

On Retiring Blight as Policy and Making Eastwick Whole

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“[T]he good folks up in the city call it all Eastwick now. We didn’t know that.”¹

“Of course, one cannot think without metaphors. But that does not mean there aren’t some metaphors we might well abstain from or try to retire.”²

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It is essential to note at the outset that I have come to know Eastwick through my work as legal counsel to the Eastwick Friends and Neighbors Coalition (“EFNC”). I was invited out to Eastwick by Ross Pilling of Keystone Conservation Trust in May of 2012 and have been working as an advocate with EFNC since that time. It is with the consent and guidance of the coalition that I wrote this article.

¹ Guian A. McKee, *Liberal Ends Through Illiberal Means: Race, Urban Renewal, and Community in the Eastwick Section of Philadelphia, 1949–1990*, 27 J. URBAN HIST. 547, 555 (2001) (quoting resident William Hillier).

² SUSAN SONTAG, *ILLNESS AS METAPHOR AND AIDS AND ITS METAPHORS* 93 (1989).

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INTRODUCTION

We are past the time to retire “blight,” not simply as metaphor, but as a policy and legal framework for rebuilding cities. Ask Eastwick, a low-lying community in Southwest Philadelphia home to the largest urban renewal project in history.³

In the years leading up to the passage of the federal urban redevelopment program in Title I of the Housing Act of 1949,⁴ city planners, reformers, private developers, and governments at all levels adopted the language of blight to talk about neighborhoods. Too often, this rhetoric provided the framework, and cover, to treat people as movable and land as a market commodity instead of treating both as integral, living components of communities. These terms and past actions continue to shape local policies. Despite all the lessons learned from the failures of urban renewal, dangers of eminent domain, and benefits of new city-planning models, we are still using the rhetoric of blight to disenfranchise communities. A designation of blight originates outside of a community and pulls power away from that community, accompanied by external definitions of values, assets, challenges, and solutions. Residents, like local governments, want solutions to the problems of disinvestment, empty homes, and abandoned lots. However, top-down neighborhood development that is not rooted in residents’ needs, voices, and strengths can perpetuate health disparities and other inequities. Thus, people most affected often must accept unwanted land uses in their areas while failing to reap the benefits of development. In contrast, promoting participatory decisionmaking and ensuring communities power over neighborhood futures has the potential to promote healthy, sustainable, and verdant communities. The story of one Philadelphia neighborhood tells us that the

³ GUIAN A. MCKEE, *THE PROBLEM OF JOBS: LIBERALISM, RACE, AND DEINDUSTRIALIZATION IN PHILADELPHIA* 34 (2008).

⁴ Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413.

time has come to recognize that residents have a “right to the city,”⁵ and with it the right to models that promote health, equity, and collective community power.⁶

Through the 1950s and 1960s, the Redevelopment Authority of Philadelphia (“RDA,” now the Philadelphia Redevelopment Authority or “PRA”) used its eminent domain powers to declare Eastwick blighted and condemn and seize at least 2140 acres within the Eastwick Urban Renewal Area.⁷ In the process, RDA displaced 8636 people from their homes and dismantled one of Philadelphia’s only racially integrated community.⁸ Swaths of land were taken away from private residents and sold at a premium, primarily to one private residential developer — the New Eastwick Corporation (“NEC”) — which was joined later by Korman Corporation (“NEC/Korman”).⁹ The RDA and NEC/Korman partnered to create a “New Eastwick” to which most of Eastwick’s former residents did not return. The blight designation and subsequent urban renewal projects have controlled the destiny of the neighborhood from that time forward.

The redevelopment of Eastwick illustrates that the greatest benefits of blight eradication did not flow to displaced or new residents. Flooding, toxic dumping, and heavy industry made pre-urban renewal Eastwick an environmentally vulnerable place for the neighborhood’s predominately working class, African American, and immigrant residents. Experts cited these very real problems, along with a surfeit of tax delinquent and undeveloped property, as reasons to designate Eastwick as blighted.¹⁰ The blight designation allowed municipal officials to take advantage of federal grants and what was viewed as Eastwick’s large open lands without finding transformative solutions for an environmentally vulnerable neighborhood. Resettled and new Eastwick residents moved to a neighborhood with continually compounding environmental hazards — sinking homes, residences built aside toxic landfills, air quality issues, oil refineries, air traffic, and flood risks.¹¹

⁵ See David Harvey, *The Right to the City*, 53 NEW LEFT REV. 23 (2008), available at <http://newleftreview.org/II/53/david-harvey-the-right-to-the-city>, archived at <http://perma.cc/B6KY-V9YB> (stating that “[t]he freedom to make and remake our cities and ourselves is, I want to argue, one of the most precious yet most neglected of our human rights”).

⁶ Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 4 (1969), available at <http://lithgow-schmidt.dk/sherry-arnstein/ladder-of-citizen-participation.html>, archived at <http://perma.cc/H3XZ-HPFY>.

⁷ Daniel J. Cummins, Jr., *Eastwick: A City Within a City*, REALTOR MAG. 9, 9 (1959); McKee, *supra* note 1, at 547 n.1.

⁸ McKee, *supra* note 1, at 555.

⁹ *Redev. Auth. v. New Eastwick Corp.*, Nos. 2087 APRIL TERM 2003, Control 102344, Control 102318, 2005 WL 705976, at *1 (Pa. Ct. Com. Pl. Mar. 23, 2005), *aff’d*, 894 A.2d 830 (Pa. Super. Ct. 2005).

¹⁰ See generally Inst. for Urban Studies, *The Housing Market Implications of Negative Environmental Factors: A Study of Areas Analogous to Eastwick (May 1957)* (unpublished report) (on file with the University of Pennsylvania Library system).

¹¹ See EPA, FINAL REMEDIAL INVESTIGATION REPORT, VOLUME I: REMEDIAL INVESTIGATION AND FEASIBILITY STUDY (RI/FS) LOWER DARBY CREEK AREA (LDCA) SITE, at ES-1 (2011), available at <http://epa.gov/reg3hwmd/npl/PASFN0305521/ri/Report.pdf>, archived at

Over time, development has also destroyed thousands of acres of tidal wetlands and, with the loss of wetlands, increased vulnerability to storms. It is the residents of Eastwick — a mixed income neighborhood, racially integrated but predominantly African American — as well as the neighboring John Heinz National Wildlife Refuge (“the Refuge”), that continue to bear the risk.¹²

Eastwick residents and allies are now building political power through grassroots organizing and strategic alliances that bring together resident and environmental groups with other partners. The Eastwick Friends and Neighbors Coalition (“EFNC”), a united effort that emerged from the struggle to gain a meaningful and equitable voice in development, may now have the opportunity to take a lead role in Eastwick’s first planning process in sixty years. In a recent historic event, the interim executive director of the PRA sat down with residents to hear grievances.¹³ Yet it is still crucial to find new ways of thinking, talking, and acting in order to make Eastwick whole, move forward, and not reproduce new Eastwicks.

Part I of this Article examines the disconnect between, on the one hand, blight rhetoric and urban renewal, and on the other, the lived experiences of Eastwick residents. These terms have provided cover to remake often already marginalized communities and community members. Part II details how residents experienced the condemnation and dismantling of their neighborhood, often without seeing the touted benefits of the new Eastwick. Part II also outlines how the urban renewal framework, focused as it was on removing visible “blight” to activate the area economically, fell short of creating solutions for the very environmental health and safety issues cited as part of the blight designation. Part III brings us to the present day. In 2006, the Philadelphia City Planning Commission recertified Eastwick as “blighted,” recementing the RDA’s authority within the neighborhood. Two years ago, NEC/Korman, RDA, and the City of Philadelphia negotiated a deal to develop a 722-unit apartment complex and expand the Philadelphia International Airport complex onto a 128-acre parcel in Eastwick, in flood zones adjacent to homes and the Refuge. EFNC is now leveraging the con-

<http://perma.cc/9HQM-CK4E> [hereinafter EPA REPORT]; Diane Sicotte, *Don’t Waste Us: Environmental Justice Through Community Participation in Urban Planning*, 3 ENVTL. JUST. 1 (2010); Kellie Patrick Gates, *City Says Feds Need to Build Earthen Berm to Provide Flooding Relief in Eastwick, and 722 Apartments Won’t Make It Worse*, PLANPHILLY (Oct. 10, 2012), <http://planphilly.com/articles/2012/10/10/city-says-feds-need-build-earthen-berm-provide-flooding-relief-eastwick-and-722-apartments-wont-make>, archived at <http://perma.cc/75ED-JVVK>; Samantha Melamed, *Sinking Feeling*, PHILA. CITY PAPER (Apr. 26, 2012), <http://www.citypaper.net/article.php?Sinking-Feeling-13008>, archived at <http://perma.cc/3RWF-8QX4>.

¹² See PEOPLE OF COLOR ENVTL. LEADERSHIP SUMMIT, PRINCIPLES OF ENVIRONMENTAL JUSTICE (1991), available at <http://www.ejnet.org/ej/principles.pdf>, archived at <http://perma.cc/G4BX-H8G5>; Robert D. Bullard et al., *Toxic Wastes and Race at Twenty: Why Race Still Matters After All of These Years*, 38 ENVTL. L. 371, 381 (2008).

¹³ The interim Executive Director of the PRA, Brian Abernathy, met with community leaders from EFNC at my office on November 5, 2013. During that meeting, Abernathy stated that he understood the RDA to have played a negative role in Eastwick and asked to hear about that history from residents.

flict over this proposal to bring awareness to Eastwick's environmental justice legacy and advocate for a long-term vision for a sustainable Eastwick. Part IV looks at how the effort to increase democratic engagement in the development process became a community-building partnership between residents and environmental advocates, who have united to shift the power dynamic and provide a new framework — rooted in environmental justice, neighborhood sustainability, and human rights — for making Eastwick whole. Finally, the Article concludes by addressing how Philadelphia's continued use of blight rhetoric in redevelopment efforts, including in passing landmark land bank legislation and by residents themselves, is symptomatic of continued structural inequity and suggests that Eastwick's experience provides guidance for the city and its diverse communities as we work toward implementing Philadelphia's new land bank law.

I. DISMANTLING POWER & CREATING VULNERABILITY: BUILDING A NEW EASTWICK

A. *Eastwick Before Urban Renewal*

Eastwick, past and present, exists at the “intersection of purity and pollution.”¹⁴ Sandwiched between the Schuylkill and Delaware Rivers, Eastwick is bordered by the Philadelphia International Airport to the south, this country's oldest and largest oil refinery to the east,¹⁵ and the John Heinz National Wildlife Refuge and Darby and Cobbs Creeks to the northwest. Eastwick looks unlike much of the rest of Philadelphia. With the exception of a few blocks that survived the eminent domain era, the majority of the housing stock dates from the 1960s forward. Many areas resemble suburban subdivisions, complete with arterial roads and culs-de-sac. Even the row homes look more modern than those in most of Philadelphia. Greater “new” Eastwick also houses two strip malls, two recently shuttered public schools,¹⁶ a significant community garden,¹⁷ the largest industrial section in Philadelphia, and the “most urban” of national wildlife refuges in the coun-

¹⁴ MINDY THOMPSON FULLILOVE, *ROOT SHOCK* 114 (2004) (describing the experience of former Elmwood resident David Jenkins).

¹⁵ *Partnership Formed to Keep Philadelphia Refinery Open*, N.Y. TIMES (July 2, 2012), <http://www.nytimes.com/2012/07/03/business/sunoco-and-carlyle-group-to-run-philadelphia-refinery.html>, archived at <http://perma.cc/88XL-NSMS>.

¹⁶ Kathy Matheson, *4 Philadelphia Schools Saved, 23 Closing After SRC Vote*, 6ABC ACTION NEWS (Mar. 7, 2013), <http://abclocal.go.com/wpvi/story?id=9018966>, archived at <http://perma.cc/8QPB-JGW6>; Bradley Maule, *Final Bell Nears At Brutalist Southwest Philly Middle School*, HIDDEN CITY PHILA. (Apr. 17, 2013), <http://hiddencityphila.org/2013/04/final-bell-nears-at-brutalist-southwest-philly-middle-school/>, archived at <http://perma.cc/M6RQ-D2RW>.

¹⁷ The Common Ground Garden has been an Eastwick presence for more than thirty years. Dan Geringer, *Trouble Crops Up for Neighbors of the Airport*, NEXT GREAT CITY PHILA. (Dec. 21, 2010), <http://www.nextgreatcity.com/node/2105>, archived at <http://perma.cc/Y7DW-D89M>.

try, home to the largest remaining freshwater tidal wetlands in Pennsylvania.¹⁸

Prior to the 1950s, Eastwick residents called it many names, including “Elmwood,” “Clearview,” and “the Meadows.”¹⁹ In the words of former resident Mary Martin, Eastwick was a “knitted in community” built among natural marshlands.²⁰ Historian Guian A. McKee describes 1950s Eastwick as “a sparsely populated, semirural area featuring small farms, trailers, scattered housing developments, and, by the mid-twentieth century, an assortment of auto junkyards and burning garbage dumps.”²¹ Photographs from the early 1950s show farmhouses amidst open fields, as well as houses clustered around commercial corridors and corner stores.²² Eastwick Avenue was vibrant with dance halls, bands, and dancing in the streets.²³ While 60% of the area was open space, Eastwick was home to 278 commercial businesses, eleven factories of various sizes, and 19,300 low- and moderate-income residents, 72% of whom owned their own homes.²⁴

The wildlife preserve, which would be conserved by federal law in 1972 as the Tinicum National Environmental Center and named the John Heinz National Wildlife Refuge in 1991,²⁵ was called “Tinicum” by residents, after the name of the local Native American tribe.²⁶ The wetland complex extended over 5700 acres in 1901, but had been reduced to 1660 acres by the 1950s. Even then, the area still provided a “glorious, pristine” wilderness for area children.²⁷

Eastwick in the early twentieth century was possibly the only integrated neighborhood in the City of Philadelphia at the time.²⁸ A Home Owners’ Loan Corporation (“HOLC”) survey of Southwest Philadelphia from 1936, prepared in conjunction with the HOLC “redlining” security maps, describes the area now called Eastwick as occupied by “Negros and Orthodox

¹⁸ Christine Fisher, *Stacyation: John Heinz National Wildlife Refuge at Tinicum*, PLANPHILLY (July 26, 2013), <http://planphilly.com/articles/2013/07/26/stacyation-john-heinz-national-wildlife-refuge-at-tinicum>, archived at <http://perma.cc/EW6V-4WVU>.

¹⁹ McKee, *supra* note 1, at 547, 549, 555, 575 n.40.

²⁰ A FIELD OF WEEDS, Part I, 3:03 (EKO Productions 1989), available at <http://eastwick-friends.wordpress.com/mediapress/a-field-of-weeds/>, archived at <http://perma.cc/S3ZP-ATW5>.

²¹ McKee, *supra* note 1, at 547.

²² *Id.* at 550 Figure 2; A FIELD OF WEEDS, *supra* note 20, at Part I, 1:35–2:25.

²³ A FIELD OF WEEDS, *supra* note 20, at Part I, 3:15–25.

²⁴ McKee, *supra* note 1, at 549.

²⁵ U.S. FISH & WILDLIFE SERV., FINAL NATURAL RESOURCE DAMAGES RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT FOR THE JOHN HEINZ NATIONAL WILDLIFE REFUGE AT TINICUM 3 (2006), available at http://www.doi.gov/restoration/library/casedocs/upload/PA_Sunoco_John_Heinz_NWR_RP_01-06.pdf, archived at <http://perma.cc/6JGB-LCDS>.

²⁶ FULLILOVE, *supra* note 14, at 114–17.

²⁷ Interview with Terry Williams, President, Eastwick Friends & Neighbors Coal. (Jan. 15, 2013) (describing his time in the preserve as a “a Huckleberry Finn experience”).

²⁸ McKee, *supra* note 1, at 560 (quoting Philadelphia City Councilman Raymond Pace Alexander).

Jews.”²⁹ The HOLC survey from the following year calculates the population as 80% “Negro” and 15% “Foreign-born,” specifically “Polish-Italian.”³⁰ By the 1950s, white and nonwhite residents coexisted as children attended integrated public elementary schools and businesses served a multi-racial clientele.³¹ Resident Mary Cebrynski described the area to the Philadelphia Daily News in 1958 as a “happy community . . . [without] racial or religious tensions.”³² For African Americans coming up from the South during the Great Migration, and for its Chinese, Jewish, and Italian immigrant residents, Eastwick was a way station.³³ Like other poor and working class communities of color in the United States,³⁴ however, Eastwick was a low-lying area and subject to flooding.³⁵ Many homes also lacked significant services, notably sewer and water systems.³⁶

By the 1940s, for many of the reasons outlined above — including Eastwick’s open space, topography, and demographics — the City of Philadelphia began to target Eastwick, Elmwood, Clearview, and the Meadows for blight designation and urban renewal.

