

Nutter for Mayor Vacant Property Subcommittee

Final Report - October 31, 2007

Summary

The primary causes of property abandonment in Philadelphia are economic, but its pervasiveness can be linked to the City's reluctance to perfect tax liens and abate serious code violations. These aversions have produced an environment of tolerance for owner neglect and property disuse that has made possible the abandonment of more than 10% of the properties in the city. Meanwhile, developers who wish to acquire vacant properties and return them to productive use confront a confusing array of title-holding quasi-city agencies with disposition policies unique to each, and a spot condemnation process that literally takes years to complete. At the same time, low-income homeowners struggle to keep their properties from becoming physically untenable while the City under-funds and inefficiently manages the home repair programs that have been shown to be highly effective in staving off abandonment.

The Vacant Property subcommittee recommends that the City undertake a four-pronged strategy for changing the environmental conditions that have allowed property abandonment to flourish and the vast inventory of developable property to remain unused:

1. Prevent future abandonment through housing preservation and aggressive code enforcement.
2. Foreclose on abandoned properties with unpaid liens for city taxes and outstanding building code abatement work.
3. Establish a unified Land Bank to acquire all of the city's vacant properties, and to expeditiously transfer those properties to owners and developers who will redevelop them.
4. Use the proceeds of Land Bank sales to: fund housing preservation and code violation abatement; cover the cost of perfecting liens; pay for the management of the vacant inventory; and promote affordable housing and equitable development.

The Causes of Property Abandonment

There are more than 20,000 vacant buildings in Philadelphia and another 40,000 vacant lots.¹ The vast majority of vacant properties are owned by private parties, most of whom have long since abandoned their interest in their properties. Some owners hide behind corporate shells listing the same address as the abandoned property, some have died and have left no will, and many more simply cannot be found. Most owners of vacant properties have long ago stopped paying taxes. As their negligence costs the City millions of dollars in added services, their tax delinquency denies it much needed revenue for police, schools and other critical services.

The problem of property abandonment is, at bottom, a problem of simple economics: there is a far greater supply of properties in the city than there is a demand for them. Simply stated, Philadelphia has more houses than households. Even if the current wave of new residents were

¹ Temple University Center for Public Policy and Eastern Pennsylvania Organizing Project, *Blight Free Philadelphia: A Public-Private Strategy to Create and Enhance Neighborhood Value*, (2001), iv, (adjusted for NTI demolition activity since 2001).
. <http://www.temple.edu/rfd/content/BlightFreePhiladelphia.pdf>, iv, (adjusted for NTI demolition activity since 2001).

to close the supply-demand gap, the cost to rebuild the vacant properties in the neighborhoods where they are most prevalent is more than twice the market value of those properties.²

Simple microeconomic principles are also at work in the production of new vacancies: the cost to rent or to own and operate the city's aging housing often outstrips the financial capacity of its residents. Nearly a third of all owners and more than half of all renters in the city spend more than 30% of their gross income on housing costs.³ As a reflection of this problem, recent housing surveys indicate that 43,000 owner-occupied households in the city have significant unmet repair needs; a third of those having severe needs that, if left uncorrected, will almost certainly lead to the abandonment of the property.⁴

These nascent vacant properties affect more than the housing markets in the neighborhoods in which they are located;⁵ when buildings fail families may be placed in shelters and children in foster care, faulty electrical systems and space heaters cause deadly fires, children experience elevated blood leads from deteriorated finishes, school attendance and performance are affected by uninhabitable conditions in the home, and resulting abandoned properties attract crime and negatively impact on neighborhood quality of life. As the city continues to lose population, as the housing stock continues to age, as the percentage of city residents living in poverty continues to increase, the problem of nascent vacancy will surely worsen. On the other hand, as property values appreciate, there is more of a financial incentive for owners to invest in their properties. A look at the causes of property abandonment, then, is essential to informing the solutions.

Strategy 1: Prevent Future Abandonment

Increase Demand for Vacant Property. On the fundamental matter of supply and demand, the City must incentivize reinvestment in and repopulation of the city's neighborhoods. To support those efforts, the City must provide for an effective and transparent system for acquiring, planning and mapping the city's vacant property inventory, and it must make the vacant property inventory attractive to developers and individual owners who will return them to productive use.

Make Housing Preservation a Top Priority of the City's Housing Policy. To address the problem of aging properties and their high cost of operation, the City must develop a comprehensive program of housing preservation to close the gap between the persistently low incomes of city homeowners and the high cost of occupancy. The City can start by simply improving the productivity and responsiveness of its existing home repair and energy assistance programs; programs that have a proven effectiveness in preventing abandonment.⁶ Recent studies have shown that many more low-income households can benefit from these vital programs with simple and achievable changes in the way in which the services are offered and delivered.⁷ Those changes need to be implemented. Additionally, geographic targeting of preservation efforts can increase their impact by reinforcing other investments in the neighborhood, such as new housing developments. Finally, funding for housing preservation must be significantly

² Kevin C. Gillen and Ira Goldstein, *Empirical Results on the WCRP Barriers-To-Affordability Study*, Presentation to the Women's Community Revitalization Project, (September 2007). Slides 12 and 13.

