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Zombie Subdivisions in the United States and Ghost Developments in Europe: Lessons for Local Governments

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ZOMBIE SUBDIVISIONS IN THE UNITED STATES AND GHOST DEVELOPMENTS IN EUROPE: LESSONS FOR LOCAL GOVERNMENTS*

*Jan G. Laitos** and Rachel Martin****

ABSTRACT: This article addresses the phenomenon of abandoned or failed commercial or residential developments, sometimes referred to as “zombie subdivisions” in America, and “ghost developments” in Europe. Both arose as a result of the real estate market disintegration after 2008. Around the world, but particularly in America and in certain European countries, developers ran out of funds and were unable to finish their projects, resulting in non-completed or largely vacant “zombie” or ghost properties. Such abandoned properties can be found throughout America and Europe, but they are more common in particular Intermountain states in the United States, and in Ireland, Spain and Portugal. These once-promising projects present significant challenges to local governments, which often do not have the appropriate resources, planning tools, or local ordinances in place to address these unsightly, economically depressing, unsafe areas. This article examines both the *causes* and *effects* of these abandoned, non-completed developments, and compares how America and Europe have had similar, but also distinct experiences. The article suggests that a bottom up, local approach is preferable to one relying on state or national solutions. It also offers lessons to be learned by local governments in America and Europe so as to enable both the removal of these eyesores, and the advancement of policies that avoid the specter of future reappearing zombie or ghost properties.

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I. INTRODUCTION

The scope of the phenomenon of abandoned or failed real estate developments, sometimes referred to as “zombie subdivisions” in the United States, and “ghost developments” in Europe, increased significantly as a result of the real estate market disintegration that began in 2008.¹ At the height of the American and European housing boom, developers sought to capitalize on what appeared to be an unstoppable market. Residential developments emerged at an incredible pace. However, local governments, banks, and developers overestimated the future demand for all of this new housing, and the market eventually collapsed between 2008 and 2009.² The housing crisis in Europe is often traced back to the United States, but the United States is not solely to blame. In Europe, the adoption of a single currency, the euro, also contributed to the real estate boom by allowing debtors and bankers to borrow at low interest rates for a sustained period of time, which encouraged excess residential and commercial development.³

After the housing market crashed, developers ran out of funds and were unable to finish their projects, resulting in ghettoized unfinished or abandoned zombie or ghost properties in parts of the United States and Europe. In America, such failed property developments are more common in particular Intermountain states. In Europe, ghost estates are most likely to be in Ireland, Spain, and Portugal. The 2008–2009 recession

1. JIM HOLWAY, ET AL., LINCOLN INST. OF LAND POLICY, ARRESTED DEVELOPMENTS: COMBATING ZOMBIE SUBDIVISIONS AND OTHER EXCESS ENTITLEMENTS 9 (2014); Rob Kitchin, et al., *A Haunted Landscape: Housing and Ghost Estates in Post-Celtic Tiger Ireland* 3 (Nat'l Inst. Reg'l & Spatial Analysis, Working Paper No. 59, 2010).

2. HOLWAY ET AL., *supra* note 1, at 2.

3. James Croke, *Chuaigh Ár Lá - Debt of a Gaelsman: Ireland's Sovereign Debt Crisis, National and International Responses*, 32 NW. J. INT'L L. & BUS. 365, 371 (2012); Justin Yifu Lin & Volker Treichel, *The Unexpected Global Financial Crisis: Researching Its Root Cause* 2 (World Bank, Working Paper No. 5937, 2012).

left subdivisions and residential developments in these areas in various states of completion.⁴ Some remain partially constructed, while others are finished and empty, but not marketable. Some developments only exist on paper—that is, the developments are merely plats recorded at the office of some local government.

These once-promising projects now present both significant challenges and promising opportunities to local governments in the United States and Europe. In Europe, authorities may not have the appropriate resources, planning tools, local ordinances, or enabling authority in place to address these unsightly, unsafe, and economically depressed areas.⁵ These ghost estates can become a potential threat to human health because they are habitat for vermin; they may even pose a safety hazard because they can become an attractive nuisance.⁶ For example, in Ireland, a two-year-old child drowned in a pool of water behind a partly constructed and abandoned ghost estate housing complex.⁷ These areas have also created a unique social problem in Spain, as squatters and homeless families have begun to occupy unfinished housing complexes, which are mostly without running water or electricity.⁸ Nonetheless, partially completed structures in the Iberian Peninsula have the potential to provide shelter to the displaced and homeless, who otherwise might have no dwelling or home.

In the United States, the emergence of zombie housing is particularly widespread in the Intermountain West. The lingering presence of endless abandoned homes helped wipe an entire town in Nevada off of the map, leaving only an eight-foot tall chain-link fence around the empty ghost town; even the town's local zip code was discontinued.⁹ Because such

4. HOLWAY ET AL., *supra* note 1, at 5.

5. *Id.* at 6–8.

6. *Id.*

7. Suzanne Daley, *Irish Try to Eradicate Ghosts of a Housing Crash*, N.Y. TIMES, Dec. 21, 2013, http://www.nytimes.com/2013/12/22/world/europe/legacy-of-a-crash-ghost-estates-haunt-ireland.html?pagewanted=all&_r=0.

8. Anne Sewell, *Homeless Take Over Abandoned Houses in Spanish Building Complex*, DIGITAL J. (June 19, 2013), <http://digitaljournal.com/article/352635>.

9. Dean Praetorius, *Empire, Nevada Completely Wiped Out By Recession*, HUFFINGTON POST (June 21, 2011), http://www.huffingtonpost.com/2011/06/21/empire-nevada-recession_n_881816.html.

residential complexes in various American states are often privately owned, the local governments may have little direct control over the situation. As a result, some American local governments have either failed to remove abandoned subdivisions, or their attempts to clean up or rehabilitate these areas have encountered formidable political and legal barriers.

This article examines both the causes and effects of these abandoned or unfinished residential developments in certain representative locations in the United States and Europe. Part II focuses first on the United States experience, relying on two case studies—Teton County, Idaho and the city of Maricopa in Arizona—as typical examples of how local efforts initially encouraged developments, and then tried to address the problem of properties that were overbuilt, and then were abandoned. Teton County in particular is often referred to as the poster child for ill-conceived development dreams in America.¹⁰ Part II next considers how Ireland, Spain, and Portugal have responded to the presence of unfinished or empty commercial and residential properties.

Part III compares the differing strategies that local authorities in the United States and Europe have used to (1) remove and then (2) prevent excessive residential growth. Part III concludes that these strategies have been largely ineffective and seeks to explain why. Part IV analyzes the lessons that can be learned by local governments in the United States and Europe so as to prevent in the future the dreaded specter of reappearing zombie or ghost properties. One of the central lessons, especially for countries in Europe, is that authorities should rely not on top-down, national or state-initiated solutions, which tend to use national banks, special financial institutions, and money to clean up the problem. Rather, zombie developments and ghost estates can be better removed and prevented by a bottom-up, local government-driven approach. Local authorities in Europe should be empowered to address these sad and dangerous eyesores, while American localities should use their zoning, land use, and police power

10. Molly Loomis, *Boom and Bust: Reshaping Development Patterns in Teton Valley*, NEW W. DEV. (Mar. 24, 2011), http://newwest.net/topic/article/boom_and_bust_reshaping_development_patterns_in_teton_valley/C35/L35; Anthony Flint, *Zombie Subdivisions and Post-Bust Detritus*, THIS LAND (Feb. 10, 2011), http://www.boston.com/community/blogs/this_land/2011/02/zombie_subdivisions_and_post-b.html.

authority to avoid unrealistic over-building leading to developments that are incomplete or empty. And local communities in Europe saddled with both a homeless population and a surfeit of finished but empty structures should consider transforming these otherwise useless buildings into shelters or even residences for their poor and homeless.

II. FAILED DEVELOPMENTS IN AMERICA AND EUROPE

Subdivisions and new housing projects became popular in both the United States and Europe during the days of the pre-2008 hyper-inflated real estate market. The eventual housing collapse of 2008–2009 seemed to have especially devastating effects in certain states within the United States, and in particular European countries. States in the Intermountain West in America had a disproportionately large share of these failures, and the countries in Europe most hard-hit by the 2008 housing recession were Ireland, Spain, and Portugal. Part II considers how and why these focused segments of the housing industry, and these specific locales, engendered the most noteworthy examples of non-completed or abandoned properties. In the United States, a combination of wide-open spaces in the Intermountain West, and a demographic migration to certain Western states, set off a modern day land rush. In Europe, countries adjacent to the Atlantic Ocean and Mediterranean Sea (e.g., Ireland, Spain, Portugal) experienced a similar explosion in demand for new housing, fueled by amenity migrants seeking relief from urban congestion and the promise of open vistas and water views, and by localities presuming a housing demand that would never slow.¹¹

A. *The United States*

1. *The Problem of Zombie Subdivisions in America*

The United States experienced a significant housing boom between 1997 and 2006, increasing the average price of an American home by 124 percent.¹² This real estate bubble was

11. See generally Jan Laitos & Heidi Ruckriegle, *The Problem of Amenity Migrants in North America and Europe*, 45 URB. LAW. 849 (2014).

12. Lisa M. Fairfax, *The Legal Origins Theory in Crisis*, 2009 BYU L. REV. 1571, 1580 (2009).

triggered by many factors, including low interest rates, subprime mortgages that were issued to borrowers with imperfect or low credit scores, and government stimulus policies that encouraged homeownership for low and middle income families.¹³ The low interest rates drove up the demand for housing. To meet this demand, developers began building residential subdivisions at an incredible pace.¹⁴ Low to middle income families, who once thought that homeownership was not possible, found it surprisingly easy to secure subprime or adjustable rate loans. By 2005, subprime loans comprised twenty percent of the nation's mortgage lending, setting the stage for a near-catastrophic financial and housing crisis that swept the United States in 2008.¹⁵

When the bubble for residential properties finally burst, housing prices quickly declined and the number of foreclosures increased dramatically, prompting what has been termed the Great Recession of 2008.¹⁶ As homeowners and developers went bankrupt, lenders foreclosed on the properties, leaving empty residential developments scattered throughout the country.¹⁷ These residential developments exist in different stages of completion; some are complete but empty, some subdivisions are only partially constructed, and others may be finished, but only some units are occupied, with the remainder vacant.¹⁸

Real estate investors and local communities consider empty or incomplete zombie developments to be the "living dead of the real estate market."¹⁹ These eyesores and safety hazards present many problems both for local governments and for the population of these communities. Government authorities have

13. *Id.*

14. HOLWAY ET AL., *supra* note 1.

15. Fairfax, *supra* note 12, at 1581.

16. Bruce M. Burger & Randy Carpenter, *Rural Real Estate Markets and Conservation Development in the Intermountain West: Perspectives, Challenges and Opportunities Emerging from the Great Recession* 7 (Lincoln Inst. Land Policy, Working Paper No. WP10BB1, 2010).

