan Cazarin, Chapter President, Roosevelt Inst. at Univ. of Ill. at Chi. (Jan 21, 2020).

community — instead of purchasers who happen to own property locally.

II. AN ALTERNATIVE TO OWNERSHIP-BASED PUBLIC PROPERTY DISPOSITION

Although an often-cited example of an alternative community development model, Boston's approach to vacant lots is instructive for Chicago's program. The Dudley Square area, located in the Roxbury neighborhood of South Boston, was once one of the poorest areas in the Boston metropolitan area with numerous vacant and tax-defaulted lots, much like the lots sold pursuant to Chicago's Large Lots Program.[46] Through the 1970s, the Dudley neighborhood deteriorated due to white flight and the neglect and divestment of Boston-area government officials and financial institutions.[47] By the 1980s, over one-fifth of the neighborhood's land was vacant. Those that remained were largely impoverished Hispanics, African Americans, Jews, and other minority groups, which did not have the financial option to relocate. But instead of selling these lots to local property owners, the City of Boston transferred ownership of 15 acres — about 1300 lots — to a community land trust (CLT).[48] Dudley Square residents incorporated as a nonprofit (Dudley Square Neighborhood Initiative, or DSNI) and embarked on an ambitious plan to create an "urban village" that would develop the neighborhood without resulting in the displacement of existing residents. On the once-vacant land, the Dudley Neighbors community land trust built 225 new affordable homes, a 10,000 square foot community greenhouse, an urban farm, a playground, gardens (which today total more than 70), and a variety of other amenities.[49]

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46. *Housing Brass Tacks: Community Land Trusts*, URB. OMNIBUS (Jan. 10, 2018), https://urbanomnibus.net/2018/01/community-land-trusts/ [https://perma.cc/R9PF-Q77Y].

47. *See generally* PETER MEDOFF & HOLLY SKLAR, STREET OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD (1994).

48. To do this, DSNI, along with its community partners, approached the Boston Redevelopment Authority and requested eminent domain authority, which was granted by the City of Boston. This was due, in large part, to the support they received from the newly elected Mayor of Boston, Ray Flynn. With this authority, the DSNI purchased 60 acres of vacant land in the neighborhood, an area called the "Dudley Triangle," and created a community land trust to ensure and preserve its affordability and prevent it from being captured by private developers. *Id.*

49. Jake Blumgart, *Affordable Housing's Forever Solution*, NEXT CITY (Aug. 10, 2015), https://nextcity.org/features/view/affordable-housings-forever-solution [https://perma.cc/D586-855S]. The housing now includes 77 cooperative living quarters, 55 rental apartments, and 96 individually owned homes. Individuals or

The Dudley Street CLT is one among a number of emerging CLTs across the country, largely to provide affordable housing but also other affordable community amenities and goods.[50] A CLT is a nonprofit entity that owns the land and leases it for what it deems community-beneficial uses.[51] CLTs operate most uniquely as stewards of shared resources by removing land from the speculative market and separating land ownership from land use.[52] Through lease agreements, CLTs allow more residents to benefit from the land.[53] For instance, CLTs often impose a resale formula tied to inflation as a condition of leasing land from the CLT, thus limiting the speculative potential of land.[54] Through such resale formulas, CLTs keep this land affordable and accessible to future generations.

A critical component of a CLT is its efforts to promote democratic governance, a key component of land stewardship and community control of land. The governing board of a CLT is typically "tripartite" — an equal number of seats represented by users or people who lease the land from the CLT, residents from the surrounding community who do not lease land from the CLT, and the public and private sector (usually public officials, local funders, non-profit providers of housing or social services, and others).[55] The

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families who wish to purchase one of Dudley's affordable homes participate in a lottery system in order to ensure equal and fair access to the homes that come available. And once purchased, the homeowner pays a small lease fee for the land that the house sits upon, which continues to be owned by the CLT. The homeowner also agrees that if the home is ever sold, which is rare in the Dudley area, that the home must be sold at a cost determined by the formula used by DSNI's CLT. This information was based on independent research and an interview with Mr. Juan Leyton, a leader in DSNI. Telephone Interview with Juan Leyton, Former Exec. Dir., Dudley St. Neighborhood Initiative (May 18, 2018).

50. *See, e.g.*, *Models and Best Practices: Community Land Trusts (CLTs)*, COMMUNITY-WEALTH.ORG, https://community-wealth.org/strategies/panel/clts/models.html [https://perma.cc/5TAS-A3MM] (last visited Mar. 22, 2020).

51. JOHN EMMEUS DAVIS, BURLINGTON ASSOCS. IN CMTY. DEV., STARTING A COMMUNITY LAND TRUST: ORGANIZATIONAL AND OPERATIONAL CHOICES (2007), https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/tool-burlington-startingCLT.pdf [https://perma.cc/YT2K-DCU7].

52. *See generally* John Davis, *Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development*, 51 U.S.F. L. REV. 1 (2017).

53. *See* Emily Thaden, *The State of Shared-Equity Homeownership*, SHELTERFORCE (May 7, 2018), https://shelterforce.org/2018/05/07/shared-equity/ [https://perma.cc/2TP9-NYLJ].

54. *See generally* GROUNDED SOLUTIONS, RESALE FORMULA DESIGN (2011), https://groundedsolutions.org/sites/default/files/2018-11/12-Resale-Formula-Design.pdf [https://perma.cc/A5RU-GCKE].

55. JOHN EMMEUS DAVIS, COMMON GROUND: COMMUNITY LED DEVELOPMENT ON COMMUNITY OWNED LAND, ROOTS & BRANCHES 5 (2015).

governance structure of the typical CLT thus differs from the kind of closed, private governance of condos, co-ops, and other "common interest communities," whose boards consist only of private property owners.[56] CLTs transform what might otherwise be a collection of individuals owning property, as in a traditional condominium or housing cooperative, into a collaboratively governed nonprofit institution that stewards land and creates essential community goods in a way that ensures their long-term affordability and access for those vulnerable to being priced or urban areas today.

For example, Dudley Square's CLT board is represented by local and nearby residents who enforce lease agreements and other obligations of the lessors.[57] The board is organized and run so that each cultural or ethnic grouping present in the Dudley community gets an equal voice.[58] The Board has 35 seats, and of those 35, 20 are reserved for community residents, including an equal number of representatives of the four main ethnic groups inside the community.[59] Residents alone vote for who gets to serve the two-year board term.[60] Campaigns are door-to-door and face-to-face so that all residents get the opportunity to meet the members of their board.[61] Once elected, the Board approves all decisions made by DSNI.[62] All projects and campaigns have to be vetted and approved by the Board, but such decisions are always open to community input and participation.[63]

CLTs resonate with what property scholars refer to as "governance property."[64] Governance property characterizes many (if not most)

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56. *See generally* Meagan M. Ehlenz, *Community Land Trusts and Limited Equity Cooperatives: A Marriage of Affordable Homeownership Models?* (Lincoln Inst. of Land Policy, Working Paper No. WP14ME1, 2014).

