

NOTE

Power Play Goal: Analyzing Zoning Law and Reparations as Remedies to Historic Displacement in Pittsburgh's Hill District

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ABSTRACT

Pittsburgh's Hill District ranked among the most important historically Black neighborhoods in America until the heart of the neighborhood was razed in 1956. When "urban renewal" hit Pittsburgh, 1,500 families were displaced from the Lower Hill District, replaced by what would become a hockey arena. The displacement had catastrophic results for the entire Hill District: By 2010, the neighborhood had lost nearly eighty percent of its 1950s population and upwards of forty percent of current residents lived in poverty. In 2011, the hockey team, the Pittsburgh Penguins, moved out, and the old Civic Arena was torn down. Over the past decade, the city, developers, and Hill District community groups have fought over the future of the land where the arena once stood. While developers sought special zoning rules, the community was focused on a bigger issue: ensuring that whatever was built on that land benefited those that had been harmed by the historic displacement. The redevelopment and attempted reclamation of the Lower Hill District by the community serves as a unique case study into both the difficulties and possibilities of remedying the historic wrongs that have destroyed culturally important poor, Black, and Hispanic neighborhoods throughout the country. This article, mindful of that history, takes the community's demand for "restorative justice" seriously—as an argument for reparations in the land planning context. Given the nature of zoning law and the weaknesses of current attempts to negotiate with developers, this article argues that some form of reparations is required to ensure that the redevelopment of former sites of "urban renewal" honor the history of the poor, Black, and Brown families that had previously lived on the land.

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“There’s no glossing over the need for rehabilitation,’ said historian Laurence Glasco. ‘But it was not in people’s thoughts to rehab back then. It was just, ‘Wipe it out.’ [City officials] had their eye on what they wanted.’”¹ What they wanted was a “big, glorious opera house”² with a retractable roof. What stood in their way was a neighborhood.

The neighborhood didn’t last long.

When buildings came down, they’d “stagger like shameless drunks, collapsing in dazzling clouds of dust. . . . Thundering sidewalks pulsated shockwaves through my shoes,” remembered one resident.³ “A lot of stuff was left behind. Moving costs money. We tossed 78 [rpm] records in the street [like Frisbees].”⁴

“The demolition of the neighborhood tore our lives apart.”⁵

The neighborhood was the Lower Hill District. The city was Pittsburgh. The opera house was the Civic Arena. The result was the displacement of more than 8,000 people, most of whom were Black, and the destruction of their homes and

1. Diana Nelson Jones, *Pittsburgh's Lower Hill: Traces of a lost neighborhood*, PITTSBURGH POST-GAZETTE (June 18, 2018), https://newsinteractive.post-gazette.com/lower_hill/.

2. *Id.* (quoting Carlos Peterson).

3. *Id.*

4. *Id.*

5. *Id.* (quoting Carol Johnson).

businesses.⁶ Now, some seventy years later, a chance has come to heal the scars of the neighborhood razed to make space for what would become a hockey arena and a sea of surface-level parking lots on prime real estate adjacent to Downtown.⁷

At its peak, the Hill District was home to a bustling small-business district with a renowned jazz and nightclub scene, a successful Negro League Baseball team, and a prominent Black newspaper.⁸ Playwright August Wilson grew up in the neighborhood, which would serve as the setting for most of his plays—including the award-winning *Fences*.⁹ The Hill District has been considered “‘pound for pound’ the ‘most generative’ black community in the United States.”¹⁰ It was among the most culturally important historically Black neighborhoods in America before it was destroyed in the 1950s as part of an “urban renewal” effort.¹¹ The Hill District as a whole never recovered: By the 2010 census, the Hill District had lost nearly eighty percent of its 1950s population and upwards of forty percent of current residents lived in poverty; the neighborhood even lacked a grocery store for decades.¹²

In 2010, the hockey team, the Pittsburgh Penguins, moved to a new arena, and the Civic Arena was torn down in the following year.¹³ In the decade since, the city, developers, and Hill District community groups have fought over the future of the twenty-eight-acre site where the arena and the neighborhood it destroyed once stood.¹⁴ The Penguins own the development rights to the land,¹⁵

6. JASON ESPINO ET AL., *ARCHAEOLOGICAL SURVEY OF THE LOWER HILL REDEVELOPMENT PROJECT*, CITY OF PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA 41, 105–06 (Michael Baker Jr., Inc. ed., 2013), <https://apps.pittsburghpa.gov/dcp/lower-hill-phase-i-ii-archaeology-report-june-2013.pdf>.

7. *See, e.g.*, Jesse Washington, *Penguins ‘restorative development’ project aims to repair Pittsburgh’s famed Hill District*, ANDSCAPE (Jan. 13, 2021), <https://andscape.com/features/penguins-restorative-development-project-aims-to-repair-pittsburghs-famed-hill-district/>; FRANKLIN TOKER, *PITTSBURGH: AN URBAN PORTRAIT 235* (Univ. of Pittsburgh Press 1994) (1986).

8. JOE W. TROTTER & JARED N. DAY, *RACE AND RENAISSANCE: AFRICAN AMERICANS IN PITTSBURGH SINCE WORLD WAR II 20–22* (2010); *GREATER HILL DISTRICT MASTER PLAN 14* (2011), <https://www.ura.org/media/W1siZiIsIjIwMTkvMDcvMjIvOWVqN3ZmMHludF9FeGhpYml0X0JfR3LJlYXRlc19IaWxsX0Rpc3RyaWN0X01hc3Rlc19QbGFunBkZiJdXQ/Exhibit%20B%20-%20Greater%20Hill%20District%20Master%20Plan.pdf>.

9. John L. Dorman, *August Wilson’s Pittsburgh*, N.Y. TIMES (Aug. 15, 2017), <https://www.nytimes.com/2017/08/15/travel/august-wilsons-pittsburgh.html>.

10. TROTTER & DAY, *supra* note 8, at xix.

11. *See id.* at xxi; ESPINO ET AL., *supra* note 6, at 30, 33.

12. Tom Davidson, *Hill District residents lament Shop ‘n Save’s closing*, PITTSBURGH TRIBUNE-REVIEW (Feb. 22, 2019), <https://triblive.com/local/pittsburgh-allegheeny/as-hill-district-residents-lament-shop-n-saves-closing-officials-work-to-attract-another-store/>; Washington, *supra* note 7; UNITED STATES CENSUS BUREAU, *Census 1950 Census Tract Only and Census 2010*, (Digitally transcribed by Inter-university Consortium for Political and Social Research. Edited, verified by Michael Haines. Compiled, edited, verified and additional data entered by Social Explorer).

13. Matt Simmons, *On This Day: September 26, 2011, Demolition begins on Civic Arena*, WPXI.COM (Sept. 26, 2021), <https://www.wpxi.com/archive/this-day-september-26-2011-demolition-begins-civic-arena/7MPFF6QDAVBRRGSG3UMBCJBDVU/>.

14. *See id.*

15. *Id.*

but the city and county own the land itself through the jointly-run Sports & Exhibition Authority (SEA) and Urban Redevelopment Authority (URA).¹⁶ The Penguins and their hired developers agreed with the Hill Community Development Corporation (Hill CDC)—the Hill District’s city-recognized “registered community organization (RCO)”¹⁷—that the new development had to acknowledge the history associated with the land as part of “restorative justice”.¹⁸ Where the parties disagreed was what exactly that meant.

The experience of the Hill District shows that reparations are necessary to ensure that communities victimized by historic displacement benefit from the redevelopment of that historic site. In other words, the only way to ensure that a historically marginalized community benefits from the redevelopment of its historic neighborhood is to require reparations as part of the redevelopment process. As things stand today, land planning law is incapable of accommodating the needs or demands of the community it should be serving—needs recognized by the City of Pittsburgh and the Penguins as important and just.¹⁹ If cities like Pittsburgh actually mean it when they endorse what the Hill is calling “restorative justice,” they will have to change their land planning laws accordingly. The incorporation of some form of reparations, whether in the form of the “atonement model,”²⁰ an equity analysis, or direct reparations, is required to meet the moral and economic needs of the community.