B. *What is Blight, Really?*

Urban blight is a social construct. Martin E. Gold and Lynne B. Sagalyn state in *The Use and Abuse of Blight in Eminent Domain* that “‘blight’ had to be invented” as a malady so government could intervene to remedy it.³⁷ The urban renewal movement of the 1920s unified a coalition of real estate interests, housing reformers, and politicians “all hop[ing] to reap

²⁹ HOME OWNERS’ LOAN CORP., SECURITY MAP OF SOUTHWEST PHILADELPHIA 4 (1936), available at <http://cml.upenn.edu/redlining/PDFs/HOLC1936/libroC.pdf>, archived at <http://perma.cc/KT8A-FBTP>. HOLC color-coded maps are often cited as at least one of the bases for the practice of “redlining” neighborhoods — targeting them for disinvestment due to their racial makeup. See, e.g., DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 51 (1993) (chronicling the history of institutionalized racism in lending practices); Amy E. Hillier, *Redlining and the Home Owners’ Loan Corporation*, 29 J. URBAN HIST. 394, 395 (2003).

³⁰ HOME OWNERS’ LOAN CORP., AREA DESCRIPTION (1937), available at <http://cml.upenn.edu/redlining/PDFs/HOLC1937/libroD23.pdf>, archived at <http://perma.cc/4DW7-STAS>. While the HOLC data lacks nuance in favor of identifying risky populations, it gives a sense of the actual population and how Eastwick was perceived from the outside.

³¹ McKee, *supra* note 1, at 551.

³² Dick Bowman, *Too Old to Start Over — Where, from Eastwick?*, PHILA. DAILY NEWS, Dec. 30, 1958, at 5.

³³ Interview with Terry Williams, *supra* note 27; see also McKee, *supra* note 1, at 551 (quoting Eastwick native Ida Scheer).

³⁴ See, e.g., Amy Laura Cahn, *Our “Rights Are Not Cast in Stone”: Post-Katrina Environmental “Red-Lining” and the Need for a Broad-Based Human Right Lawyering Movement*, 12 U. PA. J.L. & SOC. CHANGE 37, 44 (2008) (describing how “[e]conomic factors led African-Americans in New Orleans to settle in low-lying neighborhoods”).

³⁵ McKee, *supra* note 1, at 549.

³⁶ *Id.* at 549, 571 n.6.

³⁷ Martin E. Gold & Lynne B. Sagalyn, *The Use and Abuse of Blight in Eminent Domain*, 38 FORDHAM URB. L.J. 1119, 1120 (2011).

benefits.”³⁸ In joining forces to remake cities, this coalition relied on planners to provide a “new terminology of city decline, a discourse of blight and renewal.”³⁹ In order to remedy blight, the argument went, officials needed the power to reshape neighborhoods through the use of eminent domain.⁴⁰

A slum, as defined by the 1930 Housing Conference, was a “squalid and wretched” area of “social liability to the community.”⁴¹ Slum characteristics included “run-down buildings, dirty streets, and a high crime rate” in an area “almost exclusively inhabited by poor people” — all of which were viewed as dangers to the “safety, health, morals and comfort of the inhabitants thereof.”⁴² The term blight was borrowed from the lexicon of plant diseases.⁴³ A blighted neighborhood drained municipal resources.⁴⁴ In the planning context, blight was defined more broadly than slum, but also as slum’s precursor.⁴⁵ Blight encroached upon and infected surrounding neighborhoods, transforming them into disease-filled slums and, thus, blight had to be eliminated.⁴⁶

Over several decades, city and state governments paired blight discourse and eminent domain laws to expand police powers, seizing land to prevent the spread of this so-called disease.⁴⁷ In 1949, Congress initiated the federal urban redevelopment program, or “urban renewal,” with the passage of Title I of the Housing Policy Act of 1949, which provided significant resources to the municipal project of blight clearance.⁴⁸ Title I allocated federal funds so that local redevelopment authorities could buy and clear blighted areas and then sell that land to private developers, using the proceeds to cover public costs.⁴⁹ Initially, municipalities wielded police powers to create public housing, but subsequently municipalities expanded their use to include a wide range of development.⁵⁰

³⁸ Wendell Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 2 YALE L. & POL’Y REV. 1, 14 (2003); cf. Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 310–11 (2004) (describing the passage of the National Housing Act of 1937 as “a compromise between real estate interests and housing advocates”).

³⁹ Pritchett, *supra* note 38, at 15.

⁴⁰ See URBAN LAND INST., A PROPOSAL FOR REBUILDING BLIGHTED CITY AREAS 4 (n.d.).

⁴¹ Gordon, *supra* note 38, at 309.

⁴² Pritchett, *supra* note 38, at 16.

⁴³ *Id.*

⁴⁴ Gordon, *supra* note 38, at 310.

⁴⁵ Gold & Sagalyn, *supra* note 37, at 1121; Gordon, *supra* note 38, at 310; Pritchett, *supra* note 38, at 16.

⁴⁶ SONTAG, *supra* note 2, at 74 n.2.

⁴⁷ Pritchett, *supra* note 38, at 23; see also Gordon, *supra* note 38, at 305 n.1 (citing Jonathan M. Purver, Annotation, *What Constitutes “Blighted Area” Within Urban Renewal and Redevelopment Statutes*, 45 A.L.R.3D 1096, § 2(a) (1972)).

⁴⁸ Jon C. Teaford, *Urban Renewal and Its Aftermath*, 11 HOUSING POL’Y DEBATE 443, 443 (2000).

⁴⁹ See Gordon, *supra* note 38, at 311.

⁵⁰ See Pritchett, *supra* note 38, at 25–26 (“The approval of local public housing by state courts provided strong precedents for urban renewal advocates who wanted to exercise the powers of eminent domain for the benefit of private developers.”).

It is said that “the chief product of Title I was a widely held commitment never to have another Title I.”⁵¹ One major critique of midcentury urban renewal projects is that municipal governments applied blight identification with a subjectivity that unduly provided them with flexible power over neighborhoods so identified. City governments exercised this power without consulting residents to determine their real needs or concerns. Writing for the 1918 *Proceedings of the Tenth National Conference on City Planning*, Philadelphian William A. Stanton described a blighted area as “a district which is not what it should be.”⁵² Blight rhetoric was so powerful precisely because municipal governments could rely on “vague generalities,”⁵³ making blight conveniently simple to identify.⁵⁴

In *The “Public Menace” of Blight*, Wendell Pritchett makes clear that racism was a core component in identifying blighted areas. On its face, “blight” was a neutral term, but its application was “infused with racial and ethnic prejudice.”⁵⁵ A “blighted” neighborhood was more than likely home to African Americans and immigrants, as well as poor people.⁵⁶ In a 1935 interview, Bernard J. Newman, director of the Philadelphia Housing Association and housing advisor to the federal government, revealed his racial and class-based bias while discussing Philadelphia’s now displaced River Wards:

There are thousands of persons in this city . . . whose mode of life is outside the ken of folk of even moderate circumstances. A motley group of Italians, Negroes, Jews, and poor Americans, live crowded together in dilapidated dwellings, sheltered perhaps from the ravages of weather, but exposed to all the hazards of health and morals that over-crowding and poverty can conceive. They congregate in an area which is a manufacturing plant for anti-social consequences.⁵⁷

Citing the huge costs to the city, inversely proportionate to the residents’ shrinking contribution to the tax base, of this “manufacturing plant for anti-social consequences,” Newman generated enthusiasm for a \$5 million federal slum clearance loan targeted at the River Wards, among other neighborhoods.⁵⁸ By raising “blight” to the level of a disease, the rhetoric implied

⁵¹ Teaford, *supra* note 48, at 463; *see also* Stephen J. McGovern, *Philadelphia’s Neighborhood Transformation Initiative: A Case Study of Mayoral Leadership, Bold Planning, and Conflict*, 17 HOUSING POL’Y DEBATE 529, 532 (2006).

⁵² Gordon, *supra* note 38, at 306 (quoting ROBERT FOGELSON, DOWNTOWN: ITS RISE AND FALL, 1880–1950, at 348 (2001) (quoting William A. Stanton, *Blighted Districts in Philadelphia*, in PROCEEDINGS OF THE TENTH NATIONAL CONFERENCE ON CITY PLANNING 76 (1918))) (internal quotation marks omitted).

⁵³ Pritchett, *supra* note 38, at 18.

⁵⁴ Gold & Sagalyn, *supra* note 37, at 1122.

⁵⁵ Pritchett, *supra* note 38, at 6.

⁵⁶ *See id.*

⁵⁷ C.F. Rosenberg, *Slum Clearance in Philadelphia*, JEWISH TIMES, Mar. 29, 1935, at 5.

⁵⁸ *Id.* Newman described the difference between blight and slum as “the difference in emphasis between the feminine . . . ‘good gracious’ and the masculine ‘damn.’” Bernard J.

that neighborhood and neighbors alike were culpable.⁵⁹ And by indicating an association between traditionally marginalized people and that disease, planners, advocates, and city government created a framework to proclaim certain property not only a drain on municipal resources, but “dangerous to the future of the city.”⁶⁰

The Urban Land Institute,⁶¹ created to be the “planning department of the Realtors,” worked in tandem with the National Association of Real Estate Boards to use planning rhetoric to build public support for condemnations in service of private development.⁶² At the same time, the flexible discourse of blight functioned as a “legal pretext for various forms of commercial tax abatement that, in most settings, divert[ed] money” from other purposes.⁶³ Under Title I, local governments and their redevelopment agencies had discretion over redevelopment project decisions, which were heavily influenced by real estate developers and other private interests.⁶⁴ Government and business developed a lasting symbiotic relationship, aided by eminent domain and founded on the principle that a private developer would use the land “more appropriately”⁶⁵ than the existing communities had.⁶⁶ Courts affirmed the use of eminent domain out of a need to clear “focal centers of disease [and] pernicious environments.”⁶⁷ For the Pennsylvania Supreme Court, the transfer of condemned property to private developers, rather than public entities, was “incidental” to blight removal.⁶⁸

“Blight,” in its vagueness, provided municipalities with cover to dismantle both private property rights and intact communities under the guise of protecting urban infrastructure.⁶⁹ The racialized application of the term reflected redlining and other policies that were contemporaneously forcing

Newman, *Blighted Districts and Their Rehabilitation 2* (June 12, 1936) (unpublished paper) (on file with the Harvard Law School Library). A 1957 study examining communities dealing with analogous “blighting elements” to Eastwick described the “long ghetto history” of Detroit’s Gratiot project, depicting the project as “occupied almost entirely by Negroes” and “gradually deteriorat[ing] into one of the worst slums in Detroit.” Inst. for Urban Studies, *supra* note 10, at i, 12. Without specifying what constituted “worst” or “slum,” the study uses “ghetto” and “Negro” as signifiers for blight, stating that developers would have a “problem . . . attracting white residents” to a predominately African American area. *Id.*

⁵⁹ Cf. SONTAG, *supra* note 2, at 57 (“Widely believed psychological theories of disease assign to the luckless ill the ultimate responsibility both for falling ill and for getting well.”).

⁶⁰ Pritchett, *supra* note 38, at 3.

⁶¹ See *About ULI*, URBAN LAND INST., <http://uli.org/about-uli> (last visited Apr. 2, 2014), archived at <http://perma.cc/8NHD-DAQL>.

⁶² Pritchett, *supra* note 38, at 19; see also URBAN LAND INST., *supra* note 40, at 4, 8 (detailing the officers and trustees of the Urban Land Institute and declaring that eminent domain power was essential to blight clearance projects).

⁶³ Gordon, *supra* note 38, at 307.

⁶⁴ Gold & Sagalyn, *supra* note 37, at 1123–24.

⁶⁵ Pritchett, *supra* note 38, at 2.

⁶⁶ Gold & Sagalyn, *supra* note 37, at 1123–24; Pritchett, *supra* note 38, at 2.

⁶⁷ Pritchett, *supra* note 38, at 39 (quoting *Belovsky v. Redev. Auth.*, 54 A.2d 277, 282 (Pa. 1947)).

⁶⁸ *Id.*

⁶⁹ See *id.* at 16–17.

African Americans out of some neighborhoods and into others.⁷⁰ Local governments cleared out neighborhoods and failed to enhance the lives or living quarters of displaced residents.⁷¹ In fact, by June 30, 1967, 400,000 homes had been demolished for urban renewal projects nationally, but only 10,760 residences for low-income families had been constructed.⁷² The blight-clearance framework of urban renewal aimed to eliminate “disease” to save the city — cutting off the limb to save the body — but, in fact, those enacting the plans did not seem to comprehend how to heal the wound or where to toss the detached limb.

C. *Blighting Eastwick*

Eastwick was a likely target for blight clearance for a confluence of reasons: the racial, ethnic, and class makeup of its population; a host of risks to the natural and built environment; and the area’s net tax burden. At the same time, the ample undeveloped and tax delinquent land within Eastwick offered RDA significant space for residential and housing development. Because that land was divided over many owners, which would make it difficult to consolidate for development, the area was a prime candidate for the assertion of eminent domain.

The Philadelphia City Planning Commission declared Eastwick blighted in 1950.⁷³ However, the case for redeveloping Eastwick may have been in the works as early as the 1930s. Along with identifying Eastwick as a primarily African American and immigrant neighborhood,⁷⁴ the HOLC area description recounts Eastwick’s “detrimental influences” as (1) no sewers, (2) “8 feet below river level,” and (3) “undesirable negro [sic] section of very poor property.”⁷⁵ Clarifying remarks stated that this area was “[c]onsidered the worst section in Philadelphia.”⁷⁶ The “favorable influences of the neighborhood” were “nothing.”⁷⁷

Harris-Dechant Associates reported in a 1955 study that Eastwick did “not have adequate drainage facilities [and that b]urning refuse dumps, together with the fumes from near-by industries cause odors and smoke which, in addition to being a nuisance, are unhealthy.”⁷⁸ According to the 1957

⁷⁰ See Interview with Terry Williams, *supra* note 27.

⁷¹ FULLILOVE, *supra* note 14, at 59.

⁷² *Id.*

⁷³ Sicotte, *supra* note 11, at 8.

⁷⁴ HOME OWNERS’ LOAN CORP., *supra* note 30.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ HARRIS-DECHANT ASSOCS., PHASE I REPORT: EASTWICK REDEVELOPMENT PROJECT FOR THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA 1 (1955) [hereinafter HARRIS-DECHANT ASSOCS., PHASE I REPORT]; see also *id.* at app. (Report No. 1, Part B(1)(a)–(f)) (listing sources of air pollution to include the oil refinery operations of the Gulf Oil Corporation, Atlantic Refinery Company, and others; the Philadelphia Gas Works; the Lester Piano Company, the Southwest Sewage Treatment Plant).

Urban Renewal Plan many homes were “sub-standard [and] sewers, drainage, and other facilities [were] minimal or inadequate.”⁷⁹ A 1957 study conducted for RDA by the Institute for Urban Studies goes into significantly more detail about the “sources of blight in and around” Eastwick.⁸⁰ The Institute for Urban Studies outlines Eastwick’s environmental vulnerabilities, including (1) “large swampy or marshy sections, subject to frequent flooding, which must be brought up to grade to fill,” (2) “[e]xtensive areas of open burning garbage dumps which create odor, smoke and rodent problems,” and (3) “traffic which gives rise to noise, fumes, and the danger of traffic accidents.”⁸¹ “External Blighting Factors” included: “heavy commercial traffic”; the Philadelphia International Airport, problematic due to a “serious noise problem”; and a large concentration of heavy industry “as well as other inharmonious land uses which are unsightly and give rise to odors, smoke and ashes.”⁸²

The city viewed Eastwick’s “blighting elements” as holding it back from “developing as a normal part of the [c]ity,”⁸³ but a key motivation for targeting Eastwick was that it contained one of the largest areas of land available in the city.⁸⁴ Despite its thousands of residents, Eastwick’s vacant parcels⁸⁵ presented a significant development opportunity and met the U.S. Department of Housing and Urban Development’s (“HUD’s”) “predominantly open land” standard to qualify for funds under Title I.⁸⁶ The City of Philadelphia had to grow and could not leave “an area like [Eastwick] . . . to fallow.”⁸⁷

Residents did not share RDA’s perception of their neighborhood as blighted. Eastwick had “lots of optimism, kids played all summer long, [and] neighbors got along.”⁸⁸ In the words of one resident, “[m]any of the homes out here were beautiful There was certainly nothing wrong with

⁷⁹ EASTWICK REDEV. PROJECT, EASTWICK URBAN RENEWAL PLAN (1957).

⁸⁰ Inst. for Urban Studies, *supra* note 10, at 2 (looking to analogous communities to determine the impact these environmental factors might have on marketability of new homes).

⁸¹ *Id.* at 2–3.

⁸² *Id.* at 3.