57. Telephone Interview with Juan Leyton, *supra* note 49.

58. *Id.*

59. Of the 20 community seats, four seats are for Black residents, four are for Latinos, four are for residents with a Cape Verde heritage, four are for white residents, and four are for youth (ages 15–18) living in the community. Of the remaining seats: two are for community development organizations, two for local religious organizations, seven for partner organizations, and two for small businesses in the community. Once in place, these 33 members then elect two additional members from those who wanted to participate on the board but were not elected, for a total of 35. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *See generally* Gregory S. Alexander, *Governance Property*, 160 U. PA. L. REV. 1853 (2012).

forms of private property ownership today in that such property is shared with multiple owners or users collectively making governance decisions about access, use, enjoyment, and transfer of property.[65] CLTs are a departure from the prevailing property ownership model, characteristic of Western legal culture, which aggregates all legal rights and entitlements in one owner.[66] As property scholars have begun to recognize, the dominant Western model of property and resource ownership — the "fee simple"[67] — looks more and more ill-fitting for the urbanized, interdependent world in which most people live.[68] Endowing owners (public or private) with a monopoly on urban land and resources, this form of legal ownership "misses most of how urban property creates value," namely through spatial relationships that result from the density and proximity characteristic of urbanization.[69]

To meet the demands of contemporary urban land use instead requires a mix of approaches to mediate access to resources, particularly for those who have much less of them. It requires, at the very least, embracing approaches that recognize relational property interests and resource governance in ways that advance access to urban resources for the most vulnerable and marginalized communities facing resource uncertainty and precarity. Gaining or retaining access to these resources often involves a struggle or effort to recognize something akin to a collective property right to those resources for the urban poor.[70] This is why we propose that cities like Chicago, where economic opportunities are concentrated, and urban land values are skyrocketing, encourage land and resource stewardship in urban communities. Such an approach, which lies at the heart of the Co-City framework, suggests that it is possible to adapt and unbundle the legal entitlements to access[71] and use property to satisfy normative commitments to social inclusion and distributive justice embraced by cities like Chicago.

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65. *Id.* at 1856.

66. *See generally* Lee Fennell, *Fee Simple Obsolete*, 91 N.Y.U. L. REV. 1457 (2016).

67. "An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs." *Fee Simple*, BLACK'S LAW DICTIONARY (10th ed. 2014).

68. *See generally* Alexander, *supra* note 64.

69. Fennell, *supra* note 66, at 1459–61.

70. Blomley, *supra* note 20, at 311.

71. *See generally* Myrl L. Duncan, *Reconceiving the Bundle of Sticks*, 32 ENVTL. L. 773, 789–91 (2002).

Drawing from Elinor Ostrom's work on collective governance of shared or common resources, the Co-City Framework argues that residents should be able to use space, generate resources, and thrive, using urban land and resources that are available in their communities.[72] The Co-Cities project, for example, is mapping examples from cities all over the world of the various ways that communities and users are co-managing and co-governing shared urban resources in different geographic, social and economic contexts.[73] CLTs are one way that cities all over the world are experimenting with to ensure that critical urban resources remain accessible to individuals and communities by adapting private property entitlements to allow for resource stewardship.[74] As Lisa Alexander has written, property stewardship is created by removing the profit motive and by allocating rights and responsibilities in a way that gives stewards decision-making control over resources in a manner similar to ownership, but without the emphasis on sole dominion and the individual exchange value of property.[75] A resource stewardship framework grants control of, and access to, resources without formal "fee simple" title, without wealth maximization as a goal of property access, and "connects stewards to economic resources and social networks that maximize their self-actualization, privacy, human flourishing, and community participation."[76]

Other often used tools in the Co-City Framework, aside from community land trusts, include limited equity cooperatives (LECs). Much like CLTs, LECs also impose resale restrictions on interests. In places like Washington, D.C., residents in long-term rental buildings have transformed their rental buildings into LECs to allow residents to remain in their communities as those neighborhoods undergo

72. *See generally* Elinor Ostrom, *Unlocking Public Entrepreneurship and Public Economies* (United Nations Univ., World Inst. for Dev. Econ. Research, Working Paper No. DP2005/01, 2005).

73. *What Is a Co-City*, LABGOV, http://commoning.city/ [https://perma.cc/Q9UE-XRLY] (last visited Apr. 19, 2020). To date, the project has surveyed over 180 cities and over 500 policies and projects within them. *Id.*

74. *See, e.g.*, John Krinsky & Paula Z. Segal, *Stewarding the City as Commons: Parks Conservancies and Community Land Trusts*, 22 CUNY L. REV. 270, 282–83 (2019) (suggesting that CLTs "largely fulfill the demands of most of Ostrom's design principles" for collectively managed common pool resources).

75. Lisa Alexander, *Community in Property: Lessons from Tiny Homes Villages*, 104 MINN. L. REV. 385, 402 (2019).

76. *Id.* at 443.

gentrification.[77] For years, tenants across that city worked together to fight threatened evictions, pool their money to purchase their apartment buildings, and exercise control over the increasingly scarce resource of affordable housing.[78] To ensure the affordability of these buildings for future low- and moderate-income persons, the current residents created limited equity cooperative ownership structures. This allowed apartment dwellers to purchase shares in the co-op for little money, to pay low monthly co-op fees, and then to sell their shares for the same amount that they bought it plus a small amount of interest.

Unlike CLTs, however, the mechanism to keep land uses affordable in an LEC occurs through a cooperative agreement restricting resale values, rather than a lease or deed restriction imposed by a nonprofit trust.[79] Because LECs are a common or cooperative ownership regime, residents can rewrite the cooperative agreement and make private gains from speculation, as occurred in the hundreds of cooperative agreements in New York City (NYC) that converted to market-rate units.[80] CLTs represent something quite distinct: a form of ownership for the common good in that the trust is a 501(c)(3) nonprofit organization that allows community control over land through a democratic governance structure. The trust, as indicated above, is typically governed by residents in the surrounding community, leaseholders using the land on top of the trust, and the general public (represented by other stakeholders).[81]

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77. *See generally* COAL. FOR NONPROFIT HOUS. & ECON. DEV., A STUDY OF LIMITED-EQUITY COOPERATIVES IN THE DISTRICT OF COLUMBIA (2004), https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-cnhed.pdf [https://perma.cc/S3VH-UF3Z].

78. *See generally* AMANDA HURON, CARVING OUT THE COMMONS: TENANT ORGANIZING AND HOUSING COOPERATIVES IN WASHINGTON, D.C. (2018).

79. Benjamin Schneider, *CityLab University: Shared-Equity Homeownership*, CITYLAB (Apr. 29, 2019), https://www.citylab.com/equity/2019/04/home-ownership-ideas-housing-co-ops-shared-equity-land-trust/585658/ [https://perma.cc/2PR9-X2LG].

80. *See generally infra* note 160.

