

LAND USE LAW CENTER
PACE UNIVERSITY SCHOOL OF LAW
WHITE PLAINS  NEW YORK



ADDRESSING DISTRESSED PROPERTIES IN THE CITY OF NEWBURGH

Opportunities and Recommended Strategies
November, 2010

The Role of the City Council and Next Steps

These recommendations depend on the City Council to give them life and make them realistic and achievable. A new policy and direction must begin and grow as a result of Council leadership, insight, and commitment.

If the recommendations contained in this final report are largely acceptable to the Council, the next steps are:

1. To adopt a policy resolution of the Council expressing your general agreement and directing that steps be taken to implement the recommendations;
2. To authorize the preliminary steps needed to incorporate and create a business plan for the City of Newburgh Land Bank for the purpose of taking title to, managing, improving, and disposing of title to city-owned residential properties to get them back on the tax rolls; and
3. Create a distressed property task force for the city to coordinate the efforts and resources of all city departments and other agencies and organizations to launch a successful program to remediate as many properties as possible in the recommended target area.

Introduction

Despite a struggling economy, the strained fiscal condition of the City, and continuing bad news from the streets of Newburgh, there are several key opportunities to remediate distressed properties and, in the process, set the stage for the future revitalization of the physical and social fabric of the City. There is a clear and persistent connection between the condition of distressed properties in the City and increased crime, declining property

values, and the City's limited tax base. There is a sense of urgency among citizens and city leaders that a new strategy for remediating distressed properties must be embraced as the first step in revitalizing the city's historic neighborhoods and its overall economy.

There is much evidence that such a strategy can work:

- Cities like Newburgh throughout the nation have adopted new strategies for managing and reversing distressed properties, and they are succeeding;
- The economic fundamentals in the region are sound, when compared to other cities with similar inventories of distressed properties;
- The City Council has adopted key legal reforms and can strengthen local laws further to toughen local codes and their enforcement;
- Under current New York law, properties owned by the City can be held in a land bank that the City Council can establish;
- There is financing available to remediate these properties while held by the land bank and there are effective methods for working with developers and homeowners to place properties held by the land bank back on the tax rolls;
- The future land use plan being prepared for the City demonstrates the many physical, cultural, environmental, and historical assets of the City and how they can be leveraged by effective action by the local government and the private sector.
- There is technical competence in all relevant departments in the City and a renewed sense of commitment to neighborhood revitalization;
- There are several strong local anchor institutions in the private and civic sector that are willing and able to support a new strategy that promises success; and
- The Land Use Law Center and the Center for Community Progress are available to assist the city council, departmental staff, and community leaders in implementing a step-by-step plan for remediating distressed properties and for identifying and attracting needed outside resources to ensure success.

Summary of Our Study and Its Methodology

With funding provided by the Ford Foundation, the Land Use Law Center at Pace University (LULC) has been engaged to create an implementation plan for remediating distressed properties, subject to the support of the staff and administration and ratification by the City Council.

With the assistance of the Center for Community Progress (Community Progress), the LULC has identified and evaluated existing strategies to remediate distressed properties in the City and prepared several recommendations on how to mitigate the adverse effects of troubled properties on the City. All of these recommendations are based on our understanding of what the people of the City say they want, what the staff, with available

assistance, can implement, and what the law of the state and available financing will support.

Following an initial site visit and several conversations with the Mayor and City staff, Community Progress and the LULC facilitated a public presentation on April 14, 2010 to educate local leaders and citizens on effective strategies and best practices in other cities related to vacant and abandoned properties. The evening presentation drew over 100 participants, including community leaders, neighbors, elected officials, county officials, community activists, residents and investors, public and private agencies representatives, City staff, and other community stakeholders.

On April 15, 2010, Community Progress conducted six focus group sessions to facilitate discussions on current practices, challenges, and opportunities related to tax-foreclosed and other vacant and underutilized properties. The series of small group discussions focused on the barriers to remediating distressed properties and to identify new options for overcoming them.

The overwhelming consensus from the focus groups was that there is the need for a systematic and deliberate approach to returning properties to their highest and best use as a key component of stabilizing the community's property values and economic health.