⁸³ HARRIS-DECHANT ASSOCS., PHASE I REPORT, *supra* note 78, at Introduction.

⁸⁴ Deposition of G. Craig Shelter at 80, *In re McGreesh v. Pa. Dep’t of Env’tl. Res.*, No. 73-197-D (June 10, 1973) (on file with Harvard Law School Library) (stating that Eastwick had the city’s largest amount of “opened land available,” along with the Northeast and Northwest); see also HARRIS-DECHANT ASSOCS., PHASE I REPORT, *supra* note 78, at 1, 13. Harris-Dechant was one of four engineering firms involved in the Schuylkill River Project, in charge of “dredging, dredge equipment, and channel clearing.” CHARI TOWNE, A RIVER AGAIN: THE STORY OF THE SCHUYLKILL RIVER PROJECT 57 (2012), available at http://www.delawareriverkeeper.org/PDF/A_RIVER_AGAIN_2012.pdf, archived at <http://perma.cc/DM5K-72UA>. The dredge spoils from the Schuylkill River were at least one of the sources of fill used in creating new Eastwick. *Id.* at 72.

⁸⁵ HARRIS-DECHANT ASSOCS., PHASE I REPORT, *supra* note 78, at 1.

⁸⁶ McKee, *supra* note 1, at 549, 571 n.8.

⁸⁷ Deposition of G. Craig Shelter at 80, *McGreesh*, No. 73-197-D (June 10, 1973).

⁸⁸ Interview with Terry Williams, *supra* note 27.

the homes.”⁸⁹ Even the RDA executive director was not immune to the area’s charms and noted in 1963 that:

There [was] no denying that Eastwick has attractions. Although more than 700 of the 2340 families lived in shacks and slums, there are many fine and adequate homes. Residents of Eastwick treasured their open space and country-like surroundings. Families were proud of their gardens, their plantings, and their trees. Older people found it a restful community as compared to a more typical city tempo. Lower income households supplemented their incomes by raising goats and chickens, an activity possible in this sparsely built area.⁹⁰

II. RENEWAL FOR WHOM? EASTWICK’S SOCIAL AND ENVIRONMENTAL JUSTICE LEGACY

A. *Finding Blight: Who Benefits?*

RDA had huge incentives to clear and rebuild Eastwick’s vast space.⁹¹ At stake for the city was \$54 million in federal urban renewal grants, in the form of \$22 million in outright grant monies and \$32 million to match Philadelphia’s investment, which could be spent on projects elsewhere in the city.⁹² Industrial renewal in Eastwick was also to be the keystone of the city’s economic development program, creating space for manufacturing to compete with suburban industrial parks and draw business back into the city.⁹³ Improving Eastwick’s infrastructure was seen as “prohibitively expensive without federal assistance,”⁹⁴ and an “economic impracticability.”⁹⁵ Furthermore, implementing a comprehensive plan using eminent domain to acquire, consolidate, and clear private property would be cheaper and more expedient than acquiring properties piecemeal due to the heavily parceled ownership of the land.⁹⁶ Condemnation was the most efficient solution.⁹⁷

⁸⁹ A FIELD OF WEEDS, *supra* note 20, at Part III, 0:08–0:25.

⁹⁰ William L. Rafsky, Eastwick — Total Rebuilding 2 (Oct. 1, 1963) (unpublished paper) (on file with Temple University Libraries).

⁹¹ EDMUND N. BACON, URBAN REDEVELOPMENT: AN OPPORTUNITY FOR CITY REBUILDING 1 (1949); McKee, *supra* note 1, at 559 (describing the “incentive structure” created under the Federal Housing Act of 1949).

⁹² McKee, *supra* note 1, at 559.

⁹³ *Id.* at 553, 560.

⁹⁴ *Id.* at 555.

⁹⁵ Rafsky, *supra* note 90, at 2.

⁹⁶ *Id.* (articulating RDA’s concern that purchase costs would rise “as soon as the news got around [amongst the various owners] that development was imminent”); *see also* Pritchett, *supra* note 38, at 29–31, 36 (“By making the elimination of blight vital to the survival of the city, advocates avoided questions about who benefited from the condemnation process and who bore the costs.”).

⁹⁷ *See* Rafsky, *supra* note 90, at 2 (noting the need for “government intervention”); URBAN LAND INST., *supra* note 40, at 3–4 (arguing that planning should not proceed in a “diversi-

NEC subsequently obtained a lucrative option to purchase hundreds of acres.⁹⁸ All in all, multiple stakeholders viewed “the redevelopment of [Eastwick as] essential to the growth of the city” and pushed for the area to be “activated as rapidly as possible.”⁹⁹

The Philadelphia City Planning Commission finalized the Eastwick Redevelopment Area Plan (“Area Plan”) in 1954, followed by RDA’s completion of the Eastwick Urban Renewal Plan (“Urban Renewal Plan”), approved in 1957 and submitted to the City Council in 1958.¹⁰⁰ In 1961, RDA entered into an agreement (the “Redevelopment Agreement”) with Reynolds Metals Company (“Reynolds”)¹⁰¹ and Henry A. and Samuel A. Berger, acting as NEC. The Redevelopment Agreement granted NEC the option to purchase 476 acres of land within the Urban Renewal Area in exchange for RDA providing basic site improvements.¹⁰² RDA also agreed to sell to NEC all of the residential land within the Eastwick Urban Renewal Area for the sum of \$12,192,865.¹⁰³ In 1970, when it became clear that Reynolds and the Bergers did not have the capacity to fulfill NEC’s obligations, NEC entered into a Joint Venture Agreement with the Korman Corporation.¹⁰⁴ The Eastwick Redevelopment Agreement represented the rise of what is now called the “public-private partnership,” which was facilitated by Title I.¹⁰⁵

The NEC’s plan, submitted by Reynolds in 1957 (“Reynolds Plan”), looked to create something new; NEC’s consultants, Doxiadis Associates, envisioned a community based in “aesthetic values equivalent to those found in a natural village, developed . . . by the peasants themselves,”¹⁰⁶ but guided by “three masters”: people, cars, and airplanes.¹⁰⁷ The plan cautioned not to forget Eastwick’s “well developed and beautiful” trees and

fied and uncoordinated manner,” and that acquisition authority should reside in local commissions).

⁹⁸ PHILA. CITY PLANNING COMM’N, THE REPORT ON THE REVIEW OF THE EASTWICK URBAN RENEWAL PLAN (DRAFT) 77 (1981) (stating that the Redevelopment Agreement set NEC’s price for residential land at a fixed fifty-two cents per square foot, “only a fraction” of the cost of residential land in other Philadelphia neighborhoods).

⁹⁹ HARRIS-DECHANT ASSOCS., PHASE I REPORT, *supra* note 78, at 1.

¹⁰⁰ PHILA. CITY PLANNING COMM’N, *supra* note 98, at 6–8; McKee, *supra* note 1, at 560; *see* Gold & Sagalyn, *supra* note 37, at 1123–24.

¹⁰¹ McKee, *supra* note 1, at 561.

¹⁰² *Redev. Auth. v. New Eastwick Corp.*, Nos. 2087 APRIL TERM 2003, Control 102344, Control 102318, 2005 WL705976, at *2 (Pa. Ct. Com. Pl. Mar. 23, 2005), *aff’d*, 894 A.2d 830 (Pa. Super. Ct. 2005).

¹⁰³ *New Eastwick Corp. v. Phila. Builders Eastwick Corp.*, 241 A.2d 766, 768 (Pa. 1968) (addressing the purchase option of another developer and holding that under the Redevelopment Agreement NEC had equitable title to the land when the second developer failed to exercise that option in a timely manner).

¹⁰⁴ *Redev. Auth.*, 2005 WL705976, at *2–3.

¹⁰⁵ Pritchett, *supra* note 38, at 27.

¹⁰⁶ DOXIADIS ASSOCS., INC., A PROPOSAL TO THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA TO PURCHASE AND DEVELOP ALL THE LAND LOCATED IN THE EASTWICK REDEVELOPMENT AREA 19 (n.d.).

¹⁰⁷ *Id.* at 21.

called for “a complete and careful survey of all existing trees, so that the whole area is prevented from being indiscriminately flattened and then built and replanted.”¹⁰⁸ Thoughtful, in theory, about the human scale of planning, nothing in the Reynolds Plan speaks to Eastwick’s existing homes, families, and the cohesion of its communities or the health of the environment in which they had lived — except the trees.

B. Dismantling Eastwick, Elmwood, and the Meadows

Eastwick residents put up a fight as soon as they realized the city’s plan relied on their displacement.¹⁰⁹ As early as 1955, residents began refusing RDA real estate assessors entry into their homes.¹¹⁰ By fall of that year, community members presented 4500 signatures to the City Council, declaring that their neighborhood was not blighted, just in need of services, and imploring councilmembers to reconsider demolition.¹¹¹ Leading up to the passage of the Urban Renewal Plan in 1957, thousands mobilized, at one point sending 20,000 postcards to the City Council President James H.J. Tate.¹¹² The collective organizing was interracial and, at times, led by African Americans, unusual for that era.¹¹³ Certain councilmembers raised concerns about relocating elderly residents and dismantling “this great and almost only integrated community in Philadelphia,”¹¹⁴ while others called Eastwick “too big a bite,” advising a more measured approach.¹¹⁵ Yet, the Urban Renewal Plan passed with overwhelming support from the City Council, regardless of organized community voices.¹¹⁶ One lifetime resident now views the plan as an inevitable consequence of political and moneyed interests, leaving even clergy and grassroots leadership “woefully inadequate to deal with the sophistication of the realtors and the planners and the political types.”¹¹⁷

By December 1958, RDA had condemned and taken title to 6500 properties, ordering tenants to pay rent to RDA, as their new landlord, and giving homeowners three weeks to also start paying rent.¹¹⁸ Residents succeeded in getting the City Council to respond to certain objections. For in-

¹⁰⁸ *Id.* at 6, 9.

¹⁰⁹ McKee, *supra* note 1, at 555.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 560.

¹¹² *Id.* at 556.

¹¹³ *Id.*

¹¹⁴ *Id.* at 560.

¹¹⁵ *Id.* at 559.

¹¹⁶ *Id.* at 560.

¹¹⁷ Interview with Terry Williams, *supra* note 27.

¹¹⁸ Anthony Day, *Eastwick Citizens Stick to Redevelopment Demands*, PHILA. INQUIRER, Jan. 5, 1959, at B13; Philip Fine, *Eastwick Uproar Exploited, Official Says*, PHILA. DAILY NEWS, Dec. 30, 1958, at 5.

stance, a three-person board investigated resident problems and criticisms.¹¹⁹ However, Eastwick District Councilman Harry Norwitch told residents to “confine their efforts to eliminating hardship” cases.¹²⁰ The City Council would not weigh in on the fairness of the compensation and whether relocation was inevitable, because Eastwick was “vital to the . . . city.”¹²¹ Despite City Council oversight, many residents remember RDA engaging in unfair practices to move the project forward. One resident described her shock in a meeting with RDA representatives at Wolf Elementary School in the mid-1960s, when she realized RDA was “going to condemn everything” in the neighborhood.¹²² According to oral histories, RDA offered the highest prices to the first owners on the block who would sell.¹²³ Then the agency would create more distressed neighborhood conditions by allowing those homes to become dilapidated, thus intentionally lowering the condition and value of neighboring homes.¹²⁴ This process allowed RDA the leverage to purchase for lower prices and eventually “take everybody on the block.”¹²⁵ According to residents, RDA went so far as to allow cellars to flood and rats to overcome homes.¹²⁶

Residents complained that compensation was grossly inadequate. One family had received an offer of \$15,000 to \$20,000 prior to urban renewal, but ultimately received an offer of only \$9000 from RDA.¹²⁷ Resident Cheyney H. Thomas sent a letter to the editor of the Philadelphia Daily News, entitled “Eastwick Plea,” writing that he had “shunned the protest groups,” thinking that redevelopment represented progress, until he received a \$6625 offer for his brand new eight-room home.¹²⁸ “I am a little man,” Thomas wrote, “fighting for man’s most sacred possession, his home.”¹²⁹ RDA engendered significant animosity because it acted as though people were barriers to development. In an argument between an RDA official and another resident, the official said, “You people live like pigs down here. You’re like animals, and we want to get rid of you[,]”¹³⁰ in essence, rejecting the residents’ very humanity.

¹¹⁹ *Mortgages for Residents Pushed by Eastwick Unit*, EVENING BULLETIN, Jan. 13, 1959, at 5.

¹²⁰ *800 Refuse to Drop Fight in Eastwick*, EVENING BULLETIN, Jan. 9, 1959, at 1.

¹²¹ *Eastwick Work is Vital to City, Dilworth Says; Sees Project Filling Need for Industrial and Home Expansion*, SUNDAY BULLETIN, Jan. 11, 1959, at Section 1, 6; *Mayor Insists Majority Can Stay in Eastwick*, PHILA. INQUIRER, Jan. 11, 1959, at B21; *Mortgages for Residents Pushed by Eastwick Unit*, EVENING BULLETIN, Jan. 13, 1959, at 5.

¹²² A FIELD OF WEEDS, *supra* note 20, at Part I, 5:25.

¹²³ *Id.* at Part I, 8:14.

¹²⁴ *Id.* at Part I, 8:28.

¹²⁵ *Id.* at Part I, 9:10.

¹²⁶ *Id.* at Part I, 8:30.

¹²⁷ *Id.* at Part I, 7:31.

¹²⁸ Cheyney H. Thomas, *Eastwick Plea*, PHILA. DAILY NEWS, Jan. 15, 1959, at 17.

¹²⁹ *Id.*

¹³⁰ A FIELD OF WEEDS, *supra* note 20, at Part II, 5:28.

Eastwick residents experienced the trauma of displacement and “rupture of community,” as did others uprooted by urban renewal.¹³¹ According to one resident: “Some people got sick. People had nervous problems.”¹³² Doctors in Eastwick “had more patients coming in . . . for nervous disorders during the Redevelopment than they had in their whole lifetime.”¹³³ Another resident noted that her parents and others in their generation expected to retire and die naturally in Eastwick but that “many of them died from the shock of having to pull up and go someplace else.”¹³⁴ Speaking to the Philadelphia Daily News in 1958, resident Mary Cebrynski said, “We’re poor, but we’re proud. Many of us are too old to start over again.”¹³⁵ Sixty years later, current Eastwick resident Gloria Thomas still mourns that her “grandmother was so upset about it, she up and died.”¹³⁶

EFNC President Terry Williams says those in power “missed the boat” by failing to incorporate the existing businesses and residents.¹³⁷ For Williams, it “was a moral choice to involve people in the planning,”¹³⁸ and the proper investment directly into the neighborhood could have shifted the economic status of the community. All this opportunity just “disappear[ed],” replaced by “devastation,”¹³⁹ as RDA dismantled the neighborhood block by block, undoing the fabric of the community.

C. *Building New Eastwick atop Persistent Environmental Problems*

Mayor Dilworth insisted that the majority of residents would be able to stay in Eastwick if the owners agreed to have their homes relocated within the neighborhood.¹⁴⁰ However, there is no evidence that this happened with any frequency. For many, market-value compensation did not “translate into replacement value” and a home within the new Eastwick was out of reach.¹⁴¹ In a recent interview, Williams describes his family “hopscotching” from rental to rental within Eastwick, staying just ahead of redevelopment and finally settling in West Philadelphia.¹⁴² Further, despite Eastwick’s interracial history and community organizing efforts, NEC initially found

¹³¹ See generally FULLILOVE, *supra* note 14, at 120–24 (discussing the effect of urban renewal on Elmwood in Philadelphia).

¹³² A FIELD OF WEEDS, *supra* note 20, at Part II, 7:30–7:57.

¹³³ *Id.*

¹³⁴ *Id.* at Part II, 8:55.

¹³⁵ Bowman, *supra* note 32, at 5.

¹³⁶ Samantha Melamed, *Back to the Future*, CITY PAPER (June 13, 2012), <http://citypaper.net/article.php?Back-to-the-Future-13313>, archived at <http://perma.cc/Z495-AHNY>.

¹³⁷ Interview with Terry Williams, *supra* note 27.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Mayor Insists Majority Can Stay in Eastwick*, PHILA. INQUIRER, Jan. 11, 1959, at B21.

¹⁴¹ Michael Matza, *Recalling Flip Side of Urban Renewal*, PHILA. INQUIRER, Sept. 20, 1987, at B1.

¹⁴² Interview with Terry Williams, *supra* note 27. The home of Williams’s grandparents was one of the few homes that survived urban renewal. Williams returned to live there after his father’s death.

that they could only achieve the goal of an integrated community through illegal racial quotas and raising home prices.¹⁴³ Thus, the new Eastwick was likely inaccessible to many former residents.