81. Although not all land trusts operate like this. As a recent analysis has demonstrated, some land trusts are not about community control at all but rather chiefly about promoting individual homeownership. They lack the tripartite governance structure that has historically been one of the defining characteristics of land trusts. James DeFilippis et al., *W(h)ither the Community in Community Land Trusts?*, 40 J. URB. AFF. 755, 764 (2018) (noting that there is nothing inherent in the CLT model that requires a focus on housing and that. CLT land can be used for whatever purpose a community deems appropriate including, for example, development of housing, commercial space, industry, community and nonprofit centers, gardens, and parkland).

III. LAND STEWARDSHIP IN CHICAGO

What does the above analysis mean for the Large Lots Program? Can administrators find or cultivate a CLT or LEC to steward a set of plots? If not, might administrators sell to local residents, who intend to use it for community-beneficial uses? Fortunately, Chicago already has experience with using land trusts to enable communities to steward land sustainably in a way that meets their needs and allows residents to benefit from any new development that comes into the neighborhood. For instance, NeighborSpace is an independent, nonprofit land trust that preserves urban land, throughout the City of Chicago, for community gardens and open space. Created in 1996 by three government entities — the City of Chicago, the Chicago Park District, and the Forest Preserve District of Cook County — NeighborSpace now oversees 115 land-based sites located in 33 wards across the city, many of which are involved in community gardening projects.[82]

NeighborSpace is unique among urban land trusts because it represents the kind of "nested" and multilevel governance structure that Elinor Ostrom found was often present in the community management of large-scale common pool *natural* resources.[83] She documented the success of human communities that rely on natural resources to construct "institutions resembling neither the state nor the market to govern some resource systems with reasonable degrees of success over long periods of time."[84] In these instances, communities governed these resources through collaborative arrangements in which participants collectively decide how to produce value for the users and communities in which those resource are located. These structures are critical for managing shared resources at a complex scale, like the city. In these structures, self-organized small groups of users acting relatively autonomously but within a federated system that links them together.

In the case of NeighborSpace, once a land grant is established, the government generally relinquishes operational control to the land trust, which itself transfers most of that control to the local gardeners

82. *See generally Community-Managed Open Space*, NEIGHBORSPACE, http://neighbor-space.org/ [https://perma.cc/ZJ86-49TG] (last visited Apr. 19, 2020).

83. Elinor Ostrom & Marco A. Janssen, *Multi-Level Governance and Resilience of Social-Ecological Systems*, *in* GLOBALISATION, POVERTY, AND CONFLICT: A "CRITICAL DEVELOPMENT" READER 250 (Springer Netherlands ed., 2005).

84. ELINOR OSTROM, GOVERNING THE COMMONS 1 (1990).

and community groups that act as "stewards" over the land.[85] In effect, NeighborSpace operates as a higher-level authority, while the real control and management over day-to-day affairs are handled by local members and groups in the community where the land is located.[86] The rules of the land trust require collective governance over the acquired plots, which are prohibited from having a single lead gardener or overseer but must have multiple leaders overseeing its development, as well as community support and buy-in.

By transferring multiple plots to CLTs at once, administering this program can still efficiently scale. Boston took this approach when it transferred 1300 lots to the Dudley Square Community Land Trust. If there are not enough trusts, Chicago could develop more of them, just as NYC is doing under the de Blasio administration.[87] NYC secured funding from Enterprise Community Partners to develop a variety of CLT projects.[88] In late 2017, the City Council officially codified CLTs into law, allowing the city departments, such as the Department of Housing Preservation and Development, to enter into agreements with them.[89] This legal recognition thus opened the way for the city to sell vacant public lots to CLTs.

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85. Telephone Interview with Ben Helphand, Exec. Dir., Neighborspace (Apr. 18, 2018); *see also* NEIGHBORSPACE, http://neighbor-space.org/ [https://perma.cc/B4Q7-KVR8] (last visited Mar. 22, 2020).

86. NeighborSpace, the land trust, handles the land purchases, performs environmental assessments and title work, holds the titles, easements or leases that it acquires, provides liability insurance and legal defense, and works to secure a dedicated water line for every parcel of land that it obtains. Nina Ignaczak, *Chicago's NeighborSpace Preservers Urban Land in the City for Community Gardens and Open Space*, SEEDSTOCK (Sept. 10, 2013), http://seedstock.com/2013/09/10/chicagos-neighborspace-preserves-urban-land-in-the-city-for-community-gardens-and-open-space/ [https://perma.cc/NQB3-FM65]. It also provides some guidance and other forms of support, "including a signage template, a list of gardeners' rights and responsibilities, and a tool lending library," and it acts as the liaison between the government and the participating community groups. *Id.* However, it is not involved in the day-to-day management of the land plots, which is left to the community, and plot users, in what is described as a "non-hierarchical" governance structure that prevents the centralization of power in any one individual's (or one group's) hands. Telephone Interview with Ben Helphand, *supra* note 85.

87. Abigail Savitch-Lew, *The NYC Community Land Trust Movement Want to Go Big*, CITYLIMITS (Jan. 8, 2018), https://citylimits.org/2018/01/08/the-nyc-community-land-trust-movement-wants-to-go-big/ [https://perma.cc/B46H-R97K].

88. Press Release, NY Attorney General, Attorney General James Announces $8 Million in Grants to Fund Affordable Housing (Jan. 15, 2020), https://ag.ny.gov/press-release/2019/attorney-general-james-announces-8-million-grants-fund-affordable-housing [https://perma.cc/QGV2-YKVT].

89. Savitch-Lew, *supra* note 87.

Similarly, many prominent German cities have explicitly formed incubators for cooperatives.[90] The city of Leipzig, for instance, provides not only free financial consultations but also connects vulnerable segments of the population with each other so they can form housing cooperatives. For example, Leipzig's Network for Multigenerational Living helps families and seniors form multigenerational housing cooperatives and learn from best practices from prior housing cooperative entrepreneurs.[91] Munich, as another example, not only favors cooperative housing in its land sales but incentivizes them. It offers 20–40% of city-owned land at reduced prices to cooperative housing groups, viewing them as critical partners in the creation of permanently affordable housing.[92] For cooperatives that meet additional social purpose goals, the city of Munich also reduces borrowing costs for these developers.[93]

One may argue that incorporating these conditions will harm the demand for lots in the Large Lots Program. Yet, already 1250 lots have been sold in just five years.[94] Having validated demand for these lots, the City of Chicago can now afford to ensure that lot sales drive the city's long-term goals forward. A stewardship-based proposal would not even be radical in the context of Chicago's policy framework. In fact, it formalizes an existing process. Before Gutierrez's lot was sold by the Large Lots Program, a local alderman representing her supported transferring ownership of the garden to a local community land trust. Because there was no formal process to include the transfer of ownership to a CLT, however, "wires were crossed," and the Large Lots Program administrators did not transfer ownership to a CLT.

Community leaders argue that a stewardship-based model could address scenarios like Gutierrez's "by empowering residents and community members with the agency to execute decisions over land

90. Kathryn Reynolds, *Lessons from Germany's Shared Housing Models: Expanding Ownership Opportunities and Improving the Built Environment*, HOUSING MATTERS (Nov. 14, 2018), https://housingmatters.urban.org/articles/lessons-germanys-shared-housing-models-expanding-ownership-opportunities-and-improving [https://perma.cc/MY9W-YT5D].