The ongoing Lower Hill District redevelopment is not just another community-led opposition to development; the community’s fight is about reparations, not gentrification.²¹ As greater numbers of seventy-year-old buildings built during this country’s fascination with “urban renewal” and “slum removal” projects are torn down, American cities will inevitably face similar development conflicts in the near future.²² The Lower Hill District, then, is a case study into both the difficulties and possibilities of remedying the historic wrongs that have destroyed culturally important poor, Black, and Hispanic neighborhoods throughout the country.

This article seeks to articulate the need for reparations in the land planning context by situating that need in the specific details of the history of one deserving neighborhood. There are thousands of examples of similarly situated sites

16. LOWER HILL REDEVELOPMENT COMMUNITY COLLABORATION AND IMPLEMENTATION PLAN (CCIP) 6 (2014), https://www.hilldistrict.org/sites/default/files/lowerhilldistrict-communitycollaborationandimplementationplan-final_0.pdf (the SEA is a city-county joint authority) [hereinafter CCIP].

17. See PITTSBURGH, PA., CODE OF ORDINANCES § 178E.

18. Washington, *supra* note 7.

19. *Id.*

20. Patricia Cohen, *What Reparations for Slavery Might Look Like in 2019*, N.Y. TIMES (May 23, 2019), <https://www.nytimes.com/2019/05/23/business/economy/reparations-slavery.html>.

21. See generally CCIP, *supra* note 16.

22. Digital Scholarship Lab, *Renewing Inequality*, AMERICAN PANORAMA, <https://dsl.richmond.edu/panorama/renewal/#view=0/0/1&viz=scatterplot> (see “The People & the Program” tab) (last visited May 10, 2022) (“In total, renewal funded proposals to raze and redevelop 363,637 acres of land—that’s roughly 568 square miles.”).

across the country with their own histories equally deserving of study;²³ the Barry Farms neighborhood in Washington, D.C.,²⁴ and the historic Greenwood District in Tulsa²⁵ are two striking examples. However, as a case study, this article is limited in scope. This article does not attempt to determine a specific mechanism of reparations or the specific amount that would best compensate the people and community harmed by the initial displacement of the Hill in the 1950s, or of any neighborhood generally. Given the differences in the histories and conditions of each historic site of displacement, communities would likely have different needs—the mechanisms of reparation should differ accordingly.

This article is divided into four parts. Part I defines the need for “restorative justice” by examining the history of the Lower Hill as a required analytical step to understand both the community’s grievances and demands and the articulated need for reparations to meet them. Part II argues that reparations are necessary because current zoning law is incompatible with the community’s demand for restorative justice given the history, procedure, and substance of zoning law. Part III analyzes the deficiencies of community empowerment strategies as an alternative to zoning law, finding that community empowerment does not ensure the outcomes envisioned by “restorative justice.” Finally, Part IV explores the possibilities for legal reform via various reparative mechanisms that would embrace the growing need for restorative justice.

I. WHY ADVOCATE FOR RESTORATIVE JUSTICE?

A more detailed look at the history of the Hill District neighborhood demonstrates the impact of the historical displacement and cultural destruction caused by the Civic Arena and sheds light on the neighborhood’s demands for redevelopment. Hill CDC is the Hill District’s foremost neighborhood organization and the only one recognized by the city as representative of the neighborhood.²⁶ The organization has used the rhetoric of “restorative justice” to advocate for greater community control over the vacant land and has sought guarantees from developers

23. *Id.*

24. Courtland Malloy, *Initiative to Revitalize Barry Farm is Little More Than an Urban Dispersal Plan*, WASH. POST (Oct. 14, 2014), https://www.washingtonpost.com/local/2014/10/28/a5641e80-5ec7-11e4-91f7-5d89b5e8c251_story.html (“In Belt’s (the chairwoman of the community’s tenant’s association) vision, that rich history is recognized not with a proposed street sign honoring the past but a way of life for future generations.”).

25. *City Seeking Qualified Developers, Small Business Partners for Evans-Fintube Redevelopment; Project to Be Major Greenwood District Destination*, CITY OF TULSA (Apr. 26, 2021), <https://www.cityoftulsa.org/press-room/city-seeking-qualified-developers-small-business-partners-for-evans-fintube-redevelopment-project-to-be-major-greenwood-district-destination/> (“As we approach the 1921 Tulsa Race Massacre Centennial, this project creates an opportunity for community-driven economic growth in the Greenwood District,” Mayor G.T. Bynum said “I am hopeful this site will create a cultural destination that honors the history of Greenwood, while also building economic opportunity for the community.”).

26. *Registered Community Organization (RCO)*, HILL CMTY. DEV. CORP., <https://www.hilldistrict.org/rco> (last visited May 10, 2022); see PITTSBURGH, PA. CODE OF ORDINANCES § 178E et seq. (2019).

that the community will reap the benefits from the project.²⁷ The community's goals broadly include an effort to re-incorporate the Lower Hill area into the Greater Hill District.²⁸

A. *What is Restorative Justice?*

The history outlined below is recognized not only by the community, but by the city and the current developers. A historical analysis of the land written for the developers notes that the original Civic Arena development “result[ed] in the permanent destruction of the social fabric of this once culturally-rich section of Pittsburgh.”²⁹ In 2021, the CEO of the Penguins, David Morehouse, acknowledged that “[w]hat happened sixty years ago was a travesty of epic proportions. . . . That is a black stain on the soul of Pittsburgh that no one can erase.”³⁰ As the Lower Hill prepares for its second redevelopment in seventy years, all parties involved have been forced to reckon with the history of the land, the scars still felt by the community, and the urgent need for restoration.³¹

Hill CDC's focus on restorative justice “sounds awfully close to another word that starts with R” . . . reparations.³² When Hill CDC refers to “restorative justice,” it is making a strategic choice to avoid the other “R word” that might scare elected officials and developers away from the bargaining table.³³ The core meaning of the term is the same, however. Hill CDC is effectively taking the core concept of reparations—as a legal theory, as a moral justification, and as a concept that scares developers and cities—and applying it to the reality of land planning law as it currently exists.³⁴ The two terms, “restorative justice” and reparations, have the same goals, theory, and operating principles behind them. Reparations require the recognition of a historic moral or legal wrong, identification of the victims, and the promise of compensation or atonement for that wrong.³⁵ It is the element of recognition, of “reconciliation,” of “the full acceptance of our collective biography and its consequences,” that distinguishes reparations from mere compensatory damages.³⁶ Reparations can take many forms, and are not limited to the standard image of cash compensation for slavery that remains in the public consciousness.³⁷ “Restorative justice,” as a buzzword,

27. See generally CCIP, *supra* note 16.

28. *Id.*

29. ESPINO ET AL., *supra* note 6, at 106.

30. Washington, *supra* note 7.

31. *Id.*; CCIP, *supra* note 16, at 6–9.

32. Washington, *supra* note 7.

33. *Id.*

34. See also Roy Brooks, *Postconflict Justice in the Aftermath of Modern Slavery*, 46 GEO. WASH. INT'L L. REV. 243, 288–89 (2014) (equating the “atonement model” of reparations to “restorative justice” because it allows for the parties to meaningfully apologize and heal from the historical wrong, in contrast to more adversarial tort or prosecutorial methods of dealing with the injury).

35. *Id.*; see Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

36. Coates, *supra* note 35.

37. Cohen, *supra* note 20.

manages to capture the same content without the political baggage connoted by reparations. Regardless of the specific intent behind their chosen term, Hill CDC's project is inherently reparative; they argue for community benefits from the land on moral and economic grounds that stem in large part from the recognition of a past injustice to that community.

Hill CDC has organized its community and forced developers to agree, at least in principle,³⁸ that some sort of reparation is justified given the history of the land at stake in the development. Under Hill CDC's restorative justice model of development, the history of the land at stake is not only relevant but central to the analysis. Strategically, Hill CDC made this demand not only because of the strength of the historical narrative but because of their lack of recourse under established land planning law.