17. HOLWAY ET AL., *supra* note 1, at 2; Jennifer Cordon Thor, *Ghost Neighborhoods*, 41 REAL EST. L.J. 145, 146 (2012).

18. Flint, *supra* note 10.

19. HOLWAY ET AL., *supra* note 1, at 2; Anna Trentadue, *Addressing Excess Development Entitlements: Lessons Learned in Teton County, Idaho* 8 (Lincoln Inst. Land Policy, Working Paper No. WP12AT1, 2012).

to consider what to do about abandoned or unfinished developments, and the local population must deal with the negative externalities that these empty properties produce. Zombie subdivisions threaten health and safety, adversely affect property values, and impair the overall quality of life of local residents.²⁰ Even partially occupied subdivisions create problems for local governments as they are often in remote areas. Such exurban properties still require the delivery of public services, like emergency police, fire and ambulance assistance, and road maintenance, but they contribute little, if at all, to the local tax base.²¹

The problem of zombie subdivisions is particularly prevalent in the Intermountain West of the United States, where land is abundant, and where it was common for local governments to grant development rights well in advance of market demand for housing.²² For example, Mesa County, Colorado experienced a real estate boom and bust cycle from the 1970s to the 1980s, which should have served as a warning to other communities in the West. If other communities in the American West had observed Mesa County, they would have learned how easily an exciting, albeit temporary, housing boom can lead to over-building based on unrealistic projections of indefinite continued future growth.

Mesa County's phenomenal growth in the late 1970s occurred because of the great interest in the prospect of oil shale, an energy source to replace the temporary loss of Iranian oil when the western-friendly Shah was forced to flee that oil-rich country.²³ However, after Exxon announced it was closing down a large pilot oil-shale project near Mesa County, thousands of people were left without work.²⁴ Mesa County became a "virtual overnight ghost town" when over 15,000

20. HOLWAY ET AL., *supra* note 1, at 6.

21. *Id.*

22. Jim Holway et al., *Combating Zombie Subdivisions: How Three Communities Redressed Excess Development Entitlements*, LAND LINES, Jan. 2014, at 2.

23. JASON L. HANSON & PATTY LIMERICK, CTR. OF THE AM. W., UNIV. OF COLO., WHAT EVERY WESTERNER SHOULD KNOW ABOUT OIL SHALE: A GUIDE TO SHALE COUNTRY 14 (2009), available at <http://www.centerwest.org/publications/oilshale/print/oilshale.pdf>.

24. Jack Healy, *Western Colorado Struggles as Energy Jobs Fade*, N.Y. TIMES, June 29, 2012, <http://www.nytimes.com/2012/06/29/us/energy-boom-turns-to-bust-in-colorado.html>.

people left the county's most populous city, Grand Junction, after the Exxon announcement.²⁵ Virtually all residential construction and real estate development in the area ceased and more than 4,000 lots throughout the region were abandoned.²⁶ It took Mesa County nearly fifteen years to fully address the problem of these zombie lots. The county government eventually revised its development approval process and prohibited the green-lighting of pure paper plats when there was no financial assurance that actual development was forthcoming. This one change proved so successful that when the Great Recession of 2008 occurred, Mesa County was largely unaffected.²⁷

If other communities in the United States Intermountain West had heeded the painful lessons of Mesa County, Colorado, they might have been spared the invasion of zombie subdivisions that took place in 2008–2009. But few communities in the West paid attention to Mesa County. Teton County, Idaho, a small rural county in southeastern Idaho, is one example of a western community that, like Mesa County in the 1970s, was seduced by a vision of endless growth in the pre-2008 period. Teton County enabled that growth by encouraging development that had little connection to economic and demographic reality.²⁸ When the Great Recession struck, Teton County was left with empty subdivisions. These abandoned properties in Teton County were a result of that local government's quick, easy process for landowners and developers to up-zone their properties, eventually leaving an enormous surplus of residential and commercial structures and vacant lots.²⁹ Another example is the city of Maricopa, Arizona. It faced an experience similar to Teton County, due to rapid growth in a new community, accompanied by a lack of sufficient planning and adequate zoning laws.³⁰ When the Great Recession of 2008 struck Maricopa, what was once one of the nation's fastest growing towns became, in effect, a modern-era ghost town.

25. HOLWAY ET AL., *supra* note 1, at 26.

26. *Id.*

27. *Id.*

28. Loomis, *supra* note 10.

29. HOLWAY ET AL., *supra* note 1, at 46.

30. *Id.* at 37.

2. *Two Case Studies of Failed Developments in the Intermountain West*

i. *Teton County, Idaho*

Teton County, Idaho is a well-documented, typical example of what happened in many communities that experienced first the exhilaration of unprecedented housing growth and then later the collapse of that market, in a breathtakingly short time period.³¹ Developers were lured to this rural area of the Intermountain West because land was abundant and cheap, while homeowners were attracted to Teton County because of its beautiful mountain views, array of wildlife, and vast opportunities for outdoor recreation.³² During the height of the real estate boom, Teton County was named one of the fastest growing counties in the United States.³³ But when America's housing market stalled and then nearly self-destructed in 2008, demand evaporated for new homes in Teton County. The county became populated with empty lots and partially constructed subdivision developments.³⁴ In this county of only approximately 8,800 residents, over 7,000 vacant lots existed in 2011.³⁵ Local analysts predicted that it would take at least seventy-seven years to exhaust the supply of vacant lots, even if development returned to 2007 building rates.³⁶

Teton County's oversupply of real estate inventory evolved gradually over time as a result of short-sighted decisions made by inexperienced local elected officials.³⁷ The Teton County

31. *Id.* at 9, 46.

32. One overzealous developer bought and subdivided 40 acres of farmland in Teton County for just \$600,000 and made over \$2.9 million in only three years. Acquiring bank loans and getting approval from the county government was so easy that the developer continued to purchase and subdivide hundreds of acres of land. However, after the demand for housing in Teton County plummeted, the developer was left with many empty, unsalable lots, and he was \$3.3 million in debt. See Rob Marin, *After the Boom*, TETON HOME & LIVING, Spring/Summer 2012, at 41.

33. Loomis, *supra* note 10.

34. Allen Best, *Unfinished Zombie Housing Developments Haunt the Rural West*, HIGH COUNTRY NEWS (Mar. 5, 2012), <http://www.hcn.org/issues/44.4/unfinished-zombie-housing-developments-haunt-the-rural-west>.

35. Loomis, *supra* note 10.

36. *Id.*

37. Jerrold A. Long, *New West or Same West? Evolving Land-Use Institutions in the Rural American West 178* (2008) (unpublished Ph.D. dissertation, University of Wisconsin-Madison) (on file with author).

Board of County Commissioners offered a too-simple and too-easy process for landowners to request that their properties be “up-zoned” from twenty-acre lots to two-and-one-half acre lots.³⁸ Before 2004, most of the rural areas in Teton County were zoned A-20, allowing for only one house per twenty acres.³⁹ However, as the demand for housing began to increase, the Board passed a new up-zoning ordinance that allowed for the development of one dwelling per every two-and-one-half acres.⁴⁰ It was not uncommon for the Board to approve hundreds of acres of up-zoning in a single night of public hearings.⁴¹ Between 2003 and 2005, Teton County’s approval rating for subdivisions was five times higher than the region’s norm.⁴²

When residential demand dried up in 2008, Teton County was left with thousands of empty lots and unfinished homes.⁴³ These zombie subdivisions have created problems for both the residents and local government of Teton County. Because developers could not afford to finish roads and utilities, including ponds and hydrants needed for fire protection, communities that were built, but only partly occupied, were left without emergency services, road maintenance, and other necessary infrastructure.⁴⁴ Banks that acquired these abandoned developments through foreclosure were even more hesitant to sink any more money into the projects.⁴⁵ Ironically, the Teton County local government has been reluctant to pressure developers and banks to complete the subdivisions for fear they might be sued for faulty planning. Under Idaho law, a county’s liability insurance generally does not cover lawsuits involving planning.⁴⁶ Teton County remains paralyzed—it effectively has no power to remove the abandoned structures (because it does not own them), and it is afraid to press the

38. Up-zoning is when a zoning classification is changed from a lower to higher density use. *Id.* at 4.

39. Long, *supra* note 37, at 130.

40. *Id.* at 161.

41. Trentadue, *supra* note 37.

42. Loomis, *supra* note 10.

43. Holway et al., *supra* note 22, at 10.

44. Best, *supra* note 34.

45. *Id.*

46. *Id.*

owners to complete the construction (because of the threat of litigation).

ii. *Maricopa, Arizona*

Maricopa, Arizona, like Teton County, Idaho, was one of the nation's fastest growing towns during the height of the real estate expansion of the 2003–2008 period. When the real estate market imploded, Maricopa found itself with a surfeit of new homes, but an absence of buyers.⁴⁷ In the early 1990s, Maricopa was a small farming community of only 600 residents, located near Phoenix, Arizona. In 1996, one ambitious far-sighted developer had a vision to turn Maricopa into an exurban paradise next to a major metropolitan area.⁴⁸ The developer bought over 18,000 acres of land and announced plans to build a 6,000-acre community. Demand became so great that houses were being sold before they were even completed. In just ten years, the population of Maricopa soared from 1,400 to 37,000. Many of these residents were relatively young people who were lured to Maricopa because they could not afford homes in nearby Phoenix.⁴⁹ Developers could not build houses quickly enough to keep up with the demand, which drove up housing prices even more. In 2003, the median price for a house in Maricopa was only \$147,000, but quickly rose to over \$280,000 by 2006.⁵⁰ The mayor of Maricopa estimated that at one point in 2005, three new people were moving to Maricopa every hour.⁵¹

Subprime mortgages financed much of the housing boom in Maricopa, as it was common for banks to offer mortgages to virtually all prospective buyers; the financing was tantalizingly cheap—no-money-down, interest-only, or adjustable rate.⁵² After the real estate market crashed in 2008, mortgages on homes were much higher than their market value and many Maricopa residents lost their homes to

47. James R. Hagerty, *In Maricopa, Ariz., a Paradise Found and Lost*, WALL ST. J., Feb. 24, 2009, <http://online.wsj.com/news/articles/SB123543721679054667>.

