

**IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

NO. 22 EAP 2017

**CITY OF PHILADELPHIA,
Appellant,
v.
ANTHONY M. RUFO AND TR GETZ, LP,
Appellee.**

**BRIEF FOR THE PHILADELPHIA ASSOCIATION OF COMMUNITY
DEVELOPMENT CORPORATIONS, THE TACONY COMMUNITY
DEVELOPMENT CORPORATION, THE NEW KENSINGTON
COMMUNITY DEVELOPMENT CORPORATION, THE VIOLA STREET
RESIDENTS ASSOCIATION, THE CENTENNIAL PARKSIDE
COMMUNITY DEVELOPMENT CORPORATION, AND THE NORTH
5TH STREET REVITALIZATION PROJECT
AS AMICI CURIAE IN SUPPORT OF APPELLANT**

**APPEAL FROM THE ORDER OF THE COMMONWEALTH COURT OF
PENNSYLVANIA, AT NO. 2735 C.D. 2015, ENTERED ON DECEMBER 22,
2016 (REARGUMENT DENIED, FEBRUARY 17, 2017), AFFIRMING THE
ORDER OF THE COURT OF COMMON PLEAS OF PHILADELPHIA
COUNTY, AT OCTOBER TERM 2014, NO. 3768, ENTERED ON
SEPTEMBER 22, 2015**

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Dated: September 20, 2017

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<i>Bilbar Constr. Co. v. Bd. of Adjustment of Easttown Twp.</i> , 141 A.2d 851 (Pa. 1958).....	9, 20
<i>Donnelly Advertising Corp. of Md. v. Baltimore</i> , 370 A.2d 1127 (Md. 1977)	11
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<i>Pierczyk Straska Farm v. Town of Rocky Hill</i> , No. CV 155016838, 2016 WL 673490 (Conn. Super. Ct. Jan. 27, 2016)	11

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Philadelphia Code § 4-PM-901 (“Windows and Doors Ordinance”).....	<i>passim</i>
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John Accordino & Gary T. Johnson, <i>Addressing the Vacant and Abandoned Property Problem</i> , J. of Urban Affairs, at 303 (2000) (http://onlinelibrary.wiley.com/doi/10.1111/07352166.00058/ abstract)	13

An Ordinance Amending Title 4 of The Philadelphia Code, Subcode PM, by Amending Requirements Applicable to Vacant Premises: Hearing on Bill 020634, before the Comm. on Licenses & Inspections, Council of the City of Philadelphia (Dec. 17, 2002)11, 12

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Eugenia Garvin et al., *More than Just an Eyesore: Local Insights and Solutions on Vacant Land and Urban Health*, 90 J. of Urban Health: Bull. N.Y. Acad. of Med. 413 (2012) (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3665973/>)17, 18, 19

Donna Ann Harris, *2017-2022 Strategic Plan for the Tacony Community Development Corp.*, Tacony CDC Board of Trustees, at 5 (March 28, 2017) (<http://visittacony.com/uploads/TaconyCDC-StrategicPlan.pdf>)23, 24

M. Kondo, D. Keene, B. Hohl, J. MacDonald, C. Branas, A *Difference-in-Differences Study of the Effects of a New Abandoned Building Remediation Strategy on Safety*, PLoS One 10(7) (2015) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4496053/pdf/pone.0129582.pdf>)14, 15

Kermit Lind & Joe Schilling, *Abating Neighborhood Blight with Collaborative Policy Networks—Where Have We Been? Where Are We Going?*, 46 U. Mem. L. Rev. 803 (2015) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2931423)18

H. P. Lovecraft, *The Shadow Over Innsmouth* (1936), reprinted in *The Classic Horror Stories*, 339-40 (ed. Robert Luckhurst, 2013).....10

The National Vacant Properties Campaign, *Vacant Properties: The True Costs to Communities* (2005) (<https://www.smartgrowthamerica.org/app/legacy/documents/true-costs.pdf>)13

Penn Medicine News, Press Release, *Remediating Abandoned, Inner City Buildings Reduces Crime and Violence in Surrounding Areas, Penn Study Finds* (July 8, 2015) (<https://www.pennmedicine.org/news/news-releases/2015/july/remediating-abandoned-inner-ci>)14, 15

The Reinvestment Fund, *City of Philadelphia Licenses and Inspections: Act 90 Enforcement Analysis*, William Penn Data Collaborative, at 22 (Jan. 21, 2014) (https://www.iccsafe.org/cs/MJC/Documents/TG-BlightedBuildings/TRF_Study.pdf).....14

The Reinvestment Fund, *Executive Summary: Evaluation of Philadelphia’s License and Inspection’s Act 90 Enforcement Activities*, William Penn Data Collaborative (Feb. 2014)15

Research for Democracy (Philadelphia, Pa.), *Blight Free Philadelphia: A Public-Private Strategy to Create and Enhance Neighborhood Value*, Eastern Pennsylvania Organizing Project & Temple Univ. Ctr. for Public Policy (Oct. 2001) (<https://astro.temple.edu/~ashlay/blight.pdf>)12, 13