91. *Id.*

92. *Id.*

93. *Id.*

94. Daniel Wu, *Are Community Land Trusts the Answer to Chicago's Large Lots Program Issues?*, SHAREABLE (Dec. 10, 2019), https://www.shareable.net/are-community-land-trusts-the-answer-to-chicagos-large-lots-program-issues/ [https://perma.cc/8XU2-PBEX].

use, democratically."[95] Indeed, the Co-City Framework's toolkit of CLTs and LECs may better match the purposes that are driving key community leaders who created the program with the City of Chicago. As we saw in Boston's Dudley Square CLT, when applied to public land sales, a stewardship framework promotes principles of justice, solidarity, and deep collaboration in its work to ensure that cities are not constructed by a select few property owners, and instead meet the needs of all. When more residents benefit from their use of land, cities unleash the creativity of their residents. Cross-cutting relationships are built, communities thrive, and sustainable economies develop. A stewardship approach to putting vacant land back into productive use for urban communities can unlock what Ostrom called "public entrepreneurship" — opening the public sector to innovation in providing, producing, and encouraging the co-production of essential goods and services at the local level without privatizing those goods.[96] Cities can support communities' productive use of available urban assets, like land, providing them with the necessary tools to become empowered agents in the regeneration of their neighborhoods. These tools include public policies, program policies like the Large Lot Program, support of community land trusts, and fostering connections between active networks such as community gardeners across a city, just as NeighborSpace does.

IV. SUPPORTING AND FINANCING URBAN LAND STEWARDSHIP: A CHALLENGE TO SCALING THE CO-CITY APPROACH

With the goal of revitalizing neighborhoods with vacant lots, dozens of cities and countries are administering schemes reminiscent of Chicago's Large Lots Program, including New York,[97] Philadelphia,[98] Dallas,[99] and Spain.[100] Other cities, like Detroit, have

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95. Online Interview with Ivan Cazarin, *supra* note 45.

96. Elinor Ostrom, *Unlocking Public Entrepreneurship and Public Economies* (UNU World Inst. for Dev. of Econ. Research, Discussion Paper No. 2005/01, 2005), https://www.wider.unu.edu/sites/default/files/dp2005-01.pdf [https://perma.cc/X3WH-Q8QH].

97. Hannah Frishberg, *New Map Shows Every City-Owned Lot Sold for $1 since De Blasio Became Mayor*, CURBED N.Y. (Mar. 13, 2018, 2:00 PM) https://ny.curbed.com/2018/3/13/17115052/new-york-city-owned-land-lots-interactive-map [https://perma.cc/E8EH-XAKD].

98. Jake Blumgart, *City Selling Vacant Lots with Eye to 'Social Impact'*, PLAN PHILLY (Nov. 29, 2018), https://whyy.org/articles/city-selling-vacant-lots-with-eye-to-social-impact/ [https://perma.cc/HTA9-JYC7].

99. Julieta Chiquillo, *From Empty Lots to Affordable Homes: Dallas Vows to Clean up its Act After Investigation Found Abuse*, DALL. MORNING NEWS (Jan. 10,

independent land banks manage vacant parcels, clear title, and sell the land back to private owners.[101]

The temptation, and challenge, for cities with available, vacant, or unutilized land is that such land is one of the few vehicles many cities have to generate additional revenue. Hong Kong, for instance, sells its high-demand vacant lots to the highest bidder for hundreds of millions or even billions,[102] thereby funding local city operations.[103] Local city governments in the United Kingdom have sold over 12,000 public libraries, universities, parks, and other public spaces to private owners to garner funds, after years of central government austerity.[104] More drastically, countries like Honduras are creating "charter cities."[105] They sell not only lots of vacant land to private developers for millions, but also contract out the legal regime to govern related civil and criminal matters through an independent commission.[106]

Even if city administrators around the world agree to consider selling vacant land to a CLT before private owners, these nonprofit entities may struggle to finance the development of the land into community assets and to sustain them as affordable.[107] CLTs and LECs have struggled to access financing for blanket mortgages or

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2018), https://www.dallasnews.com/news/2018/01/11/from-empty-lots-to-affordable-homes-dallas-vows-to-clean-up-its-act-after-investigation-found-abuse/#_ga=2.742875 05.204471389.1582764918-200505527.1582764918 [https://perma.cc/8G8S-LNE8].

100. Lauren Frayer, *In Spain, Entire Villages Are Up for Sale — And They're Going Cheap*, NAT'L PUB. RADIO (Aug. 23, 2015), https://www.npr.org/sections/parallels/2015/08/23/433228503/in-spain-entire-villages-are-up-for-sale-and-theyre-going-cheap [https://perma.cc/2J6H-UADB].

101. John Gallagher, *Detroit Land Bank Admits Faults, Carries on Amid Complaints It Moves Too Slowly*, DETROIT FREE PRESS (Dec. 3, 2019), https://www.freep.com/story/money/business/john-gallagher/2019/12/03/detroit-land-bank-criticism-weve-accomplished-tremendous-amount/2586225001/ [https://perma.cc/S9NF-MW8M].

102. Shawn Kwan, *Hong Kong Sets Record in $5 Billion Land Sale*, BLOOMBERG (Nov. 27, 2019), https://www.bloomberg.com/news/articles/2019-11-27/hong-kong-sets-record-in-5-billion-land-sale-to-sun-hung-kai [https://perma.cc/CF48-E9BH].

103. *Id.*

104. Gareth Davies et al., *Revealed: The Thousands of Public Spaces Lost to the Council Funding Crisis*, HUFFINGTON POST (April 3, 2019), https://www.huffingtonpost.co.uk/entry/sold-from-under-you-investigation_uk_5c7bee0fe4b0e5e313cb9eac [https://perma.cc/7XVP-CZYJ].

105. Fernanda G. Nicola & Sheila Foster, *Comparative Urban Governance for Lawyers*, 42 FORDHAM URB. L.J. 1, 22–24 (2016).

106. *Id.* at 14, 23.

107. Miriam Axel-Lute, *New Program Aims to Help Community Land Trusts Get to Scale*, SHELTERFORCE (Apr. 27, 2018), https://shelterforce.org/2018/04/27/new-program-aims-to-help-community-land-trusts-get-to-scale/ [https://perma.cc/3EEU-LLXK].

interest share loans, given the lack of familiarity with these models.[108] Cities, however, are not without solutions and tools to facilitate community control of land or shared equity housing in disadvantaged communities through their support of CLTS and LECs.

To address the financial barriers Co-City developments have faced, we offer a menu of options that city leaders and community-based entrepreneurs can use to make such developments more feasible. These strategies are explored in turn, each strategy ending with an example of how it can boost the goals of the Co-City Framework, generally, and land stewardship tools like CLTs and LECs specifically.