48. Samantha M. Shapiro, *The Boomtown Mirage*, N.Y. TIMES, Apr. 6, 2008, <http://www.nytimes.com/2008/04/06/realestate/keymagazine/406ariz-t.html>.

49. Hagerty, *supra* note 47.

50. Shapiro, *supra* note 48.

51. *Id.*

52. *Id.*

foreclosure.⁵³ In anticipation of foreclosure, a large number of residents simply moved out of their homes and abandoned them. Lenders then foreclosed on their properties, leaving unsightly, empty, and eerily silent residential subdivisions scattered throughout the county.⁵⁴ Indeed, over 100,000 homes that were built in Phoenix during the boom either remain vacant or are only temporarily occupied by renters.⁵⁵

Maricopa had responded to what it perceived to be an endless demand for housing. It had committed the majority of its available land to residential subdivisions, quickly approving many of the town's subdivisions based on the county's outdated 1967 zoning laws.⁵⁶ Before 2008, Maricopa had been faced with an influx of residents; however, the city did not have the proper infrastructure or zoning laws in place to accommodate all of these new homebuyers.⁵⁷ The town also failed to consider or create incentives for mixed-use development, causing a shortage of retail shops, schools, churches, healthcare clinics, and other public facilities.⁵⁸ As a result, many people have fled the area because of the limited employment opportunities.⁵⁹ Some of those who lost hope not only deserted the city, but also their homes, when foreclosure loomed. For the residents remaining in this ghost town, the market value of their homes has dropped by over fifty percent, and these lingering residents are trapped there, unable to sell and relocate.⁶⁰ Since the local real estate market shows no sign of life, their only hope is that the town will create additional amenities to attract more employers to the area, and thus more homebuyers, to fill the endless rows of ghostly abandoned houses.⁶¹

53. Hagerty, *supra* note 47.

54. *Id.*

55. Catherine Reagor & Ronald J. Hansen, *Census: Maricopa County on Top of List For Home Vacancies*, ARIZ. REPUBLIC, Oct. 7, 2011, <http://www.azcentral.com/business/realestate/articles/2011/10/07/20111007maricopa-county-tops-home-vacancies-list.html>.

56. *Id.*

57. HOLWAY ET AL., *supra* note 1, at 38.

58. *Id.*

59. *Id.*

60. Shapiro, *supra* note 48.

61. Hagerty, *supra* note 47.

B. *Europe: The Ghost Estates of Ireland, Spain and Portugal*

1. *The Problem of Abandoned Properties in Europe*

Empty or unfinished developments are not limited to America. A similar pattern occurred in Europe.⁶² Like the United States, Europe experienced a surge in residential and commercial construction between the mid-1990s and 2006.⁶³ In Ireland and Spain, the demand for housing was fueled by (1) an influx of immigrants, (2) wealthy Northern Europeans who sought vacation or second homes, (3) rising divorce levels causing previously co-habiting couples to seek separate homes, and (4) strong income growth stemming from much needed national economic reform measures.⁶⁴ In addition, the establishment of the European Union, the introduction of a common currency, the euro, and the creation of the European Central Bank, combined to cause a significant reduction in interest rates in countries like Ireland and Spain that had historically experienced high interest rates.⁶⁵ These low interest rates furthered the availability of cheap mortgages and triggered real estate bubbles.⁶⁶ Portugal managed to avoid this property bubble as housing prices remained relatively stable in the country. But it still shared in the burst that followed due to an oversupply of residential and commercial developments originally built to satisfy what seemed to be an endless demand for ocean and sea-fronting properties.⁶⁷

After the collapse of the housing market in 2008, more than eleven million abandoned homes and empty developments were scattered across Europe as developers went bankrupt or

62. Rupert Neate, *Scandal of Europe's 11m Empty Homes: Housing Campaigners Denounce 'Shocking Waste' of Homes Lying Empty While Millions Cry Out for Shelter*, GUARDIAN, Feb. 23, 2014, <http://www.theguardian.com/society/2014/feb/23/europe-11m-empty-properties-enough-house-homeless-continent-twice>.

63. Paul B. Lewis, *Business Insolvency and the Irish Debt Crisis*, 11 RICH. J. GLOBAL L. & BUS. 407, 413 (2012).

64. John V. Duca, et al., *Housing Markets and the Financial Crisis of 2007–2009: Lessons for the Future*, 6 J. FIN. STABILITY 203, 214 (2010).

65. Jan Ambrose & Joshua Buch, *Irish Bubble Trouble and Housing Price Phenomenon in Europe*, 39 REAL EST. REV., Fall 2010, at 5, 5.

66. *Id.*

67. Andrew Henderson, *How to Get Portugal Residency by Buying Real Estate*, NOMAD CAPITALIST (June 4, 2013), <http://nomadcapitalist.com/2013/06/04/buying-overseas-real-estate-for-a-second-residence-in-portugal>.

ran out of money to complete their projects.⁶⁸ Of these eleven million properties, at least 3.4 million can be found in Spain, over 400,000 in Ireland, and more than 735,000 in Portugal.⁶⁹ A large number of these ghost properties were bought by private developers or rich investors, who never intended to occupy these developments, but rather had hoped to profit from eventually rising property prices. Since they are privately owned, local governments in these countries have limited means to remove or rehabilitate them.

Ghost estates are problematic because the surplus of residential properties has driven housing prices down. Spain, in particular, was hit hard as property values fell in some regions by as much as sixty percent.⁷⁰ In Ireland, property prices went down by twenty-five percent, while Portugal experienced a nineteen percent drop.⁷¹ Similar to zombie subdivisions in the United States, these abandoned developments in Europe also pose serious health and safety concerns for nearby residents. As a result, local governments are faced with difficult decisions of what to do about these properties. In some European countries, national governments have ordered the demolition of hundreds of thousands of half-built homes in an attempt to raise the prices of existing properties and minimize health and safety concerns.⁷² However, other countries, such as Spain, have not yet resorted to this extreme measure.⁷³

The following case studies of Ireland, Spain, and Portugal demonstrate how the phenomenon of ghost estates arose in Europe. Sometimes ghost properties occurred for reasons similar to what triggered zombie subdivisions in America, but

68. Neate, *supra* note 62.

69. *Id.*

70. Elizabeth Ho, *The International Effects of the Credit Crisis*, 28 REV. BANKING & FIN. L. 102, 105 (2008).

71. *Id.*

72. Most of these properties were bulldozed away by “bad banks,” which some national governments established to take over worthless real estate assets. These bad banks, which both Ireland and Spain established in the aftermath of the real estate market crash, will be discussed further in Section III-B of this paper. See Neate, *supra* note 62; Daley, *supra* note 7.

73. Charles Penty & Esteban Duarte, *Spain Weighs Home Demolitions as Wrecking Crews on Alert*, BLOOMBERG (July 31, 2013, 7:40 AM), <http://www.bloomberg.com/news/2013-07-30/spain-weighs-home-demolitions-as-wrecking-crews-on-alert.html>.

more often quite different, country-specific factors played a role.

2. *Ghost Estates in Ireland, Spain, and Portugal*

i. *Ireland*

The many abandoned and vacant residential properties in Ireland arose as a result of the national government's aggressive approach to growth that accompanied the property building frenzy in the early twenty-first century.⁷⁴ The Irish government provided developers with overly generous government tax incentives, which originally were designed to improve impoverished areas, but eventually expanded to non-struggling areas as well.⁷⁵ Further, Ireland's banks supplied large amounts of cheap credit to both property developers and homebuyers.⁷⁶ As a result, developers started building houses primarily to take advantage of the tax breaks, without regard to the realities of the demand for housing.⁷⁷ When those mythical demand expectations disappeared in 2010, Ireland was left with hundreds of thousands of unfinished and empty housing units. The Deutsche Bank predicts that it will take more than forty years to fill the oversupply of vacant homes at the current low population growth rate in Ireland.⁷⁸

Although Ireland has started to address these unsightly developments, ghost estates are still both a serious eyesore and safety hazard there.⁷⁹ Uncovered manholes, open excavation pits, and potentially unstable buildings can be dangerous attractive nuisances, as many children use the vacant building sites as playgrounds.⁸⁰ An abandoned swimming pool found behind one of these properties tempted one young child to investigate it, who then fell in and

74. Kitchin et al., *supra* note 1, at 2.

75. Robert Emmet Hernan, *Booms, Busts, Ghosts and NAMA: Irish Planning at its Worst*, IRISH ENV'T (Dec. 1, 2010), <http://www.irishenvironment.com/reports/booms-busts-ghosts-and-nama>.

76. Ambrose & Buch, *supra* note 65.

77. Hernan, *supra* note 75.

78. Neate, *supra* note 62.

79. Ireland's suburban ghost towns have been photographed with stark, creepy realism in VALÉRIE ANEX, *GHOST ESTATES* (2013).