Dr. Susan M. Wachter, *The Determinants of Neighborhood Transformations in Philadelphia Identification and Analysis: The New Kensington Pilot Study*, The Wharton School, Univ. of Pennsylvania, at 12, 16 (Spring 2005) (https://phsonline.org/uploads/resources/The_Determinants_of_Neighborhood_Transformations_in_Philadelphia_Identification_and_Analysis-_The_New_Kensington_Pilot_Study.pdf)16, 17

James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, *The Atlantic* (Mar. 1982) (<https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>)18, 19

INTRODUCTION

Amici curiae, the Philadelphia Association of Community Development Corporations, the Tacony Community Development Corporation, the New Kensington Community Development Corporation, the Viola Street Residents Association, the Centennial Parkside Community Development Corporation, and the North Fifth Street Revitalization Project (collectively, the “*amici*”), submit this brief in support of the appeal of Appellant City of Philadelphia from the December 22, 2016 order of the Commonwealth Court of Pennsylvania affirming the September 22, 2015 order of the Court of Common Pleas of Philadelphia County, at October Term 2014, No. 3768. The Commonwealth Court issued a *per curiam* opinion (McCullough, Hearthway, and Friedman) (2735 C.D. 2015) holding that the City lacked authority under the Pennsylvania Constitution to enact the Windows and Doors Ordinance, Bill. No. 020634 (approved March 3, 2003) (codified at Philadelphia Code § 4-PM-901) (the “Windows and Doors Ordinance”), requiring the owners of vacant buildings that have a blighting influence on the surrounding community to install windows with frames and glazing on all window openings and operative doors on all door openings. This Court granted Appellant’s Petition for Allowance of Appeal in its Order of July 6, 2017.

The ruling is of particular concern to the *amici* and their members because, unless reversed, it will thwart the City's ability to eliminate the blight that plagues so many Philadelphia neighborhoods and decreases property values and the quality of life throughout the city, and will thereby frustrate the *amici*'s and their members' ability to revitalize the areas, as set forth in this brief.

The *amici* and their members agree with the merits of the legal analysis in the Appellant's brief. They agree that, in limiting the City's power to regulate the use of land within its boundaries, the Commonwealth Court departed from the well-established constitutional principles this Court has long espoused. Instead of presuming, as the law requires, that the Windows and Doors Ordinance had a rational relationship to a valid public purpose (including maintaining property values and promoting the general welfare) and requiring the challenger to clearly and unmistakably establish the lack of such a relationship, the Commonwealth Court did the opposite. It presumed that the ordinance had no rational relationship to any valid purpose, and mistakenly put the burden on the City to prove otherwise.

In this brief, however, the *amici* and their members will focus on one central issue that is of particular concern to their members and that the Commonwealth Court ignored, namely, the fact that the outward appearance of vacant, boarded-up buildings has a profound adverse effect, both emotional and financial, on the wellbeing of the communities in which they are located, and that regulating their

appearance is therefore squarely within the City’s power to act in furtherance of the general welfare. If the City cannot regulate the unsightly, rundown appearance of sealed buildings advertising their abandonment, which drags down many Philadelphia communities, *amici* and their members will be hamstrung in their ability to revitalize their communities.

STATEMENT OF INTEREST

The Philadelphia Association of Community Development Corporations (PACDC) is a membership association of more than 120 community development corporations and other entities that support equitable neighborhood revitalization in the City of Philadelphia. PACDC provides training and technical assistance and engages in policy advocacy to create a more supportive environment for its members’ work in building, preserving, and repairing affordable homes, addressing blight and vacancy, and creating economic opportunities for neighborhood residents and small businesses.

The mission of the Tacony Community Development Corporation (TCDC) includes “to stimulate economic development and economic opportunities in the Community ... to combat deterioration in the Community ... and to otherwise promote the physical, economic and social environment of the Community.” The TCDC serves an area in lower Northeast Philadelphia from the Delaware River to Frankford Avenue and from Robbins Street to Cottman Avenue whose population

is approximately 20,000. Since 2011 the TCDC has worked to improve the Torresdale Avenue commercial corridor as the central part of its neighborhood revitalization efforts. Vacant and boarded-up buildings are a significant blight factor and a serious obstacle to TCDC's efforts to revitalize the area.

The New Kensington Community Development Corporation ("NKCDC") operates in the Fishtown, Kensington, and Port Richmond sections of Philadelphia. Its mission is to strengthen the physical, social, and economic fabric of this area of 60,000 residents by serving as a catalyst for sustainable development and community building.

The Viola Street Residents Association (VSRA) is a proactive resident-driven group that has been battling blight in the East Parkside section of West Philadelphia for a number of years. Its primary focus is the 4200 block of Viola Street.