B. A Brief History of the Hill District

The Hill District's modern history begins in the 1850s with the settlement of 2,000 Black Pittsburghers in what was then called "Little Hayti," an enclave centered on Wylie Street in the Lower Hill.³⁹ Due to the area's proximity to Downtown, the Hill District was an attractive neighborhood for laborers as Pittsburgh industrialized.⁴⁰ The Hill was home to successive waves of ethnic laborers starting in the late 1800s,⁴¹ with Black laborers arriving in the early part of the following century as part of the Great Migration.⁴² Industrial recruiters specifically encouraged Black laborers from the South to migrate to the Hill District as a respite from Jim Crow.⁴³ Due to the gradual nature of Black migration to the region, the Hill of the early 1900s was a racially and ethnically diverse community for poor and working-class Pittsburghers;⁴⁴ but by the 1920 census, the Lower Hill was approximately seventy-five percent Black and the city's primary Black enclave.⁴⁵ The neighborhood's racial shift from ethnic white immigrants to southern Black migrants was mirrored by similar city and national trends in the middle parts of the century.⁴⁶ Between 1940 and 1970, the city's overall population cratered as more than 150,000 (mostly white) Pittsburghers moved to the suburbs; the city's Black population nearly doubled in that same period.⁴⁷ This shift in urban demographics reflects the national project of suburbanization and "white

38. Washington, *supra* note 7.

39. ESPINO ET AL., *supra* note 6, at 28, 95.

40. *Id.* at 27–28.

41. *Id.* at 28.

42. GREATER HILL DISTRICT MASTER PLAN, *supra* note 8, at 12.

43. ESPINO ET AL., *supra* note 6, at 30.

44. *Id.* at 28–30, 55.

45. *Id.* at 30, 102, 104.

46. *Id.* at 33.

47. *Id.*; Jim Russell, *What The Rust Belt Can Teach Us About White Flight, Gentrification, and Brain Drain*, PAC. STANDARD (Jun. 14, 2017), <https://psmag.com/economics/what-the-rust-belt-can-teach-us-about-white-flight-gentrification-and-brain-drain> (noting that the Pittsburgh metro area population is about the same today as in the 1950s, which suggests that white flight and suburbanization were the main causes of the population shifts within the city proper).

flight” spurred by racist federal housing policies such as redlining and discrimination in housing loans.⁴⁸

In the early parts of the Twentieth Century, the Lower Hill was “described as the most densely inhabited area and home to ‘the most disadvantaged of the disadvantaged,’”⁴⁹ as most residents were forced to accept the low-paying unskilled jobs in the steel, construction, and service industries available to Black workers.⁵⁰ While the neighborhood was primarily made up of renters who worked as manual laborers, the Hill District was also home to numerous small businesses and neighborhood shops, particularly along Wylie Avenue and Logan Streets, whose intersection would come to be located directly underneath the Civic Arena.⁵¹

Around the same time, the Hill District reached its cultural peak.⁵² “African Americans in Pittsburgh constructed their own ‘black metropolis’ and transformed ‘segregation,’ a mean experience, into ‘congregation,’ a sense of brotherhood, sisterhood, and community.”⁵³ The *Pittsburgh Courier* became the country’s foremost Black newspaper, publishing fourteen regional editions and promoting Black solidarity and political consciousness throughout the city and country.⁵⁴ The neighborhood had its own baseball team, the Pittsburgh Crawfords, with legendary players like Satchel Paige and Josh Gibson, who played in the nation’s first Black-owned ballpark and won the Negro National League three times in four years between 1933 and 1936.⁵⁵ The Hill’s jazz scene was also nationally renowned: clubs and concert halls like the Crawford Grill, Hurricane Lounge, and New Grenada Theater were at the heart of the neighborhood and regularly played host to Miles Davis, Lena Horne, Duke Ellington, George Benson, and other greats.⁵⁶ Even the Harlem Renaissance recognized the Hill’s cultural importance, with poet Claude McKay calling it “the crossroads of the world,”⁵⁷ and others referring to the neighborhood as “Little Harlem.”⁵⁸ At the same time, the Hill was home to more than forty-five Black community churches,⁵⁹ including the “majestic . . . Bethel AME Church, which once was a

48. Russell, *supra* note 47.

49. ESPINO ET AL., *supra* note 6, at 105.

50. *Id.* at 104–05.

51. Nelson Jones, *supra* note 1; ESPINO ET AL., *supra* note 6, at 51.

52. See GREATER HILL DISTRICT MASTER PLAN, *supra* note 8, at 14; TROTTER & DAY, *supra* note 8, at 20–22.

53. TROTTER & DAY, *supra* note 8, at 15.

54. MARK WHITAKER, *SMOKETOWN: THE UNTOLD STORY OF THE OTHER GREAT BLACK RENAISSANCE* xiv (2018).

55. *Id.*; TROTTER & DAY, *supra* note 8, at 20; *The Pittsburgh Crawfords of the Negro Leagues, MAJOR LEAGUE BASEBALL* (last visited May 10, 2022), <https://www.mlb.com/history/negro-leagues/teams/pittsburgh-crawfords>.

56. *Id.*; TROTTER & DAY, *supra* note 8, at 20; *The Pittsburgh Crawfords of the Negro Leagues*, *supra* note 55.

57. *E.g.*, GREATER HILL DISTRICT MASTER PLAN, *supra* note 8, at 14.

58. *E.g.*, TROTTER & DAY, *supra* note 8, at 15.

59. *Id.*

station on the Underground Railroad.”⁶⁰ “The Lower Hill was densely and almost whimsically configured,” with jukeboxes and “kids dancing in doorways.”⁶¹ One of those kids, who would grow up to become playwright August Wilson, the final great artist of the pre-Arena Hill District, went to an elementary school that was demolished as part of the redevelopment.⁶²

In the 1950’s, the Hill District’s fate began to turn. The city, led by mayor David L. Lawrence, created the URA, which collaborated with Pittsburgh’s business and philanthropic interests to pursue the project of “urban renewal.”⁶³ While the URA operated “in the name of progress,” their efforts were “typical of urban renewal efforts; people and businesses affected by their decisions were not involved in the process of ‘improvement.’”⁶⁴ Spurred on by the vision of an eastern extension to the development of Downtown, the URA and developers chose the Lower Hill as the site of the Civic Arena.⁶⁵ Legally and politically, the city’s decision on where to place the Civic Arena project was constrained by federal law that required that the underlying area of investment was classified as a “slum” to secure federal funding.⁶⁶ To justify the project to the federal government under the U.S. Housing Act of 1949, the URA had to make a finding that the Lower Hill site was a “slum” under federally mandated criteria.⁶⁷ The same standard was applied to the city’s eminent domain power.⁶⁸

In 1950, the city’s Planning Commission designated approximately 100 acres of the Hill as blighted.⁶⁹ The URA announced its plans to redevelop the neighborhood in 1951 and began buying land from residents at a rapid pace in the years that followed.⁷⁰ The vacancies caused by these purchases decimated neighborhood stores and institutions; the poverty and displacement which resulted created a chain reaction that increased the rate of “blight” in the buildings that remained unsold.⁷¹ The city broke ground on the Civic Arena in 1956.⁷²

While their opinions were not the main concern of the city or developers, many prominent Hill District residents initially supported the proposal as a method to increase neighborhood investment that had otherwise been prevented by redlining.⁷³ The original redevelopment plan was not limited to the Civic

60. Washington, *supra* note 7.

61. Nelson Jones, *supra* note 1.

62. Dorman, *supra* note 9.

63. ESPINO ET AL., *supra* note 6, at 30; *see also* WHITAKER, *supra* note 54, at 314–15.

64. *See, e.g.*, ESPINO ET AL., *supra* note 6, at 30.

65. *Id.*; *but see* WHITAKER, *supra* note 54, at 315 (noting that the city opted not to pursue its first choice for the location of the Civic Arena after objections from wealthy neighbors, one of whom paid the city millions of dollars to select a new site).

66. Digital Scholarship Lab, *supra* note 22.

67. *Id.*

68. *Id.*; *see also* ESPINO ET AL., *supra* note 6, at 35, 37.

69. ESPINO ET AL., *supra* note 6, at 37.

70. *Id.* at 41.

71. *See* WHITAKER, *supra* note 54, at 318–19; Nelson Jones, *supra* note 1.