Among the barriers to progress identified by participants in this process were the lack of clarity among local land use boards as to roles and proper standards for property development and revitalization, including historic restoration; lack of private investment in property maintenance and repair in certain neighborhoods; inadequacies in local code standards and enforcement techniques; the need for enhanced software and property condition tracking systems; difficulties in obtaining local approvals for property development and redevelopment, particularly from the Architectural Review Commission; the need for staff and board member training; need for stronger property maintenance and public nuisance abatement code standards; difficulties in obtaining effective judicial orders mandating compliance with local laws; antiquated standards in the local zoning code; frequent turnover in administrative leadership in city hall; the constrained fiscal condition of the city; cutbacks in important municipal services; inability to take advantage of outside grant funding and other assistance; high rate of criminal activity; lack of jobs; and poverty.

Perhaps the biggest barrier to community progress is the lack of a unifying vision and strategy that is capable of being implemented with existing resources and that will attract outside technical and financial resources and stimulate renewed citizen and private sector support within the City.

Following these community meetings, the LULC held a series of interviews with city staff to discuss past and present strategies and to assess staff capacity to implement an effective strategy. On June 15, 2010, the LULC and Community Progress conducted a strategic planning session to evaluate the observations from the community meetings, focus groups, and staff discussions and chart and analyze several strategic approaches for further consideration. The LULC and Community Progress also conducted extensive research

regarding successful strategies in similar cities, the provisions of New York law, and available financing that the City can use to develop similar strategies in Newburgh. It was based on this methodology that this report was developed.

Opportunities and Recommendations

Overall Policy Recommendation

We recommend that the City Council adopt an organizing resolution that spells out its commitment to restoring the physical vitality of the City's historic neighborhoods as its principal strategy for community development and renewal. At the request of the Council, the LULC and Community Progress are available to draft a resolution that contains a comprehensive plan for community revitalization, rezoning, project approvals, development of key sites, funding strategies, code reform and enforcement, public nuisance abatement, acquisition of title to distressed properties, land banking, management, and remediation of these city-held properties, and the restoration of these properties to private ownership and the tax roles.

In order to garner support and capacity, the City should consider engaging principal partner institutions, Mount Saint Mary College, the St. Luke's Cornwall Hospital, and the Orange County Community College. These are all located in or near the CDBG area, in proximity to one another, and near many troubled properties. A target area for code and public safety enforcement should be developed in conjunction with the leadership of these institutions and key staff and with a clear understanding of property and financial conditions and opportunities in the selected area. Opportunities for organizing community support within a target area should be considered. Other potential partners should be consulted including Habitat for Humanity, Patterns for Progress, local banks, and outside institutions such as the Community Preservation Corporation, Orange County, Central Hudson, and others.

The City should explore regional cooperation opportunities with the County and neighboring municipalities to increase the capacity of the City in providing services to its citizens in a more economical manner. Communities across the country are leaning to regional cooperation as a means of maximizing governmental efficiency is a period of financial pressure on all levels of government.

In implementing the distressed property remediation program, all practical means of ensuring that local workers are hired to conduct building improvements and property rehabilitation should be pursued. The City's workforce initiative should be based on the most successful examples of such efforts elsewhere in the nation. Research on these programs should be conducted and a report presented to the Council recommending steps necessary to adopt best practices in Newburgh. In addition, research should be done on the powers and capacity of the city's Industrial Development Agency to help with any and all job development opportunities, including the greening of remediated buildings,

remediating and reusing distressed commercial properties, and the financing of business development in and around the target area.

All of the recommendations should consider implementing a media and communications effort about all the positive aspects of Newburgh. While the community faces many challenges, it is clear that the assets of Newburgh are not recognized by many Newburgh residents, and clearly not recognized by many within the region. A communication strategy should target city residents, as well as the residents and potential investors within the entire region. Such an initiative, while not a substitute for serious and substantive changes in the City's approach to the development challenges facing Newburgh, could be important in offsetting the negative self-image that was expressed by community stakeholders. It is important that people believe that Newburgh is a good city that has the potential to become an even better city. This may be an area where the City can request foundation support.

Our specific recommendations are organized around three key areas of opportunity available to the City to remediate distressed properties as the first step in implementing this comprehensive plan. The second step is key parcel redevelopment.