The Centennial Parkside Community Development Corporation (CPCDC) was established with the intention of supporting residents of the Parkside community in Philadelphia. Its mission is to promote an equitable development strategy that sustains an economically and culturally diverse community, improves the health and well-being of residents, strengthens the community's identity and connectivity to Fairmount Park, and enhances the quality of the physical environment.

The North 5th Street Revitalization Project (N5SRP) was founded by Olney residents, merchants, and the Korean Community Development Services Center in 2005 as a focused reinvestment toward North 5th Street's primary commercial hub, located at 5th and Olney Avenue. N5SRP serves a corridor on North 5th Street in Philadelphia's Olney neighborhood from Roosevelt Boulevard to Spencer Street. This mile-and-a-half-long stretch bustles with more than 340 active businesses, eight SEPTA bus routes, and more than 25,000 residents in the immediate surrounding blocks. Its low commercial vacancy (13%) and surrounding residential vacancy (9%) now make it one of Philadelphia's most highly trafficked commercial corridors.

The *amici* and their members are deeply interested in and concerned about the ruling in this case because they believe that, unless reversed, it will hinder their missions to revitalize their respective localities. They know from first-hand experience in their communities that the outward appearance of vacant and boarded-up buildings adversely affects community wellbeing; it affects crime, community morale, property values, and the willingness of lenders and businesses to make the cash infusions that are necessary to turn blighted areas around. *Amici's* goals of revitalizing their communities will be significantly hindered unless the Court recognizes the City's authority to regulate the outward appearance of vacant and boarded-up eyesores.

Pursuant to Pa. R.A.P. 531(b), the *amici* state that no other person or entity has paid for the preparation of, or authored, this brief in whole or in part.

INCORPORATION OF STATEMENTS

The *amici* adopt and incorporate by reference the Statement of Jurisdiction, Statement of the Scope and Standard of Review, Order or Other Determination in Question, Statement of the Questions Involved, and Statement of the Case set forth in the Appellant's brief dated September 20, 2017.

SUMMARY OF ARGUMENT

The Commonwealth Court took an overly restrictive view of the matters municipalities may target by regulation to try to improve the public welfare. It ignored the obvious fact (which the City also supported with studies and testimony) that the outward appearance of boarded-up structures (of which there are far too many in Philadelphia) has very real effects on the public welfare in the community: it affects crime levels, individual and community morale, property values, public health, and the willingness of businesses and lenders to invest in the community. Many studies of urban development have recognized the ill effects of blighted buildings on a community's ability to pull itself out of the downward spiral of physical decay and economic depression, and, conversely, that reducing the blight caused by vacant buildings can stop and reverse such trends. What's more, studies of the actual impact of the very Philadelphia ordinance at issue here

demonstrate substantial tangible benefits realized through enforcement of that ordinance. *Amici* themselves have observed this phenomenon in carrying out their missions within their own communities in Philadelphia, which are unfortunately afflicted with many vacant properties. The Commonwealth Court’s ruling, if allowed to stand, would make it far more difficult for communities in Philadelphia, including those in the *amici*’s localities, to free themselves from the oppression and decline caused by the blight emanating from vacant and boarded-up buildings. Philadelphia’s communities need and deserve all the help they can get in revitalizing themselves and ridding themselves of the economic and social liability that is blight, including help the City is entirely within its authority in giving through an ordinance prohibiting boarded-up windows and doors in appropriate neighborhoods.

ARGUMENT

I. THE COMMONWEALTH COURT CONSTRUED THE TERM “PUBLIC PURPOSE” TOO NARROWLY AND IN CONTRAVENTION OF THIS COURT’S PRECEDENTS

Apart from its error in putting the burden on the City to establish a rational connection between the ordinance and a public purpose, the Commonwealth Court construed too narrowly the term “public purpose” and thus the City’s authority to enact land-use ordinances. Specifically, it concluded that the Windows and Doors Ordinance could serve a proper public purpose, and thus be within the City’s

authority, only if it addressed “the safety risks posed by blight,” and that “aesthetic” considerations could not meet this test. *See Rufo v. Board of License & Inspection Review*, 152 A.3d 400, 404 (Pa. Commw. 2016). But this Court long ago rejected the notion “that the general welfare is *eiusdem generis* with the public health, safety and morals.” *Best v. Zoning Bd. of Adjustment of City of Pittsburgh*, 141 A.2d 606, 610-13 (Pa. 1958). It recognized instead that the concept of “general welfare” must be flexible and does not admit of precise definition. *Id.* at 611-12. In reaching this conclusion, this Court relied on *Berman v. Parker*, which stated that “[a]n attempt to define [the Police Power’s] reach or trace its outer limits is fruitless, for each case must turn on its own facts.” 348 U.S. 26, 32 (1954). In *Berman*, the United States Supreme Court made clear that police power regulation may consider aesthetics; as it stated, “the concept of the public welfare is broad and inclusive” and “[t]he values it represents are spiritual as well as physical, aesthetic as well as monetary.” *Id.* at 33. This broad conception of public purpose under the police power dictates that “[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.” *Id.* As *Berman* held, the definition of “public purpose” under the police power “is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete

definition.” *Id.* at 32. Accordingly, “[s]ubject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, *not the judiciary*, is the main guardian of the public needs to be served by social legislation” *Id.* (emphasis added).

