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A TALE OF TWO BROWNFIELD SITES: MAKING THE BEST OF TIMES FROM THE WORST OF TIMES IN WESTERN PENNSYLVANIA'S STEEL VALLEY

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Abstract: In the past decade, two attractive multi-use developments have sprung up on the banks of western Pennsylvania's Monongahela River, improving vast brownfields where large steel plants once stood. The communities that are home to these projects—Homestead and Pittsburgh's South Side neighborhood—have unquestionably benefited from these developments, but those benefits have not been evenly distributed. This Article compares these two projects from an environmental justice perspective. It concludes that Homestead is an environmental justice community, and that it has not fared as well as the Southside in the distribution of the benefits associated with brownfield redevelopment. The benefits that are most lacking in Homestead are those related to community empowerment and community identity as reflected in the development itself. Professor Perkins suggests that states amend their brownfield programs to better prepare environmental justice communities well in advance of development in order to assure that projects maximize these important community identity features.

INTRODUCTION

As the Monongahela River meanders its final six miles before meeting the Ohio River at Pittsburgh's famed "Point," it makes two subtle curves, moving gently to the north and retreating slightly to the

* Professor of Law, Duquesne University School of Law. The author would like to thank the following people: Rick Belloli, Executive Director, South Side Local Development Company; Holly Cairns, Environmental Advocate, Pennsylvania Department of Environmental Protection, Southwest Regional Office; Mark S. Dellana, Vice President of Development, Soffer Organization; Jerry Detorre, Executive Director, Urban Redevelopment Authority of Pittsburgh; Judy Dyda, Manager of Community Planning, South Side Local Development Company; Barry Ford, President of Development, Continental Real Estate; Donald J. Guter, Dean, Duquesne University School of Law; and John Mitviya, Environmental Protection Manager for Environmental Cleanup, Pennsylvania Department of Environmental Protection, Southwest Regional Office. Special thanks are owed to Erin McCurdy, Duquesne University School of Law 2008 J.D. candidate, for her invaluable and enthusiastic research assistance on this project.

south, before continuing on its western course. The flat plains that abut these two curves were at one time home to massive steel making facilities. The eastern-most site, located in Homestead, Pennsylvania, boasted U.S. Steel Corporation's enormous Homestead Works, which produced one third of the nation's steel during the first half of the twentieth century.¹ The smaller site to the west, lying within the city of Pittsburgh's South Side neighborhood, was most recently occupied by the LTV South Side Works.² For over one hundred years, the steel facilities at these sites employed hundreds of thousands of Pittsburghers, many of whom were second and third generation employees or immigrants working their first jobs in a new homeland. The mills made millionaires out of their owners and pumped vast sums of money into the surrounding areas.³ However, as big steel died in the Mon Valley in the 1980s, both facilities shut down, forcing the declining communities to come to grips with economic hardship and brownfield expanses littered with bulky skeletal reminders of the sites' former greatness.⁴

Today, these two sites have been transformed and they continue to have much in common aside from their steel heritage. Both the "Waterfront"—which now covers the former U.S. Steel site in Homestead—and the "South Side Works"—which occupies the former LTV site—are mixed-use developments. Both bustle with shoppers and joggers, residents and workers, diners and movie-goers. Both are widely praised for their aesthetic appeal and economic success.⁵ But there are differences. The Waterfront underwent private remediation and redevelopment with minimal public participation, while the South Side Works was redeveloped pursuant to Pennsylvania's brownfield law, Act 2, with signifi-

¹ Mark Roth, *Steel Lives in Their Stories*, PITTSBURGH POST-GAZETTE, July 30, 2006, at B1.

² CIVIL & ENVTL. CONSULTANTS, INC., ACT 2 CLEANUP PLAN, LTV SOUTH SIDE, PITTSBURGH, PENNSYLVANIA, REVISION 3, 1 (1997) (prepared for the Urban Redevelopment Authority of Pittsburgh) (on file with author) [hereinafter LTV ACT 2 CLEANUP PLAN].

³ See, e.g., WILLIAM SERRIN, *HOMESTEAD: THE GLORY AND TRAGEDY OF AN AMERICAN STEEL TOWN*, at xxiii, 20–21 (1992) (noting Andrew Carnegie's multi-million dollar empire and describing the influx of immigrants to Homestead).

⁴ See *id.* at 367.

⁵ *Pennsylvania's Land Recycling Program: Hearing Before the S. Envtl. Res. & Energy Comm.*, (Pa. 2003), available at <http://www.depweb.state.pa.us/dep/cwp/view.asp?a=3&q=474652> (testimony of Kathleen A. McGinty, Secretary, Pennsylvania Department of Environmental Protection). See generally Rich Lord, *Nine Lessons of the Allegheny Waterfront*, GREATER PHILADELPHIA REGIONAL REV., Fall 2002; Press Release, Continental Real Estate Companies, The Waterfront (Under Construction), Pittsburgh, Pa. (n.d.) (on file with author) [hereinafter Continental Press Materials].

cant public input.⁶ The Waterfront is an island of prosperity that is very much isolated from the rest of the still-distressed city of Homestead, while the South Side Works blends nearly seamlessly into the adjoining city blocks of Pittsburgh's South Side.

This Article aims to compare the sites through the lens of environmental justice. There is a body of scholarship that questions the justice of the tiered cleanup levels and minimal participation opportunities that characterize most brownfield programs.⁷ This Article, however, will look at distributive justice as it relates to the benefits of brownfield development. It finds that pre-development Homestead was an environmental justice community, but the South Side was not. It concludes that the South Side is reaping more of the benefits associated with brownfield development than Homestead, and suggests a strategy to avoid such outcomes.

Some of the forces that implicate the environmental justice concerns addressed here can cut both ways; for example, without tax increment financing, which withholds tax revenues from struggling host communities for many years, these two projects would never have moved forward.⁸ That reality, however, is not a reason to ignore the potential environmental injustice of brownfield redevelopment. Rather, developers' efforts to secure beneficial financing and to build near strong markets need to be informed by a wider understanding of the social justice consequences of those decisions. A commitment to sustainability demands nothing less.⁹ In order for a brownfield redevelopment to make the best of times for environmental justice communities facing the worst of times, more is required than private remediation and planning, or adhering to state brownfield laws such as Act 2, even when those efforts are pursued with the best of intentions. It additionally requires an understanding that identifying and empowering environmental justice communities before development may be the best way to avoid disparities.

⁶ See *infra* text accompanying notes 56, 105, 135.

⁷ See *infra* text accompanying notes 162–70.

⁸ Telephone Interview with Jerome N. Dettore, Executive Dir., Urban Redevelopment Auth. of Pittsburgh, Pittsburgh, Pa. (July 27, 2006) [hereinafter Dettore Interview]; Telephone Interview with Barry Ford, President of Dev., Continental Real Estate, Pittsburgh, Pa. (June 22, 2006) [hereinafter Ford Interview].

⁹ Sustainable development demands the "simultaneous consideration of social, economic, and environmental factors in decision-making." Joel B. Eisen, *Brownfields Policies for Sustainable Cities*, 9 DUKE ENVTL. L. & POL'Y F. 187, 196 (1999).

I. THE WATERFRONT

The 260-acre, two-mile stretch of land that comprises the Waterfront is located in three neighboring boroughs: Homestead, Munhall, and West Homestead.¹⁰ Nevertheless, Homestead is the symbol of the three towns and the U.S. Steel plant that once graced the land.¹¹ For this reason, except when used in comparison to the other two boroughs, "Homestead" should be read to refer to all three boroughs.

A. Site History

Homestead, Pennsylvania was, and to some extent still is, a quintessential company town.¹² Site of the massive U.S. Steel's Homestead Works, its fortunes and psychology were inextricably linked to the plant for nearly a century. Twenty years after U.S. Steel left the town in a state of disbelief and despair, the legacy of the plant and its workers remains a newsworthy topic.¹³

In its heyday, the Homestead Works boasted 450 buildings sprawled over 430 acres.¹⁴ The vast majority of the plant embraced Homestead at the wide base of a slope on the southern bank of the Monongahela River; the giant Carrie Furnace operated across the river, connected to the fabrication plants by a hot metal bridge.¹⁵

Steel manufacturing began at the site in 1881.¹⁶ Andrew Carnegie purchased the mill two years later,¹⁷ and by 1901 had established U.S. Steel, which would become the country's first billion-dollar corporation.¹⁸ Throughout most of the twentieth century the plant flourished.¹⁹ A major expansion during World War II added several new furnaces and mills to the plant,²⁰ which eventually employed 15,000 workers.²¹

¹⁰ Barnet D. Wolf, *Steeled for Success*, COLUMBUS DISPATCH, Sept. 15, 1999, at 1F.

¹¹ JUDITH MODELL, A TOWN WITHOUT STEEL: ENVISIONING HOMESTEAD 11 (1998) (noting that the growth of the Homestead Works blurred the boundaries between the three boroughs).