Still, Eastwick was transformed and new homeowners were drawn to the neighborhood. Residents over the years have valued it as a quiet and affordable option within the city.¹⁴⁴ Marion Cox moved to Eastwick in 1971 from a compact row house in South Philadelphia, attracted to its “clean and decent . . . suburban type setting” that allowed her to move without accruing too much debt.¹⁴⁵ Cox liked the trees and open space,¹⁴⁶ as did a more recent transplant to Eastwick, Jeannette Guess, who calls Eastwick a “quiet, serene and beautiful neighborhood with its own hidden gem,” the neighboring Refuge.¹⁴⁷ By the 1980s, NEC/Korman had constructed 9800 housing units and, ironically, given the methods used to get there, built a multiracial mixed-income community.¹⁴⁸ In 1970, changing HUD regulations mandated that RDA establish the Eastwick Project Area Committee (“PAC”) to represent the diverse constituencies within Eastwick as a prerequisite for obtaining funds.¹⁴⁹ RDA initially viewed convening the PAC as a barrier to receipt of funds,¹⁵⁰ but the PAC took hold and galvanized action on a range of issues, with varying success, for a period of time.¹⁵¹ Eastwick also continued to expand as an industrial hub, attracting large-scale projects, including two in

¹⁴³ See McKee, *supra* note 1, at 553–54, 562–63 (describing NEC’s practicing of delaying African Americans from moving in and keeping African Americans at “under twenty percent” of a block to ensure a stable white population).

¹⁴⁴ See Alan J. Heavens, *Town by Town: Eastwick Conveniently Located, but Feeling Overlooked*, PHILA. INQUIRER (Aug. 4, 2013), http://www.philly.com/philly/classifieds/real_estate/town-by-town/20130804_Town_By_Town_Eastwick_conveniently_located_but_feeling_overlooked.html, archived at <http://perma.cc/9J9K-NRA5>.

¹⁴⁵ Interview with Marion Cox (Feb. 12, 2014).

¹⁴⁶ *Id.*

¹⁴⁷ Email from Jeannette Guess to author (Feb. 13, 2014) (on file with the Harvard Law School Library).

¹⁴⁸ Matza, *supra* note 141, at B1; Howard S. Shapiro, *Looking Up Here’s Where Philadelphia Is Growing in Population*, PHILA. INQUIRER, Sept. 21, 1981, at A1; see PEW CHARITABLE TRUSTS PHILA. RESEARCH INITIATIVE, A CITY TRANSFORMED: THE RACIAL AND ETHNIC CHANGES IN PHILADELPHIA OVER THE LAST 20 YEARS 12 (2011) (demonstrating that Eastwick was 42.3% African American in 1990 and 76.1% African American by 2010); McKee, *supra* note 1, at 567. *But see* PHILA. PLANNING COMM’N, AMENDMENT TO THE EASTWICK REDEVELOPMENT AREA PLAN I (Mar. 2006), available at www.phila.gov/CityPlanning/plans/Blight%20and%20Redevelopment%20Reports/eastwickrap.pdf, archived at <http://perma.cc/PEZ3-9RFJ> (stating that, in the first twenty years of the project, “[p]rivate, for-profit developers built more than 4200 units of sales and rental housing”).

¹⁴⁹ Letter from Warren P. Phelan, Reg’l Adm’n’r, U.S. Dep’t of Hous. & Urban Dev., to Hugh Scott, U.S. Senator (Dec. 9, 1970).

¹⁵⁰ Memorandum from Clarence G. Alhart to Francis J. Lammer (Mar. 11, 1970).

¹⁵¹ See generally Sicotte, *supra* note 11; see also *Hearing of October 9, 2012 Before the Comm. on Transp. and Pub. Utils.*, Phila. City Council 121 (2012) [hereinafter *Flooding Hearing*] (testimony of Jill Minick, Eastwick resident); Interview with Leonard Stewart (Mar. 10, 2014).

the past decade: a massive \$289 million post office depot¹⁵² and a 550,000 square feet wholesale produce distribution center.¹⁵³

Urban redevelopment did not shift the contradiction of purity alongside pollution that had been a characteristic of the old Eastwick. In studying Eastwick's "blighting elements," both Harris Dechant and the Institute for Urban Studies identified a range of what we would today call "locally unwanted land uses" ("LULUs"), as well as Eastwick's fundamental environmental vulnerability as a low-lying area.¹⁵⁴ The Institute for Urban Studies's suggested approach was to erase visible nuisances as much as possible, and mitigate the presence of immovable heavy industry and the airport by lowering housing prices and engaging in "special marketing and merchandising effort[s]."¹⁵⁵ Eastwick's natural and built environments are complex. Removal of the evidence of LULUs, marshland, and past homes addressed only the issue of "buyer resistance."¹⁵⁶ The "blight clearance" approach did not make the problems of environmental health and risk disappear.¹⁵⁷

1. *Unstable at its Foundation.*

Redevelopment was intended to fully activate Eastwick's economic potential by filling in its marshes and other low-lying wetlands with nine million cubic tons of fill,¹⁵⁸ much of it piped in from a dredging project on the Schuylkill River.¹⁵⁹ One resident described watching construction crews "drive [pylons] into the ground [that] would go in so deep that they would have to drive another [pylon] right on top of that one before they hit bed-rock."¹⁶⁰ Atop Schuylkill River dredge spoils, NEC constructed new Eastwick homes as concrete slab-on-grade structures.¹⁶¹ However, like other neighborhoods in Philadelphia that have since been leveled, remaking wet-

¹⁵² Anthony H. Williams, *Community Must Benefit*, PHILA. INQUIRER (Sept. 12, 2003), http://articles.philly.com/2003-09-12/news/25456733_1_mail-facility-community-center-construction, archived at <http://perma.cc/CQ9Y-TPNB>.

¹⁵³ Sarah Glover, *Produce Market Has Major Regional Impact*, NBC10.COM (Apr. 23, 2013, 3:19 PM), <http://www.nbcphiladelphia.com/news/local/Philadelphia-Wholesale-Produce-Market-204092741.html>, archived at <http://perma.cc/HA67-3R4J>.

¹⁵⁴ Inst. for Urban Studies, *supra* note 10, at 2–3, 6 (outlining existing "sources of blight in and around" Eastwick); HARRIS-DECHANT ASSOCS., PHASE I REPORT, *supra* note 78, at app. (Report No. 1).

¹⁵⁵ Inst. for Urban Studies, *supra* note 10, at 22, 25.

¹⁵⁶ *See id.* at 22.

¹⁵⁷ *See supra* note 11 and accompanying text.

¹⁵⁸ Matza, *supra* note 141, at B1.

¹⁵⁹ Melamed, *supra* note 11, at 3–4. *See generally* TOWNE, *supra* note 84 (describing the Schuylkill River dredging project).

¹⁶⁰ A FIELD OF WEEDS, *supra* note 20, at Part III, 6:10–6:20.

¹⁶¹ *See* Olivia Reichenbach, *Letters: Eastwick Is Sinking*, PHILLY.COM (Nov. 9, 2000), http://articles.philly.com/2000-11-09/news/25614712_1_eastwick-binding-arbitration-single-homes, archived at <http://perma.cc/SK9N-T8EH>.

lands into habitable space was a difficult task, particularly when relying on the “creative filling solutions”¹⁶² of the 1950s.

Early residents reported that their homes filled up with “swamp gas.”¹⁶³ For decades, residents have complained that Eastwick homes subside due to unstable foundations.¹⁶⁴ Over time, floors “crack[ed], buckle[d.] and collapse[d]” as the ground settled.¹⁶⁵ As recently as 2012, resident Tyrone Beverly shared with a reporter that his “concrete floor cracked in half, sending his heater and ductwork crashing down.”¹⁶⁶ Some have watched plants growing up through the cracks in the floors.¹⁶⁷ Jill Minick testified in 2012 to the City Council that Eastwick’s homes continue to deteriorate: “The streets are sinking. Four times I’ve had the plumber in to cut off the vent pipe and shorten it, not because the pipe is rising, but because the street is sinking.”¹⁶⁸

2. *Proximity to Pollution.*

The Institute for Urban Studies thought that once all evidence of landfills and incinerators were removed, the area could be developed without significant impact on the housing market.¹⁶⁹ Yet negative impacts related to decades of illegal and unsafe storage, disposal, and dumping of waste endure.¹⁷⁰ Eastwick, along Lower Darby Creek, has long been the receptacle of municipal and industrial waste from throughout Philadelphia and Delaware counties.¹⁷¹ Of greatest concern are the two listed Superfund sites in the area — the Folcroft and Clearview Landfills.¹⁷² The sixty-five acre Clearview Landfill, located along Cobbs Creek, was operated without a permit by the Clearview Land Development Corporation for about twenty years.¹⁷³ Clearview and Folcroft Landfill, the latter located within the bounds of Heinz Refuge, were used to dispose of municipal waste, industrial

¹⁶² Melamed, *supra* note 11, at 3 (noting that “more than 1000 houses built on improper fill have been leveled” in other Philadelphia neighborhoods, such as Logan Triangle and Mill Creek).

¹⁶³ A FIELD OF WEEDS, *supra* note 20, at Part III, 6:28.

¹⁶⁴ See Melamed, *supra* note 11, at 2, 4.

¹⁶⁵ Reichenbach, *supra* note 161.

¹⁶⁶ Melamed, *supra* note 11, at 2–3.

¹⁶⁷ A FIELD OF WEEDS, *supra* note 20, at Part III, 7:28–35.

¹⁶⁸ *Flooding Hearing*, *supra* note 151, at 121 (testimony of Jill Minick, Eastwick resident).

¹⁶⁹ Inst. for Urban Studies, *supra* note 10, at 22.

¹⁷⁰ See EPA REPORT, *supra* note 11, at ES-1.

¹⁷¹ See *id.* at 1-3, 1-4, 1-5, 1-6; see also HARRIS-DECHANT ASSOCS., PHASE I REPORT, *supra* note 78, at app. (Report No. 1, Part B(3)) (describing the most serious harmful land use to include “[t]he existing dump . . . just across Cobbs Creek at 84th Street”).

¹⁷² *Flooding Hearing*, *supra* note 151, at 142–43 (statement of Fred Stine, Delaware Riverkeeper Network).

¹⁷³ EPA REPORT, *supra* note 11, at ES-1, 1-2, 1-3, 1-5; see also *Pennsylvania v. Clearview Land Dev. Co.*, No. 12666, Equity Docket (Del. Cnty. Ct. Com. Pl. Nov. 16, 1971) (interim consent order).

waste, hospital waste, incinerator ash, and sewage sludge between the late 1950s and the early 1970s.¹⁷⁴

For decades, as they watched Clearview grow from flat land to a “sizeable hill approximately 150 to 200 feet high,” residents and the PAC objected to the landfill’s presence in their community, but were hard pressed to find a resolution.¹⁷⁵ Despite a 1969 Pennsylvania State Department of Health order to cease burning activities¹⁷⁶ and legal action by the Pennsylvania Department of Environmental Resources (“PADER,” now the Pennsylvania Department of Environmental Protection or “PADEP”) directing the landfill’s closure, Clearview disposed of “demolition waste, tires, furniture, household appliances, and mattresses” until at least 1980.¹⁷⁷ Despite numerous recorded violations of the law, PADER apparently did not view the elimination of Clearview as a priority for some time. In fact, even after ordering Clearview to cease operations, PADER continued to permit LULUs for the area.¹⁷⁸ The PAC was forced repeatedly to appeal PADER permits, first for Roma Asphalt to operate an open bituminous concrete plant and then to DeLorenzo Twin County Disposal, Inc., for a trash transfer station — both proposed for the Clearview site.¹⁷⁹

Planning and development proceeded for many years, despite possible dangers connected with the landfill.¹⁸⁰ However, Clearview’s continued operation was a clear impediment to development.¹⁸¹ Over time, the City Planning Commission and Korman raised strong objections to Clearview’s continued operation and against permitting the Roma Asphalt and the trash transfer station.¹⁸² In 1973, when the landfill was officially closed but still operational, Korman began building homes around the site, and by 1980 it

¹⁷⁴ EPA REPORT, *supra* note 11, at 1-3, 1-5, 1-6.

¹⁷⁵ *See, e.g.*, BASSETT, *supra* note 11, at 1; FACT SHEET ON DELORENZO TRANSFER STATION AT CLEARVIEW LANDFILL (HELLERS DUMP) (n.d.) (describing ongoing illegal dumping activities at Clearview).

¹⁷⁶ *See* News Release, Pa. Dep’t of Health (Feb. 18, 1969) (announcing the order for Richard Heller to “immediately extinguish all smoldering and/or flaming fires”).

¹⁷⁷ EPA REPORT, *supra* note 11, at 1-4. Temple Urban Archives contains photographs of an active incinerator at Heller’s Dump that are marked as from the 1980s.

¹⁷⁸ *Id.*

¹⁷⁹ *See* Letter from N. Rao Kona, Chief of Permit Section, Bureau of Air Quality & Noise Control, Pa. Dep’t of Env’tl. Res., to Lois Shaub, President, Eastwick Project Area Comm. (June 6, 1973) (regarding grant of Roma facility permit) (on file with the Harvard Law School Library); Letter from Wayne L. Lynn, Reg’l Solid Waste Manager, Pa. Dep’t of Env’tl. Res., to Pasquale DeLorenzo, DeLorenzo Twin Cnty. Disposal, Inc. (Oct. 6, 1982) (on file with the Harvard Law School Library).

¹⁸⁰ BASSETT, *supra* note 11, at 2.

¹⁸¹ *See* Deposition of G. Craig Shelter at 35–45, *McGreesh v. Pa. Dep’t of Env’tl. Res.*, No. 73-197-D (June 10, 1973); Letter from Kathleen M. Ragg, Assistant Vice President, Korman Corp., to Reg’l Solid Waste Manager, Pa. Dep’t of Env’tl. Res. (Nov. 3, 1982).

¹⁸² *See, e.g.*, Deposition of G. Craig Shelter at 35–45, *McGreesh*, No. 73-197-D (June 10, 1973); Letter from Kathleen M. Ragg, Assistant Vice President, Korman Corp., to Reg’l Solid Waste Manager, Pa. Dep’t of Env’tl. Res., *supra* note 181.

had built at least 900 homes in the area.¹⁸³ Other homes are located on the historic landfill footprint.¹⁸⁴

Once the sites were closed, residents advocated to get Clearview and Folcroft cleaned up.¹⁸⁵ PADER began environmental testing at Clearview in the early 1980s, followed by the U.S. Environmental Protection Agency (“EPA”) in 1983.¹⁸⁶ In 1984, representatives from Eastwick asked the Philadelphia Health Commissioner, “[I]f the landfill is polluting the creek, what is it doing to us?”¹⁸⁷ In 2001, almost twenty years later, Clearview and Folcroft were listed as Superfund sites.¹⁸⁸ Remedial investigation by the EPA, completed in May 2011, identified unacceptable risks to human health and fish life from contaminants in groundwater, surface soils, and subsurface soils in both Darby and Cobbs Creeks, the most significant contaminants being polycyclic aromatic hydrocarbons, metals, dioxins, and pesticides.¹⁸⁹ In 2013, the EPA released a proposed remedial action plan, seeking public comment.¹⁹⁰ However, the EPA has not yet determined the full scope of groundwater contamination, having been unable to resolve the endpoint of groundwater plumes.¹⁹¹

Residents are concerned about their health and that of their neighbors.¹⁹² Today, sources of air pollution include the Philadelphia International Airport, the Sunoco gasoline refinery, two electric power plants, the former U.S. Naval Yard, and many other manufacturers, as well as traffic from Interstate 95 — built in the 1970s to cut through the heart of Eastwick — and

¹⁸³ BASSETT, *supra* note 11, at 2.

¹⁸⁴ Letter from Pauline Risser-Clemens, Health Assessor, Health Assessment Program, Div. of Envtl. Health Epidemiology, to Josh Barber, Remedial Manager, and Carrie Deitzel, Cmty. Involvement Coordinator, EPA 2 (Feb. 16, 2012).

¹⁸⁵ See Letter from Eastwick PAC to Dr. Stuart Shapiro (Mar. 2, 1984); see also Letter from Charles E. Benjamin to Mayor W. Wilson Goode (July 5, 1989).

¹⁸⁶ BASSETT, *supra* note 11, at 4–6.

¹⁸⁷ Letter from Eastwick PAC to Dr. Stuart Shapiro, *supra* note 185.

¹⁸⁸ EPA REPORT, *supra* note 11, at 1-1, 1-2.

¹⁸⁹ EPA, NPL LISTING PACKAGE FOR THE LOWER DARBY CREEK AREA, DELAWARE AND PHILADELPHIA COUNTIES, PENNSYLVANIA 1, 24, 30, 42, 45–46, 55–56, 59, 63, 67–68 (2001); see also testimony submitted by Clean Air Council et al. in conjunction with *Flooding Hearing*, *supra* note 151, available at <http://ow.ly/tDP5D>, archived at <http://perma.cc/6SDQ-2UJ7>; EPA, REUSE ASSESSMENT FOR THE LOWER DARBY CREEK AREA SUPERFUND SITE (2011), available at http://www.epa.gov/reg3hscd/npl/PASFN0305521/reports/LDCA_Phase_1_Reuse_Assessment_FINAL_3-20-110.pdf, archived at <http://perma.cc/FF5M-4HPL>.