A. Zoning and Land Use Regulatory Incentives

Cities can incentivize the development of CLTs, LECs, and other Co-City institutional mechanisms by incentivizing specific uses using regulation. Incentives can include allowances for mixed-use development,[109] parking lot reductions, investment into nearby public transit, tax benefits, tax increment financing, fast-track review, social impact bonds, inspection, and utility connection, fee waivers, narrower street widths, and the like. These can make stewardship approaches more financially attractive, enabling these developments to access more financing from lenders.[110] Ultimately, with incentives, more permanently affordable units can be built.

As an example, take an incentive to increase the density of an area, such as a density bonus. As part of an inclusionary zoning program, for-profit developers are able to build more units, and add more floors, when they meet local governments' goals for more affordable housing. Instead of allowing all developers to benefit from such programs, cities can limit them to CLTs or LECs to ensure that more permanently affordable housing units are built. Taking traditional affordable housing development as an analogy, being able to build more floors or more units on the same lot (by relaxing minimum unit sizes), more residents can pool their resources together, access

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108. Thaden, *supra* note 53.

109. Jena Tesse Fox, *JLL Cites Mixed-Use Development for Profitability*, HOTEL MGMT. (Sept. 17, 2019), https://www.hotelmanagement.net/development/jll-advises-mixed-use-development-for-profitability [https://perma.cc/AA3J-AWSA].

110. *The Cost of Affordable Housing: Does It Pencil Out?*, URBAN.ORG, https://apps.urban.org/features/cost-of-affordable-housing/ [https://perma.cc/94HH-CS4D] (last visited Mar. 22, 2020).

affordable units, and achieve economies of scale.[111] As a result, such a move would likely drastically increase the financial viability of LECs.[112]

Cities that limit regulatory advantages to these kinds of equitable developments exist around the world. Analogous efforts exist in German cities, as discussed above.[113] Munich, for instance, offers special regulatory incentives to cooperative housing, regularly favoring these cooperative developers and offering 20–40% discounts on public land sales.[114]

Similarly, Boulder suspended a tax incentive for most developers, except those that met public-service goals.[115] The tax incentive — the Qualified Opportunity Zones program[116] — was designed to promote investment in distressed areas.[117] Concerned that the program would not meet its intended goal to benefit residents directly, the city suspended all applications for these tax benefits, except for projects that would also directly benefit underserved residents. For instance, it allowed the city-owned Boulder Junction project to continue, which was a mixed-use development with significant affordable housing built on top of a regional bus transit hub.[118]

The major drawback of these strategies is political feasibility. Continuing with the example of density bonuses for affordable housing, cities, regions, and recently "yes in my backyard" (or YIMBY) advocates may want these to build more housing. But such upzoning threatens existing homeowners, who want less density and traffic that would arise from more density (also called "not in my backyard," or NIMBY, advocates).[119] From the other end of the

111. *Id.*

112. *Id.*

113. Reynolds, *supra* note 90.

114. *Id.*

115. Oscar Perry Abello, *Boulder Presses Pause on Some Opportunity Zone Development*, NEXT CITY (Mar. 6, 2019), https://nextcity.org/daily/entry/boulder-presses-pause-on-some-opportunity-zone-development [https://perma.cc/QWX3-J7PK].

116. *Opportunity Zones Frequently Asked Questions*, INTERNAL REVENUE SERV., https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions [https://perma.cc/K69C-X2Y7] (last visited Mar. 22, 2020).

117. *Id.*

118. Abello, *supra* note 115.

119. Steve Wright, *Pros vs. Cons: Smart Growth Experts Debate Inclusionary Zoning Strategies in an Effort to Win Diverse Affordable Neighborhoods*, ON COMMON GROUND, Winter 2007, at 31, https://www.nar.realtor/smart_growth.nsf/docfiles/winter07proscons.pdf/$FILE/winter07proscons.pdf [https://perma.cc/M4NC-ZT2F].

housing spectrum, traditional housing affordability advocates also may oppose upzoning because they fear that it would displace local residents, often favoring expensive market- or luxury-rate housing. Despite having some overlapping goals to build more housing, YIMBY and traditional housing affordability advocates have sparred on bills such as California's proposal to upzone areas around transit.[120]

In contrast, a targeted upzoning proposal like the type proposed above may thus in fact be even more politically feasible than traditional upzoning bills. As the YIMBYs prefer, the proposal would favor upzoning and the creation of more housing units to address the lack of supply. But to address concerns that upzoning would displace local residents,[121] targeted upzoning would limit these benefits to developers who will steward the property, using CLTs and LECs. These units would also be built affordably-by-design so that each unit, albeit smaller, is more cost-effective, allowing more to participate and pool their resources. Targeted upzoning may build common ground between YIMBYs and traditional affordability advocates.

The creation of new coalitions has been found to be key to housing innovations. For instance, researchers point to a coalition of young YIMBY advocates and racial justice organizers in sparking the end of Minneapolis' exclusionary, single-family zoning.[122] Coalitions between labor and tenant rights activists helped make Community Benefit Agreements in the early 2000s a success.[123] These agreements require developers to provide affordable housing and local hiring to the local community in exchange for community support of megaprojects like Los Angeles' L.A. Live.[124]

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120. Jackie Fielder & Deepa Varma, *SB 50 Authors Need to be Better Allies of Tenants, Low-Income People and People of Color*, S.F. EXAMINER (Dec. 31, 2019), https://www.sfexaminer.com/opinion/sb-50-authors-need-to-be-better-allies-of-tenants-low-income-people-and-people-of-color/ [https://perma.cc/G9Z4-CSY4].

121. *Id.*

122. Richard D. Kahlenberg, *How Minneapolis Ended Single Family Zoning*, CENTURY FOUND. (Oct. 24, 2019), https://tcf.org/content/report/minneapolis-ended-single-family-zoning/?session=1 [https://perma.cc/ALM4-8Y6V].

123. *Policy & Tools: Community Benefits Agreements and Policies in Effect*, PARTNERSHIP FOR WORKING FAMS., https://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect [https://perma.cc/3KQ8-DUTG] (last visited Mar. 22, 2020).

124. *Id.*

While more density raises gentrification concerns, favoring CLTs and LECs blunts the threat.[125] Potential appreciation and rising rents serve properties stewarded for permanent affordability, and other community amenity uses.[126] CLTs and LECs can capture rising land values and cycle them back into sustaining these land uses and keeping them affordable and accessible.[127] These tools, in fact, promote what Majora Carter has called "self-gentrification," a contested idea but one that supports enabling longtime residents of revitalizing neighborhoods to be in control of community development and the kinds of amenities that address their needs.[128]

B. Alternative Financing Sources for Stewarded Developments

Stewarded developments can also consider alternative financing sources that allow them to access more forms of capital. These sources are likely willing to take lower returns in exchange for a public good.

