



Comment on County Land Bank Proposal

July 2012

Cook County Commissioner Bridget Gainer recently proposed the implementation of a County Land Bank. This proposal comes at a time of seemingly insurmountable instability in the housing market. The unrelenting wave of foreclosure filings, resulting in unprecedented building abandonment, real estate owned properties (REOs), and general building deterioration, has led to community-wide devastation in many parts of the County. Foreclosure filings for the 6 County region “grew by 205% from 21,305 in 2005, before the onset of the foreclosure crisis, to 64,877 in 2011¹. This spike in foreclosure filings and the plummeting housing market has had a direct impact on home values, tax revenues, and household wealth. Over the past five years, home values have fallen almost 35 percent in the Chicago region².

Furthermore, foreclosures often result in building vacancies leading to building deterioration and community-wide safety concerns. It is well documented that vacant buildings are a serious drain on municipal finances. Vacant properties decrease property values of adjacent buildings, increase the cost of public personnel required to monitor these properties, and allow for the concealment of criminal activities. In 2010, the City of Chicago spent \$16 million to tear down or board up vacant buildings. Throughout Cook County, the housing crisis has led to sheer devastation in many neighborhoods—culminating in diminished housing stock, weakened fiscal capacity, and population loss.

Although the situation is dire, against the backdrop of urgency great victories can be won. A County Land Bank could convert distressed properties to productive use: “By turning vacant and abandoned properties into community assets such as affordable housing, land banking fosters greater metropolitan prosperity.³” Commissioner Gainer heralds this opportunity in her proposal: “we need to seize this critical planning moment to create an infrastructure that is sustainable, local and will operate with the best interest of our communities as its singular priority. A land bank can aggregate unrelated parcels, thus managing the present while planning for the future. If we don’t act now, the ability to comprehensively plan, redevelop and even rescue communities will pass us by.”⁴ CAFHA commends the initiative commenced by Commissioner Gainer, yet urges the County to remain mindful of the duty to affirmatively further fair housing throughout the planning and implementation of the proposed land bank. Cook County, as a CDBG entitlement jurisdiction, is required to ensure that grant activities are conducted and administered in conformity with the Civil Rights Act of 1964 and the Federal Fair Housing Act.

The duty to affirmatively further fair housing is not only a mandate for the County; it can be a positive vehicle for enhanced prosperity, cohesion, sustainable development and economic growth. Historically, public and

¹ Woodstock Institute (2012) *Struggling to Stay Afloat: Negative Equity in Communities of Color in the Chicago Six County Region*. Page 1.

² Ibid.

³ Alexander, Frank, (2008) *Land Banking as Metropolitan Policy*. Blueprint for American Prosperity. Page 3.

⁴ Cook County Land Bank Proposal (2012) *Implementing and Creating a Cook County Land Bank* Page 1.

private mechanisms have created a dual housing market through generating rigid patterns of racial and ethnic segregation. In a report examining racial segregation nationally it was found that “The Chicago metro area ranks fifth, sixth, and ninth in the most residentially segregated metropolitan areas in the United States for Blacks, Latinos, and Asians, respectively.”⁵

The County must stabilize housing patterns or continued segregation will lead to further disinvestment, uneven growth and development patterns, and inequality in access to opportunity. If certain areas in the County are allowed to remain weak, the overall economic future is bleak; artificial housing market trends driven by racial/ethnic segregation create deficient tax revenue and further siphoning of government programs, ultimately resulting in fewer, less desirable housing options for all.

Clearly, now is the time for bold housing and land-use policies, like that set forth by Commissioner Gainer, which can set a precedent for the entire region.

Existing Law, Illinois Law, and Land Banking

Previous Land Banks have relied on state legislation for their creation. An example of progressive legislation is the Land Bank Fast Track Act adopted by Michigan in 2003. However, the proposal by Commission Gainer outlines how Cook County can establish a Land Bank without state legislation.⁶ Legal power for land banking comes from municipal state law, and the Illinois Constitution addresses municipal power in Illinois. Under the state constitution, a “county which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units.”⁷ A home rule unit of government may “exercise any power and perform any function pertaining to its government and affairs.”⁸ Cook County could therefore use its home rule powers to engage in land banking activities without waiting for state legislation. It could also create separate land banking authorities. Non home rule counties and municipalities generally have only the powers granted to them by state law, but are granted some initial powers as well by the Illinois Constitution.⁹

The biggest opportunity to make land banking an effective tool involves intergovernmental cooperation between local governments to really leverage these powers. The Illinois Constitution does encourage this cooperation.¹⁰ In addition, the Illinois Intergovernmental Cooperation Act provides an even broader framework for intergovernmental agreements which would allow separate local governments (such as Cook County) to enter into agreements creating a separate public agency to engage in land banking practices.¹¹ This cooperation would be the best way to leverage the power of each separate unit of local government to foment

⁵ Forman, Tyrone, and Maria Krysan. (2008) *Policy Forum: Racial Segregation in Metropolitan Chicago Housing*. Institute of Government & Public Affairs Volume 20. Page 1.