¹⁹⁰ EPA, LOWER DARBY CREEK AREA SUPERFUND SITE COMMUNITY UPDATE (2013), available at http://www.epa.gov/reg3hscd/npl/PASFN0305521/fs/LDCA_PRAP_Clearview_Landfill_FINAL_Fact_Sheet.pdf, archived at <http://perma.cc/L85Z-5M2C>.

¹⁹¹ TETRA TECH, INC., SAMPLING AND ANALYSIS PLAN 21, 24–27 (2013), available at http://www.epa.gov/reg3hscd/npl/PASFN0305521/sampling/Final_OU-3_SAP%283-21-13%29.pdf, archived at <http://perma.cc/L4K3-XBKS>.

¹⁹² Residents feel that cancer is a significant problem for Eastwick. See, e.g., *Flooding Hearing*, *supra* note 151, at 88, 95, 96. Health risk scores for Eastwick and Southwest Philadelphia are three to five times the national average, with mortality rates far exceeding the national average. Sicotte, *supra* note 11, at 9. A report by the Pennsylvania Department of Health places cancer rates at higher than the state average, but lower than the city’s average. Letter from Pauline Risser-Clemens to Josh Barber and Carrie Deitzel, *supra* note 184, at 5.

the recently constructed United States Postal Service facility and wholesale produce center.¹⁹³ Contractors continue to target Eastwick for dumping by depositing building materials and old appliances on vacant land and along the railway tracks.¹⁹⁴ As an integrated neighborhood on the edge of the city, that Eastwick continues to be a “convenient place for wastes and polluting activities”¹⁹⁵ is a legacy predating and unresolved by urban renewal.

3. *A Wall of Water.*

Eastwick’s sinking homes and polluting facilities collide with another set of persistent Eastwick problems: catastrophic flooding and stormwater runoff issues.¹⁹⁶ Parts of Eastwick lie at or just below sea level, while much of the area is in 500-year and 100-year floodplains.¹⁹⁷ The neighborhood is bordered to the north by Darby and Cobbs Creeks, which empty into the Delaware River and are subject to its tidal flows.¹⁹⁸ The 5000 acres of freshwater tidal wetlands that once covered the Lower Darby Creek area have been reduced to fewer than 300 acres, destroying a large wetland complex that once functioned as flood storage.¹⁹⁹ The Philadelphia Inquirer reported on May 7, 2012, that Darby Creek “is one of the country’s most flood-prone streams, a significant drain on the National Flood Insurance Program, and a national lesson in what can go wrong along a developed waterway.”²⁰⁰ All of these factors combine to make Eastwick more vulnerable to catastrophic flooding than almost all other Philadelphia neighborhoods.²⁰¹

¹⁹³ When residents partnered with the Clean Air Council to do air monitoring in 2002 and 2003, they found that “benzene, ethylbenzene, toluene, hexane, xylene and MTBE had been emitted from the Sunoco refinery in ambient air in concentrations exceeding health standards.” Sicotte, *supra* note 11, at 9 (citing S. & Sw. PHILA. BUCKET BRIGADE, WHAT’S IN OUR AIR? (2003)).

¹⁹⁴ See photographs on file with author.

¹⁹⁵ Sicotte, *supra* note 11, at 9 (2010) (quoting RDA executive director Michael Arno).

¹⁹⁶ *Flooding Hearing*, *supra* note 151, at 27–28 (statement of Deputy Mayor Rina Cutler); Kellie Patrick Gates, *What It Would Take to Build an Earthen Berm for Flood Control on a Section of Cobbs Creek in Eastwick*, PLANPHILLY (Oct. 11, 2012), <http://planphilly.com/articles/2012/10/11/what-it-would-take-build-earthen-berm-flood-control-section-cobbs-creek-eastwick>, archived at <http://perma.cc/S73C-9SJR>.

¹⁹⁷ Phila., Pa., Res. 120620, at 1–2 (June 21, 2012), available at <http://legislation.phila.gov/attachments/13397.pdf>, archived at <http://perma.cc/AT82-9ZZ8>.

¹⁹⁸ PHILA. WATER DEP’T, DARBY-COBBS WATERSHED: COMPREHENSIVE CHARACTERIZATION REPORT 26 (2004), available at http://www.phillywatersheds.org/doc/DarbyCobbs_CCR.pdf, archived at <http://perma.cc/VK2M-L87G>.

¹⁹⁹ Testimony submitted by Clean Air Council et al. in conjunction with *Flooding Hearing*, *supra* note 151, available at <http://ow.ly/tDP5D>, archived at <http://perma.cc/CQ93-D7YJ>.

²⁰⁰ Anthony R. Wood, *Again, Darby Creek Appears on the Verge of Flooding Homes*, PHILA. INQUIRER (May 6, 2012), http://articles.philly.com/2012-05-07/news/31598199_1_major-flood-flood-prone-streams-stream-maintenance, archived at <http://perma.cc/7YS8-7NNQ>.

²⁰¹ See *Flooding Hearing*, *supra* note 151, at 24 (statement of Howard Neukrug, Philadelphia Water Commissioner) (describing “a catastrophic set of issues . . . not seen in other parts of the [c]ity”); *id.* at 62 (statement of Franco Montalto) (stating that due to “high groundwater tables and . . . nearby water bodies, . . . the water simply doesn’t have many places to go”).

Hurricane Floyd, in 1999, was Eastwick's most devastating flood event in recent memory. Cobbs and Darby Creeks overflowed, inundating the area with four to five feet of water,²⁰² requiring evacuation of about 1000 Eastwick residences.²⁰³ Resident Jill Minick testified to the City Council on October 9, 2012:

[Residents] were trapped. There was . . . no way for anybody to get in and get us, and there was no way for us to get out. It was so bad, the Pepper Middle School flooded and the fire truck that tried to get through on 84th Street was knee deep in water, and I watched those flood waters rise out of the storm sewers, inch by inch by inch by inch.²⁰⁴

Flooding events in Eastwick, as in the larger region, are increasing both in frequency and intensity.²⁰⁵ Homes once considered within the 500-year floodplain are now within the 100-year area.²⁰⁶ The problems persist, particularly for those living near Cobbs Creek. Leo Brundage lives on Saturn Place; he and his neighbors get hit first when rainstorms come.²⁰⁷ During Hurricane Floyd, his two-story home filled up with six feet of water;²⁰⁸ in the last twelve years, his home has been flooded seven times.²⁰⁹ Brundage says that "it's almost like when it rains, [the residents of] Saturn Place, Mars Place, Venus Place, . . . have like a post-traumatic stress, because we got to get home. We don't know if we're going to get flooded or not."²¹⁰ In the words of twenty-two year resident Bryce Baker, "the homes were sold back in 1975 for \$25,000 and \$35,000. Now every flood you got to spend \$25,000 and \$30,000 to fix up."²¹¹ The financial costs for residents of flood insurance may rise as well; recent legislation calls for the elimination of

²⁰² Gates, *supra* note 196.

²⁰³ Jacqueline R. Urgo, Michael Rothfeld, & Joseph A. Gambardello, *Floyd Rages; Rain Record Set 7 Deaths Reported, Floods Widespread*, PHILA. INQUIRER (Sept. 17, 1999), http://articles.philly.com/1999-09-17/news/25487474_1_record-flood-levels-hurricane-floyd-rescue-residents, archived at <http://perma.cc/T9AX-5SEB>.

²⁰⁴ *Flooding Hearing*, *supra* note 151, at 122 (statement of Jill Minick).

²⁰⁵ See *id.* at 59 (statement of Professor M. Richard Nalbandian, Consulting Geologist and Environmental Planner at M. R. Nalbandian and Associates); see also *id.* at 107–08 (statement of Leonard Brundage, Eastwick resident).

²⁰⁶ *Id.* at 100 (statement of Bryce Baker, Eastwick resident).

²⁰⁷ *Id.* at 93–94 (statement of Leonard Brundage).

²⁰⁸ Jan Ransom & David Gambacorta, *Nutter: No, Really, You Oughta Evacuate*, PHILA. INQUIRER (Oct. 30, 2012), http://articles.philly.com/2012-10-30/news/34818474_1_flood-saturn-place-eastwick, archived at <http://perma.cc/SFG9-MN7L>.

²⁰⁹ *Flooding Hearing*, *supra* note 151, at 93 (statement of Leonard Brundage).

²¹⁰ *Id.* at 93–94.

²¹¹ *Id.* at 101 (statement of Bryce Baker).

flood-insurance subsidies,²¹² although Congress has taken steps to slow the rollout.²¹³

Those most at risk from flooding are also those within closest proximity to the Clearview landfill, as Cobbs Creek “comes up out of its banks” at the Clearview site.²¹⁴ Brundage, one of the residents hit hardest by flooding, told the City Council in 2012 about his fears associated with the Superfund site that sits 150 feet from his house. When it floods, Brundage says, the “worst chemicals . . . invade — they come into our homes. That’s the sad part, because we don’t know how they affect [us].”²¹⁵

Through the Urban Renewal Plan, the city and RDA sought to “activate” the area for the benefit of the rest of the city. In doing so, municipal government understood that Eastwick had significant environmental problems,²¹⁶ but blight clearance, while it allowed NEC/Korman to build from the ground up, did not rid Eastwick of its vulnerabilities. Operating in an era that preceded modern environmental laws,²¹⁷ the public-private partnership that created the new Eastwick would not have known the full scope of the risk and may have followed the best practices of the day.²¹⁸ In practice, building the new Eastwick functioned to create a new “environmental justice community.”²¹⁹

One of the lessons of Eastwick is that the urban renewal framework is inadequate to address the persistent implications of past harms. The livable community is no longer one that serves the three masters — people, cars, and the airport — but one that accounts for safety and sustainability over the

²¹² See generally Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. No. 112-141, §§ 100201–100249, 126 Stat. 405, 905–969 (2012) (to be codified at 42 U.S.C. §§ 4001–4130).

²¹³ See Homeowner Flood Insurance Affordability Act of 2013, Pub. L. No. 113-89, §§ 3–4 (2014) (to be codified at 42 U.S.C. §§ 4014(g), 4015).

²¹⁴ Kellie Patrick Gates, *U.S. Army Corps and City Water Department Say Study on Eastwick Flooding Solutions Should be Complete in October*, PLANPHILLY (Jan. 6, 2013), <http://planphilly.com/articles/2013/01/06/u-s-army-corps-and-city-water-department-say-study-on-eastwick-flooding-solutions-should-be-complete-in-october>, archived at <http://perma.cc/NVC9-M6DE>.

²¹⁵ *Flooding Hearing*, *supra* note 151, at 95 (statement of Leonard Brundage).

²¹⁶ See Inst. for Urban Studies, *supra* note 10, at 1 (stating that the risks of the airport were as yet unknown); HARRIS-DECHANT ASSOCS., PHASE I REPORT, *supra* note 78, at app. (Report No. 1, Part B(1)(f) (stating that “the scientific approach to the problems of air pollution are not based on any known formula as of today”).

²¹⁷ See, e.g., National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1969) (codified as amended at 42 U.S.C. §§ 4321–4370f (2006)).

²¹⁸ See, e.g., Deposition of G. Craig Shelter at 28, *McGreesh v. Pa. Dep’t of Env’tl. Res.* No. 73-197-D (June 10, 1973) (stating that Eastwick was planned so that industrial uses “would not be objectionable [or] deleterious to the residential environment”). *But see* Sicotte, *supra* note 11, at 9 (suggesting that indifference led to the pollution).

²¹⁹ “Environmental injustice is based on the observation that minority and low-income communities (sometimes referred to as ‘environmental justice communities’) often bear a disproportionate amount of environmental harms in society.” Alex Geisinger, *The Benefits of Development and Environmental Injustice*, 37 COLUM. J. ENVTL. L. 205, 209 (2012).

long term.²²⁰ Climate change will only exacerbate Eastwick's vulnerability.²²¹ Leading up to and throughout the urban renewal era, development of both Eastwick and the airport have led to the ongoing destruction of the last acres of Philadelphia's freshwater tidal wetlands. By filling wetlands, Southwest Philadelphia is losing its natural protective buffer from catastrophic flooding.²²² Clearview, Folcroft, the oil refineries, other industrial uses, and the airport were each sited on wetlands, while Eastwick homes sit atop dredge spoil of unknown environmental quality.²²³ Thus, not only are the protective benefits disintegrating, but the wetlands themselves may be toxic as a habitat. It is clear that healing and protecting Eastwick requires a new approach.

III. RENEWAL REDUX

In 2006, the Philadelphia City Planning Commission ("PCPC") undertook a blight recertification of Eastwick, over sixty years since the original blight designation.²²⁴ To justify recertifying Eastwick, the agency's report relied on Eastwick's 162 acres of "vacant land," most of it undeveloped green space, and the dumping and accumulating debris occurring on that land, as evidence of "unsafe, unsanitary, inadequate or overcrowded conditions" and "economically or socially undesirable land use[s]."²²⁵ What the

²²⁰ *C.f.* *Robinson Twp. v. Pennsylvania*, 83 A.3d 901, 951 (Pa. 2013) (interpreting Section 27 of Pennsylvania's constitution — the Environmental Rights Amendment — to direct all levels of government to "ensure the maintenance and perpetuation of an environment of quality for the benefit of future generations").

²²¹ According to the Partnership for the Delaware Estuary, the Delaware River Basin, of which Eastwick is a part, is experiencing a steep rise in the frequency and severity of heavy precipitation events, which is anticipated to lead to increased streamflow and runoff. P'SHIP FOR THE DEL. ESTUARY, TECHNICAL REPORT FOR THE DELAWARE ESTUARY AND BASIN 233, 235 (2012), available at <http://www.nj.gov/drbc/library/documents/TREB-PDE2012/Entire.pdf>, archived at <http://perma.cc/5F35-E2JE>. Sea levels in the Delaware Estuary have already risen at least one foot in the last century and experts anticipate they will rise at least an additional three feet within the next ninety years, exceeding the global average rate for sea level rise. *Id.* at 238, 240 (the difference in sea level rise between the Delaware Estuary region and the global rate may be due to local subsidence). All of these factors will contribute to elevated river and creek levels and greater loss of coastal wetlands. *Id.*

²²² See William J. Mitsch & James G. Gosselink, *The Value of Wetlands: Importance of Scale and Landscape Setting*, 35 *ECOLOGICAL ECON.* 25, 28 (2000) ("[W]etlands provide flood control, drought prevention, and water quality protection.").

²²³ See *Dredging and Spoil Disposal in the Marine Park*, AUSTL. GOV'T GREAT BARRIER REEF MARINE PARK AUTH., <http://www.gbrmpa.gov.au/about-us/consultation/legislative-requirements-for-permits/dredging-and-spoil-disposal-in-the-marine-park> (last visited Mar. 1, 2014), archived at <http://perma.cc/SLL-6FVC> ("Dredging and material placement (also called spoil dumping) have relatively well-known potential impacts such as degradation of water quality, changes to hydrodynamics, smothering of benthic fauna and flora, damage to marine wildlife through the dredge mechanism, translocation of species and removal of habitat.").

²²⁴ See PHILA. CITY PLANNING COMM'N, EASTWICK BLIGHT RECERTIFICATION (Mar. 2006), available at <http://www.phila.gov/CityPlanning/plans/Blight%20and%20Redevelopment%20Reports/eastwickbr.pdf>, archived at <http://perma.cc/ZW4Q-UMLJ> [hereinafter *BLIGHT RECERTIFICATION*].

²²⁵ *Id.* at 2–4 (citing the conditions of the sidewalks and one dead end street).

report did not indicate was that RDA holds title to the majority of the undeveloped land in Eastwick, land to which NEC/Korman continues to retain the purchase option granted through the 1961 Redevelopment Agreement.²²⁶ Furthermore, maintenance of Eastwick's vacant land, and, thus, the accumulated trash and debris, still appears to be the responsibility of RDA. Missing from its blight recertification document were any statements about the cumulative environmental and health impacts detailed above, many cited as justification for the original blight certification. One might think PCPC was experiencing an entirely different Eastwick than the residents do, echoing the decades old disconnect between pre-urban renewal residents and RDA.²²⁷

In April 2012, two residents noticed surveying activity on the largest undeveloped parcel in Eastwick, one that borders several neighborhood streets and extends from the Heinz Refuge down to Bartram Avenue and the Eastwick train station.²²⁸ Since the 1950s, this 128-acre parcel had remained untouched and overgrown. For years, this wild green space had served as a quiet buffer for the neighboring culs-de-sac and a de facto extension of the Refuge habitat. The 1980s documentary depicting the history of Eastwick took its name — *A Field of Weeds* — from this parcel.²²⁹ Perplexed by this sudden interest in the field of weeds, Eastwick resident Terrance Johnson soon discovered that over fifty years since RDA seized the land, NEC/Korman was proposing that the City Council rezone thirty-five acres of the 128-acre parcel to build 722 units of moderate-income multifamily rental housing and over one thousand parking spaces.²³⁰

It soon became clear that the proposal for the 128 acres had been in the works for several years. At the center of these events were a series of lawsuits between NEC/Korman, the city, and RDA, related to ongoing rights and obligations under the Redevelopment Agreement and the airport's role

²²⁶ Liz Pacheco, *Riches of Eastwick*, GRID MAG. (2012), <http://www.gridphilly.com/grid-magazine/2012/9/7/the-riches-of-eastwick.html>, archived at <http://perma.cc/7ARG-WU6L>.