¹² See generally Carnegie Mellon University, The Origins of Homestead, <http://www.andrew.cmu.edu/user/nae/Homestead.htm> (last visited Mar. 25, 2007) [hereinafter CMU Homestead].

¹³ See, e.g., Roth, *supra* note 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ CMU Homestead, *supra* note 12.

¹⁷ MODELL, *supra* note 11, at 5.

¹⁸ *Id.*

¹⁹ SERRIN, *supra* note 3, at 262, 283.

²⁰ See Bruce S. Cridlebaugh, Homestead High Level Bridge (2002), <http://pghbridges.com/pittsburghE/0591-4473/homestead.htm>.

²¹ CMU Homestead, *supra* note 12, at 1.

Homestead's glory days continued into the early 1950s,²² but the denouement of the great Homestead Works and the nation's steel industry had already begun.²³ Throughout the 1960s, thousands of American steel jobs were cut, and during the next decade many plants closed.²⁴ The Homestead Works was no exception. In 1979, U.S. Steel shut down two of its mills that had been operating for over 100 years,²⁵ and in 1982 the great Carrie Furnace closed.²⁶ Three years later, more components of the Homestead Works ceased operation, and on July 25, 1986, U.S. Steel permanently closed the plant.²⁷

B. *The Community*

Homestead, Munhall, and West Homestead benefited enormously from the plant's presence. The plant provided job security for generations of families,²⁸ and workers furnished many municipal services.²⁹ Local politicians were all too happy to take credit³⁰ and to be spared concerns that were routine for most municipal governments.³¹

By the mid-1980s the mood of the steel valley was glum. People were moving into town, but they were no longer immigrants flocking to well-paying steel jobs; instead, they were poor, looking to take advantage of plummeting property values and bringing with them the common problems of poverty.³² There was widespread despair and loss of self-esteem among the town's young people,³³ who had been brought up to believe that the plant would furnish them with jobs for the duration of their working lives. Families broke apart; suicides were not uncommon.³⁴ Fires left behind vacant lots which, coupled with the even-

²² SERRIN, *supra* note 3, at 282–83.

²³ *Id.*

²⁴ *Id.* at 305 (linking the flood of pink slips to a massive firing that U.S. Steel hoped would address a pervasive over-manning problem).

²⁵ *Id.* at 329–30 (noting the “dismemberment” of U.S. Steel). During these years aluminum continued to gain market share while plastics began gaining market share as well. *Id.*

²⁶ *Id.* at 346.

²⁷ *Id.* at 367.

²⁸ See SERRIN, *supra* note 3, at 289.

²⁹ Workers were routinely dispatched to salt streets, rebuild bridges, and maintain playgrounds. *Id.* at 287–88.

³⁰ *Id.* at 288.

³¹ Corruption eventually became a way of life at the mill and in town. *Id.* at 289. Gambling and prostitution were common. *Id.*

³² *Id.* at 347, 369.

³³ *Id.* at 382.

³⁴ See MODELL, *supra* note 11, at 265–66; SERRIN, *supra* note 3, at 368, 398.

tual demolition of the plant, radically changed the only landscape that residents had ever known.³⁵

Local officials were dispirited and seemed incapable of confronting Homestead's difficulties.³⁶ They faced staggering financial and population losses. Homestead's deficit had reached \$300,000 and its population was eighteen percent lower than it was just ten years earlier.³⁷ The borough became a "bad place," with crime and hard drug use on the rise.³⁸

The City Council was almost paralyzed by the crisis, although it had never really been in control while U.S. Steel operated the plant.³⁹ The Council simply had little idea how to run a town. It lacked a strong tradition of leadership and had no solutions to offer its residents. Instead, it became mired in internal squabbles.⁴⁰ Planning for the town's future seemed impossible given its financial crisis and demoralized, apathetic population.⁴¹ Homestead's citizens, so concerned about their own lives, showed little interest in government.⁴² They remained in a state of disbelief,⁴³ resented having to take minimum wage jobs,⁴⁴ and felt betrayed by a nation that they believed cared only for corporate interests.⁴⁵ It was as if the community's fiber was dissolving.⁴⁶

Data from the 2000 census, presented in Table 1, paints a picture of Homestead, Munhall, and West Homestead after their adjustment to the plant closure and before the Waterfront was complete. Table 2 reveals further population loss, low to modest incomes, and high poverty rates for all three boroughs.

³⁵ MODELL, *supra* note 11, at viii; SERRIN, *supra* note 3, at 411. To some residents the mill created a natural landscape: "Puffs of smoke, an elderly woman said . . . , 'looked like clouds' in the sky. A young man recalled slag heaps that were like 'big mountains' for him and his friends." MODELL, *supra* note 11, at 17.

³⁶ See SERRIN, *supra* note 3, at 411.

³⁷ *Id.* at 393.

³⁸ MODELL, *supra* note 11, at 296.

³⁹ SERRIN, *supra* note 3, at 383.

⁴⁰ *Id.*

⁴¹ MODELL, *supra* note 11, at 297.

⁴² See SERRIN, *supra* note 3, at 383. This was an odd response for a community that had for so long prided itself in its solidarity and activism. See MODELL, *supra* note 11, at 250–51.

⁴³ MODELL, *supra* note 11, at 251.

⁴⁴ *Id.* at 264 (noting that "[t]he personal meaning of being in hell belonged to the laid-off steelworkers and their families").

⁴⁵ *Id.* at 13.

⁴⁶ SERRIN, *supra* note 3, at 387. Serrin observed in the early 1990s that "Homestead remains a fractious, suspicious place, unable to organize, unable to confront its enemies." *Id.* at xxiii.

Borough	1990 Population ⁴⁷	2000 Population
Homestead	4,179	3,569 ⁴⁸
Munhall	13,158	12,264 ⁴⁹
West Homestead	2,495	2,197 ⁵⁰

Borough	% Population Change Since 1990 ⁵¹	% Minority Population	Median Household Income (\$)	% of Population Below Poverty Level
Homestead ⁵²	-14.60	57.4	16,603	26.6
Munhall ⁵³	-6.79	5.2	32,832	11.9
West Homestead ⁵⁴	-11.94	10.5	33,309	13.7

C. Cleanup and Development

In 1988, Park Corporation purchased the Homestead Works site from U.S. Steel for \$14 million.⁵⁵ During the next seven years Park demolished nearly all of the plant's structures and sold whatever equipment remained at the site.

Pennsylvania's Act 2 did not yet exist, so Park conducted the cleanup privately.⁵⁶ The primary environmental concern was contamination related to 120 above- and below-ground tanks that had stored the lubricants used on the various mills' machines. Identifying the location and contents of the tanks was facilitated by the impeccable records

⁴⁷ JAMES R. WOODWELL, UNIV. CTR. FOR SOC. & URBAN RESEARCH, THE SOCIAL GEOGRAPHY OF ALLEGHENY COUNTY 842, 922, 1110 (1993).

⁴⁸ U.S. CENSUS BUREAU, CENSUS PROFILES, HOMESTEAD BOROUGH, PENNSYLVANIA T.DP-1, T.DP-3 (2000), available at <http://www.pittsburghlive.com/pages/pdf/census/1604235424.pdf> [hereinafter HOMESTEAD BOROUGH CENSUS PROFILE].

⁴⁹ U.S. CENSUS BUREAU, CENSUS PROFILES, MUNHALL BOROUGH, PENNSYLVANIA T.DP-1, T.DP-3 (2000), available at <http://censtats.census.gov/data/PA/1604252320.pdf> [hereinafter MUNHALL BOROUGH CENSUS PROFILE].

⁵⁰ U.S. CENSUS BUREAU, CENSUS PROFILES, WEST HOMESTEAD BOROUGH, PENNSYLVANIA T.DP-1, T.DP-3 (2000), available at <http://pittsburghlive.com/pages/pdf/census/1604235424.pdf> [hereinafter WEST HOMESTEAD BOROUGH CENSUS PROFILE].

⁵¹ Population change figures were calculated based on a comparison of 1990 and 2000 populations. See also CTR. FOR SOC. & URBAN RESEARCH, UNIV. OF PITTSBURGH, CENSUS 2000 POPULATION BREAKDOWN BY MUNICIPALITY (2000), available at <http://www.ucsur.pitt.edu/Census2000muns.pdf>.

⁵² HOMESTEAD BOROUGH CENSUS PROFILE, *supra* note 48, at T.DP-1, DP-3.

⁵³ MUNHALL BOROUGH CENSUS PROFILE, *supra* note 49, at T.DP-1, DP-3.

⁵⁴ WEST HOMESTEAD BOROUGH CENSUS PROFILE, *supra* note 50, at T.DP-1, DP-3.

⁵⁵ SERRIN, *supra* note 3, at 393; Ford Interview, *supra* note 8.