80. Rob Kitchin, et al., *The New Ruins of Ireland? Unfinished Estates in the Post-Celtic Tiger Era*, 38 INT'L J. URB. REGIONAL RES. 1069, 1074 (2014).

drowned.⁸¹ The non-completed status of these developments has also given rise to other social issues, such as unsecured construction materials and a lack of street lighting, which has led to theft and vandalism.⁸² The Irish government is slowly responding to these problems. The national government has in some cases provided certain finished developments with proper infrastructure, such as roads, sidewalks, and lighting, and it has started demolishing ghost estates that could not be saved.⁸³

ii. *Spain*

Most of Europe's ghost estates can be found in one country—Spain. During the real estate boom, more houses were constructed in Spain than in France, Germany, and the United Kingdom combined.⁸⁴ The demand for homes in Spain was fed largely by cheap loans and foreigners seeking vacation homes.⁸⁵ In addition, the Spanish government provided incentives for municipalities to approve land for development because the towns could keep ten percent of all the land they reclassified.⁸⁶ Fueled by this incentive, towns began approving developments at an alarming speed, and new homes were being constructed at a rate of more than 800,000 per year.⁸⁷ The crash that followed this overdevelopment left approximately 1.5 million unsold new homes in Spain. The locals call these abandoned or unfinished properties *ciudades fantasma*, or *ghost towns* in English.⁸⁸ Even after recovery began from the Great Recession of 2008, a significant

81. Daley, *supra* note 7.

82. Kitchin et al., *supra* note 80.

83. Stephen Collins, *Forty of the State's Worst Ghost Estates to be Demolished*, IRISH TIMES, Nov. 18, 2013, <http://www.irishtimes.com/news/environment/forty-of-the-state-s-worst-ghost-estates-to-be-demolished-1.1598150>.

84. Nick Paumgarten, *The Hangover: The Euro Zone's Fourth-Largest Economy Has Become its Biggest Liability*, NEW YORKER, Feb. 25, 2013, at 38, 40.

85. Duca, *supra* note 64.

86. Sharon Smyth, et al., *Spain Real Estate 'Madness' Continues Despite Burst Housing Bubble*, FIN.POST, May 2, 2012, <http://business.financialpost.com/2012/05/02/spain-real-estate-madness-continues-despite-burst-housing-bubble>.

87. Neate, *supra* note 62.

88. Aditya Chakraborty, *Nightmare for Residents Trapped in Spanish Ghost Towns*, GUARDIAN, Mar. 28, 2011, <http://www.theguardian.com/world/2011/mar/28/residents-trapped-spanish-ghost-towns>.

percentage of all properties in Spain were still vacant.⁸⁹ An additional 500,000 partially built homes have been deserted by construction companies that could no longer afford to finish them.⁹⁰

Ciudades fantasma have become common landmarks in rural, suburban, and coastal regions of Spain. The town of Sesena, just forty-five minutes from Madrid, was once nicknamed “Manhattan” as developers had planned to create a mega-development of 13,000 apartments.⁹¹ Apartment shells and bricked-up storefronts tower over the empty streets and weed-filled lots in this ghost town.⁹² Like many abandoned developments in Spain, these properties are graveyards for discarded construction materials, large cranes, rubber tires, pipes, and other waste.⁹³ *Ciudades fantasma* have also created a unique social problem in Spain, as squatters and homeless families have begun to occupy unfinished housing complexes, which are mostly without running water or electricity.⁹⁴ Because the abandoned properties are still privately owned, the local governments have little direct power to remove the new residents. As a result, these *ciudades fantasma* have become *de facto* homeless shelters for many Spanish communities.

iii. Portugal

Although Portugal was more resistant to the slump in property prices than Ireland or Spain, it still suffered from the emergence of ghost estates, or *elefantes brancos*—white elephants—as they are called in Portuguese.⁹⁵ Like Spain, the demand for housing was driven mostly by rich foreigners who sought vacation homes in Portugal. Because there are no

89. Neate, *supra* note 62.

90. *Id.*

91. Alan Clendenning, *Spain Ghost Towns Develop from Real Estate Crash*, HUFFINGTON POST (Feb. 16, 2012), http://www.huffingtonpost.com/2012/02/16/spain-ghost-towns-real-estate-crash_n_1281032.html.

92. *Id.*

93. Paumgarten, *supra* note 84.

94. Sewell, *supra* note 8.

95. Henrique Almeida, *Portugal's \$9 Million Villas Draw Investors to Crisis: Mortgages*, BLOOMBERG (Mar. 12, 2013, 4:31 AM), <http://www.bloomberg.com/news/2013-03-11/portugal-s-9-million-villas-draw-investors-to-crisis-mortgages.html>.

restrictions on foreign property ownership in Portugal, and transaction costs are generally low, foreigners were particularly attracted to this country with its lengthy coastline.⁹⁶ Real estate developers naively believed that wealthy Europeans from other countries would continue to demand coastline properties, even as prices soared far past the reach of most locals.⁹⁷ The beautiful beaches along the Algarve region of Portugal also attracted many tourists, and developers built hotels and resorts to meet this increased demand, doubling the number of hotels in just ten years.⁹⁸

However, when the economic and real estate disaster spread to Europe, demand plummeted for trophy villas, expensive vacation homes, and hotel accommodations. The Algarve, the southernmost coastal region of Portugal, was hit particularly hard by this global crisis. As the need for residential and commercial properties declined, developers increasingly went bankrupt and Portugal was left with over 735,000 *elefantes brancos*, a thirty-five percent increase from 2001.⁹⁹

One of the more prominent cases of white elephants in Portugal is a tourism project located in Albufeira.¹⁰⁰ The Herdade dos Salgados tourism project comprises of blocks and blocks of mostly empty and abandoned hotels surrounded by a forest of dying palm trees and tall weeds.¹⁰¹ Such white elephants of Portugal are not only economically disconcerting and aesthetically unattractive, but they have also led to violence in areas that previously were overwhelmed with tourists. In the once-popular resort town of Albufeira, one hotel was held up by a machine-gun wielding gang.¹⁰² Problems

96. Virginia C. McGuire, *House Hunting in...Portugal*, N.Y. TIMES, Mar. 21, 2012, <http://www.nytimes.com/2012/03/22/greathomesanddestinations/real-estate-in-portugal.html>.

97. Vivek Menezes, *Warning Signs for Goa in the Algarve Experience*, TIMES OF INDIA, Mar. 10, 2013, <http://timesofindia.indiatimes.com/city/goa/Warning-signs-for-Goa-in-the-Algarve-experience/articleshow/18997518.cms>.

98. Almeida, *supra* note 95.

99. Neate, *supra* note 62.

100. Pedro Carreira Garcia, *Algarve: Housing Bubble Threatens Tourism*, PORT. DAILY VIEW (June 18, 2012), <http://www.portugaldailyview.com/whats-new/algarve-housing-bubble-pressuring-heavily-the-tourism-sector>.

101. Len Port, *Water—and Hope—Back at Salgados*, PORT. NEWSWATCH (July 27, 2012), <http://algarvenewswatch.blogspot.com/2012/07/water-and-hope-back-at-salgados.html>.

102. Nick Leeson, *Column: Portugal and Ireland Have Much in Common...and We*

associated with abandoned or partially occupied properties in Portugal prompted the Prime Minister of Portugal to personally assess the situation and proclaim that some solution needs to be forthcoming to rid the country of its distressed properties.¹⁰³

IV. DIFFERING CORRECTIVE AND PREVENTATIVE STRATEGIES IN AMERICA AND EUROPE

After the Great Recession of 2008, national and local governments in the United States and Europe began to employ different strategies (1) to confront the problems associated with existing zombie and ghost properties and (2) to prevent these developments from recurring. The United States seems to have followed a bottom-up, local government-driven approach, while in Europe, distressed communities have tended to rely on top-down, national government-driven solutions. Part III will discuss and compare these two quite different approaches to the problem of abandoned and unfinished properties. Part III will also explain why many of these responses, especially in Europe, have been mostly unsuccessful.

A. *The United States*

1. *Giving New Life to Abandoned Properties and Preventing the Recurrence of Future Distressed Developments*

i. *Removal*

Approximately half of the states in the United States have enacted legislation to address existing zombie developments.¹⁰⁴ However, the majority of these state laws serve only to protect banks and lenders from liability after they are forced to foreclose on a distressed property. None of the states require that developers complete partially-built subdivisions.¹⁰⁵ It is no surprise, then, that state and local officials have had difficulty

Both Need a Leg-up, THE JOURNAL.IE (July 25, 2011), <http://www.thejournal.ie/readme/column-portugal-and-ireland-have-much-in-common-and-we-both-need-a-leg-up-186029-Jul2011>.

103. *Id.*

104. Thor, *supra* note 17, at 150-51.

105. *Id.* at 169.

urging developers to voluntarily finish their developments. Local governments do have the power of eminent domain—the power to force private parties to sell their land to the government for a public purpose, such as for the purpose of removing blight.¹⁰⁶ However, localities are hesitant to use this power to take over abandoned or unfinished properties because purchasing and maintaining land comes with high costs. A few states have taken action, though, by passing legislation that gives immunity to local governments that take possession of abandoned or foreclosed properties. This solution has helped governments avoid potential legal liability for assuming responsibility for hidden hazards and threatening nuisances lurking on these properties.

For example, Newark, New Jersey adopted a cluster of laws under the state's Abandoned Properties Rehabilitation Act, which gives officials authority to quickly take possession of “legally abandoned buildings that are behind in their taxes, uninhabitable, or infested with vermin.”¹⁰⁷ Once the city takes possession of a vacant property, it hires a local developer to rehabilitate the house and then converts it into affordable housing for low-income families. Similarly, in New York State, the city of Utica has begun enforcing an obscure section of the state's real estate law, which allows the city to take control of abandoned or foreclosed houses.¹⁰⁸ This method of property acquisition is much faster than waiting for the foreclosure process, which is often quite lengthy and may leave unsightly properties abandoned for years. Under New York state law, a city must file a claim with the court, inform the last-known owner and any lien holders, and wait for a court date. If the court awards the title to the city, any interested party has ninety days to appeal. So far, Utica has identified nearly

106. U.S. CONST. amend V; Donald Elliott, *Premature Subdivisions and What to Do About Them* 25 (Lincoln Inst. of Land Policy, Working Paper No. WP10DE1, 2010), available at http://www.lincolnst.edu/pubs/1761_Premature-Subdivisions-and-What-to-Do-About-Them.

107. N.J. STAT. ANN. §§ 55:19-78 to -107 (West 2001); see also Bendix Anderson, *Newark's Cleanup Mission: New Mayor Aims to Turn Abandoned Properties into Affordable Housing*, AFFORDABLE HOUSING FIN. (June 1, 2008), <http://www.housingfinance.com/affordable-housing/newark-s-cleanup-mission.aspx>.