It is worth discussing why financing gaps in permanently affordable housing development exist. Traditional lenders face regulatory or operational roadblocks in financing projects seen as too risky or unconventional. For one, lenders rely on a process called securitization[129] to pool mortgages of a similar type and sell pieces of that pool to investors. While this spreads credit risk, pooling requires homogeneity in the underlying pooled assets — which is in tension with the Co-City Framework's aforementioned notion of pooling resources. Furthermore, capital market investors penalize unstandardized assets, harming liquidity and exposing lenders to higher risk.[130]

The sector of "entrepreneurial finance" seeks to address this gap by helping entrepreneurs, such as developers, obtain financing from

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125. Alana Semuels, *Affordable Housing, Always*, ATLANTIC (July 6, 2015), https://www.theatlantic.com/business/archive/2015/07/affordable-housing-always/397637/ [https://perma.cc/XUK5-NTAX].

126. *Id.*

127. *Id.*

128. Dominic "CJ" Arenas, *Don't Move Improve: Self-Gentrification in the South Bronx*, MEDIUM (Feb. 13, 2018), https://medium.com/@dominicarenas/dont-move-improve-self-gentrification-in-the-south-bronx-f4056e9fb643 [https://perma.cc/S96H-V2EW].

129. Ian Galloway, *Peer-to-Peer Lending and Community Development Finance*, 21 COMMUNITY INVEST. 18, 19 (2009).

130. Laura Choi, *Creating a Marketplace: Information Exchange and the Secondary Market for Community Development Loans* (Cmty. Dev. Invs. Ctr. at the Fed. Reserve Bank of S.F., Working Paper 2007–01, 2007).

lenders subject to fewer of the restrictions mentioned above for unconventional projects.[131] Crowdfunding is a relevant financing mechanism for expensive projects due to its ability to pool the funds from numerous individuals into one large project.[132]

Crowdfunding is a valuable tool for Oakland's Permanent Real Estate Cooperative (PREC). PREC describes itself as a "movement cooperative." It seeks not only to provide housing, but also to help members transform their neighborhoods and systems of finance and land ownership.[133] In addition to using crowdfunding, PREC combines features from both CLT and LECs, with a strong focus on social movement organizing and participatory governance.[134] About 25%[135] of its $200,000 maintenance fund budget is covered by sales to non-residents of cooperative shares, which return a dividend of 1.5% to investors, far below the 7% commercial average.[136] Investment terms, furthermore, are structured to maintain the cooperative's mission. For instance, shares are non-transferable, cooperatives have five years to buy back shares when investors need to sell, and resident-owners get right of first refusal to acquire the cooperative's properties.[137]

Yet similar cooperative-like developments that use crowdfunding will find that the amount of money they can raise is limited. Terms like PREC's may not be attractive for many retail investors, limiting the pool of investors and ultimately funds that nontraditional, nonprofit, or limited equity developers can raise. For low- or middle-class *non-resident* investors, earning 1.5% on your investment may be unsound. They likely will rather invest more of their portfolio

131. Garry Bruton et al., *New Financial Alternatives in Seeding Entrepreneurship: Microfinance, Crowdfunding, and Peer-to-Peer Innovations*, 39 ENTREPRENEURSHIP THEORY & PRAC. 9 (2015).

132. *Id.*

133. *Permanent Real Estate Cooperatives*, SUSTAINABLE ECONS. L. CTR., https://www.theselc.org/prec_pilot [https://perma.cc/47GK-GSCY] (last visited Mar. 22, 2020).

134. *Id.*

135. Jade Yamazaki Stewart, *The East Bay Permanent Real Estate Cooperative's New Way to Build Housing Equity*, OAKLAND MAG. (Oct. 2, 2019), http://www.oaklandmagazine.com/October-2019/The-East-Bay-Permanent-Real-Estate-Cooperatives-New-Way-to-Build-Housing-Equity/ [https://perma.cc/MK59-QN3V].

136. *Id.*

137. Jared Brey, *Why These Hospitals Have Promised $700 Million for Affordable Housing and More*, NEXT CITY (Dec. 3, 2019), https://nextcity.org/daily/entry/these-hospitals-have-promised-700-million-for-affordable-housing-and-more [https://perma.cc/5AT6-3KPN].

in high-interest savings or tax-advantaged retirement accounts that deliver better returns with less risk, especially due to Federal Deposit Insurance Corporation insurance. Beyond that, investing much of their portfolio in low-returning financial products like PREC's shares may harm these investors' ability to save adequately for retirement or rainy days, like medical emergencies.

To address some of these issues, online *platforms* to support Co-City developments such as CLTs or LECs can help expand the pool of investors for which these low-returning yet mission-oriented financial products are attractive. In contrast to one-off sales of cooperative stock, like PREC's, a platform would aggregate many Co-City projects in one place, filtered by a variety of key investment criteria. These include size, geography, return, and measures of social impact (for instance, the Community Development Financial Institution, or CDFI, Assessment and Ratings System[138]).

For would-be Co-City developers, this platform would compile potential financing sources.[139] Eligibility filters and a standardized application — which could double as a template to understand best practices for legal, financial, and other operations — allow these developers to source financing more quickly. Several housing platforms like Cobuy[140] and UsurpPower[141] ease these transaction costs for specific markets, such as shared mortgages and energy

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138. ELISE BALBONI & CHRISTINA TRAVERS, LOCAL INITIATIVES SUPPORT CORP., CDFIS & IMPACT INVESTING: AN INDUSTRY REVIEW (2017) https://www.newyorkfed.org/medialibrary/media/outreach-and-education/2017/CDFIs-Impact-Investing.pdf [https://perma.cc/869J-8JJ6].

139. To provide a flavor of the diversity of financial sources that exist, see MARC NORMAN, ANALYSIS OF THE FINANCIAL FEASIBILITY OF DEVELOPING AFFORDABLE HOUSING ON UNDER-UTILIZED CITY-OWNED PROPERTY (2019), https://a2gov.legistar.com/View.ashx?M=F&ID=7863583&GUID=739FCFD2-50C5-4475-8547-5EE2868C75A3. As Professor Norman's analysis shows, these sources may include credit unions, nonprofits, CDFIs, cooperative associations, social purpose real estate investment funds, insurance companies, city and federal funds, hospitals that need to invest community benefits dollars to maintain nonprofit status, social impact bond creators, and social impact real estate investment trusts, like the Housing Partnership Equity Trust. *See, e.g.*, *id.*; Kathryn Reynolds et al., *Why Hospitals and Health Systems Are Becoming Impact Investors*, URB. INST. (Aug. 8, 2019), https://www.urban.org/urban-wire/why-hospitals-and-health-systems-are-becoming-impact-investors [https://perma.cc/3UCJ-LFKS].

140. Nat Levy, *Buy a House with a Buddy? This Startup Aims to Simplify Non-Traditional Home-Buying Partnerships*, GEEKWIRE (Nov. 25, 2016) https://www.geekwire.com/2016/cobuy-aims-simplify-non-traditional-home-buying-partnerships-skyrocketing-prices-send-buyers-scrambling-alternatives/ [https://perma.cc/N45H-4D3N].

141. UNETY, https://usurppower.com/ [https://perma.cc/N6JM-UVMT] (last visited Mar. 22, 2020).

retrofits, respectively. Demand for such a way to navigate numerous financing opportunities is clear. Organizations from the Global Fund for Cities' Development[142] to Grounded Solutions[143] have created databases of possible funding sources for Co-City-type developments, like CLT and LECs.