²²⁷ McKee, *supra* note 1, at 555 (characterizing RDA's 1951 description of the area as "predominantly open land" to be a significant exaggeration).

²²⁸ Pacheco, *supra* note 226.

²²⁹ A FIELD OF WEEDS, *supra* note 20.

²³⁰ The following narrative is based on my own observations as legal counsel to Eastwick Friends and Neighbors Coalition. These events are well documented in the press. See, e.g., Kellie Patrick Gates, *City Council to Consider Legislation Allowing for a 722-Unit, 35-Acre Apartment Complex in Eastwick*, PLANPHILLY (May 30, 2012), <http://planphilly.com/articles/2012/05/30/city-council-consider-legislation-allowing-722-unit-35-acre-apartment-complex-eastwick>, archived at <http://perma.cc/VLN9-JSZH> [hereinafter Gates, *City Council*]; Kellie Patrick Gates, *Critics of Planned Eastwick Apartment Complex Say it Would Harm the John Heinz Refuge and Increase Flood Risk*, PLANPHILLY (June 11, 2012), <http://planphilly.com/articles/2012/06/11/critics-planned-eastwick-apartment-complex-say-it-would-harm-john-heinz-refuge-and-increase-flood-ri>, archived at <http://perma.cc/6483-TJ4K> [hereinafter Gates, *Critics*]; Pacheco, *supra* note 226. Ongoing press coverage regarding the proposed Korman development and resident efforts can be found on the PlanPhilly website at <http://planphilly.com/search?q=Eastwick>, archived at <http://perma.cc/J6LA-J4KN>, as well on the Eastwick Friends and Neighbors Coalition website at <http://eastwickfriends.wordpress.com/mediapress/>, archived at <http://perma.cc/UY3Z-WMFH>.

as an economic driver for the city.²³¹ In the first suit, RDA sought to invalidate the entire Redevelopment Agreement with NEC/Korman forty years later on a number of grounds, including that (1) the original contract was void because it was not time limited, and (2) NEC/Korman had not fulfilled its obligations by failing to complete the development.²³² RDA lost in 2005, when the court upheld the Redevelopment Agreement and found that RDA had not met its own obligations to NEC/Korman, which maintained “equitable title” to the land in Eastwick.²³³ In the second suit, the city sought to condemn and take back rights to one of the remaining undeveloped parcels, for use in airport expansion as an employee parking lot, with NEC/Korman fighting for significantly more compensation than offered by the city.²³⁴ In December 2011, the city, RDA, and NEC settled the condemnation suit.²³⁵ Under the resulting Settlement Agreement, the city, RDA, and NEC/Korman agreed that the city and RDA would facilitate NEC/Korman’s development of the thirty-five acres.²³⁶ The city and RDA agreed to support NEC/Korman’s effort to obtain necessary zoning and land-use approvals for the project.²³⁷ In exchange, the city would gain back rights to the remaining ninety-three acres of the larger parcel for use in the impending airport expansion.²³⁸

On May 22, 2012, members of a newly formed Eastwick residents’ group, the Eastwick Action Committee (“EAC”), and the Friends of Heinz Refuge (“FOHR”), a nonprofit, called a meeting on development in Eastwick.²³⁹ The meeting was attended by 150 community members, as well as environmentalists concerned about the Refuge. John Korman, his legal counsel, and Korman representatives stood before the group to present the proposed project and discuss its economic benefits, including job creation

²³¹ See Mike Dunn, *Nutter Says PHL Airport Expansion Project Is Good For Entire Region*, CBS PHILA. (Feb. 6, 2012, 2:44 PM), <http://philadelphia.cbslocal.com/2012/02/06/nutter-says-phl-airport-expansion-project-is-good-for-entire-region/>, archived at <http://perma.cc/FH7H-TM57> (quoting Mayor Nutter’s support for the Philadelphia Airport expansion as necessary if the airport were to continue to be an “economic engine” for the region).

²³² See generally *Redev. Auth. v. New Eastwick Corp.*, Nos. 2087 APRIL TERM 2003, Control 102344, Control 102318, 2005 WL 705976 (Pa. Ct. Com. Pl. Mar. 23, 2005) (addressing the continued validity of the Redevelopment Agreement and NEC/Korman’s purchase option), *aff’d*, 894 A.2d 830 (Pa. Super. Ct. 2005).

²³³ *Redev. Auth.*, 2005 WL 705976, at *3–5.

²³⁴ *In re Condemnation by City of Philadelphia*, 981 A.2d 391, 394 (Pa. Commw. Ct. 2009) (addressing the valuation of a tract of land — “Parcel C” — within the Urban Renewal Area, which had been condemned by the city for use by the Philadelphia Airport); see also *Hearing on Bill No. 120418 Before the Rules Comm.*, Phila. City Council 405–08 (June 12, 2012) [hereinafter *Rezoning Hearing*] (statement of Sara Kalb).

²³⁵ Settlement Term Sheet, *In re Condemnation by City of Philadelphia*, No. 2397 (Phila. Ct. Com. Pl. Dec. 13, 2011).

²³⁶ *Id.* §1.

²³⁷ *Id.* §§1, 4. The city also agreed to pay NEC/Korman \$9.6 million for Parcel C, in addition to over \$7 million already transferred to NEC/Korman.

²³⁸ *Id.* §1.

²³⁹ *EFNC Facts Past and Present*, EASTWICK FRIENDS & NEIGHBORS COALITION, <http://eastwickfriends.wordpress.com/about/facts-past-and-present/> (last visited Apr. 2, 2014), archived at <http://perma.cc/8M8C-5UNK>.

and an increased tax base for the city. In the face of broad resistance to the proposed plan, a member of the Korman management staff told the room of majority African American residents that “you people” should be grateful for all Korman had done in the community.²⁴⁰ The room erupted in anger. One resident called for a straw poll of all in attendance about the project. All but two participants voted against the development. In the weeks following the meeting, EAC and FOHR came together to form EFNC, working in partnership with Keystone Conservation Trust, the Delaware Riverkeeper Network, a local Sierra Club affiliate, and the Public Interest Law Center of Philadelphia, joined later by Darby Creek Valley Association.²⁴¹

One week after EFNC’s meeting, PCPC convened a meeting of the Planning Commission and voted to support the rezoning of the thirty-five acres and the acquisition of the ninety-three acres for the airport.²⁴² While the requisite public notice for the meeting had been distributed online, few people from the community knew about the daytime meeting in time and only one community member and the author were in attendance to speak to issues in Eastwick.²⁴³ On June 6, 2012, EFNC met with Councilman Johnson’s staff. EFNC members came away from that meeting with the understanding that the community’s only opportunity to have a voice in and/or benefit from this project was to agree to a negotiated agreement with NEC/Korman in the form of a community benefits agreement (“CBA”). While some stakeholders were open to the idea of the CBA, they felt pressure from all quarters to develop a community-wide position and come to an agreement with NEC/Korman in the two weeks before the full Council vote on the rezoning bill, scheduled for June 21st.²⁴⁴

On June 12, 2012, EFNC mobilized over 100 residents and supporters of the Refuge to attend the City Council Rules Committee hearing. The Committee heard over three hours of testimony. The June 12 hearing was a watershed event in the movement towards greater transparency regarding the proposed development and the larger conditions in Eastwick. As the hearing

²⁴⁰ See *Rezoning Hearing*, *supra* note 234, at 393 (statement of Carolyn Mosely, Eastwick Friends and Neighbors Coalition member and Eastwick Action Committee co-chair) (stating that the term “you people” in reference to an African American community is “starkly associated with social inequality, degradation and cultural differences”).

²⁴¹ I was in attendance at the May 22nd meeting hosted by EFNC at the Eastwick Mercy Wellness Center and this account is based on my recollection, in addition to press coverage and public hearing transcripts.

²⁴² See *Rezoning Hearing*, *supra* note 234, at 204 (statement of William Kramer); Gates, *City Council*, *supra* note 230.

²⁴³ I attended the PCPC meeting. My testimony, as well as that of community member Carolyn Mosley and Korman attorney Peter Kelsen, is documented on video. Gates, *City Council*, *supra* note 230.

²⁴⁴ While I was not in attendance at the June 6th meeting, the events and perspective of various EFNC members were relayed to me verbally and by email. See Email from Debbie Beer, Eastwick Friends & Neighbors Coal. Secretary, to author (June 7, 2012) (on file with author).

continued, resident upon resident called attention to fears about flooding,²⁴⁵ a councilwoman spoke of flooding in Eastwick since “forever,”²⁴⁶ and the Deputy Water Commissioner stepped forward to testify that, while the city was addressing flooding citywide, he did not know the scope of flooding in Eastwick, nor of a plan to address it.²⁴⁷ Finally, the hearing concluded with testimony by a senior attorney from the City Solicitor’s office revealing details about NEC/Korman’s settlement agreement with RDA and the city, allowing the city to take the remaining undeveloped acreage in Eastwick for use by the airport.²⁴⁸ It became crystal clear only in the very last minutes of the hearing that the city *needed* the City Council to pass the rezoning bill or the Settlement Agreement would be null and void.

The objections of residents and allies fell into several categories. NEC/Korman’s proposed rezoning threatened the peace and quiet of existing residents, increasing density by over 1000 residents.²⁴⁹ Residents cited stories about broken promises by NEC/Korman.²⁵⁰ Many questioned Korman’s plans to exclusively develop multifamily rental units instead of considering single-family dwellings,²⁵¹ which would have been consistent with the original Eastwick plans. Some had a desire to see the thirty-five undeveloped acres remain an extension of the Refuge habitat²⁵² and feared the impact of development on the Refuge’s fragile habitat.²⁵³ Finally, numerous residents testified about their fears that the proposed plan would exacerbate their flooding and put new residents in harm’s way.²⁵⁴

In addition, many people expressed mistrust grounded in the fact that Eastwick had been cut out of the discussion at a number of junctures. It was unclear to Eastwick stakeholders why RDA had continued to re-up NEC/Korman’s purchase option and development rights seemingly without community input and after decades without action on the 128-acre parcel. The city and RDA had agreed to support NEC/Korman in a major rezoning and development in exchange for gaining back rights to a huge parcel for airport development.²⁵⁵ As the original basis for the litigation had only addressed an

²⁴⁵ See *Rezoning Hearing*, *supra* note 234, at 349 (statement of Tyrone Beverly); *id.* at 356 (statement of Joanne Graham); *id.* at 374 (statement of Gloria Truxon).

²⁴⁶ *Id.* at 265 (statement of Councilwoman Blondell Reynolds Brown).

²⁴⁷ *Id.* at 257–58 (statement of Deputy Water Commissioner Chris Crockett); see also *Flooding Hearing*, *supra* note 151, at 31 (statement of Howard Neukrug, Water Commissioner for the City of Philadelphia) (stating that prior to the rezoning hearing, the Water Department did not know how often Eastwick had flooded within the prior five years).

²⁴⁸ See *Rezoning Hearing*, *supra* note 234, at 406–08 (statement of Sarah Kalb, Senior Attorney, Office of the City Solicitor).

²⁴⁹ See *id.* at 341 (statement of Carol Simmons).

²⁵⁰ See *id.* at 388–90 (statement of Carolyn Moseley).

²⁵¹ See *id.* at 381–82 (statement of unidentified speaker).

²⁵² See *id.* at 286–87 (statement of Kate Dorrenson).

²⁵³ *Id.* at 287–88.

²⁵⁴ See *id.* at 286 (statement of Kate Dorrenson); *id.* at 290 (statement of Robin Mann); Melamed, *supra* note 136.

²⁵⁵ See *Rezoning Hearing*, *supra* note 234, at 407–08; Kellie Patrick Gates, *City Says Feds Need to Build Earthen Berm to Provide Flooding Relief in Eastwick, and 722 Apartments*

airport parking lot, which was separated from Eastwick proper by a major road, Eastwick stakeholders were not even on notice that this deal was in the works. Until the surveying activity, residents and Refuge advocates were oblivious to this major proposal for the neighborhood and, until June 22, many had no idea about the lawsuit.

EFNC also learned that City Council President Anna Verna (representing Eastwick at the time) had, with one other council member, introduced the rezoning bill to the City Council in the fall of 2011 without notice to community members or Refuge advocates, and had stated that there was neither need nor time for community participation on the matter.²⁵⁶ Finally, just as Eastwick residents and their allies began to mobilize, they felt pressure to quickly negotiate a CBA to facilitate the swift passage of the rezoning and property bills before the end of the Council session. Though government officials knew neither the full scope of the risks nor the goals of community stakeholders, these officials countered that NEC/Korman's proposed development would bring jobs, businesses, and a larger tax base to Philadelphia.²⁵⁷ Residents who passionately wanted to improve the health and safety of their homes and the larger neighborhood ecology got the message once again that they could not get something for nothing — that the Korman plan was the only route to improving the neighborhood. In the words of at-large Councilman James Kenney: "So now we're dealing with airport expansion and Korman's maximizing their development rights from 145 townhouses to 772 apartments, and these folks are still whipsawed in the middle, and we wouldn't be here if it weren't for those two deals."²⁵⁸

Citing a need for more community input and information about flooding, Councilman Kenyatta Johnson took a bold step and asked to table the rezoning bill at the close of the rezoning hearing.²⁵⁹ He and Councilman Kenney then called for a hearing on October 9, 2012 "to investigate the flooding and the . . . efforts to improve stormwater management in . . . Philadelphia,"²⁶⁰ with Eastwick residents, environmental advocates, and supportive experts coming out in force. The following month, Councilman Johnson stood before residents and stated that "[t]he community has spoken . . . loud and clear,"²⁶¹ apologizing that he had not initially heard residents'

Won't Make It Worse, PLANPHILLY (Oct. 10, 2012), <http://planphilly.com/articles/2012/10/10/won-t-says-feds-need-build-earthen-berm-provide-flooding-relief-eastwick-and-722-apartments-wont-make>, archived at <http://perma.cc/75ED-JVVK>.

²⁵⁶ Gates, *City Council*, *supra* note 230.

²⁵⁷ See *Rezoning Hearing*, *supra* note 234, at 204–06 (statement of Duane Bumb); see also ECONSULT, POTENTIAL ECONOMIC AND FISCAL IMPACT OF PROPOSED EASTWICK JOINT VENTURE I HOUSING DEVELOPMENT (2012) (outlining projected economic benefits of proposed development); Melamed, *supra* note 136.

²⁵⁸ *Flooding Hearing*, *supra* note 151, at 35–36 (statement of Councilman James Kenney).

²⁵⁹ *Rezoning Hearing*, *supra* note 234, at 412–13 (statement of Councilman Kenyatta Johnson).

²⁶⁰ *Flooding Hearing*, *supra* note 151, at 2 (statement of Councilman William Greenlee).

²⁶¹ Kellie Patrick Gates, *Councilman Johnson Says He'll Withdraw Bills Korman Needs to Build 722 Apartments in Eastwick*, PLANPHILLY (Nov. 20, 2012), <http://planphilly.com/arti>

concerns. On that day and since, the Councilman committed to holding the rezoning bill until he could be assured of broad community support.

The collective fervor of this multiracial coalition evoked, in some ways, the failed protests against the passage of the initial 1957 urban renewal plan. Yet, in 2012, elected representatives began to hear the protests of community stakeholders and put the brakes on moving development forward.

IV. LESSONS FROM EASTWICK

A. *Time to Rewrite the Urban Renewal Story*

The blight recertification and NEC/Korman's return to finish the job that NEC began in 1961 demonstrate the persistence of the power structures and inequities created through the urban renewal process. For fifty years, NEC/Korman has retained the development rights, purchase options, and, thus, equitable title²⁶² to what is likely the largest contiguous undeveloped parcel in the City of Philadelphia. Now, NEC/Korman has proposed a development that many fear will exacerbate environmental risk before solutions to Eastwick's existing environmental vulnerabilities are found. And, as with so many other environmental justice communities, Eastwick has been expected to accept the potential burdens of development in exchange for economic benefits that will not accrue to Eastwick residents — job creation, an increased tax base, and increased capacity of the airport to serve as a corporate hub — even as questions loom regarding the true worth of those benefits to the city as a whole.