Pursuant to this broad conception of public purpose under the police power, this Court time and again has upheld municipal ordinances that “bore no reasonable relation to the health, safety, or morals of the community but whose constitutional validity rested alone upon their promotion of the general welfare.” *Bilbar Constr. Co. v. Bd. of Adjustment of Easttown Twp.*, 141 A.2d 851, 857 (Pa. 1958). This Court also has recognized that “preservation of the attractive characteristics of a community [is] a proper element of the general welfare” and “preservation of property values is a legitimate consideration since anything that tends to destroy property values of the inhabitants of the [community] necessarily adversely affects the prosperity, and therefore the general welfare, of the entire [community].” *Best*, 141 A.2d at 612-13 (quotation and alteration omitted).

In short, the Commonwealth Court plainly departed from this Court’s precedents by concluding that an ordinance whose immediate effect was upon a property’s appearance could not promote the general welfare.

II. THE COURT OVERLOOKED EVIDENCE THAT THE CITY INTENDED THE WINDOWS AND DOORS ORDINANCE TO PROMOTE PUBLIC HEALTH AND SAFETY, AS WELL AS EVIDENCE THAT SUCH MEASURES ACTUALLY PROMOTE PUBLIC HEALTH AND SAFETY

A. The Commonwealth Court Disregarded Evidence That the Ordinance Is Intended to—And Does in Fact—Promote the General Welfare

It is well-nigh self-evident that vacant buildings have a profoundly adverse impact on a community, and, indeed, the human spirit. One author vividly described the extreme emotions they evoke, including abandonment and despair:

Certainly, the terror of a deserted house swells in geometrical rather than arithmetical progression as houses multiply to form a city of stark desolation. The sight of such endless avenues of fishy-eyed vacancy and death, and the thought of such linked infinities of black, brooding compartments given over to cobwebs and memories and the conqueror worm, start up vestigial fears and aversions that not even the stoutest philosophy can disperse.

H. P. Lovecraft, *The Shadow Over Innsmouth* (1936), reprinted in *The Classic Horror Stories*, 339-40 (ed. Robert Luckhurst, 2013). The Commonwealth Court not only ignored what is obvious, it ignored compelling evidence that requiring vacant buildings to have operating windows and doors promotes the general welfare of Philadelphia's neighborhoods and residents, and that this was in fact the City's goal in enacting the Windows and Doors Ordinance.¹

¹ Indeed, many other jurisdictions have adopted anti-bligh ordinances in recognition of the obvious harms of urban blight. *See, e.g.*, 45 ALR 3d 1096, *What*

First, testimony before the Council stated that the Windows and Doors Ordinance was intended to “help to stabilize the City from the spread of further blight that has an *economic impact* on surrounding properties and an *emotional impact* on the individuals who reside in them.” *An ordinance amending Title 4 of The Philadelphia Code, Subcode PM, by amending requirements applicable to vacant premises: Hearing on Bill 020634, before the Comm. on Licenses & Inspections, Council of the City of Philadelphia*, at 13:20-24 (Dec. 17, 2002) (emphasis added). The City also heard testimony that vacant properties that lack proper windows and doors “ha[ve] a *horrible effect* on the community’s *morale and the value of the property* in the community.” *Id.* at 22:2-15 (emphasis added). Thus, the City showed that its goal in enacting the ordinance was by no means limited to aesthetics, but rather was to promote the general welfare by ensuring that

Constitutes ‘Blighted Area’ Within Urban Renewal and Redevelopment Statutes (1974). A number of jurisdictions have upheld the constitutionality of land-use ordinances that seek to reduce urban blight, including by regulating ostensibly aesthetic matters. *See, e.g., Pierczyk Straska Farm v. Town of Rocky Hill*, No. CV 155016838, 2016 WL 673490, at *2 (Conn. Super. Ct. Jan. 27, 2016) (upholding enforcement of citation under ordinance that required correction of blighting factors in building and recognizing its constitutionality); *Donnelly Advertising Corp. of Md. v. Baltimore*, 370 A.2d 1127, 1133 (Md. 1977) (upholding constitutionality of ordinance that eliminated billboards where billboards inhibited homeowners from moving into neighborhood); *Kenefick v. Battle Creek*, 774 N.W.2d 925, 928 (Mich. Ct. App. 2009) (upholding constitutionality of ordinance requiring owners of vacant buildings to pay a fee); *Adjile, Inc. v. City of Wilmington*, No. Civ. A. 04A-02-001WCC, 2004 WL 2827893, at *3 (Del. Super. Ct. Nov. 30, 2004) (same; and noting that “[v]acant buildings, ... without proper care, can be not only a nuisance and blight on the effort to vitalize the City, but a haven for crime and a community eyesore”).

vacant, blighted properties are maintained “consistent with the other surrounding buildings in the community” so that they do not negatively affect morale and property value. *Id.* at 23:24-24:4. Buoying community morale and preserving property values in the community are unquestionably proper public purposes to support exercise of the police power. *Best*, 141 A.2d at 612. The Commonwealth Court mistakenly ignored the City’s actual purpose.