³ Gillen and Goldstein, Slide 39.

⁴ *Reclaiming Abandoned Pennsylvania II. From Liability to Viability: A Technical Resource Guide for Action*, Housing Alliance of Pennsylvania, (2005).

⁵ Researchers in Philadelphia found that "Houses within 150 feet of a vacant or abandoned property experienced a net loss of \$7,627 in value." Temple, 21.

⁶ "Of 12,000 houses that received Basic Systems Repair Grants from 1995 to 2000, only 117 (less than 1%) were abandoned in 2000." Temple, iv.

⁷ Jeffrey Allegretti, Court Daspit and Anthony Neri, *Expanding Capacity and Speeding Production*. Women's Community Revitalization Project, (2005).

increased over current levels and a public education effort targeted to low income homeowners must be developed to expose the dangers of predatory contractors that exacerbate the income-cost disparity.

The proven effectiveness of home repair programs in reducing abandonment suggests that similar offerings to moderate income homeowners, perhaps a zero-interest loan such as that used to good effect by the Water Department's HELP program, must also be developed. In the same vein, small rental property owners – the most significant group of de facto affordable housing providers in the city – must be given financial incentives, like the now-defunct MEND program which offered self-amortizing loans when leveraged by the owners equity and bank financing, to foster reinvestment in decaying apartment buildings and rowhouse rentals. To bolster these preservation efforts, the City needs to tap into the deep capacity of its existing CDCs and affordable housing developers by offering them financial inducements to develop “new” affordable housing units through the preservation of the city's vast substandard occupied housing stock.

Use Code Enforcement as a Housing Preservation Tool. On the flip side of this same coin, the City must aggressively enforce its building and housing codes to compel absentee and neglectful owners to bring their properties into compliance. When such enforcement fails to achieve the desired response by the owners, the City must move swiftly to abate the violations, lien the properties and, where feasible, take possession of properties that have been effectively abandoned by their owners.

The City already requires owners of vacant properties to register them, and an existing ordinance allows the City to assess derelict owners \$300 per missing window per day. However, neither the registration requirement nor the missing window fines are enforced, partly due to a lack of will and partly due to a lack of human resources to inspect and follow-through on the violations. In the latter case, citizen partnerships can provide valuable adjunct resources for the City's efforts. Neighborhood Code Watchers, the code enforcement equivalent of crime Town Watchers, can enhance the City's ability to identify serious violators and to monitor their response (or lack thereof) in the aftermath of City code enforcement action.

Strategy 2: Take Abandoned Properties from Neglectful Owners

Reduce Reliance on Eminent Domain and Sheriff's Tax Lien Foreclosures. The City currently has only two tools in its possession to take properties from neglectful owners: PA Act 94 eminent domain (a.k.a. spot condemnation) and tax lien foreclosure sale (a.k.a. Sheriff's Sale). Even when these instruments are well executed, neither is particularly effective in forestalling abandonment or assuring that new owners will return the property to productive use. Condemnation is costly – especially in the aftermath of the recent spike in the city's real estate values – because it requires that the owner be paid the fair market value of the property, and it is extremely time-consuming both because of the due process burdens of the condemnation law and the notoriously inefficient manner of its execution. Condemnation experts say that reforms in the way in which spot condemnation priorities are developed – now largely through City Council prerogative – and increases in staff and contracted resources to expedite the legally required processes will go a long way to shortening the typical timeframe of more than 18 months. However, they say, even in the best of circumstances, the process as defined in the law will require nearly a year to complete. Clearly, any process that requires a year to complete under the best of circumstances cannot be the primary mechanism by which the City obtains control of such a massive inventory of abandoned property. Nevertheless, reforming the current spot condemnation process needs to be a high priority for the City's housing administrators.

The Sheriff's tax lien foreclosure sale is also of limited utility to the City for the acquisition and control of abandoned properties. Currently, the City's interest in a tax delinquent property is limited to the value of the property's unpaid taxes, which is nearly always less than the market value of the property. As a result, the City is often outbid for properties which it seeks to acquire, and the properties may then end up in the hands of speculators and owners who behave in the same neglectful manner as the properties' former owners.

Use Judicial Foreclosure for Tax Delinquents. To overcome the shortcomings of these tools for vacant property acquisition, the City must devise an expedient means of foreclosing on properties that have been abandoned by their owners. One effective method used in Michigan, New York City, Cleveland and elsewhere⁸ involves the reform of property tax foreclosure laws by shifting the focus away from seeking judgment of personal liability against the property owner to enforcing a lien against the property. The process is called 'in rem' foreclosure; it avoids the need for a public sale (and the risk of unscrupulous speculation that it engenders) by allowing the City to take possession of an abandoned property by foreclosing on its tax lien after the owners due process rights have been faithfully exercised. Because 'in rem' foreclosure may not have the same title-cleaning effect as the Sheriff's sale process, it does present some post-foreclosure title work,⁹ but if it provides an avenue to remove a property from the hands of a negligent owner, it is a worthy tool nonetheless. Supporting the pending introduction of legislation in Harrisburg to provide Philadelphia this invaluable tool must be a priority of the City's legislative agenda.