⁵⁶ When the Park Corporation began the cleanup, Mr. Ford was employed by Park Corporation. Ford Interview, *supra* note 8.

maintained by U.S. Steel.⁵⁷ Tanks were removed; leaks, if any, were identified; and contaminated soil was excavated and replaced with clean fill.⁵⁸ Park's comprehensive remediation records satisfied investors in the following years.⁵⁹ There have been no fines or environmental problems at the site since it was cleaned up.⁶⁰

Park sold the property to Continental Real Estate in 1998 for \$20 million.⁶¹ Continental focused on infrastructure, building a generous network of roads that set the stage for development. Unfortunately, access to the site was limited by railroad tracks that ran along the entire south side of the site. There ultimately would be only three access points to the project, only one of which would bring visitors through downtown Homestead.⁶² Continental did, however, make the most of the site's steel heritage by erecting an imposing row of tall stacks that once emitted huge plumes of smoke at one of the project's entrances, and by leaving other pieces of machinery in place.⁶³

Today, the Waterfront is fully built out. It includes a Power Center comprised of numerous big-box stores⁶⁴ and "The Stacks," a grouping of upscale stores surrounded by an entertainment and dining district.⁶⁵ In addition, 650,000 square feet of office space and 700 apartment units line the river's edge.⁶⁶ The Waterfront has become a point of destination for residents from many of Pittsburgh's surrounding neighborhoods, attracting shoppers and diners who are more wealthy and better educated than those who typically live near the major malls in the greater Pittsburgh area.⁶⁷

Two agreements were crucial to the project's development. The first was a tax increment financing agreement (TIF agreement) that funnels real estate taxes into a TIF fund to pay debt service on twenty-

⁵⁷ *Id.*

⁵⁸ *Id.* The Pennsylvania Department of Environmental Protection signed off on the tank cleanup. *Id.* After the passage of Act 2, consideration was given to applying for the Act's liability protection. *Id.* However, officials were confident that remediation was both adequate and complete, and because Act 2 does not protect against unknown contamination (the only kind of problem officials thought possible), the idea was not pursued. *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Ford Interview, *supra* note 8.

⁶³ *Id.*

⁶⁴ Continental Press Materials, *supra* note 5.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *See id.*

year municipal bonds.⁶⁸ The three boroughs also created a revenue sharing district that allocates tax revenue based on the amount of land each borough owns at the project site, regardless of where building occurs.⁶⁹ When the TIF agreement expires in 2018, the boroughs will receive taxes based on the actual buildings and tenants that exist on their separate parcels.⁷⁰ That revenue will be both welcome and significant, since current estimates value the Waterfront at \$300 million to \$350 million.⁷¹

D. Community Reaction

What the people of Homestead wanted most from the site's redevelopment was industrial revitalization and jobs for out of work steelworkers.⁷² At best, residents were conflicted over what the new Homestead should be, but many wanted industrial or retraining facilities so people could stay in place, prepare themselves for new jobs, and "have control over their lives."⁷³

Those who hoped the new development would address these desires likely feel disappointed by the Waterfront. Retail jobs do not support families, neither do they provide the unemployed with the sense of control Homesteaders so urgently need.⁷⁴ Further, the TIF agreement

⁶⁸ Agreement Regarding the Waterfront Tax Increment Financing District §§ 4-6 (Sept. 15, 1998) (on file with author) [hereinafter TIF Agreement]; see Donna Mitchell, *From Rust to Retail: Public-Private Venture Replaces Old Steel Plant with Mixed-Use Project*, SHOPPING CENTERS TODAY, May 2002, available at <http://www.icsc.org/srch/sct/sct0502/page39.html>. Over \$20 million in bonds were issued for infrastructure improvements. Lord, *supra* note 5, at 23.

⁶⁹ TIF Agreement, *supra* note 68, § 7. Of the approximate revenues allocated to the boroughs, Homestead receives fifty percent, Munhall thirty percent, and West Homestead twenty percent. *Id.* at Exhibit D-2.

⁷⁰ Mitchell, *supra* note 68.

⁷¹ See Rich Lord, *Distressed for Success*, PITTSBURGH MAGAZINE, June 2000, available at <http://riversofsteel.com/ros.aspx?id=138&h=78&sn=88>; Redevelopment Authority of Allegheny County (RAAC), Home Page, <http://www.county.allegheny.pa.us/economic/raac.asp> (last visited Mar. 25, 2007) (describing the Waterfront as "a \$300 million synergistic mix of commercial, retail and residential development"). At \$300 million, the site will be worth fifteen times the \$20 million Continental paid in 1977. See Jeffrey Cohan, *Waterfront Deal a Bit Taxing for Homestead*, PITTSBURGH POST-GAZETTE, Apr. 18, 2004, available at <http://www.post-gazette.com/pg/04109/302573.stm>. That figure dwarfs the \$14 million that Park Corporation paid for the site in 1988. See SERRIN, *supra* note 3, at 393.

⁷² SERRIN, *supra* note 3, at 407.

⁷³ *Id.*

⁷⁴ See DIANA PEARCE, PATHWAYS PA, THE SELF-SUFFICIENCY STANDARD FOR PENNSYLVANIA 9, 14 (2006), available at http://pathwayspa.org/policy/FINAL_PA-2006_full%20report5-15-06.pdf. An adult living with one pre-schooler and one school-aged child in Pitts-

will divert tax revenues totaling close to \$1 million per year from Homestead alone until 2018.⁷⁵ Without those funds, Homestead remains a distressed municipality under the state's Act 47.⁷⁶ Nevertheless, the borough's present tax revenue, which is only forty-four percent of what it would be without the TIF, is double what it was pre-development.⁷⁷ Despite this improvement, residents are frustrated, a feeling that intensified in 2003 when Continental sold a portion of the site for \$124 million.⁷⁸

The limited access to the site is another point of contention. It particularly disappoints Eighth Avenue merchants, whose view of the Waterfront is one of railroad tracks and the back of big-box stores.⁷⁹ They regret that there was no comprehensive plan that might have improved the integration of the project with the heart of the borough.⁸⁰

In spite of these concerns, Homestead is better off than it was a few short years ago.⁸¹ Continental assumed a substantial risk in developing the parcel, and would not have proceeded without the TIF agreement.⁸² The towns are skeptical, however; they believe Continental was aware of the site's "massive potential" and may have fared well without the TIF agreement. They believe their failure to conduct research to assess the true value of the site when the plant closed has hurt them in the long run. On balance, it seems that the TIF agreement, and perhaps the project as a whole, has been "good news/bad news" for the community.⁸³

burgh must earn \$18.59 per hour to meet basic needs. *Id.* at 10–11. Retail salespersons and cashiers working in Allegheny County make between \$7.44 and \$9.03 per hour. *Id.* at 30.

⁷⁵ See Cohan, *supra* note 71.

⁷⁶ *Id.* The frustration and impatience is not limited to Homestead. *Id.* Munhall Councilman Mike Terrick believes that Continental fared too well in the TIF and that the borough is actually losing money on the project. *Id.* The town is also unnerved that revenues that might otherwise be available to the town are being used for cosmetic landscaping. Brian C. Rittmeyer, *Development Gets Boost from Taxes*, PITTSBURGH TRIBUNE-REV., Oct. 16, 2003, available at http://www.pittsburghlive.com/x/pittsburghtrib/s_160156.html. Officials argue that any excess tax increment revenue should be used to retire debt or be refunded to the host communities. *Id.*

⁷⁷ Cohan, *supra* note 71.

⁷⁸ *Id.* The perceived inequity of such a windfall has led a county councilman to sponsor legislation mandating the retirement of TIF obligations upon such a sale. *Id.*

⁷⁹ Wolf, *supra* note 10, at 2F.

⁸⁰ *Id.*

⁸¹ See Cohan, *supra* note 71.

⁸² *Id.* (quoting Barry Ford, President, Continental Real Estate's Pittsburgh Office).

⁸³ *Id.* (quoting Joseph Hohman, President, Resource Development and Management Inc., Homestead's Act 47 coordinator). Shortly before this Article went to press, Homestead emerged from distressed status. The borough's mayor, Betty Esper, credits the Waterfront development with the turn around. See Ed Blazina, *Homestead Sheds "Distressed" Status*,

II. THE SOUTH SIDE WORKS

A. Site History

LTV Steel operated the South Side Works on 123 acres in Pittsburgh's South Side.⁸⁴ Like so much of the flat plain along the Monongahela, the land had been used for steel making since the late nineteenth century.⁸⁵ Jones and Laughlin Steel Company (J&L) opened a steel plant on the site in 1893, and was joined by Republic Iron Works and American Iron & Steel Works in 1905.⁸⁶ By the 1950s the J&L plant was booming and employed thousands of workers. Like the Homestead Works, the South Side plant was connected to furnaces across the river by a hot metal railroad bridge.⁸⁷ LTV acquired J&L in 1974,⁸⁸ and eventually became the nation's second largest steel producer.⁸⁹

After years of profitable production, the LTV facility experienced the same decline that plagued the rest of the Mon Valley steel plants. It halted nearly all operations in 1984.⁹⁰ After idling the plant, it sold the site to Pittsburgh's Urban Redevelopment Authority (URA) in 1993.⁹¹

B. The Community

The parallels between the South Side and Homestead are striking. Pittsburgh's South Side neighborhood was populated by a mix of immigrants who worked in the neighborhood's once-famous glass factories before iron works and steel plants took hold in the twentieth cen-

PITTSBURGH POST-GAZETTE, Mar. 29, 2007, available at <http://www.post-gazette.com/pg/07088/773377-55.stm>.