Second, the Commonwealth Court ignored evidence that the City’s legislative conclusion that improving the appearance of vacant, boarded-up buildings promotes the public welfare by improving morale and property values was by no means fanciful or capricious, but supported both by empirical evidence and scholarly studies. One study the Court disregarded draws a direct connection between vacant buildings and reduced property values, concluding that “the presence of an abandoned house on a block reduces the value of all the other property by an average of \$6,720.” Research for Democracy (Philadelphia, Pa.), *Blight Free Philadelphia: A Public-private Strategy to Create and Enhance Neighborhood Value*, Eastern Pennsylvania Organizing Project & Temple Univ. Ctr. for Public Policy, at iv (Oct. 2001) (available at: <https://astro.temple.edu/~ashlay/blight.pdf>) (“*Blight Free Philadelphia*”). *Blight Free Philadelphia* further observes that abandonment of property “itself can cause housing market deterioration and property loss,” and that property abandonment is

a factor in—if not *a cause of*— “a vicious cycle of neighborhood and business district decline that undermines market demand.” *Id.* at 5 (quoting John Accordino & Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, J. of Urban Affairs, at 303 (2000) (available at: <http://onlinelibrary.wiley.com/doi/10.1111/0735-2166.00058/abstract>). The same report cited other studies that confirm that “abandonment and blight are part of a vicious cycle of housing market deterioration and therefore both a cause and an effect of population loss” in Philadelphia. *Blight Free Philadelphia, supra*, at 6. Because “the presence of an abandoned house on a block may reduce the value of the remaining houses,” “even one or two abandoned houses may begin to deteriorate the housing market in a neighborhood.” *Id.* at 20. As the study concludes, reinvestment and encouragement of renovation and encapsulation of vacant, boarded-up buildings and investment of “public resources strategically” could “increase the value of [Philadelphia’s] neighborhoods [and] touch tens of thousands more people.” *See id.* at 51. This and similar studies were the basis for a national report, *Vacant Properties: The True Costs to Communities*, The National Vacant Properties Campaign (2005) at 9 (available at: <https://www.smartgrowthamerica.org/app/legacy/documents/true-costs.pdf>).

Third, and even more to the point here, studies show that the Windows and Doors Ordinance – the very legislative action the Commonwealth Court struck

down as purportedly unrelated to the general welfare – actually has promoted the general welfare in Philadelphia by eliminating blight in vacant buildings. In a study on which the Board relied in sustaining the Department of License and Inspection’s enforcement against Appellee, The Reinvestment Fund analyzed the actual economic effect of the Board’s enforcement of the Windows and Doors Ordinance and “found that properties that complied with L&I citations created \$74 million in sales value for surrounding properties.” The Reinvestment Fund, *City of Philadelphia Licenses and Inspections: Act 90 Enforcement Analysis*, William Penn Data Collaborative, at 22 (Jan. 21, 2014) (available at: https://www.iccsafe.org/cs/MJC/Documents/TG-BlightedBuildings/TRF_Study.pdf); *see also* The Reinvestment Fund, *Executive Summary: Evaluation of Philadelphia’s License and Inspection’s Act 90 Enforcement Activities*, William Penn Data Collaborative, at 2 (Feb. 2014) (available at: https://www.reinvestment.com/wp-content/uploads/2015/12/Strategic_Property_Code_Enforcement-Presentation_2014.pdf). Another study by the University of Pennsylvania and its Perelman School of Medicine concluded that the installation of working windows and doors in vacant buildings in Philadelphia under the Windows and Doors Ordinance significantly reduced many categories of crime and violence near the buildings, including a 19% reduction in assaults, a 39% reduction in gun assaults,

and a 16% reduction in nuisance crimes. Press Release, Penn Medicine News, *Remediating Abandoned, Inner City Buildings Reduces Crime and Violence in Surrounding Areas, Penn Study Finds* (July 8, 2015) (available at: <https://www.pennmedicine.org/news/news-releases/2015/july/remediating-abandoned-inner-ci>); M. Kondo, D. Keene, B. Hohl, J. MacDonald, C. Branas, A *Difference-in-Differences Study of the Effects of a New Abandoned Building Remediation Strategy on Safety*, PLoS One 10(7) (2015) (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4496053/pdf/pone.0129582.pdf>). Its authors concluded that the very measures required by the Windows and Doors Ordinance were “practical and low cost, yet potentially high-return, health and safety solutions when compared to other options.” Kondo et al., *supra* (at Abstract).