108. N.Y. REAL PROP. ACTS. § 1971 (McKinney 2009); see also Steve Hughes, *Utica Using Little-Known Law to Seize Abandoned Properties*, UTICA OBSERVER DISPATCH, May 28, 2013, <http://www.uticaod.com/article/20130528/News/305289922>.

twenty eligible houses for seizure and has filed court proceedings against four of those properties.¹⁰⁹

Some American cities, such as Tampa, Florida, have taken the extreme measure of bulldozing abandoned, uninhabitable properties that have multiple building code violations.¹¹⁰ Like eminent domain, this draconian approach is expensive. It costs the city \$5,500 per demolition, not including the cost of hiring code enforcement officers and inspecting the properties for violations. The city has demolished over fifty-one properties at a cost of nearly \$300,000.¹¹¹

ii. *Prevention*

Preventing future zombie subdivisions is a significant challenge as many local governments do not have the proper legal authority to enact zoning ordinances that might foreclose their re-emergence during boom times. In the United States, each state generally delegates to local officials the legal authority to plan for public infrastructure and services, process plats and development applications, and allocate planning and zoning responsibilities.¹¹² However, each state's enabling legislation is structured differently, giving local governments in some states more flexibility than others to adopt regulations that could potentially address the problems created by abandoned or unfinished developments.

In states that permit certain localities to have "Home Rule" authority, local governments vested with this power may govern themselves, permitting them to pass land-use

109. *Id.* In Detroit, Michigan, the Detroit Land Bank Authority has ownership control of thousands of unoccupied and abandoned homes. Instead of razing them all, the city has highlighted the homes that can be saved by selling them at auction to those who want to fix them and move in. Corey Williams, *Detroit Fights Blight by Selling Off Vacant Homes*, BIG STORY (June 15, 2014), <http://bigstory.ap.org/article/detroit-fights-blight-selling-vacant-homes>.

110. Richard Danielson, *Tampa to Demolish 51 Vacant Homes in Sulphur Springs*, TAMPA BAY TIMES, Jan. 29, 2013, <http://www.tampabay.com/news/localgovernment/tampa-to-demolish-51-vacant-homes-in-sulphur-springs/1272833>.

111. *Id.*

112. Anna Trentadue & Chris Lundberg, *Subdivision in the Intermountain West: A Review and Analysis of State Enabling Authority, Case Law, and Potential Tools for Dealing with Zombie Subdivisions and Obsolete Development Entitlements in Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Utah, and Wyoming* 10 (Lincoln Inst. of Land Policy, Working Paper No. WP11AT1, 2011), available at https://www.lincolnst.edu/pubs/dl/2031_1353_Trentadue%20WP11AT1.pdf.

regulations addressing abandoned properties as they see fit. In contrast, states following “Dillion’s Rule” only provide local governments powers that are (1) expressly granted to them by state statute, (2) necessarily implied from that grant of power, and (3) essential or indispensable to the local government’s existence and functioning.¹¹³ State legislatures that adopt Dillion’s Rule must give explicit power to local governments to prevent or remove zombie subdivisions. Without such delegated power, cities and counties have far less autonomy to adopt remedial or preventative planning and zoning ordinances. The difference between Home Rule and Dillion’s Rule states is not a bright-line distinction, as some states permit a hybrid of the two. Nonetheless, the degree to which a state is a Home Rule or a Dillion’s Rule jurisdiction will significantly affect how much power and discretion local officials have to address or prevent the problems associated with overbuilt and subsequently abandoned subdivisions.

The following two case studies demonstrate how one county within the state of Idaho—Teton County—has initiated bold, aggressive tactics to confront the problem of abandoned or unfinished properties, while the local government in Maricopa, Arizona has taken a far less successful, mainly passive approach.

2. *A Contrasting Tale of Two Communities*

i. *Teton County, Idaho*

Teton County’s quick, easy up-zoning process and overly generous approval of subdivision applications encouraged aggressive and unsustainable residential growth in the area.¹¹⁴ Planning officials in Teton County were ill prepared and too inexperienced to handle the rapid residential development that resulted. Further, the planning and zoning regulations in place at the time of the housing boom were written by a group of local farmers who lacked any expertise in drafting land-use ordinances.¹¹⁵ The regulations offered no protection to the county in the event that a developer defaulted on a project.

113. *Id.* at 11.

114. HOLWAY ET AL., *supra* note 1, at 46.

115. Long, *supra* note 37.

Moreover, because local officials perceived the booming real estate market to be unstoppable, they failed to adopt any new laws to allow the county to intervene in the event of a sudden unforeseen downturn.¹¹⁶

Although Idaho is a not a Home Rule state, its constitution grants police power directly to the local governments to make and enforce any regulations, including planning and zoning ordinances, that do not conflict with the state constitution.¹¹⁷ However, despite this latent power, it was not until 2007, after two decades of extensive population growth and residential development, that Teton County officials finally began to reconsider their antiquated land-use regulations.¹¹⁸ Even after the Great Recession of 2008 dried up demand for housing in the over-built county, the local government was still slow to consider any new laws designed to respond to or prevent excessive growth. Finally, one organization, the Valley Advocates for Responsible Development (VARD), petitioned the County to confront the embarrassing and economically depressing problem of these distressed properties.¹¹⁹

Teton County responded in two ways; one addressed existing zombie subdivisions, and the second sought to avoid them in the future. First, in an attempt to remedy the unsightly and market-deflating eyesore of its seemingly endless stock of empty houses and unplatted lots, Teton County adopted a replatting ordinance that provides for the inexpensive, quick replatting of subdivisions.¹²⁰ This new ordinance enables developers and city officials to renegotiate their existing contracts, allowing developers to dramatically scale back on their subdivision projects and reduce their property tax liability.¹²¹ As an incentive to developers, Teton County waives its fees for processing replat applications.¹²²

Second, to prevent such overbuilding in the future, government officials and VARD have held multiple workshops and created planning subcommittees to bring together

116. Trentadue, *supra* note 19, at 14.

117. IDAHO CONST. art. XII, § 2.

118. Long, *supra* note 39, at 171.

119. HOLWAY ET AL, *supra* note 1, at 47.

120. Best, *supra* note 34.

121. Trentadue, *supra* note 19, at 19.

122. *Id.*

developers, local banks, and affected residents to discuss the past, present, and future development of Teton County.¹²³ The County designed a new comprehensive zoning plan that takes into consideration the existing inventory of platted lots and foreseeable demand for housing.¹²⁴ The county also adopted a development agreement template, which establishes guidelines for developers outlining (1) when projects must be completed, (2) how they must be financed, and (3) what the County's rights are if a developer defaults on the project.¹²⁵

Many of these policies and plans are fairly new, so it remains to be seen whether Teton County will be effective in preventing abandoned or unfinished developments in the future.¹²⁶ Rather than a passive approach, Teton County has opted for certain proactive changes that are consistent with the recommendations set forth in this article: (1) the new policy for growth is a local decision, not a state or national response (unlike European countries); (2) it seeks to bring together the principal players in development projects, and urges them to arrive at a consensus growth plan that is connected to growth realities; (3) it has fall-back provisions, which are triggered when there are inevitable defaults; and (4) it encompasses both remediation and prevention measures.

ii. *Maricopa, Arizona*

In 2003, at the beginning of Maricopa's rapid-fire growth, all planning decisions were made by a three-person board of supervisors who relied on outdated rural zoning codes from the 1960s.¹²⁷ These ordinances did not consider or create any incentives for mixed-use development, which might have accommodated drastically reduced growth rates.¹²⁸ Because it was relatively cheap and easy to build subdivisions full of

123. Sandy Mason, Op-Ed., *How Do We Plan For Our Recovery?*, TETON VALLEY NEWS, May 6, 2010, http://www.tetonvalleynews.net/opinion/article_3503a508-592b-11df-9d88-001cc4c002e0.html.

124. TETON COUNTY, COMPREHENSIVE PLAN—A VISION AND FRAMEWORK 2012–2030 (2012), *available at*: http://www.tetoncountyidaho.gov/pdf/codePolicy/120928_TetonID_CompPlan_FINAL.pdf.

125. Trentadue, *supra* note 19, at 14.

126. *Id.* at 41.

127. Shapiro, *supra* note 48.

128. HOLWAY ET AL, *supra* note 1, at 37.

cookie-cutter homes, big developers coaxed naïve government officials to approve rows and rows of nearly identical houses.¹²⁹ To cut corners, developers built sidewalks only on one side of the street and left little space in their plans for parks, businesses, and commerce.¹³⁰ Consequently, Maricopa lacked land-use diversity and proper infrastructure, and after the Great Recession it became a town full of empty residential developments.

Unlike Teton County, officials in Maricopa have not aggressively sought solutions to address or prevent abandoned subdivisions. While government officials have publicly stated that the real estate bust in Maricopa is an opportunity to improve planning and zoning laws so that the town will be prepared for future growth spurts, little has actually been done to revise any land use regulations and ordinances.¹³¹ Maricopa has taken a positive proactive step—it has adopted a collaborative approach with other key development players in response to the surplus of existing empty residential housing. Officials in Maricopa have partnered with private developers, banks, and government agencies in an attempt to eventually convert distressed parcels into nonresidential and mixed-use developments.¹³² Meanwhile, residents hope that the city will attract future homeowners to fill the empty homes by creating more parks and other amenities. However, the local government in Maricopa will need to do more than offer recreational locations. It needs to ensure that additional zombie subdivisions do not recur in the future, but those next generation rules have not yet been proposed.¹³³

B. *Europe*

1. *Strategies in Ireland, Spain, and Portugal to Cope With Abandoned or Unfinished Properties*

The majority of European countries have employed a national government-driven approach to cope with distressed residential and commercial properties. Unfortunately, these

129. Shapiro, *supra* note 48.

130. *Id.*

131. See, e.g., Hagerty, *supra* note 47.

132. HOLWAY ET AL., *supra* note 37.

133. Hagerty, *supra* note 47.

countries have mostly focused their attention on improving their national finance and banking regulations, but have largely ignored the local planning and zoning laws that set the stage for these ghost estates.¹³⁴ For example, in 2008, the Commission of the European Union proposed a financial recovery program that involved a fiscal stimulus of 200 billion euros.¹³⁵ Not surprisingly, many European countries, including the three hardest hit by the Recession—Ireland, Spain, and Portugal—sought economic bailouts from the EU. But there was no coordinated EU-wide response, and European Union member countries were left to deal with these depressed properties in their own way. Money alone, without careful planning, will not prevent the recurrence of ghost estates.