Opportunity One: Enhance Local Property Condition Codes and Their Enforcement

Newburgh currently has consolidated fire and building code departments. In addition, the police and code departments have experience conducting targeted enforcement. The City Council has adopted a strong public nuisance abatement law. Pending proposals for strengthening fines and charging administrative fees should be adopted as a first step in this process. These strengths can be built on to achieve maximum effect in enforcing the Property Maintenance Code, the public nuisance law, and other code provisions regarding unsafe, abandoned, vacant, and deteriorated buildings.

Review all code enforcement and remediation laws and determine how they can be strengthened by the addition of stricter standards and stiffer penalties. The city should adopt a law regarding the enforcement of the state Property Maintenance Code, so its enforcement procedures comply with the requirements of the Department of State's regulations.

The Center for Community Progress, with the assistance of the Land Use Law Center, is available to review any existing legislation, research other state's / local legislation, make recommendations on how to strengthen the code enforcement and remediation laws, and draft new legislation.

In order to create a comprehensive enforcement program, the city should take a strategic approach in a particular area to pilot concepts: It appears that the City does not have the capacity to sustain an effective city-wide effort to remediate distressed properties. The City should, therefore, develop a targeted effort. To determine target areas, GIS maps of vacant buildings, code violations, percentage of homeowners, police calls, and institutional strengths should be prepared and consulted.

The Center for Community Progress, with the assistance of the Land Use Law Center, is available to complete an analysis of neighborhood condition, review existing redevelopment plans, make recommendations for targeting remediation, and hold public meetings as necessary.

Develop a program for remediation or demolition of unsafe buildings: Newburgh has a new public nuisance ordinance, codified at Chapter 126 of the Municipal Code. Through the newly effective public nuisance abatement law, implement a procedure which results in all code enforcement remediation costs incurred by the city being certified to the tax rolls and enforced through the tax collection and foreclosure process. This law defines two types of nuisance buildings, both somewhat broadly: one is identified by the illegal acts of the occupants and the other the blighted condition of the building. The city can issue orders to abate and bring actions for injunctions, which requires the cooperation of the courts. Under this law a receiver of rents can be appointed and the city may apply to the courts for leave to sell the premises following the entry of a judgment establishing a lien on a building for costs incurred in the process of enforcement.

Newburgh's Municipal Code, Chapter 129 also regulates unsafe buildings. Abatement can be ordered, placards can be posted, emergency abatement is allowed, and the City can perform work needed, add the charges to the tax bill, and foreclose for nonpayment of these liens plus interest. Buildings can be ordered vacated and demolished.

Work with the city court judges to develop a more effective enforcement approach: Would a clearer and more focused remediation program, secure greater judicial cooperation? Would it be more effective to calendar enforcement efforts against landlords in certain neighborhoods on the same day? If judges can't become more effective, then consider preparing and enforcing a summary abatement law that would allow the city administration greater autonomy in abating nuisances in privately-owned buildings.

The Center for Community Progress, with the assistance of the Land Use Law Center, is available to facilitate meetings with current court judges and staff to discuss current conditions, explore areas for improvement, and draft recommendations.

Reestablish annual rental inspections and require an annual inspection fee be paid by all landlords on a per unit basis with a reasonable maximum cap. This may help reduce the amount of blighted rental properties.

Enforce the provision of the rental property registry that requires landlords to register an official agent as a condition precedent to being able to rent units in their buildings. Impose fines for violations which can become liens on the property and consider foreclosing on these and other liens where appropriate.

Community Progress is available to assist the city with implementing this recommendation with its policy and legal staff.

Establish new procedures and software systems in code enforcement to create a more structured, integrated and focused city effort and it should be institutionalized through a cross departmental team that meets regularly to develop benchmarks, monitor progress, assess the effectiveness of ongoing interventions.

Community Progress is available to assist the city with implementing this recommendation with its policy and legal staff.

Opportunity Two:

In addition to the numerous properties the city currently owns, the City has proceeded with the *in rem* tax foreclosure proceeding and has taken title to those properties which have not been severed from the proceeding (bankruptcies, answers, etc.). Ownership of and control over these properties is an opportunity to direct remediation and development in the City and if targeted can result in positive outcomes for the City. The loss of control over property in the City to speculative interests is very risky and will likely continue to exacerbate existing conditions.