Since 2012, residents have called attention to long-neglected issues in the neighborhood. As Councilman Kenney noted at the October 9, 2012 flooding hearing: “[B]efore this zoning hearing, there was no information or very little information about what these people are going through out there.”²⁶³ Now, it is not only Eastwick residents or Refuge advocates paying attention to stormwater management, flooding, and Clearview, or the racial injustice at the core of these ongoing issues. The media, local, regional, and national environmental organizations, and elected officials at all levels have all taken notice and are becoming key partners in this work.

Since the 2012 rezoning and flooding hearings, a number of policy makers have asked, “What does Eastwick want?” Eastwick residents, the Refuge, and the larger community have made clear at community meetings and public hearings that what these collective interests seek is the chance to decide. Eastwick wants a voice in creating Eastwick's future. Eastwick's

cles/2012/11/20/councilman-johnson-says-hell-withdraw-bills-korman-needs-build-722-apartments-eastwick, archived at <http://perma.cc/D6J7-RL3H>.

²⁶² See generally *Redev. Auth. v. New Eastwick Corp.*, Nos. 2087 APRIL TERM 2003, Control 102344, Control 102318, 2005 WL 705976 (Pa. Ct. Com. Pl. Mar. 23, 2005), *aff'd*, 894 A.2d 830 (Pa. Super. Ct. 2005).

²⁶³ *Flooding Hearing*, *supra* note 151, at 31–32 (statement of Councilman James Kenney).

story — which has certainly not concluded — is important because EFNC could potentially play a role in creating not simply a new process, but a new power structure.

B. *Towards Transforming Urban Ecology*

In a recent article, Sacoby M. Wilson argues that our approach to building healthy communities needs to be more proactive.²⁶⁴ One must “deal with negative and hostile forces in the environment in a vigorous manner that [leads] to their enrichment instead of their diminishment.”²⁶⁵ This includes looking to resources internal to the community to strengthen the health of the community itself. In a coastal community like Eastwick, facing the increased rainfall, storm surges, and tidal influences of climate change, it is quite literally the fragile wetlands ecology that protects the neighborhood, but the wetlands must be strong enough to do so.²⁶⁶ However, strengthening Eastwick relies just as much on fostering and strengthening the community ecosystem, in direct counterbalance to negative impacts on the social, economic, and built environments.²⁶⁷

EFNC’s efforts to have a voice in development have roots in decades of community participation models. In her 1969 article *A Ladder of Citizen Participation*, Sherry R. Arnstein outlines a typology describing levels of citizen participation, ranging from models that operate as “tokenism” or, worse, “nonparticipation,” to those that foster “citizen power”²⁶⁸ and promote, not simply participation, but a means to influence outcomes and meaningfully reap benefits. Since the initial urban renewal era and the creation of project area committees like the Eastwick PAC, federal economic development projects have urged community participation.²⁶⁹ Municipal governments and citizens alike have struggled with (and against) these requirements — from the “maximum feasible participation of the poor”²⁷⁰

²⁶⁴ Sacoby M. Wilson, *An Ecologic Framework to Study and Address Environmental Justice and Community Health Issues*, 2 ENVTL. JUST. 1, 21 (2009).

²⁶⁵ *Id.* at 20.

²⁶⁶ Post-Katrina New Orleans reminds us that flooding events present not just immediate danger to people, but an opportunity to remake a city in service of capital, in a manner eerily analogous to the blight designation of the urban renewal era. *See, e.g.*, NAOMI KLEIN, *THE SHOCK DOCTRINE* 4 (2007) (quoting developer Joseph Canizaro: “I think we have a clean sheet to start again. And with that clean sheet we have some very big opportunities.”); *see also* Kenneth M. Reardon, *The Shifting Landscape of New Orleans*, SHELTERFORCE ONLINE (Spring 2006), <http://nhi.org/online/issues/145/shiftinglandscape.html>, archived at <http://perma.cc/3YMB-8A2T> (describing a “selective rebuilding” plan put forth by the Urban Land Institute that would have razed the most flood-damaged neighborhoods, home to many poor people of color, to create green space).

²⁶⁷ *See* Wilson, *supra* note 264, at 21.

²⁶⁸ Arnstein, *supra* note 6, at 217.

²⁶⁹ Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 BROOK. L. REV. 861, 863 (2001).

²⁷⁰ *Id.* at 872.

and “widespread citizen participation”²⁷¹ mandates of the Great Society and Model Cities eras to the more limited notice and hearing requirements of Community Development Block Grants²⁷² and more robust Empowerment Zone planning processes.²⁷³

Efforts to strengthen Eastwick’s community voice and shape Eastwick’s future may build on past models and will certainly take guidance from more recent environmental justice and right-to-the-city movements, as well as the Pennsylvania Supreme Court’s recent decision in *Robinson Township v. Pennsylvania*.²⁷⁴ The Principles of the Environmental Justice Movement, developed in 1991 by the First National People of Color Environmental Leadership Summit, call for “the fundamental right to political, economic, cultural and environmental self-determination of all peoples” and “demand[] the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.”²⁷⁵ The right-to-the-city movement also calls for “[t]he right of community control and decision making over the planning and governance of the cities where we live and work, with full transparency and accountability, including the right to public information without interrogation.”²⁷⁶ And Chief Justice Castille’s recent plurality opinion in *Robinson* reminds us that government actions at both the state and local level²⁷⁷ must conform with Pennsylvania’s Environmental Rights Amendment by protecting the public trust and the constitutional right to a healthy environment on behalf of “all the people,” equitably and for the benefit of future generations.²⁷⁸

All of these principles point to the need to ensure that the voices from Eastwick are not just heard and acknowledged, but that Eastwick stakeholders participate in creating a sustainable future for Eastwick in a shared leadership role. Dr. Mindy Fullilove provides a framework, in her 2013 book *Urban Alchemy*, for “restoring joy in America’s sorted-out [or segregated]

²⁷¹ *Id.* at 876.

²⁷² *Id.* at 882.

²⁷³ *Id.* at 885–86.

²⁷⁴ 83 A.3d 901, 985 (Pa. 2013) (plurality opinion) (holding that Pennsylvania has a state constitutional duty to serve as trustee of the state’s “public natural resources”).

²⁷⁵ Justin Steil & James Connolly, *Can the Just City Be Built from Below?*, in *SEARCHING FOR THE JUST CITY* 173, 179 (Gary Bridge & Sophie Watson eds., 2009) (citing PEOPLE OF COLOR ENVTL. LEADERSHIP SUMMIT, *supra* note 12).

²⁷⁶ RIGHT TO THE CITY, THE RIGHT TO THE CITY PLATFORM (2012), available at <http://www.righttothecity.org/index.php/resources/platforms/item/67-rttc-platform>, archived at <http://perma.cc/DEK8-W8YH>. Right to the City coalesced in 2007 as a response to “gentrification and . . . displacement of low-income people, people of color, marginalized LGBTQ communities, and youths of color from their historic urban neighborhoods,” and encompasses the right to “sustainable and healthy neighborhoods” within its platform. *Mission & History*, RIGHT TO THE CITY, <http://www.righttothecity.org/index.php/about> (last visited Mar. 1, 2014), archived at <http://perma.cc/FGS8-V9VC>.

²⁷⁷ *Robinson*, 83 A.3d at 985 (plurality opinion).

²⁷⁸ *Id.* at 913, 959.

cities.”²⁷⁹ One of the key components of Fullilove’s approach to urban restoration is to “find out what you’re FOR.”²⁸⁰ According to Fullilove, finding out what you are “FOR” requires three things: First, those engaging in the process must recognize the “moral, humanitarian, and pragmatic” imperative to “include everyone in the conversation.”²⁸¹ Second, developing a community vision relies on technical guidance related to “the art and science of urban restoration to achieve in space what they imagine in relationships.”²⁸² Finally, the community vision must “address the restoration of the sorted out city.”²⁸³ In other words, the community’s plan will only work if it directly addresses the historic and current inequities of racial and economic injustice.²⁸⁴ The first two components take a step towards addressing the third as the exclusion of key voices from decisionmaking and the lack of access to necessary information, guidance, and expertise perpetuate inequity.

At the beginning of 2013, EFNC developed a mission statement that states:

EFNC is a nonprofit, unincorporated association comprised of concerned residents, stakeholders, and supporters whose mission is to improve the quality of life for residents of Eastwick and the resiliency of the Eastwick community; ensure optimal environmental and ecological quality for Eastwick; and to increase Eastwick’s economic growth and vitality. EFNC recognizes the historic disenfranchisement experienced by residents throughout Eastwick and the need to now remedy harms to health and ecology and work to make Eastwick whole.²⁸⁵

This mission is reflective of the goals of a core group of stakeholders — including residents and environmental allies. EFNC’s mission and work up to now are in line with Fullilove’s directives, as well as Wilson’s approach to strengthening community ecology. This approach has proved critical to EFNC’s progress. It also demonstrates a framework for next steps, based on Fullilove’s directives.

1. *“Including Everyone in the Conversation.”*

Critical decisions about Eastwick’s future are about to be made. In moving towards planning for Eastwick, the City of Philadelphia has an opportunity to use Eastwick as a model that truly supports citizen empowerment, social inclusion, and participatory democracy. Partnership and the

²⁷⁹ See generally MINDY THOMPSON FULLILOVE, URBAN ALCHEMY (2013).

²⁸⁰ See *id.* at 99–120 (emphasis in original).

²⁸¹ *Id.* at 100.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ See *id.* at 101–05.

²⁸⁵ Eastwick Friends and Neighbors Coalition Bylaws (Jan. 2013) (on file with the Harvard Law School Library).

willingness to include everyone in the conversation have been critical components of EFNC's work to date. The EFNC board itself brings together residents from different sections of Eastwick, environmental advocates, and clergy, with EAC and FOHR members at the core.²⁸⁶ EFNC's community engagement and partnerships reach Heinz Refuge staff, local business owners, and beyond. Where many groups might be "single issue," EFNC recognizes and is addressing the complexity of Eastwick's social and economic justice issues. The diverse makeup of the coalition and its holistic approach represent a "bright light" on the horizon and a "significant dynamic" for Eastwick's future development.²⁸⁷ EFNC is talking with *everyone*: elected officials at all levels; local, state, and federal agencies; nonprofit organizations; and others — bringing many out to speak directly to residents and other stakeholders and initiating door-to-door community engagement. All this work requires EFNC to address racial injustice head on in the context of urban renewal and ongoing racism expressed by government officials.²⁸⁸ EFNC must also address the complex racial dynamics of a group of residents representing a predominantly African American neighborhood working side by side with a mostly white group of environmental advocates and policymakers.

Informing all of EFNC's work are PCPC's 1955 Area Plan and RDA's 1957 Urban Renewal Plan, neither of which has been meaningfully updated. Thus, there has never been a process to ask a broad range of stakeholders, "What does Eastwick want?" Eastwick needs an opportunity for engagement, open dialogue, priority setting, and visioning that asks all stakeholders what Eastwick should be, where is it going, and what is it for. There are, of course, tradeoffs in community-based planning. A more participatory process requires more resources upfront, more time invested, and the ongoing confidence of all involved along the way. At the same time, engagement and shared leadership can create confidence in both the process and the ultimate results, creating "desirable"²⁸⁹ communities where people want to live and leading to potentially fewer cost overruns and capital construction delays as plans are implemented.²⁹⁰ However, who will pay for Eastwick's plan is an open question, as is how funding might impact leadership and stakeholder participation.

²⁸⁶ Interview with Terry Williams, *supra* note 27.

²⁸⁷ *Id.*

²⁸⁸ See Email from Carrie Dietzel, Cmty. Involvement Coordinator, EPA, to Anna Abbey, Office of Solid Waste & Emergency Response (Apr. 13, 2013) (on file with the author) (describing "the predominantly Black, urban, Eastwick community" as not "actively engaged]" with recipients of EPA funding for technical assistance, a group described as "largely comprised of well-educated, suburban Whites").

²⁸⁹ Interview with Alison Hastings, Manager of Strategic P'ships, Del. Valley Reg'l Planning Comm'n (Feb. 27, 2014).

²⁹⁰ *Id.*

2. *“Using the Art and Science of Urbanism.”*

In a recent interview, EFNC President Terry Williams outlined important infrastructure needed by Eastwick to support both planning and implementation. He indicated that Eastwick needs an organization with “administrative capacity at the local level to involve . . . and engage” resident and environmental leadership on key issues.²⁹¹ Eastwick residents and other stakeholders need the opportunity to “engage . . . local government and local commerce in . . . realistic, viable partnership[s], [in which] community initiatives are not seen as adversarial.”²⁹² Eastwick needs the

capacity to plan for the future . . . where you have [the] Airport, these major institutions . . . oil refineries, Superfund site[s], huge abandoned [school] buildings, residents in a flood plain, you need to have the capacity to address those issues not in a vacuum, not in a back room, not have a politician try to force something on you because he is newly elected or wants to be reelected.²⁹³

And residents and government agencies must reckon with the fact that Eastwick has “a superfund site that never goes away”²⁹⁴ adjacent to a tempestuous creek, and that residents must live alongside both until remediation is complete and solutions for catastrophic flooding are found.

As Williams states, “EFNC has given [Eastwick] the capacity to engage those issues with some sophistication and effectiveness.”²⁹⁵ Ultimately, EFNC must strengthen the resources internal to the community so that residents and their allies have the tools, information, and expertise to engage with and guide discussions with stakeholders and policymakers at every level and to do so on an equal playing field. To do that, Eastwick needs more traditional “experts” in a range of areas, including economic and sustainable development, environmental law, hydrology, insurance, and planning. But a more equitable planning process recognizes the critical expertise that exists within the community of Eastwick itself.

3. *“Addressing the Restoration of the Sorted Out City” and Defining Eastwick’s “Right to the City.”*

What Fullilove calls “addressing the sorted out city” is what EFNC might call “making Eastwick whole.”²⁹⁶ There is no roadmap for how to do this, but certain principles have emerged from recent conversations and advocacy. The City of Philadelphia, RDA, NEC/Korman, and the airport all

²⁹¹ Interview with Terry Williams, *supra* note 27.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Eastwick Friends and Neighbors Coalition Bylaws, *supra* note 285.

have rights to or authority over land in Eastwick, whether those rights or authority flow from a contract (Korman), a blight designation (RDA), or a role as an economic driver for the city (airport). Even the Refuge has protections as a federally designated site. To move Eastwick forward, all involved need to embrace a framework in which Eastwick's residents and other community stakeholders have rights too.²⁹⁷

One of the core injustices of urban renewal was a failure to acknowledge how Eastwick viewed itself — not as a blighted area of predominately open land, but as a home and vibrant multiracial community. Eastwick was even renamed as it was remade.²⁹⁸ The 2006 Blight Recertification perpetuates this disconnect.²⁹⁹ PCPC recertified Eastwick as blighted using a narrow lens, seeing vacant land, trash and debris, and a dead-end street.³⁰⁰ The recertification document ignores many of Eastwick's challenges and speaks nothing of its assets. The document does not include the voice of Eastwick stakeholders, and residents are nervous of the power it grants RDA.³⁰¹ Removing the blight designation would be one step toward recognizing how Eastwick views itself. This is not to suggest that Eastwick is without problems, or even that eminent domain is never an appropriate tool. Rather, removing the blight designation would restart the conversation about where Eastwick is headed, without the looming uncertainty of condemnation, and would include everybody to define the range of appropriate legal, planning, and development tools.

Any planning process needs to build on respect for both the pain and expectations created in the past and a willingness to move through both to the next stage. Residents speak of experiencing something akin to post-traumatic stress related to recurring flood events and the uncertainty of not knowing when the next flood will occur or what the impact might be of flood waters bringing toxic waste into their homes.³⁰² At the same time, historical trauma “accompan[ies]” displacement and disenfranchisement, particularly within the African American community, including current Eastwick residents who experienced the original impact of urban renewal.³⁰³

²⁹⁷ Cf. *Robinson Twp. v. Pennsylvania*, 83 A.3d 901, 977 (Pa. 2013) (stating that officials at all levels of government have obligations to protect the public trust and that existing zoning ordinances created “reasonable expectation[s] concerning the environment” in which residents were living).

²⁹⁸ “[T]he good folks up in the city call it all Eastwick now. We didn’t know that.” McKee, *supra* note 1, at 555 (quoting resident William Hillier).

²⁹⁹ See generally BLIGHT RECERTIFICATION, *supra* note 224.

³⁰⁰ See *id.* at 2–4.

³⁰¹ See Interview with Marion Cox, *supra* note 145.

³⁰² *Flooding Hearing*, *supra* note 151, at 93–94 (statement of Leonard Brundage).