B. Many Other Studies Have Found Vacant Buildings to Be Harmful to the General Welfare, in Philadelphia and Elsewhere

Many other studies have similarly concluded that vacant properties have adverse effects on neighborhoods and residents, in Philadelphia and elsewhere. A study by Econsult conservatively estimated that vacant properties in Philadelphia “represent an aggregate \$3.6 billion in reduced household wealth because of the blighting effect they have on nearby properties.” Econsult Corp., Penn Inst. for Urban Research & May 8 Consulting, *Vacant Land Management in Philadelphia: The Costs of the Current System and the Benefits of Reform*, Redevelopment

Authority of the City of Philadelphia, at 5 & n.4 (Nov. 2010) (available at: <http://penniur.upenn.edu/uploads/media/vacant-land-management-in-philadelphia.pdf>). Indeed, the study determined that in some neighborhoods “the loss of value [caused by vacant properties] was estimated to be as high as 20 percent.” *Id.* at 7. The study’s authors estimated that the existence of 40,000 vacant parcels within the city costs homeowners 6.5% in property value, for an aggregate \$3.6 billion in property value loss, and that the magnitude of loss is about \$8,000 in property value for an average household. *Id.* at 6. Conversely, Econsult concluded that efforts to reduce blighting can reverse those trends: “as the blighting effect of vacant parcels on neighborhoods and on property values is addressed, housing values rise, and new development is induced.” *Id.* at 28.

Similarly, a study conducted by The Wharton School at the University of Pennsylvania in partnership with the William Penn Foundation concluded that “neighborhood groupings showing more vacant lots display lower house prices,” and conversely “that vacant land improvements result in surrounding housing values increasing by as much as 30%, a large impact.” Dr. Susan M. Wachter, *The Determinants of Neighborhood Transformations in Philadelphia Identification and Analysis: The New Kensington Pilot Study*, The Wharton School, Univ. of Pennsylvania, at 12, 16 (Spring 2005) (available at: https://phsonline.org/uploads/resources/The_Determinants_of_Neighborhood_Transformations_in_Philadelphia

Identification_and_Analysis- The_New_Kensington_Pilot_Study.pdf). Dr. Wachter analyzed the effect of eliminating blighted, vacant, and boarded-up properties from the New Kensington neighborhood in Philadelphia and found a \$12 million gain in property value through lot improvements. *Id.* at 16.

Anecdotal evidence compiled in studies also provides significant insight into the degree to which boarded-up properties adversely affect Philadelphia's neighborhoods. As one study posits, "lay perspectives are an essential foundation" for addressing the issues associated with abandonment and blight. Eugenia Garvin et al., *More than Just an Eyesore: Local Insights and Solutions on Vacant Land and Urban Health*, 90 *J. of Urban Health: Bull. N.Y. Acad. of Med.* 413 (2012) (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3665973/>).

Findings from interviews with residents conclude that "[v]acant land [is] perceived to influence community well-being by decreasing residents' control over neighborhood life, fracturing ties among neighbors, raising concerns about crime and safety, and exerting a negative financial strain on the community." *Id.* at 417. Specifically, residents of blighted neighborhoods report—aside from the tangible economic costs of "significantly decreased" property values and increased insurance costs—that blight "overshadow[s] positive aspects of neighborhood life and undermin[es] attempts to improve the image or overall success of the

community.” *Id.* at 417-18. These same residents identified abandoned, boarded-up buildings as being a “hallmark” of blight. *Id.* at 415-17.

Sadly, however, residents of blighted neighborhoods perceive “[e]fforts to maintain the neighborhood ... as futile, contributing to a sense of helplessness and perceived lack of community cohesion.” *Id.* at 417. As such, in the absence of effective coordination spurred by ordinances like the Windows and Doors Ordinance and other building maintenance codes, *see id.* at 422, blight will continue to “threaten[] to become a chronic crisis” across Philadelphia and other cities throughout “the American urban landscape.” Kermit Lind & Joe Schilling, *Abating Neighborhood Blight with Collaborative Policy Networks—Where Have We Been? Where Are We Going?*, 46 U. Mem. L. Rev. 803, 812 (2015) (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2931423).

These conclusions of significant detriment to the general welfare resulting from blight, as well as of significant benefit from combatting the blight from boarded-up buildings, are unsurprising as scholars and urban planners long have recognized that the scourge of blight “constitutes an economic and social liability” that is “threatening to become a chronic crisis across much of the American urban landscape” *Id.* at 811-12 (quotation omitted). Long associated with this recognition of the detrimental effect of blight on urban neighborhoods—and germane to the Windows and Doors Ordinance, and the disorder and oppression it

seeks to combat—is the “Broken Windows Theory.” James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, *The Atlantic* (Mar. 1982) (available at: <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>). This theory posits that “disorder and crime are usually inextricably linked” such that disorder and crime beget blight, and blight begets further disorder and crime. *See id.*; *see also* Garvin *et al.*, *supra*, at 413 (“The ‘broken windows’ theory offers a framework for understanding these links [between physical disorder and crime, fear, and further disorder,] and holds that visible signs of neglect signal that an area is uncared for and residents are unwilling to maintain control of neighborhood conditions and activity [and] perpetuat[e] a cycle of physical and social decline.”). Thus, “if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken,” as “one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.” Wilson & Kelling, *supra*. But unrepaired windows are a signal not only to the would-be window breaker, they are also a signal to the residents of the neighborhood in which the neglected building is situated and passersby that “no one cares” within the neighborhood.