Conduct an inventory of the number and location of city-owned distressed properties and how many additional properties could be secured through the foreclosure of existing delinquent taxes. How many of these are located in potential target areas? What kind of a strategy can the city develop to maintain and then dispose of these properties to responsible homeowners and landlords? The city should develop a disposition plan consistent with the future land use plan.

Under the Private Housing Finance Law, the City should create a land banking program on a carefully controlled scale. This would allow for the community to establish priorities for re-use of abandoned and foreclosed properties, develop the capacity to maintain properties, adopt clear and transparent disposition policies, as well as to create enforceable standards for property conveyed to community organizations, local citizens, investors and developers.

The land bank will be organized as a separate corporation that will not incur liabilities for the City. Its board of directors can consist of trusted individuals who are either ex-officio representatives of the city or other key institutions. The certificate of incorporation of the land bank entity will make it clear that its legal authority is limited to holding, managing, rehabilitating, and placing back into private ownership properties that are taken by the city because of tax or other delinquencies. It will be authorized as well to take title to properties by gift from or favorable negotiated settlements with private owners. The land bank will be authorized to secure funding through grants and loans to carry out these functions from a variety of governmental agencies, foundations, and private sector institutions that provide funding for urban revitalization projects as well as using CDBG and Connect funds that are controlled by the City and can be used for these purposes. (For more information, see Appendix A to this report)

The LULC and Community Progress are available to help Newburgh establish a land bank within the current legislative authority, educate the community on land banking programs, create a mission, goals and a strategic/business plan for the land bank, create policy and procedures that would guide the operation of a land bank, create acquisition strategies and associated funding, establish maintenance standards, and disposition policies.

Consider taking title to additional key properties: Determine whether to establish procedures to take title to abandoned properties under Article 19-A of the Real Property Actions and Procedures Law. Consider taking title through eminent domain of specific properties that constitute a blighting influence on the community

Community Progress could assist the city staff and attorneys with implementing this recommendation.

Opportunity Three: Future Land Use Plan and Its Realization

The future land use plan being prepared for the city provides an opportunity to adopt a clear and effective plan for public and private investment. It identifies preservation, revitalization, and redevelopment areas, established gateways, incorporates transit and transportation strategies, and guides selective rezoning to achieve some higher density, mixed use development. It should be reviewed by advisory groups and the public and adopted by the City Council as expeditiously as possible. This plan has the potential to guide the location of development/redevelopment in designated industrial zones and several mixed-use zones throughout the city.

Streamline the Development Approval Process: The City should begin to implement “redevelopment readiness” standards to rationalize the development process and make it predictable and streamlined to developers and property owners wanting to invest in the City. These standards can be established incrementally at little expense to the City.

The Center for Community Progress, with the assistance of the Land Use Law Center, is available to conduct an assessment of the current development process (planning, permitting, historic review, etc.), provide recommendations for new process maps and schedules to streamline the system for developers, and train city staff on the new process.

Update Existing Zoning Legislation: The City should amend its zoning to remove antiquated provisions and to conform to and realize the promise of the future land use plan. As part of the process, the City should determine whether the current architectural review guidelines and their interpretation are consistent with the comprehensive plan and the City’s strategy for property remediation. A study is needed of the flexibility measures that can be used in granting certificates of appropriateness, of streamlining the process of granting certificates, and of securing financial incentives for historic and green rehabilitation of distressed historic properties.

City staff has applied for funding for drafting new zoning and the Land Use Law Center is available to provide guidance.

Provide training for all members of boards and commissions involved in the development approval process: In 2006, the state established minimum training standard of four hours each year for members of city planning and zoning boards. The City Council should pass a resolution establishing required training and identifying appropriate training program(s). This requirement should be for all members of boards and commissions involved in the development approval process.

Training should focus on developing a clearer understanding of the respective responsibilities and authority of each board, and also equip board members with the knowledge of the real estate development process to discharge their duties. This should assist them in making consistent and equitable decisions and in streamlining the development approval process.

The members of the Architectural Review Commission should be involved in a comprehensive land use board training program. It is critical that the design guidelines in the East-End Historic District be administered in a way that preserves the historic fabric of distressed properties and their neighborhoods in the context of an aggressive remediation program.