Some countries, particularly Ireland, have been more agile and aggressive than others in developing solutions to remove and prevent unfinished or abandoned developments.¹³⁶ Ireland established a “bad bank” to absorb property loan debt, and began demolishing residential developments that posed serious safety or health threats.¹³⁷ Other countries, like Spain and Portugal, failed to respond to the financial and real estate crisis. Spain and Portugal have taken a wait-and-see, *laissez faire* approach, which entails hoping that the housing market will eventually recover. In 2012, when it became obvious that residential market demand would remain low or non-existent, Spain followed Ireland’s lead and established its own bad bank. To date, however, both Spain and Portugal have refused to demolish or take meaningful steps to avoid potentially dangerous, incomplete projects in the future.

134. David R. Cameron, *European Fiscal Responses to the Great Recession*, in *COPING WITH CRISIS: GOVERNMENT REACTIONS TO THE GREAT RECESSION* 91, 92 (Nancy Bermeo et al. eds., 2012).

135. *Id.* at 91.

136. However, none of these countries have used their “land tenure readjustment” powers, which allow most European countries to take land from private parties and replan the land to incorporate modern infrastructure, like roads and lighting, and fix safety hazards.

137. Croke, *supra* note 3, at 380.

2. *Contrasting Responses in the Three Problematic European Countries*

i. *Ireland*

Ireland has been the most determined European country in addressing abandoned developments. Contrary to the recommendations advanced in this article, Ireland has chosen to rely on a series of top-down, national measures. After the collapse of the property and banking sectors, the Irish national government had to acknowledge that its financial regulatory system had failed to prevent the collapse, and that local planning and zoning regulations were inadequate.¹³⁸ Ireland chose to use the national government to address the country's financial issues, as well as the limits of local planning authorities. To correct financial problems stemming from the crash of the real estate market, Ireland established its own bad bank, the National Asset Management Agency (NAMA). The bank manages bad-debt properties by acquiring and controlling bank assets relating to land and development loans.¹³⁹ Since its introduction, NAMA has acquired over eighty-eight billion euros of property debt.¹⁴⁰ However, NAMA's acquisition of these loans has been criticized by those who believe that the bank is overpaying for essentially worthless loans at the taxpayers' expense.¹⁴¹

The next priority of the national government was to identify and remove distressed properties, concentrating on those homes where the cost to finish them was too high, and the risk of leaving them unattended was too dangerous.¹⁴² In 2014, together with NAMA and local authorities, the Irish national government identified forty unfinished estates with no hope of residential or commercial viability, and began demolishing and returning them to "green field" status—the original or prior use of those properties.¹⁴³ Officials first contacted the banks or

138. Kitchin, *supra* note 80, at 1074.

139. Croke, *supra* note 137.

140. *Id.*

141. Croke, *supra* note 137.

142. Daley, *supra* note 7.

143. Stephen O'Brien, *Coalition Set to Demolish Ghost Estates*, SUNDAY TIMES, Nov. 17, 2013, http://www.thesundaytimes.co.uk/sto/news/ireland/article1341620.ece?CMP=OTH-gnws-standard-2013_11_16.

developers associated with each property and gave the owners the option of either complying with the demolition demand or proposing an alternative plan to avoid demolition.¹⁴⁴ These bold steps elicited mixed reactions from local residents who stood by and watched the government bulldoze half-finished homes that were once worth more than \$450,000.¹⁴⁵ Many locals were uncomfortable when the demolition crews destroyed valuable items, such as roof tiles, windows, and doors, all of which could be reused or resold. Locals were also uneasy about a far-away national government making what were, in effect, site-specific localized decisions.

For partially built developments that are salvageable, the national government has begun to auction properties to builders or developers willing to complete the projects.¹⁴⁶ In addition, the Irish government has started to provide money to some local authorities to make repairs in distressed communities; however, these local governments have jurisdiction to make repairs only in public areas, not on unfinished private homes.¹⁴⁷ The national government has set aside ten million euros to finish roads, sidewalks, and street lighting in half-completed developments where some families already own homes.¹⁴⁸ The government also experimented with the idea of having some of these abandoned or partially occupied housing developments become subsidized social housing for homeless or indigent residents.¹⁴⁹ Ireland is taking the next formal step to have government ownership-control-regulation of ghost estates as official public housing.¹⁵⁰

The Irish national government chose *not* to defer to or rely on local governments to address the country's notoriously poor

144. Collins, *supra* note 83.

145. Alison Healy, *A Ghost Story for Modern Ireland*, IRISH TIMES, Nov. 23, 2013, <http://www.irishtimes.com/news/environment/a-ghost-story-for-modern-ireland-1.1604282>.

146. Frank McDonald, *Call For Sale of Ghost Estates to Builders*, IRISH TIMES, Dec. 2, 2013, <http://www.irishtimes.com/news/environment/call-for-sale-of-ghost-estates-to-builders-1.1613841>.

147. Daley, *supra* note 7.

148. O'Brien, *supra* note 142.

149. Henry McDonald, *Ireland's Bailout May Be Over But Its Housing Crisis is Far From Finished*, GUARDIAN, Feb. 23, 2014, <http://www.theguardian.com/world/2014/feb/23/ireland-predicted-26000-empty-properties-end-2014>.

150. McDonald, *supra* note 149.

planning and zoning regulations. It instead created the National Housing Agency in 2010, which consults with local authorities to promote sustainable communities and assist with policy implementation.¹⁵¹ The Agency also publishes yearly progress reports regarding the status of unfinished housing developments in Ireland, and makes policy recommendations for local governments. The Irish government has also launched an Advisory Group to investigate and make recommendations on what to do with the incomplete and abandoned residential properties that were not going to be bulldozed, but still had too many problems to be occupied.¹⁵² These two organizations' proposals focus on a collaborative approach, in which all stakeholders should be directly involved in eventual plans to resolve the lingering effects of remaining ghost estates. Most of these idealistic policies are still in the planning and development phase; however, primary reliance continues to be on national solutions to what is, in essence, a localized problem.

ii. *Spain*

The key difference between the approaches taken by Ireland and Spain has been the speed with which the two countries responded to the fall of the financial and real estate market.¹⁵³ Ireland quickly addressed the problem of unfinished or abandoned developments by establishing its "bad bank" in 2009, along with multiple housing organizations. Spain did not react as aggressively. In Spain, there was more of an effort to smooth out the pace of the construction activity rather than to truly confront the root of the housing problem.¹⁵⁴ Indeed, it was not until 2012 (four full years after the collapse of the housing market), that the Spanish national government established a bad bank, known as Sareb, to take over worthless real estate assets.¹⁵⁵ This institution now has an

151. HOUSING AGENCY, <https://www.housing.ie> (last visited Apr. 17, 2014).

152. ADVISORY GRP. ON UNFINISHED HOUS. DEV., IR. HOUS. AGENCY, RESOLVING IRELAND'S UNFINISHED HOUSING DEVELOPMENTS (2011).

153. Smyth, *supra* note 86.

154. *Id.*

155. Sharon Smyth & Neil Callanan, *Spain Sareb Said to Reorder Property Sale as Bids Fall Short*, BLOOMBERG (Oct 25, 2013, 7:48 AM), <http://www.bloomberg.com/news/2013-10-24/spain-bad-bank-said-to-reorder-property-sale-as-bids-fall-short.html>.

inventory of over 100,000 properties.¹⁵⁶ Sareb was set up to absorb over fifty billion euros of real estate assets, but it has barely started the process of selling off the properties it owns. The bank has set aside \$140 million for demolition of the *ciudades fantasma*, but unlike Ireland, it has no plans to actually demolish these developments.¹⁵⁷

Local governments have been especially slow to deal with the social costs associated with Spanish ghost estates. Many counties have turned a blind eye to the thousands of squatters and homeless people who have taken over these abandoned properties. These “residents” are becoming a semi-permanent sub-class in Spain, with no intention of leaving their free shelters, which have become their home. One county, Andalucia, has actually inadvertently encouraged such squatting by passing a law to temporarily stop evictions from bank-owned properties, thereby allowing poor families to legally live in them.¹⁵⁸ As a result, these “residents” are becoming a semi-permanent sub-class in Spain, with no intention of leaving their free shelters. While these abandoned homes may temporarily provide relief for the homeless, local governments should develop a permanent solution as many of these buildings are without doors, running water, or even toilets, and thus unsuitable and dangerous for occupation.

The *ciudades fantasma* of Spain are not being razed, or rehabilitated—they are simply being allowed to remain. If local governments do not take serious, unambiguous steps to address this persistent problem, ghost estates may become an intractable feature of the Spanish landscape. Spain, in essence, has experienced the worst of two worlds—a national government that seems incapable of imposing workable national rules, and local governments that are unwilling to do anything other than simply watch the gradual deterioration of the countryside, while acquiescing to an invasion of homeless who have taken up semi-permanent occupancy in the *ciudades fantasma*.

156. Charles Penty, *Red Flags Over Madrid a Sign Spanish Crisis Easing*, BLOOMBERG (Sep 9, 2013, 9:43 AM), <http://www.bloomberg.com/news/2013-09-08/red-flags-over-madrid-a-sign-spanish-crisis-easing.html>.

157. Ian Mount, *The Road to Demolition: Inside a Spanish Ghost Town*, FORTUNE (Nov. 15, 2013), <http://management.fortune.cnn.com/2013/11/15/the-road-to-demolition-inside-a-spanish-ghost-town>.

158. Sewell, *supra* note 8.

iii. *Portugal*

Despite its ubiquitous *elefantes brancos*, Portugal has been even less assertive than Spain or Ireland in its attitude towards the country's distressed properties. Portugal is reliant on its tourism industry, and its authorities naively believe that by simply attracting more tourists, its *elefantes brancos* will eventually somehow become filled with people. In fact, the national government continues to approve commercial developments, allowing builders to construct new hotels along the Algarve coastal region while older pre-recession lodging structures remain abandoned and unfinished.¹⁵⁹

Portugal's local governments seem clueless in the face of these troubled properties. The country's only definitive *national* response to these residential eyesores has been the 2012 "golden visa" program.¹⁶⁰ In an attempt to attract more property buyers and investors to Portugal, the country offers permanent residency to anyone (as well as their immediate family) who can invest at least one million euros in the country, create thirty jobs, or purchase 500,000 euros in local real estate.¹⁶¹ The Deputy Prime Minister of Portugal, Paulo Portas, has stated that the nation is relying on the golden visa program to reinvigorate the country's economy; he believes that the program will attract more than 500 million euros in investments in 2014.¹⁶² Over 700 golden visas have been issued so far.¹⁶³ Unfortunately, most of these property buyers have no plans of actually occupying the homes; their only interest is to financially invest in the properties, which will remain uninhabited until there is some unlikely dramatic market turn-around sometime in the distant future.¹⁶⁴

159. Carrie-Marie Bratley, *State Secretary "Makes Decision" on Salgados Lagoon Development*, PORT. NEWS ONLINE (Nov. 7, 2013), <http://www.theportugalnews.com/news/state-secretary-makes-decision-on-salgados-lagoon-development/29835>.