In this model, an area marked by disorder is vulnerable to criminal activity, and fearful residents may withdraw from neighborhood life. Social isolation and fear are thought to impede the development of collective efficacy, or the linkage of mutual trust and shared expectations for

intervening on behalf of the common good, perpetuating a cycle of physical and social decline.

Garvin et al., *supra*, at 413. Clearly, abandoned, blighted, and boarded-up properties are a pox on the communities where they loom.

In sum, there are overwhelming reasons to conclude that the requirements of the Windows and Doors Ordinance were intended to and do in fact promote the general welfare by halting and reversing the adverse effects of urban blight on morale, crime, and property values. In rejecting the City's conclusion, the Commonwealth Court impermissibly substituted its "judgment for that of the authorities who enacted the legislation." *Bilbar Constr. Co.*, 141 A.2d at 856.

III. IN THE AMICI'S OWN COMMUNITIES, THE ORDINANCE IS AN ESSENTIAL TOOL IN REDUCING BLIGHT

The findings of the studies discussed above are borne out in the real world and are a focus of *amici's* missions. If the Commonwealth Court's decision is upheld and the Windows and Doors Ordinance invalidated, *amici* and other similarly situated community groups, as well as residents, will lose a crucial tool to combat the devastating economic and broader social consequences of blight.

A. The Philadelphia Association of Community Development Corporations

The PACDC Commercial Corridor Working Group regularly receives reports from its members concerning the challenges they face in attempting to persuade absentee property owners to voluntarily ensure that their buildings are not

a blighting influence. Too often, owners board up windows and doors rather than make improvements. Boarded-up residences signify disinvestment to the rest of the community, rather than temporary vacancy. In addition, neglected residential properties attract vandals, graffiti, short dumping, and criminal activity, causing problems for the entire community beyond mere aesthetics. Likewise, boarded-up buildings in commercial shopping districts repel potential customers, deter potential new businesses from opening, and discourage existing businesses from improving their own properties. This creates a cycle of blight that contributes to economic distress, safety concerns, and overall community decline.

PACDC members have advocated strongly for the creation, expansion and strong enforcement of the Windows and Doors Ordinance to facilitate their work in ending that cycle of blight and making their neighborhoods safe, clean, and welcoming places for the public, while also enhancing the economic welfare of Philadelphia residents. Without this vital property maintenance enforcement mechanism, the members of the PACDC have few other tools at their disposal to ensure that property owners make improvements on their own, or take advantage of financial assistance the City of Philadelphia offers to make improvements, such

as the Storefront Improvement Program.² In the absence of such improvements the overall welfare of many Philadelphia neighborhoods would indisputably suffer.

B. The New Kensington Community Development Corporation

The neighborhoods served by the NKCDC have also directly and observably benefitted from City enforcement of the Windows and Doors Ordinance prohibiting boarded-up windows and doors. Removing boarded-up windows above store fronts and replacing them with real windows on the second and third floors of buildings in the Fishtown, Kensington, and Port Richmond sections of the City has stimulated rentals and economic activity, both in those buildings and in adjacent ones in the neighborhood. Even the appearance of more eyes on the street creates the perception of safety and thus more activity, creating an improvement cycle that reinforces itself and leads to significant reduction in crime and increases in economic vitality. This phenomenon is readily apparent on parts of North Front Street and Frankford Avenue that were previously targets for vandalism and other nuisance activity. Although there are incentives available to property owners who are self-motivated to improve their homes and businesses, some owners need the added pressure of code enforcement before they will replace boarded-up windows and doors with operating windows and doors. Without the Windows and Doors

² The Storefront Improvement Program reimburses owners of commercial buildings and businesses within designated commercial corridors who make storefront improvements. *See* <https://business.phila.gov./storefront-improvement-program/>.

Ordinance, the KCDC would find it much more difficult to persuade some owners to undertake the improvements which so clearly reduce the influence of blighted and abandoned buildings on surrounding properties. It is beyond dispute that economic revitalization does not occur unless individuals and businesses make investments in their community, and many are reluctant to do so when boarded-up buildings are actively advertising vacancy and abandonment by other owners. The NKCDC has experienced first-hand that reducing and deterring boarded-up structures—which is the fundamental purpose of the Windows and Doors Ordinance—is a very important part of the community revitalization process.