⁸⁴ Urban Redevelopment Authority of Pittsburgh, Showcase Projects: South Side Works, http://www.ura.org/showcaseProjects_ssWorks3.html (last visited Mar. 25, 2007) [hereinafter URA Website] (offering an in-depth historical account of the Urban Redevelopment Authority's (URA) involvement and cleanup of the LTV site).

⁸⁵ See Carnegie Mellon University, LTV South Side Works, Background Information, <http://www.ce.cmu.edu/Brownfields/NSF/sites/ltv/info.htm> (last visited Mar. 25, 2007) [hereinafter LTV South Side Works, Background].

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Interview with Rick Belloli, Executive Dir., and Judy Dyda, Manager of Cmty. Planning, South Side Local Dev. Co., in Pittsburgh, Pa. (Sept. 15, 2006) [hereinafter Belloli/Dyda Interview]. LTV's coke facility and steam plant remained in operation until 1998. URA Website, *supra* note 84.

⁹¹ LTV South Side Works, Background, *supra* note 85.

ture.⁹² Many residents thought it “inconceivable” that the LTV plant would ever close, and blamed the closure on union demands and management’s failure to reinvest in the facilities.⁹³ LTV’s departure, like U.S. Steel’s in Homestead, left thousands of people without work,⁹⁴ many of whom were psychologically devastated.⁹⁵ And, like Homestead, mill employment by generations of family members left the community with a sense of history that remains inextricably linked to steel making.⁹⁶

The South Side is smaller than Homestead but its geography is similar. It covers a flat plain bordering the river, known as the South Side “Flats,” which gives way to a rising expanse called the “Slopes.”⁹⁷ The neighborhood offers a mix of residential, commercial, and light industrial land concentrated in a fairly dense urban grid.⁹⁸

The 2000 census, taken at a time during the early stages of redevelopment at the South Side Works, showed a 10.2% population decline over 1990 figures.⁹⁹ The number of twenty to twenty-nine year olds increased 7% during the same ten years.¹⁰⁰ Still, people sixty-five and older accounted for the largest segment of the population even though their numbers were decreasing.¹⁰¹ The overall population decline was attributed to the loss of the steel industry and the trickle-down effect on commercial establishments in the neighborhood.¹⁰²

The South Side is predominantly white. Even with an increase in minority residents between 1990 and 2000, blacks comprise only 5.5% of the population compared to the greater Pittsburgh area’s 32%.¹⁰³ Census figures also reveal that in 2000, the South Side was a low-income neighborhood. Just over half of its residents had low to moderate incomes, and 22.8% lived below the poverty level compared to 20.4% city-wide.¹⁰⁴

⁹² Videotape: South Side (WQED Pittsburgh 1998) (on file with Duquesne University’s Gumberg Library).

⁹³ *Id.*

⁹⁴ URA Website, *supra* note 84 (stating that 10,000 people lost their jobs).

⁹⁵ Belloli/Dyda Interview, *supra* note 90.

⁹⁶ *Id.*

⁹⁷ See SOUTH SIDE LOCAL DEV. CO., SOUTH SIDE NEIGHBORHOOD PLAN 6 (2004), available at http://www.southsidepgh.com/live_and_work/documents/2004nhoodplandownload.pdf [hereinafter SOUTH SIDE NEIGHBORHOOD PLAN].

⁹⁸ *See id.*

⁹⁹ *Id.* at 7.

¹⁰⁰ *Id.* (reflecting, likely, that the South Side is home to many of the city’s college students).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ SOUTH SIDE NEIGHBORHOOD PLAN, *supra* note 97, at 7.

¹⁰⁴ *Id.*

C. Cleanup and Development

The South Side Works would not have been developed absent Act 2's developer-friendly provisions.¹⁰⁵ Like most state brownfield laws, Act 2 offers liability protection for voluntary cleanups.¹⁰⁶ In Pennsylvania, parties may select a background, statewide health, or site-specific cleanup standard.¹⁰⁷ The process for each standard is similar. A notice of intent to remediate must be filed with the Pennsylvania Department of Environmental Protection (DEP) and the municipality where the site is located, and a final report must be submitted to the DEP once remediation is complete.¹⁰⁸ The DEP has sixty days to notify the remediator of deficiencies—ninety days for a site-specific standard—and if the DEP fails to do so, the report is deemed accepted.¹⁰⁹ Act 2 provides for community involvement only for site-specific cleanups, but participation is not guaranteed.¹¹⁰

Act 2's liability protections are similar to those found in other state laws.¹¹¹ A person whose final report is accepted by the DEP is released from further liability under Pennsylvania's environmental laws for "any

¹⁰⁵ Dettore Interview, *supra* note 8. See generally Kirsten H. Engel, *Brownfield Initiatives and Environmental Justice: Second-Class Cleanups or Market-Based Equity?*, 13 J. NAT. RES. & ENVTL. L. 317, 326 (1997–98) (noting that many brownfields would stand vacant without the availability of state voluntary cleanup programs).

¹⁰⁶ See Engel, *supra* note 105, at 324.

¹⁰⁷ A combination of standards may also be selected. 35 PA. CONS. STAT. ANN. § 6026.301 (2006). Attainment of the background standard is achieved by testing representative samples from various environmental media in the area of contamination and cannot be achieved through the use of institutional controls. *Id.* § 6026.302(b). The Statewide Health Standards (SHS) are medium-specific concentrations for regulated substances, which vary based on projected residential or nonresidential use of the land. *Id.* § 6026.303(a), (b). Institutional controls may be used to maintain a SHS but not to attain it. *Id.* § 6026.303(e)(3). Cleanups that are undertaken under a site-specific standard require the preparation of a remedial investigation report, risk assessment, and cleanup plan, and can be attained through a combination of treatment, removal, and engineering and institutional controls. *Id.* § 6026.304(a), (i). Persons cleaning up a site to this standard must also comply with the deed acknowledgement requirements of Pennsylvania's Solid Waste Management Act or Hazardous Sites Cleanup Act. *Id.* § 6026.304(m).

¹⁰⁸ *Id.* § 6026.302(b)(2), (c)(1).

¹⁰⁹ See *id.* §§ 6026.302(e)(3), 6026.303(h)(3), 6026.304(n)(2)(ii).

¹¹⁰ The host municipality can request the remediator to develop a public involvement program. In such a case Act 2 calls for a "proactive" approach to community participation. *Id.* § 6026.304(n)(1)(ii). The plan must involve the community throughout the remedial investigation, risk assessment, and cleanup planning process, and specific practices should be considered, such as doorstep notices, roundtable discussions, hearings, and document access. *Id.* § 6026.304.

¹¹¹ See *id.* § 6026.501(a); Heidi Gorovitz Robertson, *One Piece of the Puzzle: Why State Brownfields Programs Can't Lure Businesses to the Urban Cores Without Finding the Missing Pieces*, 51 RUTGERS L. REV. 1075, 1100–01 (1999).

contamination identified in reports submitted to and approved by the department to demonstrate compliance with [the selected standard].”¹¹² The protection applies to the developer and passes to successors,¹¹³ but is subject to reopeners.¹¹⁴

During its first four years of ownership, the URA began work on a tax increment financing package, hired a consultant to develop a master development plan, engaged in community consensus efforts, and enhanced infrastructure. It also ordered environmental assessments and remediated two hot spots.¹¹⁵

By 1997, the majority of environmental assessments were completed and the URA had entered into a Consent Order and Agreement (COA) with the DEP.¹¹⁶ The URA had already submitted Act 2 notices of intent to remediate soils and groundwater at the four parts of the parcel: the “Main Site,” the “Sarah Street Properties,” the “Tar Tank Area,” and the “Eliza Works Site.”¹¹⁷ The URA selected a combination of statewide-health and site-specific standards, and in 1997, submitted the required risk assessments and cleanup plans for all parcels.¹¹⁸ The COA authorized the URA to proceed with development as long as it performed the remediation detailed in the cleanup plans.¹¹⁹ Upon the DEP’s approval of a final report establishing the completion of the remediation at each parcel, the URA would receive Act 2’s liability protection.¹²⁰ By 1998, most of the remediation was complete.¹²¹

¹¹² 35 PA. CONS. STAT. ANN. § 6026.501(a).

¹¹³ *Id.*

¹¹⁴ *Id.* § 6026.504–.505. Reopeners include new contamination caused by the person who cleans up a site, fraud, the discovery of previously unknown contamination, failure of the remediation method, and new risks associated with increased exposure. *Id.* § 6026.505.

¹¹⁵ URA Website, *supra* note 84.

¹¹⁶ Consent Order and Agreement of Urban Redevelopment Authority of Pittsburgh and the Commonwealth of Pennsylvania Department of Environmental Protection 3 (Apr. 16, 1998) (on file with author) [hereinafter COA].