160. Other countries, such as Spain, Greece, and Romania, have also adopted similar programs to attract foreign investors and property owners.

161. Sophie Song, *Troubled European Economies Like Portugal, Spain and Greece Lure Wealthy Chinese Willing to Invest Millions in Exchange For Permanent Residency*, INT'L BUS. TIMES (Mar. 4, 2014), <http://www.ibtimes.com/troubled-european-economies-portugal-spain-greece-lure-wealthy-chinese-willing-invest-millions>.

162. *Id.*

163. *Id.*

164. Babe G. Romualdez, *Upbeat Economic Sentiment in Portugal*, PHILIPPINE STAR

IV. LESSONS FOR LOCAL GOVERNMENTS

Zombie and ghost properties impair the quality of life for nearby residents, depress neighboring property values, create social costs, and impose fiscal strains on local governments. What, then, should communities in the United States and Europe do to (1) remove these troublesome sites and (2) prevent them from reoccurring? Affected localities cannot simply stand by and wait (or just hope, like Spain and Portugal) for real estate market conditions to improve. Government authorities in areas affected by distressed properties need to take proactive steps. As planning and zoning laws differ from state-to-state and country-to-country, the available remedies will also vary when governments wish to remove, rehabilitate, or prevent the recurrence of incomplete or vacant residential and commercial properties.

In order to both remove and prevent these unfortunate developments, communities should not simply turn to the country's national government, but rather rely on a bottom-up, local government-driven effort.¹⁶⁵ This localized approach may require that national or state governments (especially in Europe) adopt adequate enabling authority to ensure that town, city, and county authorities have the necessary legal power to manage and regulate land development.¹⁶⁶ But the threshold condition to an effective response is not to turn to the national government, but to that law-making authority that is closest to the problem—*local governments*.

Once the proper enabling authority is in place, local governments should first gain a sound understanding of (1) the extent of existing and future risk of distressed properties in their region, (2) their jurisdiction over these developments, (3) their legal power in the form of laws and procedures for subdividing, developing, managing, and zoning land, (4) the types of planning tools available, if not already in place, and (5) any legal challenges that they could face.¹⁶⁷ After

(Mar. 24, 2014), <http://www.philstar.com/business/2014/03/25/1304654/upbeat-economic-sentiment-portugal>.

165. HOLWAY ET AL, *supra* note 1; ADVISORY GRP. ON UNFINISHED HOUS. DEV., *supra* note 152.

166. Lavea Brachman, *Vacant and Abandoned Property: Remedies for Acquisition and Redevelopment*, LAND LINES, Oct. 2005, at 1, 2.

167. HOLWAY ET AL, *supra* note 1, at 17.

evaluating their current policies, laws, and potential legal liability, local authorities may then need to reform their existing laws to permit governments at the local level to quickly, and legally, address this problem.

Throughout this entire process, the local governments should involve all concerned parties, including planning officials, real estate developers, bankers, and residents of the community. In particular, local governments should focus on the individuals most impacted by unfinished or abandoned properties—nearby residents. Their needs should be a priority for any long-term plan or resolution of immediate problems. All the relevant players would, in theory, work together to adopt a comprehensive community plan. Such a plan is the critical component of a system designed to remove or repair distressed buildings and remain vigilant against the return of abandoned properties. The community plan ideally (1) takes into account and assesses existing incomplete or vacant developments, and (2) formulates ways to prevent their re-emergence.¹⁶⁸

Any subsequent steps should be in accordance with this plan, which is the threshold step in an effective response. Post-plan, local authorities would then implement two sets of legal reforms—the first would seek to *remove* or *rehabilitate* existing distressed properties, and the second would aim to *prevent* their recurrence. National governments can help by providing financial resources or expert guidance, but the impetus for zombie eradication should be local.

A. *Bringing Life to the Undead: How to Remove (or Finish) Unfinished Zombie or Ghost Developments*

1. *Assess the Extent and Nature of the Problem*

Whether in the United States or Europe, when a local government is faced with one of these abandoned, unfinished, or partially built residential or commercial developments, it should first conduct a diagnostic triage to determine the status of each subdivision or property.¹⁶⁹ These incomplete or

168. Kitchin, *supra* note 1, at 57-58. Although some communities, like Teton County, Idaho, have executed comprehensive plans in the past, these plans were only loosely followed and were too easily amended. See Best, *supra* note 34.

169. HOLWAY ET AL, *supra* note 1, at 41.

unoccupied estates can be broadly divided into three categories: (1) properties where the landowner or developer is actively managing or completing the development, (2) properties where the developer remains, but there is little or no on-site activity or property management, and (3) properties that have been totally abandoned or vacated due to foreclosure or lack of funds. The first of these categories, where developments are substantially complete and free of any building code violations, generally do not present major problems. For those structures, the primary need is to maintain the properties and eventually fill them with economically viable occupants. However, the latter two categories are particularly troublesome, because in those cases potential safety, health, or environmental concerns could exist. If left alone, the developments will likely depress surrounding property values, lead to criminal activity, be a lure for homeless transients, and impose financial costs on the relevant local government.¹⁷⁰ These sites will require some level of non-market, government intervention.

In assessing both American zombie developments or European ghost estates where government intervention is needed, local governments should consider the following factors: the number of incomplete or vacant properties within each development, the severity of any safety or health risks, the feasibility of completing unfinished projects, negative impacts on nearby residents and on surrounding property values, and the proximity to existing public infrastructure (e.g., roads, street lighting, and emergency services). In Europe, especially in Spain and Portugal, another factor to consider when relying on a local response is the extent to which past local corruption helped to bring about the disaster that is now a ghost estate.¹⁷¹ Local authorities then need to rank all distressed properties within their jurisdiction, from the highest to the lowest priority. Authorities should focus on the subdivisions or developments that require the most immediate attention—first priority are those properties which pose the greatest health or safety risk, and second in line are

170. Brachman, *supra* note 167, at 1.

171. If local corruption was a contributing cause, future local efforts should not permit bribes and kick-backs to take place. These acts of corruption should be penalized.

properties where project completion and eventual human habitation is not possible. For these developments, the government may choose to either acquire or demolish the property through one of the methods discussed below.

2. *Removal of Uninhabitable Developments and Acquisition of Vacant Properties*

Local governments should demolish abandoned and incomplete developments that present the most serious safety or health hazards. To remove these properties, authorities should take advantage of legal tools already provided for by law. For example, local governments in the United States can exercise their eminent domain powers pursuant to the Fifth Amendment of the U.S. Constitution to acquire blighted, unfinished, or uninhabited properties.¹⁷² Similarly, most countries in Europe have eminent domain-like powers, known as “land tenure readjustment,” which allow local governments to “take” land from private parties, re-plan the land to incorporate modern infrastructure, like roads and lighting, remove safety hazards, and then convey specific parcels of the land back to the original owner.¹⁷³ The remaining parcels, especially those that are in environmentally sensitive areas, can be returned to green field status for the benefit of the public.

Local authorities could also consider purchasing abandoned properties that have potential to be rehabilitated and resold. While this is the most direct way to eliminate vacant, unwanted properties, it is also the most expensive method and could be too costly for some communities.¹⁷⁴ Alternatively, where available, local governments could acquire a property through tax foreclosure—a process by which some governments can take the title to land where the owners have failed to pay their property taxes or similar financial obligations.¹⁷⁵ This process allows the government to obtain a clean title to the tax-delinquent property, correct any

172. However, as the use of eminent domain requires that property owners be justly compensated, governments may wish to utilize this power only for the most unsightly and dangerous properties. Brachman, *supra* note 167, at 4.

173. Elliott, *supra* note 106, at 26.

174. Holway, et al., *supra* note 22, at 5.

175. Brachman, *supra* note 167, at 4.

hazardous concerns, and hold the property until a new use or owner is identified.¹⁷⁶ However, the time between initiation and eventual government ownership during a tax foreclosure can be long. Most tax foreclosure statutes grant landowners some amount of leniency before governments can finally seize their property.¹⁷⁷ For example, such laws usually impose lengthy notice requirements as well as equally long time periods that taxes must be delinquent before a seizure can occur.¹⁷⁸

3. *Site Resolution Plans for Salvageable Properties*

For residential and commercial developments in America and Europe that can be saved, local governments should work with the developers or homeowners to create “Site Resolution Plans” (SRPs) in order to finish the construction and complete the development.¹⁷⁹ These SRPs include an overall site assessment of the proposed and existing properties, a plan of action outlining what yet needs to be done to finish the project, a proposed timeline, and suggested funding proposals.¹⁸⁰ The local government and interested landowners should include in this process other interested parties, such as lenders and nearby concerned residents, to ensure that the most critical safety or health concerns are addressed (i.e., funded) first.

Where possible, local authorities should also attempt to renegotiate any existing contracts with developers so that all components of the development will be completed in a timely manner. Prior to the Great Recession, flexible, loose contracts with developers contributed to the creation of zombie or ghost properties, as many of these contracts had lenient deadlines to complete projects, and typically imposed no penalties for contract noncompliance. Local authorities and developers should try to agree on new contracts that will keep the subdivisions viable, but spell out harsh, yet realistic, deadlines and penalties.¹⁸¹ In exchange, the government could agree to

176. *Id.*

177. *Id.*

178. *Id.*

179. ADVISORY GRP. ON UNFINISHED HOUS. DEV., *supra* note 152, at 7–8.

180. *Id.*

181. Best, *supra* note 34.

more pragmatic project completion deadlines, or waive application and processing fees for developers who wish to replat or redesign their properties.¹⁸² However, local governments should be cautious when offering economic incentives, because in many communities overly generous incentives actually encouraged many of the zombie and ghost developments now scattered across America and Europe.