³⁰³ See Susan P. Kemp, *Place, History, Memory: Thinking Time Within Place, Communities, Neighborhoods and Health, in COMMUNITIES, NEIGHBORHOODS, AND HEALTH: EXPANDING THE BOUNDARIES OF PLACE* 1, 4 (Linda M. Burton et al., eds., 2011) (discussing the “reverberating influence of histories of place-based oppression and displacement” on the health of marginalized communities); Melamed, *supra* note 136 (describing a resident “still haunted by the first time developers came to Eastwick”).

Healing must be part of planning. For healing to happen, city officials need to create space for listening and apology — as the City Council did by holding hearings on flooding,³⁰⁴ as Councilman Johnson did in November 2012,³⁰⁵ and as the interim executive director of the RDA did, in November 2013, asking residents to explain to him the history between Eastwick and the agency.³⁰⁶ It costs very little to stop to hear residents' grievances and apologize. In concert, community stakeholders have to take a risk, trust that they have been heard, and work to move forward.

Until now, the economic interests of metropolitan Philadelphia and its private development partners have guided development in Eastwick. Further, while some studies have documented the cumulative impacts of Eastwick's environmental burdens on its residents and the Refuge, the efforts to address risks to Eastwick's environmental health and safety have primarily been piecemeal, looking at toxic remediation as distinct from flooding and unrelated to air quality and other burdens. Eastwick needs a community-based plan to guide the allocation of any resources to Eastwick in a manner that holistically addresses efforts to support community health, environmental remediation, risk prevention, and economic development. Profit alone should not dictate who decides Eastwick's future. Yet, Eastwick needs more than just process and more than just a plan — it needs the resources to implement such a plan and a governing body that equitably represents the neighborhood's stakeholders.

Finally, prior to the stalling of the rezoning proposal, various city officials and residents had called for a negotiated agreement that would have given other stakeholders besides NEC/Korman and RDA an enforceable voice in future development. Such CBAs have been used recently in places like Los Angeles and San Francisco as contractual instruments to ensure communities can elicit some benefits if they are also experiencing the burdens of a LULU or a new development. Another model, put forward by Alex Geisinger, is to create a "reasonable benefits" scheme that requires, by statute, that benefits flow to communities in proportion to the burdens they experience.³⁰⁷ A CBA or other negotiated instrument will be necessary to ensure benefits flow to Eastwick in the immediate term, as the prospect of development and an expanded airport footprint appear likely. Any long-term set of solutions will need to incorporate solutions to Eastwick's cumulative environmental risks at the intersection of toxic remediation, a subsiding housing stock, and flooding in the face of climate change.

³⁰⁴ See generally *Flooding Hearing*, *supra* note 151.

³⁰⁵ See *Gates*, *supra* note 261.

³⁰⁶ See *supra* note 13.

³⁰⁷ See Geisinger, *supra* note 219, at 228–40.

C. *Time to Rewrite the Blight Story*

Addressing the sorted out city also means looking at how Eastwick fits into the larger context of a racially and economically just Philadelphia. Writing in 2003, Wendell Pritchett cautioned that blight rhetoric was continuing to “shape urban policy,” as Philadelphia moved toward implementing the Neighborhood Transformation Initiative (“NTI”) during the administration of Mayor John Street.³⁰⁸ Through NTI, the City of Philadelphia floated \$295 million in bonds to purchase property, destroy buildings, and construct new residential units.³⁰⁹ Pritchett recognized that residents were still “struggl[ing] to build community in the midst of abandonment.”³¹⁰ His warning that blight “remains in the eye of the beholder” was prescient as NTI spurred community protests by residents “alarmed about the city’s ambiguous plans for demolishing homes and thus fearful about the possibility of mass relocations to uncertain destinations.”³¹¹ To residents, NTI was a “‘black box’ program lacking meaningful civic participation.”³¹² The “aggressive courting of private developers” fomented mistrust by failing to involve Philadelphia’s many community development corporations or creating a framework for equitable development.³¹³

The lack of community input in deciding what blight meant for them had mixed environmental implications for neighborhoods. Residents tell stories of bulldozers arriving to raze active and deeply rooted community gardens when the city failed to consult with residents about its condemnation plans.³¹⁴ Further, the incentive to build on Philadelphia’s larger undeveloped tracts propelled projects forward without proper analysis of the neighborhood ecology.³¹⁵ In areas such as the Mill Creek, larger vacant tracts sit atop underground creeks and within the floodplain.³¹⁶ As longtime residents knew, these tracts were vacant because past homes sunk into the ground and had to be demolished.³¹⁷ As Domenic Vitiello described it, “the market logic of NTI butted heads with residents’ competing visions of what was

³⁰⁸ Pritchett, *supra* note 38, at 51.

³⁰⁹ McGovern, *supra* note 51, at 541–42.

³¹⁰ Pritchett, *supra* note 38, at 52.

³¹¹ McGovern, *supra* note 51, at 555.

³¹² Domenic Vitiello, *Twenty-First Century Urban Renewal in Philadelphia: The Neighborhood Transformation Initiative and Its Critics*, PLANNERS NETWORK (Jan. 22, 2007), <http://www.plannersnetwork.org/2007/01/twenty-first-century-urban-renewal-in-philadelphia-the-neighborhood-transformation-initiative-and-its-critics/>, archived at <http://perma.cc/8MLF-MUTU>.

³¹³ McGovern, *supra* note 51, at 560.

³¹⁴ DOMENIC VITIELLO & MICHAEL NAIRN, COMMUNITY GARDENING IN PHILADELPHIA: 2008 HARVEST REPORT 36 (2009), available at <https://sites.google.com/site/harvestreportsite/philadelphia-report>, archived at <http://perma.cc/6HRQ-2SQ8>.

³¹⁵ Vitiello, *supra* note 312.

³¹⁶ *Id.*

³¹⁷ *Id.*

wrong with their community — and how to fix it.”³¹⁸ The gaps between community goals and market analysis echo Eastwick’s history.

Today, residents and local business owners along West Philadelphia’s Baltimore Avenue corridor are contending with these gaps. Participants in PCPC’s community engagement process for the University Southwest District Plan recently discovered that properties at the intersection of 51st Street and Baltimore Avenue “would be recertified as blight to ‘aid redevelopment.’”³¹⁹ According to community members, at no point in the planning process was the prospect of blight recertification brought into the conversation.³²⁰ Plans of RDA to condemn two vacant parcels to expand a neighborhood medical center and create student housing has put RDA in tension with the owner of the vacant parcels, who has floated the idea of creating a garden center on that block, as well as with local business owners who say that expanding the commercial corridor is critical to their success.³²¹ Voices in the local community appear perplexed about the lack of consent or even consultation involved in the blight recertification and skeptical of the use of eminent domain.³²² The issue is not so much what should happen on the 5100 block of Baltimore Avenue or even whether eminent domain is an appropriate tool,³²³ but that assertions of eminent domain power should be considered upfront, as part of a participatory planning process.

The blight framework has become common parlance.³²⁴ Yet, Philadelphia now has a new opportunity to treat the neighborhood redevelopment

³¹⁸ *Id.*

³¹⁹ PHILA. CITY PLANNING COMM’N, UNIVERSITY SOUTHWEST DISTRICT PLAN 38 (2013), available at http://www.phila.gov/CityPlanning/plans/District%20Plans%20Library/USW_full%20plan.pdf, archived at <http://perma.cc/3BWB-49QW>; Annamarya Scaccia, *A Tale of Two Communities? Meeting Scheduled to Discuss 5000 Block of Baltimore Ave.*, W. PHILLY LOC. (Jan. 24, 2014), <http://www.westphillylocal.com/2014/01/24/a-tale-of-two-communities-meeting-scheduled-to-discuss-5000-block-of-baltimore-ave/>, archived at <http://perma.cc/VB92-5J6Z>.

³²⁰ Scaccia, *supra* note 319.

³²¹ Annamarya Scaccia, *Greensgrow Farms Eyeing Empty Lot at 51st and Baltimore*, W. PHILLY LOC. (Aug. 8, 2013), <http://www.westphillylocal.com/2013/08/08/greengrow-farms-eyeing-empty-lot-at-51st-and-baltimore/>, archived at <http://perma.cc/BX8W-V34E>.

³²² Scaccia, *supra* note 319.

³²³ It is worth pointing out that certain cities, notably Richmond, California, are considering the tactical use of eminent domain to seize homes from mortgage lenders, allowing them to forgive the debt and prevent foreclosure. Emily Badger, *Why Eminent Domain Can’t Save Broke Cities Like Richmond, California*, ATLANTIC CITIES (Oct. 25, 2013), <http://www.theatlanticcities.com/housing/2013/10/why-eminant-domain-cant-save-broke-cities-richmond/7358/>, archived at <http://perma.cc/3JD5-A72T>; Shaila Dewan, *Eminent Domain: A Long Shot Against Blight*, N.Y. TIMES (Jan. 11, 2014), http://www.nytimes.com/2014/01/12/business/in-richmond-california-a-long-shot-against-blight.html?_r=0, archived at <http://perma.cc/E82L-TF22>.

³²⁴ See, e.g., Jon Hurdle, *Philadelphia Forges Plan to Rebuild from Decay*, N.Y. TIMES (Dec. 31, 2013), <http://www.nytimes.com/2014/01/01/realestate/commercial/a-land-bank-is-forged-for-decaying-blocks-in-philadelphia.html>, archived at <http://perma.cc/5VBK-VNJ7>; Timothy Williams, *Blighted Cities Prefer Razing to Rebuilding*, N.Y. TIMES (Nov. 12, 2013), <http://www.nytimes.com/2013/11/12/us/blighted-cities-prefer-razing-to-rebuilding.html>, archived at <http://perma.cc/827G-9TP6>.

process and residents differently. Philadelphia has an estimated “40,000 vacant, derelict or underused buildings and lots.”³²⁵ At the close of 2013, the Philadelphia City Council passed legislation to create a Philadelphia land bank,³²⁶ which is aimed at creating a proactive and streamlined process to consolidate publicly owned vacant parcels and to acquire privately owned and tax-delinquent properties so that they may be transferred and put back into active use.³²⁷

The land bank law has been heralded as historic — it is the country’s largest municipal land bank.³²⁸ The law also codifies language geared toward supporting equitable development and sustainable communities.³²⁹ The legislation succeeded because of a partnership between political leadership and diverse coalitions, which united advocates from the for-profit, nonprofit, and community-based sectors.³³⁰ One of the great victories of the land bank law was the value statement specifying how the land bank board must approach the entity’s formation. The law mandates transparency and public participation in planning and policy setting, and community representation on the land bank board. The law also recognizes that multiple end uses are necessary to create healthy and sustainable communities, with explicit language addressing accessible and affordable housing, open space, and urban agriculture.³³¹

Despite the broad coalition effort, there are still those who felt marginalized by the process leading to the land bank law. Prior to its passage, residents from primarily African American neighborhoods stood up to raise concerns that the land bank would facilitate land grabs, the likes of which were seen in urban renewal and, to a lesser extent, NTI, and discussed the need for greater transparency and better community representation.³³² While supportive of the bill, Reverend Lewis Nash of the North Philadelphia Faith Deliverance Church came forward with concerns that residents who put time, effort, and resources into maintaining and farming on individual parcels would be priced out.³³³ Resident Tiffany Green was worried about communities getting cut out of decisionmaking, noting that many organiza-

³²⁵ See Hurdle, *supra* note 324.

³²⁶ PHILA., PA. CODE § 16-500 (2014).

³²⁷ *Id.*

³²⁸ *Historic Land Bank Legislation Signed into Law*, CITY COUNCIL: CITY OF PHILA. (Jan. 13, 2014), <http://philadelphiacitycouncil.net/council-news/historic-landbank-legislation-signed-into-law/>, archived at <http://perma.cc/YFD6-GT7H>.

³²⁹ PHILA., PA. CODE § 16-500.

³³⁰ See Karen Black, *Philadelphia Achieves Land Bank Through Compromise*, SHELTERFORCE (Jan. 22, 2014), http://www.shelterforce.org/article/3575/philadelphia_achieves_land_bank_through_compromise/, archived at <http://perma.cc/MP55-XSZA>.

³³¹ See *id.*; Ashley Hahn, *Five Hopeful Things About the Land Bank*, PLANPHILLY (Dec. 16, 2013), <http://planphilly.com/eyesonthestreet/2013/12/16/five-hopeful-things-about-the-land-bank/>, archived at <http://perma.cc/C83C-XKLT>.

³³² *Hearing on Bill No. 130156A Before the Comm. of the Whole*, Phila. City Council 111–24 (Dec. 5, 2013).

³³³ *Id.* at 111 (statement of Reverend Lewis Nash).

tions had not been notified about what was happening with the land bank.³³⁴ Green saw the land bank as “an online store for many developers to come and purchase city-owned properties.”³³⁵ She wanted to see African American representation on the land bank board, noting that Philadelphia’s Zoning Commission, Planning Commission, and Civic Design Review board tend to be majority white with “one token African American” in a city that is majority black.³³⁶ Darnetta Arce of the Brewerytown-Sharswood Community Civic Association shared that Brewerytown, too, wants “the blight to be removed . . . [,] better housing . . . [, and] vacant lots to be more beautified.”³³⁷ However, Arce’s community needed a better understanding of the bill and the conditions it would create for the neighborhood before it could support the land bank.³³⁸

The land bank has the potential to open up opportunity and create change for Philadelphia’s neighborhoods. The land bank board and advocates in support have a responsibility to usher in this new institution in a way that brings all neighborhoods along. Eastwick, as well as the more recent story of NTI, remind us that we need to include everybody. Advocates have affirmed the commitment of the various coalition members, representing sectors often in tension, to come together to move the land bank forward in a manner that is aligned with the coalitions’ core values. These coalitions also need to continue building support with a grassroots approach that directly includes African American communities that still experience the negative effects of historic disinvestment, urban renewal, and NTI. Further, everyone needs the benefit of expertise and technical knowledge. At the center of this conversation is a real question of what sustainable and equitable development means for Philadelphia. The land bank can play a part in creating solutions that strengthen the social and environmental ecologies of our neighborhoods. Community education needs to happen on a neighborhood level so people can actually understand what the land bank does and how it is different from urban renewal and NTI.

Residents and community-based groups should have the tools to access land as adeptly as developers and to fully participate in shaping their neighborhoods. Environmentally vulnerable neighborhoods like Eastwick often house a disproportionate amount of vacant land — either brownfields or areas where homes were demolished due to flooding or subsidence. These areas will need particular expertise to determine the best way forward. But, in fact, long-term residents themselves may be some of our best experts on neighborhood vulnerabilities. As a whole, implementation of the land bank law must address the problems of a “sorted out city.” The hope of advo-

³³⁴ *Id.* at 126–28 (statement of Tiffany Green).

³³⁵ *Id.* at 126.

³³⁶ *Id.* at 128.

³³⁷ *Id.* at 125 (statement of Darnetta Arce).

³³⁸ *See id.*

cates has been that the land bank is not urban renewal redux, but residents need to believe that as well. For that to happen, the benefits of accessible land and development opportunities need to flow to the people most affected by vacancy and disinvestment.

CONCLUSION

The blight designation has historically used a community's vulnerabilities, including environmental risk, against that community. This has resulted in the loss of community voice, agency, identity, and property rights. The benefits of blight rhetoric and eminent domain have disproportionately flowed to municipal and private entities while existing residents faced displacement or, if they stayed, failed to see improvements to their quality of life. In the case of Eastwick, even the new residents were put at risk by hazardous environmental conditions.

The balance of power imposed through urban renewal is still in place. The PRA still has significant land holdings in Eastwick, the blight designation affirms its eminent domain powers, and courts continue to affirm NEC/Korman's own legal rights. If Eastwick is to be remade in response to past harms and in preparation for future climate crises, that process must be a democratic one that elevates local voices and reflects the very human rights of its residents. Future urban planning in Eastwick must be a participatory process in order for the process to have integrity. Whether and how that happens will require PCPC, the PRA, the Philadelphia International Airport, and a host of other city agencies and elected officials to commit to sharing leadership with the Eastwick community. Further, planning for healthy and sustainable development cannot happen without an analysis of environmental risks, prioritizing human health and safety, with the Refuge as both a core stakeholder and a resource.

We must shake off blight discourse, which serves to perpetuate inequity. Yet we persist in letting this discourse shape our policy and our perception of our communities. Now, even residents speak of blight as the problem. In doing so, we continue to focus on eliminating the "diseased" component without promoting holistic solutions or strengthening the greater community ecology. Let us start with retiring the social construct that is blight and return the word to its origins with the horticulturalists. Urban neighborhoods are not diseased. They have strengths that can and should be bolstered and challenges that need tools and resources to be solved. It is up to planners, municipalities, and developers, as well as community development corporations and other nonprofits, to craft and embrace support roles for themselves, while recognizing residents' rights to their city and their health, and creating space for those most affected to step forward to shape and define the futures of their communities.