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 4, 8. The revised cleanup plan for Sarah Street Properties details the contamination at the site, including volatile organic compounds (VOCs) in the soil near underground storage tanks. LTV ACT 2 CLEANUP PLAN, *supra* note 2, at 5. There were two PCB “hot spots” at the Main Site area, as well as petroleum hydrocarbon, metal, and polynuclear aromatic hydrocarbon (PAH) contamination of the soils. *Id.* at 14. The cleanup plan also reveals that deed restrictions would be used to restrict future groundwater use even though much of the site’s groundwater generally met statewide health standards. *Id.* at 12. Groundwater at the Tar Tank Area was, however, contaminated with benzene and naphthalene. *Id.* It was for this reason that the URA selected a site-specific standard for that area. *Id.* at 18.

¹¹⁹ COA, *supra* note 116, at 6.

¹²⁰ *Id.* at 7.

During the next few years the URA finalized the Tax Increment Financing Plan (TIF Plan), continued to improve infrastructure, and sold parcels to developers.¹²² The eastern sixteen acres of the site now include a sports performance and medical office facility for the University of Pittsburgh Medical Center, and a training center for the Pittsburgh Steelers and University of Pittsburgh Panthers football teams.¹²³ Other parcels house the regional headquarters of the Federal Bureau of Investigation and the International Brotherhood of Electrical Workers.¹²⁴ The Soffer Organization, a real estate development firm in Pittsburgh, is developing thirty-five acres of the Main Site,¹²⁵ and has completed two office buildings and various mixed-use, office/retail buildings, some of which include residential lofts.¹²⁶ Its portion of the project has already received the U.S. Environmental Protection Agency's Phoenix Award.¹²⁷ A 270-unit apartment complex has been built on the western end of the site,¹²⁸ and an affordable senior housing complex stands on the Sarah Street Properties.¹²⁹ A park and trail that will run along the development's riverfront is now partially complete.¹³⁰

Unlike Continental, Soffer did not have to deal with above-ground trains and associated access problems.¹³¹ Although over fifty trains traverse the South Side Works parcel daily,¹³² they do so by passing through a tunnel that was built in the 1800s.¹³³ Today, four roads pass over and are perpendicular to the tunnel below, providing easy access to all

¹²¹ URA Website, *supra* note 84. Post-cleanup requirements were limited to the implementation of a health and safety plan for site workers and remediation of construction-related contamination. *Id.*

¹²² *Id.* The TIF agreement provided for \$25 million in financing. *Id.* The project was funded with nearly \$220 million in private investment and \$103 million in public funding. *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Interview with Mark S. Dellana, Vice President of Dev., Soffer Org., in Pittsburgh, Pa. (Sept. 20, 2006) [hereinafter Dellana Interview].

¹²⁷ *Id.*; *see also* News Release, Commonwealth of Pa., Schweiker Administration Land-Recycling Project Earns Prestigious Phoenix Award (Oct. 9, 2002), *available at* <http://www.dep.state.pa.us/NewsReleases/Default.asp?ID=2016>.

¹²⁸ Dellana Interview, *supra* note 126.

¹²⁹ Belloli/Dyda Interview, *supra* note 90.

¹³⁰ Dellana Interview, *supra* note 126.

¹³¹ Ford Interview, *supra* note 8.

¹³² Belloli/Dyda Interview, *supra* note 90.

¹³³ Dellana Interview, *supra* note 126.

points of the site, and the remaining tunnel cover has been attractively landscaped.¹³⁴

The entire development process has been conducted with input from the South Side Local Development Company (SSLDC), the neighborhood's community development corporation.¹³⁵ The SSLDC was established by community residents in 1982, two years before the closing of the LTV plant.¹³⁶ At the time, the community was concerned about the inevitability of the closure of the steel plant and a forty percent vacancy rate on Carson Street, the neighborhood's commercial thoroughfare.¹³⁷ The SSLDC's objectives were twofold: to attract economic development and to preserve the neighborhood's historic character.¹³⁸ The group moved quickly; Carson Street was placed on the National Register of Historic Places within a year.¹³⁹ Today, the SSLDC can boast the arrival of 150 new businesses to the neighborhood, 100 new homes, 120 renovated storefronts, and a commercial vacancy rate of only ten percent.¹⁴⁰

The SSLDC was over ten years old with a strong record of success when the URA purchased the LTV site in 1993. Around the same time a new mayor, Tom Murphy, encouraged Pittsburgh's neighborhoods to engage in visioning and other planning activities, and demanded that public trails be built along all of the city's waterfronts.¹⁴¹ The mayor's policies, along with the strength of the SSLDC, coalesced to bring an unprecedented neighborhood perspective to the decision-making process. In fact, the SSLDC's intervention helped thwart proposals that would have brought big-box stores and riverboat gambling to the site.¹⁴²

The SSLDC's participation yielded other tangible results. Its overall concern was to ensure that the new development looked like a natural extension of Carson Street, which was lined with three- and four-story turn-of-the-century brick buildings with no setbacks. The group

¹³⁴ *Id.*

¹³⁵ See generally South Side Local Development Company, Home Page, <http://www.southsidepgh.com/SSLDC/index.php> (last visited Mar. 25, 2007).

¹³⁶ See South Side Local Development Company, History of SSLDC, http://www.southsidepgh.com/SSLDC/history_SSLDC.php (last visited Mar. 25, 2007) [hereinafter SSLDC History].

¹³⁷ Belloli/Dyda Interview, *supra* note 90.

¹³⁸ See SSLDC History, *supra* note 136.

¹³⁹ *Id.*; see also SOUTH SIDE LOCAL DEV. CO., 2003 ANNUAL REPORT 2 (2003), available at <http://www.southsidepgh.com/SSLDC/documents/SSLDCannual2004.pdf>.

¹⁴⁰ SSLDC History, *supra* note 136.

¹⁴¹ Belloli/Dyda Interview, *supra* note 90.

¹⁴² *Id.*

succeeded in extending Carson Street's historic designation along a portion of Carson Street that bordered the LTV site.¹⁴³ The SSLDC also lobbied for the senior housing units that were eventually built on the Sarah Street Parcel.¹⁴⁴ Additionally, the high-density grid pattern of the neighborhood was kept intact at the insistence of the SSLDC, as were street names.¹⁴⁵ The group also had success dealing with parking, setbacks, and building height restrictions, and persuaded Soffer to agree not to lure existing Carson Street businesses into the new development.¹⁴⁶ The SSLDC remains committed to providing input as the remainder of the site develops.¹⁴⁷

The Soffer Organization had considerable experience working with community groups in Pennsylvania,¹⁴⁸ and was prepared to work with the SSLDC, a group that brought historical perspective, commitment, and expertise to the project.¹⁴⁹ The SSLDC's involvement lengthened the development process, but assured the extension of the neighborhood's ambiance into the South Side Works.¹⁵⁰

SSLDC officials believe that the group's pervasive participation had little to do with Act 2's participation requirements, but rather resulted from the SSLDC's status in the community.¹⁵¹ They also feel that the URA, Soffer, and other developers recognized early on that the SSLDC was a capable and legitimate community force that could make things happen, and that any attempt to work around the group would be counter-productive.¹⁵²

D. Community Reaction

The SSLDC is clearly pleased with the South Side Works. The development retains the look and feel of the old South Side and has not robbed the rest of the community of its commercial tenants.¹⁵³ It has provided the neighborhood with new affordable senior housing units and high-end rental units.¹⁵⁴ Positive spillover effects have also been

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Belloli/Dyda Interview, *supra* note 90.

¹⁴⁸ Dellana Interview, *supra* note 126.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Dellana Interview, *supra* note 126.

felt elsewhere on Carson Street, including increased property values and reports by businesses of increased sales.¹⁵⁵

Further, the 2500 jobs lost by the LTV closing have already been replaced. That number of new employment positions is expected to jump to 5600 when the project is complete.¹⁵⁶ The new jobs include professional jobs as well as retail and hospitality positions, many of which pay as much, if not more, than steelmaking jobs.¹⁵⁷

Complaints about the South Side Works include inadequate parking, lost sales by pre-existing businesses, and unwise design decisions, particularly the small number of authorized departures from height restrictions.¹⁵⁸ Additionally, there is the occasional and inevitable complaint by Pittsburgh residents that a new state-of-the-art steel plant should have been built at the site.¹⁵⁹ Nevertheless, the SSLDC—the development voice of the community—is very pleased with the results.¹⁶⁰ It believes that the South Side Works reflects the community's identity and that the neighborhood's autonomy and sense of control have been heightened as a result of its input into the project.¹⁶¹

III. ENVIRONMENTAL JUSTICE IMPLICATIONS

For some time, scholarship has warned that brownfield development such as that described here may be environmentally unjust.¹⁶² To avoid this pitfall, brownfield programs must strive for distributive fairness in both substance and procedure. Unfortunately, most brownfield programs fail to make this goal a priority.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Belloli/Dyda Interview, *supra* note 90.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* Rick Belloli, Executive Director of the SSLDC, points out that those who longed for steel's return to the site fail to realize that any new plant would hire fewer individuals, by far, than the facilities that now exist. *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See generally Lincoln L. Davies, Note, *Working Toward a Common Goal? Three Case Studies of Brownfields Redevelopment in Environmental Justice Communities*, 18 STAN. ENVTL. L.J. 285 (1999). Environmental justice exists "when everyone, [regardless of race, culture, national origin or income,] enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work." U.S. Environmental Protection Agency, Environmental Justice, <http://www.epa.gov/compliance/environmentaljustice/index.html> (last visited Mar. 25, 2007).