⁶ Cook County Land Bank Proposal 2012 page 10.

⁷ Ill. Const. Art. VII Sec. 6(a).

⁸ *Id.*

⁹ Ill Const. Art. VII Sec. 7

¹⁰ Ill Const. Art. VII Sec. 10

¹¹ Ill. Intergovernmental Cooperation Act, 5 ILCS §220; §220/3. Units of local government may enter into “an intergovernmental agreement which includes provisions for a governing body of the agency created by the agreement. Such an agreement creates a ‘public agency’ that may exercise powers, privileges, function, or authority’ exercised by a unit of local government that is party to the agreement.”

aggressive change. A separate agency to administer land banking activities would be an important vehicle to harness the collectively leveraged power and implement land-banking in a cooperative fashion.

A collectively authorized and jointly governed land banking agency could include employees of Cook County and the City of Chicago as well as suburban mayors, regional planning associations, and affordable housing developers. Members of different units of government could participate without leaving their offices or positions.¹² The participating units of government (such as the County, City, or suburbs) can also use their revenue, credits, and other resources already existing to pay costs and service any debt relating to land banking activities.¹³ Instead of just one set of resources and employees, all units of government participating can leverage their employees and resources to contribute to a whole that is greater than the sum of its parts. Together, the Illinois Constitution and the statute allow each local government unit that is a part of the agreement to exercise the powers and privileges of the other.¹⁴ Cooperation therefore would give a land banking agency great powers in acquisition, maintenance, and disposition of property as well as other advantages. Cooperation also lends itself better to the idea of regional planning, as opposed to each local government unit with home rule power conducting its own land banking activities without any wider coordination.

A state statute could be ideal in the future for Illinois in order to firmly establish its commitment to land banking. However, the urgency of the foreclosure crisis and the number of abandoned buildings in Cook County demands a quick solution. Existing Illinois law provides for Cook County to start engaging in land banking and work together with other local governments to combat the problem. Since the mechanisms are already in place, Cook County faces fewer legislative obstacles to land banking activities. However, in order to combat segregation and engage in affirmatively furthering fair housing as required by the Fair Housing Act, the best route is to work with other municipalities to truly establish a solution that reaches all of Cook County and beyond.

Fair Housing Considerations

In order to ensure that patterns of segregation are not further exacerbated by the implementation of a County land bank, planning strategies must be tailored to the unique needs of the communities slated for development. Although the creation of affordable housing is the most common goal of virtually all land banking programs throughout the nation; CAFHA is concerned that the siting of affordable housing specifically in areas that are hardest hit by foreclosure will have deleterious fair housing implications. Affordable housing is most needed in areas that currently lack housing options and limit the development of rental and affordable housing through exclusionary zoning practices. Land Banking policies can override such land-use barriers and put in place a mechanism for expanding housing options in certain areas. Conversely, communities that are currently facing economic hardships, and that already have ample affordable housing options, would benefit most from land banking policies that drive economic development.

¹² Ill. Const. Art. VII Sec. 10

¹³ *Id.*

¹⁴ See *County of Walsh v. Partee*, 608 N.E.2d 674, 679 (Ill. App. 5 Dist. 1993). “The agreement is valid so long as either [unit of local government] has the right to undertake the task required under the agreement.

Land Banking can further fair housing efforts with the following priorities:

- Ensure that fair housing experts are represented on the Land Bank board of directors
 - Through the inclusion of FHIP (Fair Housing Initiatives Program) grantees, the board of directors will garner the expertise of fair housing advocates with experience in housing discrimination and the duty to affirmatively further fair housing.
- Dedicate time and resources to allow for substantial community input in deciding the best use of property acquired through the Land Bank
 - For example, conduct public hearings to determine land-use needs specific to communities targeted for building acquisition.
 - Allow for public input throughout the development process to ensure that existing community resources are built upon, community needs are properly assessed, and community strengths are preserved.
- Prioritize the creation of affordable housing development in areas currently lacking affordable housing
 - In order to further fair housing goals, affordable housing and rental housing stock in areas currently lacking inclusionary zoning patterns must be created.
- Through the Land Bank, create economic development in areas that already have ample affordable housing – depending on community need, plans can be put in place for green space, community centers, retail, social service and nonprofit facilities, etc.
 - Through the development of additional affordable rental units in areas with sufficient affordable housing, concentrations of poverty may intensify. Therefore, alternative development goals focused on small business development and increased employment opportunities should be discussed with input from community residents.

CAFHA is in favor of Commissioner Gainer's proposed land bank statute for all of the aforementioned reasons. Land Banking makes sense for Cook County as a means to leverage the collective land use powers of multiple home rule jurisdictions, and existing Illinois law supports moving expeditiously to empower these communities for concerted work against the destructive forces that the foreclosure crisis has wrought on our neighborhoods. Such a coordinated response to foreclosure will enable Cook County communities to ensure their long-term health and competitiveness by affirmatively furthering fair housing - building affordable rental housing where it is needed, and focusing economic development and job creation where concentrations of rental housing could promote opportunity structures.

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