C. The Tacony Community Development Corporation

The TCDC has a similar mission aimed at eliminating blight in Northeast Philadelphia. It has instituted programs designed to battle the impact of boarded-up buildings on commercial activity and property values by (1) reducing their presence through stimulating and subsidizing storefront improvements, and (2) assisting in the vigorous enforcement of the Windows and Doors Ordinance. Specifically, the five-year strategic plan the TCDC adopted in March 2017 states that it has energetically sought “matching grants offered by the city’s Commerce Department,” which “has been extraordinarily successful in Tacony, with more than 30 storefront improvements completed and \$2.3 million invested in the area.”

Donna Ann Harris, *2017-2022 Strategic Plan for the Tacony Community*

Development Corp., Tacony CDC Board of Trustees, at 5 (March 28, 2017) (available at: <http://visittacony.com/uploads/TaconyCDC-StrategicPlan.pdf>). In that plan, the TCDC observed: “In the last five years, one third of our businesses have installed new signs, awnings, or made other façade repairs and restorations through this matching grant program. These business owners have told us that they have seen increased sales because of these improvements, and have added 45 new jobs to the corridor.” *Id.* Such investment and economic growth would not have been possible if boarded-up properties were rampant in the area—a threat that the Commonwealth Court’s decision could make a reality if not overturned.

The TCDC has also strategically pursued code enforcement in partnership with the City of Philadelphia Department of Licenses & Inspections against properties not in compliance with the Ordinance. These strategies are designed to encourage property owners who own storefronts that do not meet code to make improvements so they can attract better quality tenants and stimulate investment in adjacent properties, which in turn, enhances the overall economic value of the neighborhood. The TCDC is proud to report that because of its work the effective vacancy rate on Torresdale Avenue has fallen from 30% in 2011 to 10% in 2017, which would have been impossible without the Windows and Doors Ordinance. *Id.* Boarded-up buildings also lower adjacent property values. This can be seen where actual prices paid for properties collected by the TCDC are lower on blocks

with boarded-up buildings than similar properties on blocks without boarded-up properties. Properties with boarded-up buildings create a vicious cycle of the appearance of blight promoting more disinvestment and more blight. Code enforcement helps prevent and reverse this cycle.

D. The Viola Street Residents Association and the Centennial Parkside CDC

The VSRA and the CPCDC are very familiar with the blighting effect of boarded-up buildings throughout their East Parkside community in West Philadelphia on the edge of Fairmont Park. Both the VSRA, since 2009, and the CPCDC, since 2015, have been attempting to deal with the large number of abandoned properties, including several properties on the 4200 block of Viola Street itself, and their negative impacts on the community. When a neighboring property is boarded up and deteriorating, requiring the owner of the building to install windows and doors is an important civic improvement strategy. There are several reasons for the community to support this effort.

First, replacing boards with windows on buildings increases the sense of stability and security of people living nearby. No one knows if or when someone has pried up and then replaced a board over a window; in contrast, the breaking of windows can be heard, and broken windows can be seen, by the community.

Second, when windows are boarded up the message to persons walking down the street is that this is a community not worth caring about. The cost of that

message to the lives of residents who must decide what to do with their properties and whether it is safe to keep their families in the neighborhood is real, and it takes a heavy toll on them and the community. Third, both organizations need as many tools as possible to overcome the tangible blighting influence of abandoned buildings.

A prime example of the beneficial impact of the Windows and Doors Ordinance is the experience with the Gateway property at 1515 Belmont Avenue on the corner of Viola Street. This property was once commercial on the ground floor and residential above. It had been boarded up for a number of years prior to 2015. After legal enforcement proceedings, doors and windows were installed. Neighbors who have been cleaning up the property reported a significant reduction in trash and dumping on the property, even though it continued vacant.

Support of the ordinance requiring operating doors and windows on abandoned properties is not a concern of just a few in the neighborhood. VSRA polled residents and ascertained that a majority are prepared to take whatever measures are necessary to support the effort. CPCDC's Board is likewise committed to doing so.

E. The North 5th Street Revitalization Project

The N5SRP also has worked to decrease the impact of boarded-up buildings because of their depressing influence on the economy in the neighborhood. A

good example is the Youngstown building at Rockland Street, a large old theater building which in 2012 had boarded-up windows on the first and second floors. Replacing the boarded-up windows with operating windows had a beneficial rippling effect, decreasing the blighting effect of the building even without changing its occupancy. The change increased occupancy of neighboring buildings. Across the street, for example, Philly Bread moved in, and a smaller blighted building was renovated and occupied next door. The bottom line is that removing boarded-up windows attracted new businesses and homes and added value to the neighborhood. This *tangible impact* from removing signs of abandonment represented by boarded-up structures is well known throughout the corridor and is why merchants and others support the Windows and Doors Ordinance and the project's revitalization activities.

CONCLUSION

For the foregoing reasons, *amici* request that the Court reverse the decision of the Commonwealth Court that invalidates the Windows and Doors Ordinance.

Dated: September 20, 2017

Respectfully submitted,

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CERTIFICATION

This 20th day of September, 2017, I certify that:

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Word Count: This brief contains 6040 words, as counted by the undersigned's Microsoft Word Processing Software.

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