A. *Brownfield Development Threats to Environmental Justice*

Some believe that assuring environmental justice creates conflicts with the policies and objectives of state brownfield laws.¹⁶³ The vast majority of brownfield sites are located in America's urban cores, which are largely populated by minorities and the poor.¹⁶⁴ Despite the fact that brownfield programs offer remediation that might otherwise not occur,¹⁶⁵ and involve properties that tend not to be heavily contaminated,¹⁶⁶ environmental justice issues are numerous.

A common concern targets the risk- and use-based cleanup standards that are typical of state voluntary programs. Commentators argue that these standards, which are normally less stringent than those mandated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),¹⁶⁷ provide communities with "second-class" cleanups.¹⁶⁸ In addition, the meager public participation provisions of many state programs allow developers to proceed with projects without any meaningful input from surrounding communities.¹⁶⁹ Environmental justice communities also worry about development plans that are designed to lure white, affluent consumers to remediated sites.¹⁷⁰ Further, land uses selected by developers that are more tolerant of residual contamination can lock in industrial uses, forever barring a community from using the land for residential purposes.¹⁷¹ Others argue that the gravitation of developers to predominantly white brown-

¹⁶³ See, e.g., Engel, *supra* note 105, at 319–20.

¹⁶⁴ See Stephen M. Johnson, *The Brownfields Action Agenda: A Model for Future Federal/State Cooperation in the Quest for Environmental Justice?*, 37 SANTA CLARA L. REV. 85, 95 (1996); William T.D. Freeland, Note, *Environmental Justice and the Brownfields Revitalization Act of 2001: Brownfields of Dreams or a Nightmare in the Making*, 8 J. GENDER RACE & JUST. 183, 187 (2004).

¹⁶⁵ See Engel, *supra* note 105, at 318, 326; Johnson, *supra* note 164, at 96 (noting that not all brownfield sites trigger a response from the Comprehensive Environmental Recovery, Conservation, and Recovery Act (CERCLA)).

¹⁶⁶ Johnson, *supra* note 164, at 96; Freeland, *supra* note 164, at 190.

¹⁶⁷ See Engel, *supra* note 105, at 318–19.

¹⁶⁸ *Id.* at 319; see also Eisen, *supra* note 9, at 218 (arguing more generally that state brownfield programs fail to adequately address all of the elements of sustainability); Davies, *supra* note 162, at 295 (citing the likelihood of disagreements about the degree of cleanup).

¹⁶⁹ Eisen, *supra* note 9, at 211; Freeland, *supra* note 164, at 194–95.

¹⁷⁰ See, e.g., Andrew O. Guglielmi, Comment, *Recreating the Western City in a Post-Industrialized World: European Brownfield Policy and an American Comparison*, 53 BUFF. L. REV. 1273, 1309 (2005) (describing gentrification problems associated with Portland's brownfield redevelopment program).

¹⁷¹ Engel, *supra* note 105, at 319.

field communities results in a disproportionately smaller number of cleanups in poor, minority neighborhoods.¹⁷²

B. *The Benefits of Brownfield Development—Substance and Procedure*

The potential inequities of brownfield programs are very real and pose threats to both substantive and procedural equity. The totality of the benefits associated with brownfield redevelopment is the substance against which the goals of environmental justice must be measured. The procedures used to obtain those substantive benefits also must be environmentally just.

The substantive benefits of state brownfield programs include a mix of economic and environmental advantages. Commonly cited benefits include contamination reduction and aesthetic improvement¹⁷³ as well as job opportunities and additional tax revenue.¹⁷⁴ An environmentally just brownfield remediation policy will ensure that poor minority communities enjoy these benefits to the same extent as affluent white communities.

The study of the Waterfront and the South Side Works suggests that other, less tangible substantive benefits should be distributed equitably as well, notably the embodiment of community identity in project design, as well as enhancement of community self-determination and empowerment.

The latter benefits are admittedly linked to the procedural shortcomings of state brownfield programs, which are designed to restrict community involvement.¹⁷⁵ Developer avoidance or minimization of community participation is another problem,¹⁷⁶ as are the social problems that overwhelm environmental justice communities and the resource limitations that prevent community leadership initiatives from taking hold.¹⁷⁷ These procedural impediments contribute to the failure of some developments to capture community identity and instill pride in residents.

¹⁷² See Davies, *supra* note 162, at 295.

¹⁷³ See *id.* at 318.

¹⁷⁴ Robertson, *supra* note 111, at 1079.

¹⁷⁵ See Freeland, *supra* note 164, at 194.

¹⁷⁶ See Robertson, *supra* note 111, at 1090.

¹⁷⁷ *Id.* at 1078–79 (noting the “hopeless poverty” of some environmental justice communities).

Various writers have offered suggestions to address these problems,¹⁷⁸ but nearly all of those suggestions address the procedural inequities of state programs. They thus fail to recognize that the ends of community participation are just as important as the means. Those ends include the substantive benefits mentioned above: the reflection of each neighborhood's sense of self in a project's design, and the enhancement of a community's self-determination and empowerment upon the completion of development. As important and necessary as procedural innovations may be, the substantive benefits inuring to community identity and empowerment must be analyzed separately, because the most inclusive and well-intentioned procedural process may not yield projects that empower communities and reflect their identity.

C. *Homestead and the South Side as Environmental Justice Communities*

An environmental justice community is typically one whose minority population is greater than that of the surrounding area.¹⁷⁹ Low income is also an indicator; in fact, some early studies suggest that income correlates more closely with the siting of locally undesirable land uses than does race.¹⁸⁰ Thus, it is not inaccurate to label a predominantly white community with income figures below county and state percentages as an environmental justice community.¹⁸¹

A variety of methodologies are used to determine whether a neighborhood is an environmental justice community.¹⁸² For the purposes of this Article, race, median income, and poverty figures for the

¹⁷⁸ Freeland, *supra* note 164, at 200 (suggesting that state programs can address inequities in community participation in their siting decisions); James T. O'Reilly, *Environmental Racism, Site Cleanup and Inner-City Jobs: Indiana's Urban In-Fill Incentives*, 11 YALE J. ON REG. 43, 66 (1994) (suggesting community relations specialists); Ellen B. Sturm, *Nonprofit Organizations in Brownfields Redevelopment: Leveling the Playing Brownfield*, 8 BUFF. ENVTL. L.J. 99, 118–21 (2000) (suggesting the use of nonprofit intermediaries); D. Evan van Hook, *Area-Wide Brownfield Planning, Remediation and Development*, 11 FORDHAM ENVTL. L.J. 743, 758–59 (2000) (suggesting the use of steering committees made up of a variety of stakeholders).

¹⁷⁹ See generally CLIFFORD RECHTSCHAFFEN & EILEEN GAUNA, ENVIRONMENTAL JUSTICE LAW, POLICY & REGULATION 55–85 (Carolina Academic Press 2003) (2002) (discussing evidence of environmental justice and use of various research methodologies).

¹⁸⁰ Bunyan Bryant & Paul Mohai, *Environmental Racism: Reviewing the Evidence*, in RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE 163 (Bunyan Bryant & Paul Mohai eds., 1992), reprinted in RECHTSCHAFFEN & GAUNA, *supra* note 179, at 66.

¹⁸¹ See Davies, *supra* note 162, at 306 (labeling a largely Caucasian community an environmental justice community based on census data showing a higher level of poverty than the county and the state).

¹⁸² See RECHTSCHAFFEN & GAUNA, *supra* note 179, at 70.

town of Homestead and the South Side neighborhood as a whole will be compared to those for the city of Pittsburgh, Allegheny County, and Pennsylvania. All comparisons are based on 2000 census numbers, compiled at a time when the Homestead and South Side steel plants had closed and redevelopment efforts were in their early stages.

This comparison is admittedly simplistic. Nevertheless, Table 3 indicates quite clearly that Homestead was an environmental justice community. Its minority population and poverty figures were well above those of Pittsburgh, Allegheny County, and Pennsylvania. Homestead's median household income was also significantly lower than that of the other jurisdictions.