72. ESPINO ET AL., *supra* note 6, at 41.

73. WHITAKER, *supra* note 54, at 315–16.

Arena but also included luxury high-rise apartments designed by I. M. Pei,⁷⁴ park space, commercial space, and space for a major throughway that would become Interstate-579.⁷⁵ Residents were promised that their churches would be left standing and that they would be re-housed in public housing projects being built elsewhere in the Hill.⁷⁶

Other residents opposed the proposal, citing the history and existing culture of the neighborhood.⁷⁷ In particular, the community's concern for its churches and community groups weighed heavily given the lack of compensation for their taking.⁷⁸ Families continued to squat in their homes even as demolition of their homes was underway around them.⁷⁹

The statistical damage to the Lower Hill caused by the "urban renewal" is staggering. Over the course of the project, an estimated 1,300 buildings were demolished, 413 businesses were closed or forced to relocate, and more than 8,000 residents were displaced.⁸⁰ Other sources list the displacement with slightly higher figures, at "about 1,600 families, or 8,500 people;" in either case, the vast majority of those displaced were Black.⁸¹ The commercial center on Wylie Street was demolished, as were all but one church, the Epiphany Church directly south of the arena.⁸² The public housing units completed elsewhere in the Hill in the preceding years were inadequate to house the displaced, with only about 230 families of the more than 8,000 'Hill dwellers' accepted as new residents.⁸³ The relocation of the displaced residents was split along racial lines: Black families largely stayed within the Hill District, while many white families moved to the city's southern suburbs.⁸⁴ The rest of the Hill District successfully prevented a second round of urban renewal targeting the Middle Hill neighborhood,⁸⁵ but the entirety of the surviving neighborhood fell into disrepair due to redlining and a lack of investment, coupled with the effect of the neighborhood being cut off from Downtown by the expressway and the arena.⁸⁶

Few of the benefits promised by developers were enjoyed by the Hill's residents. Other than the arena, only one other building was built on the land: a high-rise apartment.⁸⁷ The major investor in the project, William Zeckendorf, went

74. ESPINO ET AL., *supra* note 6, at 37.

75. *Id.* at 41; see also Deborah N. Archer, *White Men's Roads Through Black Men's Homes: Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259, 1265–66 (2020).

76. ESPINO ET AL., *supra* note 6, at 35.

77. WHITAKER, *supra* note 54, at 316.

78. *Id.* at 316–17.

79. *Id.* at 318–19.

80. TOKER, *supra* note 7, at 234.

81. ESPINO ET AL., *supra* note 6, at 41, 106.

82. TOKER, *supra* note 7, at 234.

83. See WHITAKER, *supra* note 54, at 318.

84. Nelson Jones, *supra* note 1.

85. WHITAKER, *supra* note 54, at 321.

86. Washington, *supra* note 7.

87. TOKER, *supra* note 7, at 235.

bankrupt during development, and the rest of the project died.⁸⁸ The Heinz Foundation built a proposed theater Downtown rather than on the Lower Hill site as planned.⁸⁹ Additionally, very few of the jobs created by the arena went to the community, given racial discrimination at the time, spurring a protest in 1961 that culminated at the arena.⁹⁰ In 1968, the Hill District was one of many national sites of protests and riots spurred by discrimination, the assassination of Martin Luther King Jr., and in the Hill's case, the failure of the Lower Hill urban renewal to confer any benefits to the neighborhood.⁹¹ The lack of investment into the Hill has continued to today; the neighborhood had a "21% unemployment rate, 45% of residents living in poverty and more vacant lots than businesses" in recent years.⁹² The Hill District has lacked a grocery store for the vast majority of the past four decades.⁹³

In 2010, the Penguins moved into a new arena, just a block or two south of the Civic Arena, which was demolished two years later.⁹⁴ The Penguins, who negotiated the development rights for the Civic Arena site as part of an agreement that secured their new arena and prevented them from leaving town,⁹⁵ started preparing plans for the redevelopment of the site around this same time.⁹⁶ By 2014, the project accelerated: the Penguins, their developers, and the city signed a Community Collaboration and Implementation Plan with Hill CDC on September 11.⁹⁷ A week later, the Penguins filed for a zoning change with the Planning Commission.⁹⁸ After a series of amendments and a hearing in November 2014, the Penguins had the Commission's approval for their project: a new headquarters for U.S. Steel, as well as apartments, commercial space, and a park.⁹⁹ Before City Council could vote on the special zoning district requested by the Penguins, Hill CDC filed suit in January 2015;¹⁰⁰ they settled with the developers a few weeks later. The project was delayed for years anyway when U.S. Steel dropped out of the plan,¹⁰¹ but the Penguins finally broke ground on a

88. *Id.*

89. *Id.*

90. TROTTER & DAY, *supra* note 8, at 56–57.

91. WHITAKER, *supra* note 54, at 321–23; TROTTER & DAY, *supra* note 8, at 103–04.

92. Washington, *supra* note 7.

93. Davidson, *supra* note 12.

94. Washington, *supra* note 7.

95. *Id.*

96. CCIP, *supra* note 16, at 6–7.

97. *Id.* at 1.

98. SPORTS & EXHIBITION AUTH. OF PITTSBURGH & ALLEGHENY CNTY. ZONE CHANGE PETITION (2014), https://apps.pittsburghpa.gov/dcp/Zone_Change_Petition.as_submitted.9_19_2014.pdf.

99. URBAN DESIGN ASSOCS. ET AL., SP-11 LOWER HILL PLANNED DEVELOPMENT DISTRICT PRELIMINARY LAND DEVELOPMENT PLAN (2014), https://apps.pittsburghpa.gov/dcp/Lower_Hill.PLDP.as_submitted.9_19_2014.pdf.

100. Complaint, Hill Cmty. Dev. Corp. v. City of Pittsburgh Planning Comm'n, 2015 Pa. Dist. & Cnty. Dec. LEXIS 3226 (C.P. Allegheny Cnty., Pa., Jan. 20, 2015) (SA-15-000005).

101. Paul J. Gough & Justine Coyne, *EXCLUSIVE: U.S. Steel abandons plan to build headquarters at former Civic Arena site*, PITTSBURGH BUS. TIMES (Nov. 5, 2015), <https://www.bizjournals.com/pittsburgh/news/2015/11/05/u-s-steel-abandons-plan-to-build-headquarters.html>.

revised version of the project in September 2021.¹⁰² According to an agreement negotiated between Hill CDC and developers, the project is expected to bring in “\$500 million in private investment, create almost 4,000 construction and 3,000 permanent jobs,” and generate \$20 to \$25 million in annual tax revenues.¹⁰³ Despite those projections, Hill CDC’s President acknowledged that “the jury is still out as to whether or not this development will reconcile the harm and trauma and costs to the Hill District community.”¹⁰⁴

II. REPARATIONS ARE NECESSARY BECAUSE ZONING LAW FAILS TO ENSURE THAT A HARMED COMMUNITY BENEFITS FROM REDEVELOPMENT

Despite its rhetorical win over “restorative justice,” none of the tangible goals Hill CDC pursued are guaranteed: “the jury is still out.”¹⁰⁵ Pittsburgh’s largely standard zoning scheme runs contrary to Hill CDC’s goal of restorative justice because it allows for too much developer and city hall influence. Like other cities, the barriers to participation in zoning decisions for the average resident are high, which skews zoning decisions towards the interests of those wealthy enough to invest time and money into participating in the process. Procedurally and substantively, both historically and today, zoning law incentivizes policies that make affordable, integrated housing difficult, and limits the ability of a community like Hill CDC to ensure that they feel the benefits of development in their neighborhood. For similar restorative justice projects to succeed in practice and not just in rhetoric, legal change is needed.

The primary laws regulating the sorts of large development projects like the Lower Hill redevelopment are municipal zoning ordinances.¹⁰⁶ Since the Supreme Court sanctified municipal zoning codes in 1926,¹⁰⁷ cities across the country have enacted land-use regulations,¹⁰⁸ each with their own minor wrinkles. Pittsburgh’s zoning code is typical of most American cities in that it is controlled not by City Council but by an independent and unelected zoning board, the City Planning Commission (CPC).¹⁰⁹ The CPC oversees both large scale neighborhood or district-wide land use regulations and individual parcel variances.¹¹⁰

102. Mark Belko, *The start of something big? FNB, Penguins break ground on 26-story office tower at former Civic Arena site*, Pittsburgh Post-Gazette (Sept. 1, 2021), <https://www.post-gazette.com/business/development/2021/09/01/Pittsburgh-Penguins-Civic-Arena-lower-Hill-District-First-National-Bank/stories/202109010144>.