4. *Adopt New and Interdependent Zoning, Planning, or Subdivision Regulations*

If outdated zoning or planning ordinances have contributed to the emergence of distressed properties, local governments should modify, amend, or draft anew those regulations. Most importantly, any new zoning, planning, or subdivisions laws should be consistent with, and interdependent on, each other. Plans need to guide zoning regulations, which in turn form the basis for subdivision rules. The local officials that oversee and implement these laws must collaborate on all decisions that affect development in their community. For example, in Ireland, authority over the planning system is problematically divided among councillors and planners; elected local councillors are responsible only for the formation and adoption of development or zoning decisions, while the planners adjudicate only planning applications.¹⁸³ Because there are essentially no checks and balances in place to guide and limit development, this division of power and lack of communication among these officials have led to a piecemeal development system in Ireland.¹⁸⁴

Where troubled properties are causing potential safety or health concerns, communities can adopt land use “emergency” laws that allow for the modification of dangerous unworkable existing plats, or delay the issuance of permits for half-built developments. Local governments could then withhold or postpone issuing residential building permits until the developer eliminates health and safety issues, or meets building code requirements. Local governments may also create a transfer of development rights program to allow

182. Elliott, *supra* note 106, at 19–20.

183. Kitchin, *supra* note 1, at 40.

184. *Id.* at 36.

owners of unfinished properties to sell or transfer their rights to those who have both the will and finances to complete the project.¹⁸⁵

B. *Avoiding Haunted Landscapes in the Future*

There are four distinct, yet related steps that should be undertaken by local governments in the United States and Europe in order to make it far less likely that the zombie and ghost developments of the post-2008 era do not return. When these distressed properties began to appear in America and Europe, their existence was in part caused by the fact that the relevant local authorities did not have these four steps in place. Each of the four steps discussed below should be a function of *local* authorities, not national or state rule. The primary role of national or state government is to provide the necessary enabling authority to local governments. In Europe, cities and towns should be granted sufficient enabling authority to exercise local, site-specific decision-making.

1. *Conduct a Comprehensive Real Estate Market Analysis*

In order to prevent future zombie or ghost estates in the United States and Europe, local governments should first employ a neutral entity to conduct a *market study* to determine both the demand for residential or commercial developments and the current supply of these properties in their community.¹⁸⁶ This study should be based on documented historical rates and patterns of home construction in the area, not the grandiose schemes and promises of developers.¹⁸⁷ In analyzing the need for such developments, existing, realistic future demand should be taken into consideration. The market analyst should also consider those factors that have the greatest influence on future demand, such as likely projected population growth rates, household income, and job growth.¹⁸⁸ On the supply side, the study should take into account the

185. Elliott, *supra* note 183.

186. HOLWAY ET AL, *supra* note 1, at 39.

187. *Id.* at 40.

188. LEE R. NOVAK, MARKET AND FEASIBILITY STUDIES: A HOW-TO GUIDE 18 (1996), available at <http://pages.uoregon.edu/rgp/PPPM613/downloads/How%20to%20do%20a%20Market%20Analysis.pdf>

current inventory of properties, vacancy rates, the location and types of existing developments, and the likely foreseeable demand for new projects.¹⁸⁹ Vacancy rates are usually reliable prime indicators of existing supply.¹⁹⁰ If an area has a high vacancy rate, it may mean that there is an overabundance of a particular type of property in the market.

When a local government is approached by a developer with a proposed residential or commercial project, the government's planning department should require that the developer hire an impartial entity to conduct a *feasibility analysis*. A feasibility study weighs the financial and social costs and benefits of the proposed development to determine if the project's return will exceed its opportunity costs.¹⁹¹ The study should also outline the potential risks of the proposed development by identifying the possible collateral consequences on the community, such as burdens that additional development will place on existing transportation systems, water and sewer facilities, schools, fire, police and medical services.¹⁹² By combining the results of the market and feasibility analysis, a local government will then be able to make informed and more accurate decisions regarding the approval of future development in the area. Approvals made consistent with such studies should prevent the oversupply of vacant or abandoned properties.

2. Adopt a Comprehensive Community Plan

Based upon the real estate market and feasibility studies, local governments should next adopt a general or comprehensive community plan, which provides general long-range planning guidelines for how the city or county should be developed.¹⁹³ Establishing a comprehensive community plan is essential to good planning and lays the foundation for implementing or defending any subsequent laws and policies. The most effective plan first involves collaboration among landowners, the local government, environmental and preservationist groups, and the surrounding community. The

189. *Id.*

190. *Id.* at 22.

191. HOLWAY ET AL, *supra* note 1, at 40.

192. Novak, *supra* note 189, at 8.

193. HOLWAY ET AL, *supra* note 1, at 39.

plan would state the community's goals and recommended courses of action. This articulation of ends and means should assist the local government in maintaining sustainable levels of growth, while taking into consideration the preservation of natural resources, environmental quality, and open space and recreation.¹⁹⁴ A plan should also include the possibility of converting abandoned structures to shelters for the homeless.

The community plan should also establish a system for monitoring, tracking, and analyzing future development data.¹⁹⁵ It should describe procedures for tracking the status of current and proposed development projects, infrastructure commitments, and agreements or contracts with developers. After adopting this plan, the city or county must apply it consistently to all applicants and ensure that new developments conform with the plan. Additionally, the local government should periodically review and update the comprehensive plan to reflect any changes in planning policies, enabling legislation, or real estate market conditions.

3. *Implement Interdependent Zoning and Planning Ordinances*

Local governments in both America and the EU need a solid foundation of zoning, planning, and subdivision laws to avoid the problem of future distressed properties.¹⁹⁶ This step may require that local governments pass new regulations or simply amend existing, outdated laws. In Europe, this step may require local governments to acquire the power to adopt land use regulations from either national or regional governments. Zoning, planning, and subdivision laws should be consistent with each other, and with the community's comprehensive plan, which should be prepared first. Communities should be innovative and pragmatic, so that their policies are easily adaptable to evolving, and even deteriorating, market conditions changes. One of the major difficulties with the American and EU response to the Great Recession was the inability and unwillingness of local governments to react quickly to changing markets. Paralysis by local governments in

194. *Id.* at 32.

195. *Id.* at 52.

196. Elliott, *supra* note 106, at 27.

the face of impending dramatic change was as much a cause of the resulting “ghost” landscapes as the underlying economic factors.

Generally, subdivision laws control how land can be divided, while zoning laws address how the land can be developed.¹⁹⁷ However, in several states in the United States and in much of Ireland, Spain and Portugal, there is no legal requirement that zoning and subdivision policies correspond with, or need to be correlated to, one another.¹⁹⁸ Additionally, most subdivision laws in the American Intermountain West are antiquated and have been amended many times, creating internal inconsistencies between the local governments’ subdivision and zoning powers.¹⁹⁹ Confusion and planning chaos ensues when some land is subdivided before zoning is in place, or when zoning is amended after lots are subdivided. Local authorities need to ensure that zoning and subdivision laws are applied consistently from development to development.

4. *Require Development Agreement Templates*

Finally, local governments need a system for negotiating development agreements, or contracts, to ensure that projects will be completed within a certain timeframe and consistent with certain conditions.²⁰⁰ Such agreements help protect both developers and the city or county in the event of future market disruptions. While a comprehensive community plan governs a county or city’s planning system generally, development agreements are individual contracts between the local government entity and the developers of a residential or commercial project.²⁰¹ These contracts usually deal with issues that cannot be addressed in the zoning or subdivision approval process. Development agreements would bind developers to finish their projects and to install infrastructure on a predictable timeline. In Teton County, Idaho, such agreements did exist, but they were written by the developer and the developer’s attorney. As a result, these were one-sided

197. *Id.* at 7.

198. *Id.* at 27.

199. HOLWAY ET AL, *supra* note 1, at 20.

200. Trentadue, *supra* note 19, at 14.

201. *Id.*

contracts that favored only the developer.²⁰² Local government officials need to be involved in the process of drafting these agreements, to ensure that non-developer, area-wide interests are also protected.²⁰³

Development agreements may come in many forms and may vary from project to project. But at a minimum, these contracts should set out explicit guidelines for when projects must be completed, how they will be financed, and the rights and remedies of the local government if the developer happens to default on the project. Before development can begin, the local government needs to have assurances that essential services and infrastructure are in place, such as water and sewage treatment plants, energy supply, and roads and street lighting. Lack of or insufficient infrastructure, such as roads and street lighting, has created safety hazards in the past. To avoid this kind of problem in the future, local governments could require that certain approved infrastructure exist before building permits or construction on homes could begin.²⁰⁴

In addition, all such development agreements should be consistent with the comprehensive community plan. As such, the agreements would require developers to (1) prepare growth projections prior to development and prior to being allowed to sell lots, and (2) provide periodic written disclosures about the status of the development throughout the building process.²⁰⁵ The development contract should also include a provision that allows local officials to void the agreement and enter into a new agreement to adapt to changing marking conditions. To help ensure that the developer will complete the project, the local government should require that the developer provide a letter of credit from an approved bank guaranteeing that funds are available for the completion of the subdivision or property.²⁰⁶ In the event that the developer defaults, the bank would then be required to cover the costs of the remaining improvements. Local governments could also require “sub-phasing” of subdivisions, where completion of one phase of the

202. *Id.*

203. *Id.*

204. HOLWAY ET AL, *supra* note 1, at 50.

205. Trentadue & Lundberg, *supra* note 112, at 71–72.

206. HOLWAY ET AL, *supra* note 1.

project is required before allowing final approval of the next phase.

V. CONCLUSION

Neither Europe nor America wish to have their landscapes dotted with distressed or abandoned properties. These failed developments create economic depression and social costs. Local governments, and their land use planning powers, hold the key to ensuring that such eyesores, and community nuisances, do not reappear. If local government entities adopt the recommendations outlined in this article, then rational brakes can be applied when unrealistic exuberance overtakes housing markets, which otherwise tend to become overbuilt. Local communities can and should seize control of the quality and quantity of housing that is acceptable to those who live there.