Geographic Unit	% Minority Population	Median Household Income (\$)	% Below Poverty Level
Homestead ¹⁸³	57.4	16,603	26.5
South Side ¹⁸⁴	5.5	28,588*	22.8
Pittsburgh ¹⁸⁵	32.4	28,588	20.4
Allegheny County ¹⁸⁶	15.7	38,329	11.2
Pennsylvania ¹⁸⁷	14.6	40,106	11.0

* Source indicates that three of the South Side's four census tracts are below this figure, which represents the median household income of Pittsburgh.¹⁸⁸

The South Side figures are more equivocal. In 2000, the neighborhood's poverty level was only slightly above that of the city of Pittsburgh, but was nevertheless twice that of Allegheny County and Pennsylvania as a whole. Median income figures tell a similar tale; the South Side figure is equal to the city figure, but is well below county and state figures. Further, the neighborhood was less diverse, by far, than the four other jurisdictions.

The South Side was not a classic environmental justice community, yet some of its post-steel characteristics point in that direction.¹⁸⁹ Never-

¹⁸³ HOMESTEAD BOROUGH CENSUS PROFILE, *supra* note 48.

¹⁸⁴ See SOUTH SIDE NEIGHBORHOOD PLAN, *supra* note 97, at 7.

¹⁸⁵ U.S. CENSUS BUREAU, CENSUS PROFILES, CITY OF PITTSBURGH, PENNSYLVANIA T.DP-1, T.DP-3 (2000), available at <http://www.ucsur.pitt.edu/CensusProfiles/City%20of%20Pittsburgh.pdf>.

¹⁸⁶ U.S. CENSUS BUREAU, CENSUS PROFILES, ALLEGHENY COUNTY, PENNSYLVANIA T.DP-1, T.DP-3 (2000), available at <http://www.ucsur.pitt.edu/CensusProfiles/allegHENYcounty.pdf>.

¹⁸⁷ U.S. CENSUS BUREAU, CENSUS PROFILES, PENNSYLVANIA T.DP-1, T.DP-3 (2000), available at <http://censtats.census.gov/data/PA/04042.pdf>.

¹⁸⁸ SOUTH SIDE NEIGHBORHOOD PLAN, *supra* note 97, at 7.

¹⁸⁹ See Davies, *supra* note 162, at 306.

theless, few persons walking down Homestead's Eighth Avenue and the South Side's Carson Street in 2000 would have described the communities similarly. At that time, Eighth Avenue was a sea of boarded up buildings and ramshackle structures. Carson Street, on the other hand, was packed with popular bars, restaurants, and coffee houses that catered to a large student population.¹⁹⁰ The South Side was also home to many young professionals.¹⁹¹ Based on that reality, it would be difficult to label the South Side an environmental justice community. This conclusion paves the way for a comparison of two relatively contemporaneous developments of post-steel brownfields, one located in an environmental justice community and one situated in a more affluent, predominantly white city neighborhood.

D. Disparities in Brownfield Redevelopment Benefits

A good case can be made that the traditional environmental and aesthetic benefits of brownfield redevelopment have been equitably distributed at the Waterfront and the South Side Works. Both are beautiful projects that have vastly improved the aesthetics of their communities. Also, both properties are cleaner than they once were and offer a range of commercial and residential uses.

Some would nevertheless argue that aesthetic benefits have been inequitably distributed. The Waterfront is undeniably attractive, and its extensive use of brick echoes many of the old buildings that line Eighth Avenue. Yet the project is isolated; there is no integration with Eighth Avenue's business district or the community at large,¹⁹² a point made clear by the Avenue's merchants.¹⁹³ On the other hand, positive remarks about the integration of the South Side neighborhood and South Side Works are common.¹⁹⁴ This integration is made even more apparent to diners and shoppers by a shuttle service that moves visitors and residents between the Southside Works and the rest of Carson Street.¹⁹⁵

The distribution of the projects' economic benefits is even more uneven. As noted, the revenue sharing and TIF agreements that were crucial to the development of the Waterfront have significantly de-

¹⁹⁰ These descriptions are based on the author's personal knowledge.

¹⁹¹ Dellana Interview, *supra* note 126.

¹⁹² Lord, *supra* note 5; Wolf, *supra* note 10, at 2F.

¹⁹³ See *supra* text accompanying note 79.

¹⁹⁴ Belloli/Dyda Interview, *supra* note 90; Dellana Interview, *supra* note 126.

¹⁹⁵ The shuttle service was the idea of the SSLDC. Belloli/Dyda Interview, *supra* note 90.

creased the amount of tax revenue that Homestead, Munhall, and West Homestead would otherwise enjoy.¹⁹⁶ The loss of those funds has been keenly felt by Homestead,¹⁹⁷ whose residents also argue that the retail and hospitality jobs created at the Waterfront offer wages that are too low to support a family, and pale in comparison to the jobs once enjoyed by steelworkers.¹⁹⁸

Negative remarks about tax revenues, jobs, and aesthetics are generally not heard in relation to the South Side Works. Even though the financing for that project involved a TIF, the effects of lost tax revenue are dispersed throughout the city of Pittsburgh, rather than visited solely upon the South Side.¹⁹⁹ Further, the one million square feet of office space at Soffer's portion of the South Side Works²⁰⁰—which does not include the other non-retail facilities at the site such as the University of Pittsburgh Medical Center and Federal Bureau of Investigation buildings—is considerably more than the 400,000 square feet of office space at the Waterfront.²⁰¹ The South Side Works's office space provides a diverse array of jobs, many of which pay more than the steel jobs of the past.²⁰² These facts suggest that the South Side Works, a much smaller and denser development, is bestowing more economic benefits to the community than is the Waterfront.

The brownfield benefits associated with community identity also are more evident at the South Side. The neighborhood's dense, brick, grid design is clearly reflected throughout much of the South Side Works. SSLDC representatives strongly believe that the project not only reflects the neighborhood's identity, but is a testament to the self-determination of nearby residents.²⁰³ While the use of brick and the forceful presence of mill machinery at the Waterfront are a reminder of the site's legacy, the project's low-density, big-box look and sprawling

¹⁹⁶ See *supra* Part I.D.

¹⁹⁷ See *supra* text accompanying note 69.

¹⁹⁸ See MODEL, *supra* note 11, at 304 (describing residents' frustration with the small number of low-paying jobs created by a water park attraction built at another former steel site in Homestead). Homestead residents repeatedly expressed their desire for higher paying industrial jobs. See SERRIN, *supra* note 3, at 407.

¹⁹⁹ Belloli/Dyda Interview, *supra* note 90.

²⁰⁰ Mark Dellana, Vice President of Dev., Soffer Org., Chart of Southside Works Development Square Footage (Sept. 2006) (on file with author).

²⁰¹ Kevin Kenyon, *Pittsburgh Steel Plant Site Getting Mixed-Use Project*, SHOPPING CENTERS TODAY, June, 1999.

²⁰² Belloli/Dyda Interview, *supra* note 90. When asked if he would have changed anything at the Waterfront, Barry Ford stated he may have developed more office space. Ford Interview, *supra* note 8.

²⁰³ Belloli/Dyda Interview, *supra* note 90.

parking lots contrast sharply with the higher density commercial and residential design of Eighth Avenue and nearby streets. Further, some residents complain that the development fails to include industrial or job training facilities that would more fully capture the spirit of the borough.²⁰⁴

The degree of community empowerment and satisfaction appears to be greater at the South Side Works as well. Complaints about lost revenues, low-paying jobs, and lack of accommodation of community desires are more prevalent in Homestead than in the South Side. The SSLDC considers its contribution to the South Side Works to be a job well done and looks forward to a continued partnership with developers as the project is completed.²⁰⁵ Homestead officials, on the other hand, are generally appreciative of the Waterfront, but still feel left behind. They point to missed planning opportunities and their failure to receive a fair share of the project's economic benefits.²⁰⁶

The disparities between the projects' success in reflecting community identity and respecting self-determination are mirrored by disparities in the procedural benefits associated with the projects. The SSLDC was a key player in South Side Works design decisions from the outset; even today it remains involved with the project on a daily basis.²⁰⁷ Additionally, its participation was welcomed by Pittsburgh's Urban Redevelopment Authority and Soffer, both of which recognized the group's legitimacy and expertise.²⁰⁸

There was no similar participation at the Waterfront; however, that reality was not due to private remediation or developer unwillingness. Homestead simply lacked a strong community development organization that was ready to inject itself into the decision-making process when Park Corporation purchased the land from U.S. Steel. Post-steel Homestead's near free-fall in the face of an unprecedented crisis depleted the borough of the social capital that may have made it possible to develop and implement a coordinated public participation strategy.

It is sad but not surprising that Homestead—the environmental justice community—received disproportionately fewer of the benefits associated with brownfield redevelopment when compared to the South Side. This result was neither intentional nor exploitive in any

²⁰⁴ See *supra* Part I.D.

²⁰⁵ Belloli/Dyda Interview, *supra* note 90.

²⁰⁶ See *supra* note 83 (noting the Homestead mayor's positive remarks about the Waterfront); see also *supra* Part I.D.

²⁰⁷ Belloli/Dyda Interview, *supra* note 90.