103. CCIP, *supra* note 16, at 6.

104. Washington, *supra* note 7 (quoting Marimba Milliones).

105. *Id.*

106. Shelby D. Green, *Development Agreements: Bargained-For Zoning That is Neither Illegal Contract nor Conditional Zoning*, 33 *CAR. U.L. REV.* 383, 383–84 (2004).

107. *See generally* Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

108. Green, *supra* note 106, at 383–84.

109. *Planning Commission*, CITY OF PITTSBURGH, <https://pittsburghpa.gov/dcp/planning-commission> (last visited May 10, 2022).

110. *Id.*

The Lower Hill redevelopment project involved several facets of Pittsburgh's land-use legal scheme. Aside from the typical zoning process that accompanies all new construction, developers applied for and were granted a Specially Planned District covering the entirety of the Lower Hill site.¹¹¹ The story and outcome of Hill CDC's advocacy display how current land planning law is at odds with the restorative justice the group seeks.

A. Zoning Law as a Cause of the Historical Displacement

The racist purpose and effect of American zoning law has been well documented in academic literature.¹¹² Both before and after the *Buchanan* decision striking down explicitly racist zoning ordinances, cities used zoning both as a segregationist tool for exclusion and as a method of redistributing wealth from poor and Black areas to wealthier, whiter suburbs.¹¹³ Structurally racist and anti-poor zoning law contributed to the creation of "slums" under federal housing policy, especially when coupled with Federal Housing Authority (FHA) redlining practices that limited the capital available to Black and poor neighborhoods for repairs.¹¹⁴ Once considered "slums," neighborhoods were open to "urban renewal" of the sort that displaced the Lower Hill.¹¹⁵

This sort of racialized exclusionary zoning persists today, despite the use of facially neutral standards.¹¹⁶ The difficulty in reversing previous land planning decisions in urban settings allows historic racism to have contemporary ramifications—the effect of the decision to locate the Civic Arena in the Lower Hill was made seventy years ago but the Hill District still feels its effects today.¹¹⁷ The result is that current and historic displacements of comparatively poorer and Blacker neighborhoods subjected to land-use decisions contrary to their interests compound over time.¹¹⁸

The procedural systems that make up zoning law work in concert with the law's substance. "[Zoning B]oard members, who are typically nonexpert and often unelected, significantly influence the country's racial and economic integration, environmental sustainability, economic vitality, and social connectivity."¹¹⁹

111. PITTSBURGH, PA., CODE OF ORDINANCES § 909.01.A–D, R.

112. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

113. *Id.* at 50; Andrew Dietderich, *An Egalitarian's Market: The Economics Of Inclusionary Zoning Reclaimed*, 24 *FORDHAM URB. L.J.* 23, 31 (1996).

114. ROTHSTEIN, *supra* note 112, at 50.

115. ESPINO ET AL., *supra* note 6, at 35. The classification of a neighborhood as a "slum" was tied to eminent domain law and the federal funding schemes that motivated "urban renewal." See Digital Scholarship Lab, *supra* note 22.

116. Charles Lord & Keaton Norquist, *Cities As Emergent Systems: Race as a Rule in Organized Complexity*, 40 *ENV'T L.* 551, 584 (2010).

117. Washington, *supra* note 7.

118. Anthony V. Alfieri, *Black, Poor, and Gone: Civil Rights Law's Inner-City Crisis*, 54 *HARV. C.R.-C.L.L. REV.* 629, 654 (2019).

119. Grant Glovin, *Power and Democracy in Local Public Participation Law*, 51 *URB. LAW.* 43, 44–45 (2021).

Avenues for public participation in zoning board meetings, implemented as a response to the urban renewal that destroyed urban centers without input from residents over the last century, do not necessarily have the effect that progressive activists were hoping for.¹²⁰ People can only take advantage of opportunities for public participation when they have the time and means to participate: “speakers at planning board meetings are, as compared to the towns in which they live, disproportionately white, male, elderly, homeowners, longtime residents, and frequent voters.”¹²¹ The observed effect, particularly in wealthier or mixed communities, is that public commenters tend to exhibit “not in my backyard” attitudes consistent with their self-interest as wealthier homeowners.¹²² Those same barriers to participation, as applied to urban neighborhoods with predominantly Black, poor, and renter populations, result in lower participation and lower opposition to developers, incentivizing gentrification.¹²³ “As it stands, the [American] system of public participation is a crucial support for an unjust, economically harmful, and environmentally destructive system.”¹²⁴

Pittsburgh’s zoning system is typical of the national model. The CPC is an unelected body whose members are appointed by the mayor.¹²⁵ The CPC meets every other Tuesday afternoon,¹²⁶ a time when most city residents are busy working. There is no statutory requirement that the CPC listen or respond to comments made at their meetings.¹²⁷ Pittsburgh land planning law has had a segregating effect over time; the most famous of these decisions is the placement of the Civic Arena and the construction of I-579 which together cut off what remained of the Hill District from Downtown, significantly decreasing its value.¹²⁸ Today, Pittsburgh has “high segregation” levels,¹²⁹ with neighborhoods sharply defined by historic redlining processes.¹³⁰ Taken together, this history makes clear that zoning law, as currently and historically implemented, is one of the causes of the harm tackled by the restorative justice model. Without changes, the law will continue to operate as it always has, leading to more instances of displacement rather than allowing for the opportunity to remediate past harms.

120. *Id.* at 59–60.

121. *Id.*

122. *Id.* at 61.

123. *See id.* at 5860 (connecting stricter zoning law to gentrification and noting the disproportionate participation rates and incentives among participants in the American zoning system).

124. *Id.* at 61.

125. PITTSBURGH, PA., CODE OF ORDINANCES § 923.01.

126. CITY OF PITTSBURGH, *supra* note 109.

127. *See* PITTSBURGH, PA., CODE OF ORDINANCES § 923.01.

128. Washington, *supra* note 7.

129. *Most to Least Segregated Cities*, OTHERING & BELONGING INST., <https://belonging.berkeley.edu/most-least-segregated-cities> (last visited May 10, 2022) (based on 2020 census data).

130. Kian Nassre, *Mapping Software Explores the Legacy of Redlining*, THE TARTAN (Feb. 2, 2020), <https://thetartan.org/2020/2/3/scitech/housing>.

B. Specially Planned Districts as Developer-Written Zoning Law

Rather than fit their development into the already existing zoning scheme, the Lower Hill developers requested—and received—an amendment to the zoning code outlining a new set of rules permitting the development plan they had in mind.¹³¹ While not uncommon, the developers' legal strategy was made possible by a city ordinance allowing for that exact outcome.

Pittsburgh's zoning scheme includes "specially planned districts,"¹³² which shelter hyper-local neighborhoods from the city-wide zoning scheme.¹³³ Designed to protect the unique characteristics that may make a given neighborhood special, special district zoning ordinances allow for the creation of individual, tailored zones with ordinances unique to one small area.¹³⁴ While there are obvious benefits to protecting the special parts of a city, special districts can function as powerful tools used by both developers and communities to avoid the typical rules of development disputes.¹³⁵ Special zoning also gives cities an opportunity to avoid the normal prohibition on spot zoning, the practice of granting special zoning exemptions to arbitrarily small parcels favored by the city, despite court-issued bans on the practice as antithetical to the zoning project at large.¹³⁶

One well-cited example of the misuse of special districts is Union Square in New York.¹³⁷ City officials hoped to revitalize an area which had "deteriorated" from its status as a "hub of the city" to a place of crime by accommodating a developer seeking to use the land for what had previously been an impermissible use.¹³⁸ Using a special district to avoid the courts' distaste for spot zoning, the city re-zoned a three block area surrounding the site with special rules allowing for the mixed-use towers sought by the developer.¹³⁹

Unlike New York's use of special districts, Pittsburgh's "specially planned districts" cannot be applied to unique areas or neighborhoods like Times Square or Little Italy.¹⁴⁰ Pittsburgh's specially planned district ordinance limits their deployment to areas "controlled" by a single owner, effectively preserving the rule's spot zoning function while eliminating its value in protecting unique

131. See PITTSBURGH, PA., CODE OF ORDINANCES § 909.01.R; URBAN DESIGN ASSOCS. ET AL., *supra* note 99, at 2, 9.

132. PITTSBURGH, PA., CODE OF ORDINANCES § 909.01.A–D, R.

133. Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 512–17 (1997).