The LULC, with the assistance of Community Progress, is available to review existing practices, make recommendation for a more standard approval conditions, and train boards and commission on development approval process that is standardized and equitable.

Provide financial incentives to encourage development: The revised historic tax credit of the state and the programs of NYSERDA should be packaged by the city for interested property owners. The Land Use Law Center is available to work with the state to provide needed training to staff and property owners focused on criteria and process for historic tax credits and other available incentives and tax credit programs.

The City should consider approving the 485 (A) tax incentive to entice mixed-use development of abandoned buildings. It has been estimated that vacant properties cost a city as much as \$80,000 annually. While development incentives such as this may result in some short-term tax relief for revitalized properties, the net effect is to reduce governmental costs associated with abandoned properties and their adverse effect on property values and the overall tax base.

Conclusion

This report suggests the creation of an overall comprehensive program that helps the City reframe the debate about its future from one of hopelessness and blight remediation to one of creating strong neighborhoods and generating economic opportunity. It suggests a transparent, proactive, coordinated overall strategy, and a point of beginning: that begins with the reform of local laws and enhanced practices that start the process of distressed property remediation through existing owners and, where they cannot or will not

cooperate, through a land banking process leading to the return of properties to private ownership and to the tax rolls.

If implemented properly, this distressed property remediation strategy can become the central component of the City's broader economic development and job creation strategy. It can rekindle hope and support and leverage the energies and resources of local businesses, workers, investors, civic institutions, non-profits, the religious community, and the technical and financial support of outside governmental agencies and private entities. This responds to the consensus we heard at community meetings: that there is the need for a systematic and deliberate approach to returning properties to their highest and best use as a key component of stabilizing the community's property values and economic health.

Careful attention will have to be paid to administrative direction and to assigning responsibility for coordinating efforts among departments and sectors. There needs to be a structured, integrated, and focused city effort and it should be institutionalized through a cross departmental team that meets regularly to develop benchmarks, monitor progress, assess the effectiveness of ongoing interventions, and ensure ongoing civic engagement, transparency and accountability.

Appendix A

Residential Property Land Banking Under Current New York Law

Land banking for the purpose of holding and developing properties for residential use is possible under New York law. A not-for-profit corporation can be established under Article XI of the Private Housing Finance Law. Such a corporation is called a Housing Development Fund Company (HDFC). Article XI empowers city, town, or village governments to convey municipally-owned land to HDFCs without going to public auction and without having to accept the highest bid. The price can be negotiated and agreed upon by the municipality and the HDFC. This is allowed because the HDFC serves a public, rather than a private, purpose.ⁱ There must be a public hearing before properties are conveyed to the HDFC.

When a housing development is undertaken by the HDFC, even if it through a partnership with a private developer or other non-profit, the development is exempt from mortgage taxes and sales taxes on materials purchased for construction. In the discretion of the municipality, the development can be exempt from local property taxes, or pay an in lieu of amount to make it affordable in the local housing market.

An HDFC can be set up to hold title to property for a single project or it can hold multiple properties and take them as far through the development process as it wishes. The HDFC may enter into partnerships with private or other non-profit developers to develop and hold property. Such an HDFC enjoys a corporate life of three years and, to continue functioning, can reapply for a certificate of good standing for an additional three years.

HDFCs can be incorporated in a short time: 4-6 weeks. Normally the corporate papers list the Division of Housing and Community Renewal (DHCR) as the supervising agency, requiring DHCR to sign off on the incorporation, a step that normally takes 2-3 weeks.

An HDFC is established by sponsoring agencies, such as strong local institutions including hospitals, colleges, or non-profits in the municipality and its board of directors may be drawn from those institutions. If the municipality desires, it can require that the certificate of incorporation of the HDFC require it to confirm to municipal housing policies to ensure that the local government has some control over the operations of the company.

HDFCs have been set up in recent years in many communities, including Croton, Yonkers, and Hastings in Westchester County.

ⁱ The public purpose is the creation of housing for individuals and households who cannot afford private market housing in the region. In the case of Orange County, housing made available through the HDFC would have to be affordable to households earning from approximately \$50,000 to \$90,000.