²⁰⁸ *Id.*

way. In fact, the disparities suffered by Homestead, particularly those touching on aesthetics, were at least partially caused by the above-ground railroad tracks that not only prevented better integration with Eighth Avenue, but resulted in buildings backing up to, rather than facing, the town's main thoroughfare.²⁰⁹ It is, however, inescapable that most of the inequity in Homestead resulted from disparities in community resources and political will, factors that are ubiquitous in environmental justice scenarios.²¹⁰

IV. TOWARD AN ENVIRONMENTALLY JUST BROWNFIELD POLICY

A number of writers have suggested ways to make brownfield programs more just. A recurring suggestion is to improve the public participation provisions of state brownfield laws.²¹¹ Again and again, authors emphasize the need to include the public from the beginning of the redevelopment process.²¹² Giving developers the freedom to make land use and remediation decisions may encourage and streamline the redevelopment process;²¹³ however, the relatively brief history of these programs demonstrates that projects are more successful when developers act "with careful attention to the current and future needs of the cities in which sites are located, rather than proceeding in an ad hoc fashion."²¹⁴

Amending brownfields laws to integrate all three parameters of sustainable development—the environment, economy, and equity—is another suggestion.²¹⁵ State programs often are touted as sustainable, but the reality suggests otherwise.²¹⁶ Serious attempts to inject the integrative policies of sustainable development into brownfield programs are needed. Mandating continuous government oversight throughout the lifespan of a project to ensure that environmental, economic, and social issues are being adequately addressed would help achieve this

²⁰⁹ Ford Interview, *supra* note 8.

²¹⁰ See RECHTSCHAFFEN & GAUNA, *supra* note 179, at 3.

²¹¹ See, e.g., Joel B. Eisen, *Brownfields Redevelopment*, in STUMBLING TOWARD SUSTAINABILITY 457, 465 (John C. Dernbach ed., 2002).

²¹² *Id.* at 464.

²¹³ See *id.* at 459–60.

²¹⁴ *Id.* at 462.

²¹⁵ *Id.* at 465.

²¹⁶ *Id.* at 458 (citing President Clinton's Council on Sustainable Development as promoting the link between brownfield redevelopment and sustainability).

goal.²¹⁷ Developers currently escape such close scrutiny, particularly during project design and cleanup.²¹⁸

These suggestions hold promise, but there is no guarantee that more opportunities for participation and attention to sustainability will yield community satisfaction and projects that are reflective of community identity. In order for brownfield programs to generate these benefits in ways that alleviate the inequities between environmental justice and other communities, mechanisms must be in place to assess the political strength of communities well before a project begins. Further, communities with weak social capital must be provided with resources to help them identify concerns and bring them to the attention of developers.

These objectives could be addressed in various ways. Area-wide planning for communities with multiple brownfields through the use of community-based steering committees would coordinate planning on a larger scale and integrate community perspectives into the development process.²¹⁹ Community relations specialists²²⁰ and nonprofit organizations that facilitate brownfield development have also been touted as a means of guaranteeing community input where social capital is weak.²²¹ One can only wonder what area-wide planning of the Mon Valley's steel-making brownfields would have yielded, or what the intervention of a community relations specialist or non-profit facilitator may have accomplished in Homestead.

The prospect of intermediary involvement once planning is underway could lead developers to steer clear of environmental justice communities in the future, especially when layered onto programs that are designed to be hands-off and efficient. This result could largely be addressed by pre-development intervention. As one writer suggests,

Communities that are not ready for redevelopment projects may at best be unable to help facilitate a project, and at worst may oppose an otherwise good project out of fear or uncertainty. Communities that *are* ready have organized a working consensus among the stakeholders, have clarity about their vi-

²¹⁷ Eisen, *supra* note 211, at 462 (citing the importance of an "elaborate feedback mechanism").

²¹⁸ *Id.* at 462–63.

²¹⁹ See van Hook, *supra* note 178, at 758, 763.

²²⁰ O'Reilly, *supra* note 178.

²²¹ Sturm, *supra* note 178, at 105, 125–27 (noting that such groups can help obtain financial support and pro bono services for the community).

sion for the future, and have created the institutional vehicles needed to implement their plans.²²²

The key is to have environmental justice communities “ready” for brownfield developers. States will have to play a role if this is to occur. They should take steps to help environmental justice communities prepare to be legitimate participants in brownfield remediation before projects are even contemplated.²²³ A first step would require states to identify candidate communities. A series of public hearings could be held to inform those communities about nearby brownfields, the brownfield process, and potential opportunities for development.²²⁴ States could also offer targeted funding to allow community organizations or other entities help residents prepare vision statements and plans, and form leadership teams that could be taught collaborative decision-making skills. Communities benefiting from these initiatives would be prepared to hit the ground running when a developer comes to town, and might even receive some sort of state certification of brownfield readiness. It is not up to developers to engage in community readiness activities. Rather, it is up to the states to take steps to ensure that communities are prepared to guide developer decisions in ways that will maximize all of the benefits associated with brownfield development.

Community development corporations and nonprofit brownfield facilitators alike could be part of the process, as could brownfield planning and community outreach centers sponsored by universities or coalitions of other regional organizations. Regardless of the mechanism, communities would work toward choosing leaders and formulating community visions and plans for their brownfields well before development decisions are made. Interested developers would have the advantage of working with legitimate participants from the outset; project development would not stall while an environmental justice community plays catch-up, scrambling to try to understand what is happening to its neighborhood and to inject itself into the process. A pre-development preparation approach would instead require developers and state regu-

²²² *Id.* at 119 (quoting HAROLD J. RAFSON & ROBERT N. RAFSON, *BROWNFIELDS: REDEVELOPING ENVIRONMENTALLY DISTRESSED PROPERTIES* 161 (1999)).

²²³ See O'Reilly, *supra* note 178, at 60–61.

²²⁴ The need to fully inform environmental justice communities about brownfields and other environmental programs is widely accepted. See, e.g., Stephen M. Johnson, *Economics v. Equity: Do Market-Based Environmental Reforms Exacerbate Environmental Injustice?*, 56 WASH. & LEE L. REV. 111, 123–24 (1999).

lators to take into account well-formulated, consensus-based community objectives at the optimum time.²²⁵

The community readiness approach would certainly add time to a project that might otherwise require little or no public input. Nevertheless, developers would know from the beginning who they are dealing with, what the community's vision is,²²⁶ and that the community team is committed and legitimate. Brownfield developments that have succeeded in environmental justice communities share these characteristics,²²⁷ as does the South Side Works, where developers recognized the value of working with the SSLDC.²²⁸ Further, if organized sufficiently in advance, community groups could begin to put in place community assets that are known to attract urban developers, such as new zoning districts, public transportation routes, education centers, and crime prevention programs.²²⁹ Had Homestead been aided by a readiness team in the late 1980s to help it develop a master plan for its post-steel years, different decisions may have been made at the Waterfront, or the community may have been more accepting of the project's master plan.

Pennsylvania has recently established a program that further streamlines the brownfield redevelopment process in ways that may hold promise for environmental justice communities.²³⁰ The program is spearheaded by the Governor's Action Team (GAT), a group of "seasoned economic development professionals" that matches growing companies with Pennsylvania brownfields.²³¹ The Community Action Team (CAT) complements GAT by directing state resources to "communities that may be struggling with their revitalization efforts."²³² GAT and CAT are clearly driven by economic and environmental policies,²³³ and there is currently no direct interface between those teams and the

²²⁵ It is imperative that any readiness mechanism avoid being paternalistic in its relationship with the community. See SERRIN, *supra* note 3, at 406–07 (describing such a failing in Homestead).

²²⁶ A community's vision is likely to include more than economic improvement. Davies, *supra* note 162, at 294–95, 322–23.

²²⁷ *Id.* at 318–19.

²²⁸ Dellana Interview, *supra* note 126.

²²⁹ See Robertson, *supra* note 111, at 1114–18.

²³⁰ See generally Powerpoint Presentation, Office of Edward G. Rendell, Governor of Pa., Revitalizing Pennsylvania: A Report on Brownfield Investments 2003–2006 (2006).

²³¹ *Id.* at 3.

²³² *Id.* at 4.

²³³ *Id.* at 3 (noting that the state's brownfield initiatives make it "a partner in economic and environmental development").

state's Office of Environmental Advocate.²³⁴ Nevertheless, CAT seems ideally suited to do more than provide resources to struggling communities. Its mission should include proactive involvement with those communities—some of which are certainly environmental justice communities—to help them develop the leadership and planning skills that will make them legitimate partners when development comes their way.

CONCLUSION

The lesson of these two case studies is not merely that an environmental justice community needs a strong community organization in order to maximize brownfield benefits. It is also crucial that a coherent community vision and leadership team are in place before development proposals are made. States will need to play a proactive role in identifying, educating, and funding these mechanisms to prepare environmental justice communities with limited social capital. And developers must understand that partnering with mobilized and legitimate community groups or non-profit players that represent environmental justice concerns will not be disruptive, but rather will steer them toward decisions that will benefit all concerned in an equitable manner. In this way, there will be more happy endings to tales like those told here.

²³⁴ Telephone interview with Holly Cairns, Env'tl. Advocate, Pa. Dep't of Env'tl. Prot., Sw. Reg'l Office (Oct. 3, 2006).