134. RICHARD F. BABCOCK & WENDY U. LARSEN, SPECIAL DISTRICTS: THE ULTIMATE IN NEIGHBORHOOD ZONING 3 (1990).

135. *See id.* at 1–5.

136. *Id.* at 104; Osborne M. Reynolds, Jr., *Spot Zoning—A Spot That Could Be Removed From the Law*, 48 WASH. U. J. URB. & CONTEMP. L. 117, 118–19 (1995).

137. BABCOCK & LARSEN, *supra* note 134, at 104.

138. *Id.* at 104–05.

139. *See id.* at 105.

140. *See id.* at 27, 62; PITTSBURGH, PA., CODE OF ORDINANCES § 909.01.A–D, R.

neighborhoods.¹⁴¹ The Pittsburgh procedure to create these districts has the developer propose the text of the zoning code amendment for a CPC vote.¹⁴² This procedure is nothing more than codified spot zoning on the scale of a few blocks rather than a single parcel.

When the Penguins and their co-developers got control of the land encompassing the historic Lower Hill, they requested a specially planned district to replace the existing Downtown zone covering the area.¹⁴³ When the CPC approved the change, Hill CDC sued.¹⁴⁴ Two weeks after the challenge was filed, the parties settled: Hill CDC won narrow concessions within the text of the new zoning ordinance and got the Penguins to commit to a neighborhood revitalization fund in exchange for its support on the zoning change.¹⁴⁵ In this case, Pittsburgh's specially planned district ordinance functioned as a mechanism for the government to rubber stamp the wealthy developers' preferred set of laws. In the context of broader zoning law, the specially planned district procedure allows for a greater than normal alteration to the character of a neighborhood, not due to community or governmental planning but due to the wishes of developers. Pro-developer legal procedures like this one can hardly be thought of as tools for enacting restorative justice.

III. COMMUNITY EMPOWERMENT STRATEGIES ALSO FAIL TO ENSURE RESTORATIVE JUSTICE

While zoning law tends to put power in the hands of developers as opposed to communities, the opposite approach still fails to ensure the success of the restorative justice model of redevelopment. This is because typical community empowerment strategies are open to all communities, not just those entitled to reparations. While community empowerment may be a positive outcome in principle, a need-blind and color-blind increase to community power would likely increase disparities between communities: wealthier and whiter neighborhoods and suburbs capable of taking advantage of community empowerment tools would use them to their benefit and to the detriment of surrounding communities, while poorer and Blacker neighborhoods would face relatively steeper barriers to meet the demanding organizational, negotiating, and legal capacity required. For cities looking to implement restorative justice, the legal changes best suited involve reparations. This is because reparations specifically benefit displaced

141. See PITTSBURGH, PA., CODE OF ORDINANCES § 909.01.A–D, R.

142. *Id.*; CITY OF PITTSBURGH, *supra* note 109.

143. Sports & Exhibition Auth. of Pittsburgh & Allegheny Cnty., Zone Change Petition, (2014), https://apps.pittsburghpa.gov/dcp/Zone_Change_Petition.as_submitted.9_19_2014.pdf.

144. Complaint, Hill Cmty. Dev. Corp. v. City of Pittsburgh Planning Comm'n, 2015 Pa. Dist. & Cnty. Dec. LEXIS 3226 (C.P. Allegheny Cnty., Pa., Jan. 20, 2015) (SA-15-000005).

145. Hill Cmty. Dev. Corp. v. City of Pittsburgh Planning Comm'n, 2015 Pa. Dist. & Cnty. Dec. LEXIS 3226 (C.P. Jan. 20, 2015); Mark Belko, *Hill District, City and Penguins reach agreement; appeal dropped*, PITTSBURGH POST-GAZETTE (Jan. 19, 2015), <https://www.post-gazette.com/business/development/2015/01/19/Hill-District-city-and-Penguins-reach-agreement-appeal-dropped/stories/201501190159>.

people and injured neighborhoods by using historical context to ensure that those harmed by historical land use policies benefit from redevelopment.

Cities use a wide variety of community empowerment strategies built into their zoning codes. Outside of the formalized zoning context has been the rapid increase in Community Benefit Agreements (CBAs). In Pittsburgh particularly, the city has attempted to regulate CBA negotiation by establishing RCOs, which effectively limit the set of community groups credibly able to negotiate with developers.

A. The CBA as Negotiated Land-Use Law

As city governments have struggled to balance the interests of developers and the community via zoning law, community groups have turned to private legal mechanisms to win concessions from developers.¹⁴⁶ CBAs are the result. CBAs are negotiated contracts between developers and communities seeking to guarantee that some of the benefits of development are felt by the community in the form of job guarantees, adherence to environmental standards, affordable housing, or even payments to a community fund.¹⁴⁷ In return, community groups pledge to support development in zoning meetings and to refrain from initiating legal challenges.¹⁴⁸ Cities have reason to support these agreements because they take the burden off the zoning system and ease political tensions around development by distributing benefits more equitably via negotiation.¹⁴⁹ While this strategy has obvious benefits, there are enforcement, legitimacy, and constitutionality problems involved.¹⁵⁰

The legitimacy problem arises from the difficulties in defining who is included in the “affected community” represented by the negotiating organization and in ensuring that the negotiating organization is representing that community adequately.¹⁵¹ In extreme cases, developers collude with community organizations, funding their operation or providing benefits to negotiators that are not felt by the broader community.¹⁵² To alleviate this problem, many CBAs are negotiated by coalitions of community organizations representing slightly different interests within the neighborhood.¹⁵³ In some cities, communities opt to include elected officials or city administrators in the negotiations as a mechanism to ensure representativeness.¹⁵⁴ Even if negotiators are perfect representatives of the

146. Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5, 5–7 (2010).

147. *Id.*

148. *Id.*

149. *Id.* at 20.

150. *Id.*; see Patricia Salkin & Amy Lavine, *Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power*, 18 J. L. & POL’Y 157, 200–06 (2009).

151. Been, *supra* note 146, at 21–24.

152. *Id.*

153. *Id.*; Salkin & Lavine, *supra* note 150, at 199–204.

154. Salkin & Lavine, *supra* note 150, at 199–204.

community, the resulting CBA typically would not bind individual citizens or neighboring communities from taking their own steps to block the development.¹⁵⁵ These legitimacy problems can disincentivize both communities and developers from pursuing CBAs.

The enforcement problem for CBAs comes from their status as private law: to secure legal enforcement, a party must win a suit premised on a breach of contract theory.¹⁵⁶ There are obvious capacity barriers to this option for community organizations, especially smaller grassroots organizations lacking the funds or legal expertise for the suit.¹⁵⁷ Similar capacity and legal barriers occur at the negotiation stage, where the developers may succeed in including aspirational language in the CBA that would turn a binding contract into a shared statement of non-binding goals for the project.¹⁵⁸ Finally, for many CBAs, enforcement of the terms of the agreement are dependent on the project continuing as planned, creating a timing problem: communities are forced to concede on preliminary issues like zoning changes and development approval prior to the receipt of negotiated-for benefits like job guarantees, community investment, or affordable housing guarantees.¹⁵⁹ This timing problem incentivizes developers to overpromise and underdeliver.

The enforcement problems are compounded by a related legal issue: court-imposed legal limits to CBAs may prevent sympathetic governments from participating in the negotiations or enforcing the agreement.¹⁶⁰ Courts have struck down government-developer negotiated “contract” or “conditional” zoning as effectively negotiating away the state’s police powers by selling the power to enact zoning law out to the highest bidder.¹⁶¹ This logic could be extended to negotiated CBA contracts where a government entity has a hand in the negotiation, requires a CBA as a condition for zoning approval, enforces the contract directly, or even where the government merely implicitly or informally requires a CBA.¹⁶² Decisions in some states allow for certain government-negotiated CBAs, distinguishing it from previous anti-exactions cases on the grounds that CBAs are voluntary and therefore not extractive.¹⁶³ The Supreme Court has weighed in on these issues in two cases, *Nollan* and *Dolan*, but legal doctrine on the issue remains underdeveloped, making this an open legal question.¹⁶⁴

155. *Id.*

156. *See* Been, *supra* note 146, at 5–7.