Specific types of institutional investors may be attracted to such platforms because of the search and information costs of finding worthwhile investments. CRA-motivated banks, for instance, need to invest in low- and moderate-income (LMI) geographies or find loans originated by certified community development lenders, such as community development financial institutions. Currently, due to search and information costs, many banks simply invest in mutual funds of loans that service their LMI geographies to meet their obligation, despite the costly nature of the convenience.[144] Other smaller institutional investors, such as municipal pension funds, foundations, and high-income individuals, will also benefit from a platform in which they can easily find investments that meet their investment and impact criteria.[145]

There is precedent for raising financing through platforms to fund stewarded developments, such as the platform Faithify's offering of the Lucy Stone Cooperative.[146] Faithify raised $11,358 in donations in two months to help the Lucy Stone Cooperative (LSC) afford a down payment.[147] While LSC is a group-equity cooperative, LSC members do not accrue individual equity to keep rent permanently affordable.[148] In that way, it is a stewardship rather than

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142. FMDV, INTERREG NORTH-WEST EUROPE, MAPPING FINANCE FOR COMMUNITY LAND TRUSTS IN THE NORTHWEST EUROPEAN REGION (2018), http://admin.fmdv.net/Images/Publications/113/FINAL-CLTFinance_Mapping_Synthesisdoc_181008.pdf [https://perma.cc/V2XX-FJZ6].

143. *Accessing Mortgage Financing Options for Buyers of Shared Equity Homes*, GROUNDED SOLUTIONS NETWORK, https://groundedsolutions.org/tools-for-success/resource-library/mortgage-financing-options [https://perma.cc/5D5Z-JG8P] (last visited Mar. 22, 2020).

144. Galloway, *supra* note 29.

145. *Id.*

146. UNITARIAN UNIVERSALIST COMMUNITY COOPERATIVES: LUCY STONE COOPERATIVE, https://uucommunitycoops.org/lsc/ [https://perma.cc/D9BF-59KV] (last visited Mar. 22, 2020).

147. *The (Next) Lucy Stone Cooperative!*, FAITHIFY, https://faithify.org/archived-projects/the-next-lucy-stone-cooperative/ (last visited April 29, 2020).

148. *See generally Housing Co-op Equity Models*, NASCO, https://www.nasco.coop/development/handbook/equity [https://perma.cc/7JJ7-YP8F] (last visited Mar. 22, 2020).

ownership-based governance system, like LECs.[149] Furthermore, to assist philanthropists, projects on Faithify can be filtered by type of project and feature clear descriptions of key criteria.[150] Other crowdfunding platforms for mission-driven real estate-related investments include Nico, which reduces the barriers to entry for local neighbors and renters to invest in real estate in their neighborhood,[151] Small Change, which allows users to filter by the development's level of social impact,[152] and BlocPower, which focuses on energy retrofits.[153]

C. Strategic Partnerships and Investments

While the Co-City Framework explicitly considers both CLTs and LECs as key pooling mechanisms, when these two forms work together, they can unlock more financial opportunities. For one, LECs allow residents to pool resources to drive down costs and also secure a blanket mortgage,[154] using a physical building as collateral.

R50, one "building group" (or baugruppen) in Austria, for instance, has been able to live in units nearly 20% cheaper[155] than comparable units. Because the group self-directed the development of its own building, it avoided having to hire a developer, which would otherwise require a 10–20%[156] return on investment on top of the cost of the building. Furthermore, by organizing a community to live in the building, the baugruppen also avoided marketing and sales costs, which can consume up to 10% of total development budgets.[157] Finally, this baugruppen was able to obtain more financing for its

149. *Id.*

150. *See generally supra* note 147.

151. *See* Adele Peters, *Now Renters Can Also Make Money in the Real Estate Market as Their Neighborhoods Gentrify*, FAST CO. (Nov. 2019), https://www.fastcompany.com/90432402/now-renters-can-also-make-money-in-the-real-estate-market-as-the-neighborhoods-gentrify [https://perma.cc/EYY7-2H2H].

152. *See* SMALL CHANGE, https://www.smallchange.com/ [https://perma.cc/KK83-C72E] (last visited Mar. 22, 2020).

153. *See* BLOCPOWER, https://marketplace.blocpower.io/ [https://perma.cc/XX75-NTRL] (last visited Mar. 22, 2020).

154. Ehlenz, *supra* note 56, at 8.

155. Jessica Bridger, *Don't Call It A Commune: Inside Berlin's Radical Cohousing Project*, METROPOLIS (June 10, 2015), https://www.metropolismag.com/architecture/residential-architecture/dont-call-it-a-commune-inside-berlin-radical-cohousing-project/ [https://perma.cc/5D8Q-9RDL].

156. Lauren Elkies, *What A Building Costs*, HJ DEV., https://therealdeal.com/wp-content/uploads/all/images/37700/What_a_building_costs.pdf [https://perma.cc/5SW9-SS9Q] (last visited Mar. 22, 2020).

157. *See id.*

building by pooling together initial down payments and proving its interest in the project to lenders.[158]

R50 would also benefit from a partnership with a CLT. By separating the ownership of land from the building, the cost to own an interest in a cooperative is lowered, as a cooperative resident does not need as much money to purchase land.[159] Finally, both the cooperative and land trust form offer distinct financial benefits that can be pooled together. Cooperative corporations have an enhanced ability to take multiple forms of capital, unlike trusts, which are typically 501(c)(3)s.[160] Yet, since 501(c)(3)s often qualify for special tax exemptions,[161] which can thus reduce the partnership's total operational costs and financial viability.

Other strategic partnerships Co-City developers should consider are those with traditional community development corporations (CDCs). There are quite a few benefits for both parties, as evidenced by the Banana Kelly CDC's partnership with the East Harlem CLT.[162] First, some CDCs have considered ways to move their rental portfolios into land trusts to maintain permanent affordability. "For example, the Banana Kelly Community Improvement Association is developing a land trust to govern their properties while mobilizing broader community support for creating additional land trusts in the Bronx area of New York City."[163] By holding these rental portfolios in a land trust, CLTs can have the "minimum income to allow financing to work," notes Banana Kelly's executive director, Harold DeRienzo.[164]

Some CDCs are part of large housing portfolios, which can create an unprecedented scale for CLTs. One example is the Joint Ownership Entity (JOE), of which the Banana Kelly CDC is a part,

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158. Bridger, *supra* note 155.

159. Lillian M. Ortiz, *Will Limited-Equity Cooperatives Make a Comeback?*, SHELTERFORCE (Apr. 25, 2017), https://shelterforce.org/2017/04/25/will-limited-equity-co-ops-make-comeback/ [https://perma.cc/GP8S-P4ZD].

160. *Permanent Real Estate Cooperatives*, SUSTAINABLE ECONS. L. CTR., https://www.theselc.org/prec_pilot [https://perma.cc/2FZ7-JGFA] (last visited May 4, 2020).