157. *See id.* at 29.

158. *See id.* at 29–30.

159. *See id.* at 30.

160. *Id.* at 27–29.

161. *See id.*; Green, *supra* note 106, at 416.

162. Been, *supra* note 146, at 27–29.

163. Salkin & Lavine, *supra* note 150, at 206–08.

164. Green, *supra* note 106, at 400–07. *See* *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 834 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

B. RCOs as Pittsburgh's Answer to the Problems With CBAs

Pittsburgh's attempt to refine the CBA process strove for balance in light of the legal uncertainty surrounding contract zoning. The city has recognized or endorsed CBAs without agreeing to enforce them or sign onto them as bound parties.¹⁶⁵ To facilitate CBA negotiations without implementing them with the force of the state, Pittsburgh has chosen to indirectly regulate which community groups may enter into an agreement via its RCO ordinance.¹⁶⁶ The ordinance does not expressly provide for the power to negotiate CBAs, agree to enforce them, or limit the power of other groups to enter into their own contracts, but does provide for a mandatory meeting between the community and the developers prior to the project's approval by the CPC.¹⁶⁷ The ordinance also does not require that the CPC adopt—or even consider—the position of the RCO at the conclusion of the required meeting.¹⁶⁸ Despite these limits, Pittsburgh has effectively shrunk the universe of possible CBA negotiators to only those community groups that meet the city's requirements to be an RCO.¹⁶⁹

To become an RCO, communities must register with the city.¹⁷⁰ The requirements for city recognition are intended to distinguish between genuine and well-organized community groups and smaller groups that fail to adequately represent the community,¹⁷¹ but also serve a gatekeeping function: a requirement that the community's city council member supports the group's application to become an RCO limits the acceptable policy positions of a given community group.¹⁷² Additionally, language in the ordinance allows for multiple organizations with overlapping or coextensive geographic boundaries; in those cases, the city takes over the organization of a joint meeting with developers that includes both RCOs.¹⁷³ For well-organized groups like Hill CDC, this city-run process would limit the group's autonomy to develop their own procedures for meeting with developers.¹⁷⁴ The RCO ordinance's lack of enforceable teeth thus seriously limits its efficacy as a community empowerment tool or as a solution to the problems of CBAs.

165. See CCIP, *supra* note 16, at 4 (explaining the nature of the city and county's signature).

166. See PITTSBURGH, PA. CODE OF ORDINANCES § 178E ET SEQ. (2018).

167. *Id.* §178E.08.

168. *Id.*

169. Press Release, Hill CDC et al., Citywide Public Statement: Registered Community Organization Legislation (May 18, 2019), https://www.hilldistrict.org/sites/default/files/rco-public-statement_final_with-logos.pdf; see RCO Advocacy, HILL CDC, <https://www.hilldistrict.org/rcoadvocacy> (last visited May 10, 2022). This function of the RCO ordinance was among those that Hill CDC opposed when the ordinance was first announced.

170. § 178E.04.

171. §§ 178E.03; 178E.04 (discussing the requirements to be recognized as a community organization that together indicate a legislative interest in ensuring adequate community representation).

172. Hill CDC et al., *supra* note 169.

173. §§ 178E.01; 178E.08(c).

174. See, e.g., *Development Review Panel*, HILL CDC, <https://www.hilldistrict.org/drp> (last visited May 10, 2021) (outlining the steps required that any proposed development plans in the Hill District must complete to gain consideration and approval by the Development Review Panel).

The Lower Hill's CBA, titled Community Collaboration and Implementation Plan (CCIP), makes clear that while the city and county signed on to the agreement, neither have practical responsibilities in relation to it.¹⁷⁵ The CCIP is enforced by an Executive Management Committee created by the agreement and is staffed by representatives from the community, the developers, and the government.¹⁷⁶ The CCIP includes assurances by Hill CDC that the community will support the developers at all stages of the development; the developers in turn pledge to make "commercially reasonable-efforts" towards a series of negotiated goals that seek to ensure that Hill District residents benefit from the development.¹⁷⁷ Typical of CBAs, these promises are largely outside the traditional scope of zoning law, and include assurances that certain proportions of the jobs created by the project will be filled by community members, that developers will contract with minority and women owned businesses, that the housing included in the project's plan will include affordable housing, that developers will donate to a community redevelopment fund, and that parks and monuments within the development will honor the cultural history of the Lower Hill.¹⁷⁸

As of 2022, construction on the Lower Hill has only just begun.¹⁷⁹ While it is still too early to tell whether Hill CDC will succeed in enforcing the terms of the CCIP it negotiated seven years ago—most of the terms of the agreement relate to the construction and post-construction phases of the project¹⁸⁰—there is already evidence that developers are failing to meet their required benchmarks under the CCIP.¹⁸¹ Given the makeup of the executive committee designed to implement the agreement, any strict enforcement seems unlikely.¹⁸² Adding to the difficulties are the somewhat aspirational language of the document and the city's inability to enforce it via the CPC or the RCO ordinance.¹⁸³ However, Hill CDC has already won some significant concessions from developers that directly relied on the CBA they negotiated—victories that would not have been won via a reliance on zoning law in isolation.¹⁸⁴

175. CCIP, *supra* note 16, at 4. "The City and County will provide support to this Plan in an effort to assist in and further the continued redevelopment of the Greater Hill District, subject to . . . restrictions placed on them as governmental entities." See also *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 834 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

176. Rich Lord, *Where the Sausage Is Made: A Nine-Member Panel Privately Plots a Course For the Hill*, PUBLICSOURCE (Sept. 17, 2021), <https://www.publicsource.org/hill-district-penguins-civic-arena-executive-management-committee-fnb-pittsburgh/>.

177. CCIP, *supra* note 16, at 2–3.

178. *Id.* at 10–19; see generally *Been*, *supra* note 146 (for a description of the typical CBA).

179. *Belko*, *supra* note 102.

180. See generally CCIP, *supra* note 16.

181. *Lower Hill Block G1*, HILL CDC, <https://hilldistrict.org/lowerhillblockg1> (last visited May 10, 2022).

182. See *Lord*, *supra* note 176.

183. PITTSBURGH, PA. CODE OF ORDINANCES § 178E et seq.; see generally CCIP, *supra* note 16.

184. See generally *Hill Cmty. Dev. Corp. v. City of Pittsburgh Planning Comm'n*, 2015 Pa. D. & Cnty. Dec. LEXIS 3226 (C.P. Jan. 20, 2015). In the settlement, Hill CDC won legal recognition of the CCIP and an increased and early payment via the LERTA. *Id.*

C. Other Community Empowerment Strategies Face Similar Shortcomings

Aside from the CBA, communities have advocacy tools of varying formality capable of influencing policy. Among the most formalized of these is the neighborhood plan. In 2020, Hill CDC and the city launched a two-year project to update the Hill District's Neighborhood Plan.¹⁸⁵ In Pittsburgh, Neighborhood Plans are drafted by steering committees made up of city planning department officials and community leaders; when adopted by the CPC, the plan "will become City policy and guide public and private investments in the area."¹⁸⁶ The plan may also result in zoning law changes or other city policy shifts.¹⁸⁷

As with the power devolved to RCOs, neighborhood plans are only as meaningful as the RCO and City that enforce them. The Hill CDC has had success applying the neighborhood plan and its related RCO powers against small developments in the neighborhood and in informal advocacy in the media,¹⁸⁸ but when tasked with neighborhood-defining projects like the Lower Hill redevelopment, even a highly organized neighborhood like the Hill District has limits. Without willingness in the CPC and City Hall to withstand political pressure from developers and enforce the neighborhood plan without variances, the neighborhood plan lacks teeth.

Additionally, neighborhood plans run into the same problems faced by other community empowerment strategies. While the Greater Hill District Master Plan does include a historical analysis as part of its explanation and justification of its policy features, the plan's lack of legally enforceable provisions mandating a restorative justice mode of analysis on each development limits its legal power.¹⁸⁹ Analogously, zoning reform initiatives like "inclusionary zoning" may be good policy, but do not allow for targeted relief to the affected communities.¹⁹⁰

IV. VARIOUS MODELS OF REPARATIONS ENSURE THE ACHIEVEMENT OF RESTORATIVE JUSTICE

Given that current land planning law and community empowerment strategies fall short of restorative justice, cities like Pittsburgh that voice interest in addressing historic displacements must shift to reparations. This article does not mean to suggest that any one form of reparations or other legal change will resolve the political and legal opposition to restorative justice, nor does it attempt to weigh the

185. *Updating and Adopting the Greater Hill District Master Plan*, CITY OF PITTSBURGH, <https://engage.pittsburghpa.gov/ghdmp> (last visited May 10, 2022).

186. *Id.*

187. *Id.*

188. See *Gaudenzia Residential Drug and Alcohol Treatment Facility*, HILL CDC, <https://hilldistrict.org/gaudenzia> (last visited May 10, 2022); Bill O'Toole, *How the Community is Driving the Lower Hill District Redevelopment Project*, NEXT PITTSBURGH (Apr. 15, 2019), <https://nextpittsburgh.com/city-design/how-the-community-is-driving-the-lower-hill-district-redevelopment-project/>.

189. GREATER HILL DISTRICT MASTER PLAN, *supra* note 8, at 12–19, 121.

190. See Laura Padilla, *Reflections on Inclusionary Housing and A Renewed Look at Its Viability*, 23 HOFSTRA L. REV. 539, 578–79 (1995).

likelihood of the enactment of any changes. Ultimately, the strategic decision of which legal change or changes are best to pursue should be left to the communities themselves as experts in their own local politics. Instead, Part IV aims to review two options: direct reparations and indirect reparations in the form of a mandatory reparative equity analysis for changes to zoning law and major development projects.

It is important to note the common-place myths surrounding reparations that inhibit their full consideration. A common thread in American reparations discourse is that reparations are impractical,¹⁹¹ but there are many different forms that reparations could take, from one-time direct payments to an indirect “atone-ment model” featuring a more long-term investment into historically harmed communities.¹⁹²

In the context of displacement, direct reparations could entail land reparations¹⁹³ or monetary compensation for the displacement that goes beyond that required by the takings clause.¹⁹⁴ In the Lower Hill, the evidence suggests that homeowners and business owners were fairly compensated for the values of their property,¹⁹⁵ but those payments did not encompass the full costs borne by the displaced. The Hill District was primarily a renter’s neighborhood; these renters did not receive any compensation.¹⁹⁶ Neither were the displaced compensated for intangible social goods: a vibrant culture and community had been erased; its constituent parts scattered across the city.¹⁹⁷ Neighbors in the rest of the Hill District were not compensated either, despite the trickle-down effects from being cut off from Downtown and the removal of a commercial district in the neighborhood resulting in a mass exodus and the extreme poverty felt by residents today.¹⁹⁸ A truly fair payment for the injuries of displacement would encompass these social, economic, and neighborhood-wide effects ignored by the Takings Clause.

Discussions of reparations also present problems of scope.¹⁹⁹ Compensation could go to specific individuals and their descendants or to neighborhood-wide entities, such as caretakers or distributors.²⁰⁰ Limiting compensation to those who can prove a relationship to the specific displacement at issue would significantly affect the ability for the community to collect. In a neighborhood like the Hill District, which was comprised mostly of renters,²⁰¹ it would be prohibitively difficult for a family to prove their previous tenancy in a neighborhood some seventy

191. Coates, *supra* note 35.

192. Cohen, *supra* note 20.

193. Jordan Brewington, *Dismantling the Master’s House: Reparations on the American Plantation*, 130 YALE L.J. 2160, 2164–66 (2021).

194. *See* Coates, *supra* note 35; Cohen, *supra* note 20.

195. Nelson Jones, *supra* note 1.

196. ESPINO ET AL., *supra* note 6, at 82, 98.

197. *Id.* at 106.

198. Washington, *supra* note 7.

199. *See* Cohen, *supra* note 20.

200. *Id.*

201. ESPINO ET AL., *supra* note 6, at 82, 98.

years prior.²⁰² A broader distribution scheme runs into a similar legitimacy problem: How would the distributor of funds ensure that community caretakers receiving money would use or distribute it appropriately?²⁰³ Despite these weaknesses, there is a significant symbolic and analytical benefit to ensuring that the people and communities affected are compensated directly.²⁰⁴

Indirect reparations, with compensation that is not directly paid out to identified victims, are another potential solution. The acknowledgment, acceptance, and apology elements of reparations may be included in the decision-making analysis of any relevant political body as a mechanism to ensure that the distribution of opportunity, resources, and power is equitable. This version of reparations is also referred to as the “atonement model” as described by Roy Brooks.²⁰⁵ Rather than viewing reparations as compensatory for some past injustice, Brooks reframes them as necessary investments in the future of historically impacted communities.²⁰⁶

In the land-planning and displacement contexts, municipalities could apply this sort of reparative analysis to zoning decisions. In so doing, municipalities can not only compensate victims of previous displacements, but avoid future displacements by incorporating an acknowledgment of the costs of displacement in the first instance. In the context of a historic displacement, redevelopment of that land could provide an opportunity to evaluate the costs of the historic displacement and ensure some measure of compensation to the neighborhood in the form of conditions on zoning. One version of this would be to include a “racial equity impact survey” as a requirement in all major zoning decisions.²⁰⁷ Many jurisdictions already require similar investigations as to the archaeological, environmental, and transportation effects of zoning decisions, so the framework for the analysis already exists.²⁰⁸ The required analysis would determine the proposed development’s effect on racial equity in the context of the history of the area and base future land use decisions on that history as necessary.²⁰⁹ In the Lower Hill, such an analysis would have enabled a more systematic application of the restorative justice sought by Hill CDC.

V. CONCLUSION

Pittsburgh’s Hill District was once a beacon of Black culture, playing host to the greatest entertainers in the arts, music, and sports.²¹⁰ By the 1960s, a significant portion of the neighborhood known as “the crossroads of the world” was

202. See Cohen, *supra* note 20.

203. *C.f. id.*

204. Direct reparations would provide former victims with a measure of closure, while acting as a symbol of the perpetrator’s acknowledgement, apology, and remorse. The more direct and tangible the compensation in the eyes of the affected community, the likelier the community will actually benefit from the reparations.

205. Brooks, *supra* note 34, at 268–69, 276–83.

206. *Id.*

207. Archer, *supra* note 75, at 1321.

208. *Id.*; see, e.g., ESPINO ET AL., *supra* note 6.

209. Archer, *supra* note 75, at 1321.

210. See discussion *supra* Part I(B).

razed; the 8,000 people living there forced to scramble for new homes.²¹¹ In 2011, the arena built on that land was torn down, and the Lower Hill sat as a sea of parking lots for a decade while legal issues and funding stalled a new round of redevelopment.²¹² In the end, developers got the outcome they were looking for with relatively few enforceable concessions and construction began in 2021.²¹³ It remains to be seen how the project will affect the community it has promised to benefit.²¹⁴

The Lower Hill District provides a case study for communities attempting to reclaim or secure remedies for historic displacement under what Hill CDC referred to as “restorative justice.” Current zoning law does not allow for the incorporation of restorative justice as a legal principle given its history, procedural structure, and the use of developer-friendly tools like special zoning districts. Community empowerment strategies like CBAs and RCO laws similarly fall short.

Legal change is necessary to ensure that communities in similar positions to the Hill District have more leverage over their futures and the opportunity to guarantee remedies for future displacement. While this article does not attempt to determine which remedies are the best strategic choices for communities to pursue, it recognizes that some model of reparations is required to ensure that historical injustices are centered in the analysis and benefits from development are actually enjoyed by the affected community.

211. *Id.*

212. *Id.*

213. *See* Belko, *supra* note 102.

214. Washington, *supra* note 7.