161. Ortiz, *supra* note 159.

162. DAVID M. GREENBERG, LOCAL INITIATIVES SUPPORT CORP., COMMUNITY LAND TRUSTS & COMMUNITY DEVELOPMENT 15 (2019), https://www.lisc.org/media/filer_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519_white_paper_community_land_trusts.pdf [https://perma.cc/2FZ7-JGFA].

163. *Id.*

164. *Id.*

which holds nearly 3000 affordable units.[165] The JOE allows CDCs to assign ownership interests in their property to an umbrella entity, and receive membership interest and board seats. The JOE, in turn, manages the assets and provides more consistent revenues and a larger balance sheet for future development projects.[166]

Given that one of the core principles of the Co-City Framework is pooling, there is a lot to be learned from how real estate investment cooperatives (REICs) allow local residents to invest financially to collectively buy, rehab, and manage commercial and residential property in the community.[167] Strategic, pooled investments allow these entities to raise capital and investment assets as collateral to purchase more properties.

The Northeast Investment Cooperative (NEIC) in Minneapolis provides an example.[168] In 2012, residents pooled their money to acquire a discount mattress warehouse as a group, which has now been converted into a thriving bike repair shop, craft beer brewery, and bakery. When a building owner agrees to sell, NEIC signs a letter of intent with that owner, raises financing from new and existing members, and also obtains capital from a community bank. A key aspect of loan analysis is that the borrower has sufficient equity and assets to cover the down payment and associated renovations.[169] Due to the collection of thriving assets it has developed, NEIC has

165. Oscar Perry Abello, *Nonprofits Join Up to Increase Affordable Housing Heft*, NEXT CITY (Mar. 29, 2017), https://nextcity.org/daily/entry/nyc-joe-affordable-housing-investment-lihtcs [https://perma.cc/M9SZ-9SWM].

166.

> By pooling properties in JOE NYC, the nonprofits can start to combine their buildings in that way to get the bigger loan together, instead of trying for a bunch of smaller loans they might not be able to afford. Other buildings in the portfolio that don't need maintenance serve as collateral or assurance to a lender, which can lower the interest rate even more. In real estate parlance, this musical chairs game of using a portfolio of buildings to get financing for maintenance needs is known as "asset management."

Id.

167. *See* NYC REAL EST. INV. COOPERATIVE, http://nycreic.com/ [https://perma.cc/HUX9-GDJB] (last visited Mar. 22, 2020).

168. *See* Olivia Lavecchia, *The Do-It-Yourselves Downtown*, INST. FOR LOC. SELF-RELIANCE (Feb. 23, 2015), https://ilsr.org/do-it-yourselves-downtown-investment-cooperative-model/ [https://perma.cc/8NVJ-VMQJ].

169. Nicole Bennett, *Mixed-Use Development: Through the Lender's Looking Glass*, FED. RES. BANK MINNEAPOLIS (Dec. 1, 1998), https://www.minneapolisfed.org/article/1998/mixeduse-development-through-the-lenders-looking-glass [https://perma.cc/3MGE-7BWV].

successfully obtained financing for multiple buildings from local banks.[170]

Similar work has been proposed and prototyped by Cooperative Community Investment (CCI)[171] and the cooperative housing association Mietshauser Syndikat.[172] As CCI explains, assets the REIC collects can be used to provide "dividends from income generated through commercial rents, strategic acquisitions or proceeds from CCI sales" and create larger purchases that reduce the cost of basic needs, like food and utilities.[173]

Ultimately, by encouraging the use of regulatory incentives to promote more pooling and affordability-by-design, alternative financing sources, and strategic partnerships, city leaders and community-based entrepreneurs can scale stewarded developments even in areas with high land values.

CONCLUSION

A key component of the Co-City Framework is the creation of common goods collectively governed and controlled by the communities that they serve. These goods are made possible by local policies that allow residents to access and utilize the property of the city, that we all share, and through the pooling of resources, money, and time to develop or construct those goods.

This Essay investigated one city's policy — the Large Lots Program — as an example of the kind of program that can be adapted or redesigned with stewardship in mind. The piece then explored why Co-City's applicability does not end with the Chicago example. It has relevance to a variety of public land sales happening across the world.

Yet the Co-City Framework will have trouble applying to areas where land is cost-prohibitive.[174] In these cities, governments often sell land in order to generate revenue — not just revitalize

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170. *See* Oscar Perry Abello, *These Neighbors Got Tired of Waiting for Traditional Developers*, NEXT CITY (Aug. 30, 2016), https://nextcity.org/daily/entry/cooperative-commercial-real-estate-development-minneapolis [https://perma.cc/ZCB6-WNJW].

171. This model has been proposed and prototyped by one of the coauthors of this piece. *See* Marc Norman, COOPERATIVE COMMUNITY, INC., https://syrdevelopment.files.wordpress.com/2018/11/cooperativecommunityinc_norman.pdf [https://perma.cc/H72K-L96H] (last visited Mar. 22, 2020).

172. *See* MIETSHÄUSER SYNDIKAT, https://www.syndikat.org/en/ [https://perma.cc/D4SE-U955] (last visited Mar. 22, 2020).

173. Norman, *supra* note 171.

174. Axel-Lute, *supra* note 107.

neighborhoods.[175] In order to push the Co-City Framework further, this Essay ended with an investigation into three general strategies Co-City projects can use to support and finance their work. These include creating incentives in zoning and land use laws, encouraging the identification of alternative financing sources, and launching strategic partnerships to build leverageable assets.

Beyond these strategies, it is worth briefly discussing legal reforms or policies that can further enable the Co-City Framework to become a powerful intervention into exclusionary patterns of urban development. Following Minnesota's lead, states might consider securities exemptions that allow cooperatives to raise capital from their members and exceed the purchase of membership shares.[176] Rules like this helped Minnesota's thriving cooperative sector.[177] The PREC in California, too, was able to raise more money from its surrounding community due to a 2015 state law allowing cooperatives to raise more than $350 from their members.[178]

While a focus on finance seems at odds from the community-driven efforts seen in Co-City developments, they go hand-in-hand. Many of the accounts above, from PREC to the NEIC, show that efforts to build financial feasibility involve community organizing so that local residents can increase community control over their neighborhood. Raising financing means listening to the concerns and needs of a variety of local stakeholders who are invested in the outcome of the project. Raising financing means coalition-buildings work with community development corporations and other diverse actors in the ecosystem, such as policymakers, to push for new policies. Raising financing is itself a means to understand and partner with communities to build more equitable and empowering communities.

175. *See* Gareth Davies et al., *Revealed: The Thousands of Public Spaces Lost to the Council Funding Crisis*, HUFFINGTON POST (Oct. 7, 2019), https://www.huffingtonpost.co.uk/entry/sold-from-under-you-investigation_uk_5c7bee0fe4b0e5e313cb9eac [https://perma.cc/RD55-SFEN].

176. Lavecchia, *supra* note 168.

177. *Id.*

178. Stewart, *supra* note 135.