Foreclose on Abatement Liens. The City may also acquire neglected and abandoned properties through a program of zero-tolerance enforcement of the city's housing and building codes. Hard-hitting code enforcement will not only spur formerly neglectful owners to make needed reinvestment in the city's failing housing stock, it can, in the case of egregious and unresponsive violators, provide an effective means of public taking of derelict properties through "fix it or lose it" laws like those used in New Jersey, Ohio and California.¹⁰ In such cases, the City or a court-appointed non-profit may be assigned as the receiver of a neglected property to abate the violations and to take ownership through the foreclosure of the abatement lien. As in the case of 'in rem' tax lien foreclosures, the City may take possession of the property by perfecting the abatement lien, even if the value of the lien is less than the market value of the property, so long as the owners rights to due process have been protected and the City has demonstrated to the court that the owner has effectively abandoned his/her interest in the property. Legislation is about to be introduced in Harrisburg that will allow municipalities and other eligible entities to establish "conservatorships" for properties that have been abandoned by their owners. The City must use its influence with State legislators and the Governor to support this legislation.

Revert Ownership. The City currently has an as-right ability to assume ownership of abandoned properties that have been previously sold by public entities, such as the RDA, PHDC, PAID, PIDC, etc., where owners have not lived up to their obligation to return the property to productive use. Nearly all deeds issued by these quasi-public agencies contain an ownership reversion clause that allows the deed granting agency to take back ownership in the event that the

⁸ *Third Party Transfer Initiatives in New York City: A Solution to Property Abandonment.*

<http://www.lisc.org/content/publications/detail/794/>

Model Practices in Tax Foreclosure and Property Disposition. <http://www.lisc.org/content/publications/detail/797/>

⁹ Proponents of Michigan's law say that the priority of tax liens can be preserved if the enabling legislation is carefully crafted.

¹⁰ Joseph Schilling, *Nuisance Abatement of Vacant Properties: Innovative uses of civil receivership.* February 2006. <http://www.vacantproperties.org/resources/NuisanceAbatement.pdf>

conditions of the sale have not been fulfilled. Inspections of these properties to determine their current conditions will likely yield hundreds of properties whose ownership can be reverted to a City-controlled agency for productive reuse.

Consolidate City Agency Inventory. The City and its affiliate agencies already own about 20,000 vacant parcels – nearly a third of all vacant properties in the city. However, in the absence of a comprehensive City policy on their use and purpose, the individual title-holding agencies assert full ownership control and thereby develop a disjointed but de facto City policy on their purpose and disposition. Because this fractured inventory presents the public face of the City’s own conduct of neglect, the City must assert its authority over the purpose and disposition all of this inventory – including PHA scattered sites not designated for redevelopment – and must then assume a posture of responsible ownership by conscientiously maintaining and managing these properties.¹¹

Strategy 3: Transfer Vacant Properties to Owners Who Will Redevelop Them

Plan for Vacant Property Redevelopment. The sizable existing inventory of City-owned vacant property, and the significant new additions to the City-owned portfolio contemplated by the aforementioned acquisition reforms, obliges the City to develop a comprehensive citywide plan for the reuse of vacant parcels. The plan must account for the needs of the neighborhoods in which the vacant properties exist by soliciting the participation of civic groups, CDCs and political representatives in the planning process. The plan must also account for existing private assets in those neighborhoods and the extant market forces for redevelopment. Some of this work has been already done during the planning stages for NTI, but any effective planning must be an ongoing process as the needs of most neighborhoods in the post-NTI period are likely to be different than they were in 2001. The planning should assume that a simultaneous program of aggressive acquisition by the City is already underway and that it will include properties that are now controlled by local State Authorities such as the Redevelopment Authority and the Philadelphia Housing Authority.

Establish a Unified Land Bank. Only by assembling abandoned properties under a single body can the City hope to effectively manage, maintain, map, plan, organize and, ultimately, create marketable opportunities through the disposal of this inventory. To that end, the centerpiece of the City’s vacant property policy is the creation of a *unified* Land Bank – a minimally staffed City-controlled non-profit corporation, authorized to forgive delinquent taxes, acquire properties through negotiated sale and lien foreclosures, manage and maintain the inventory, and dispose of vacant property in concert with the City’s established redevelopment priorities.

The Land Bank’s disposition policies must be ever-guided by the City’s comprehensive plan. An important product of that plan must be the completion and implementation of the BUILD database, begun under Mayor Street, which will increase efficiency and accountability in the acquisition/disposition process. BUILD is, or should be, a GIS-enabled database that allows planners, managers, elected officials and the public, via a web interface, to identify and map all of the city’s vacant properties. The planning effort will produce a "purpose" tag for each parcel in the public inventory, and the BUILD system will identify the designated use for each. Such tags may include: low or no cost properties made available to developers of affordable housing; properties packaged for planned developments and offered through public RFPs to developers; bulk sales of properties to developers to stimulate private unsubsidized developments (with

¹¹The legal constraints of transferring agency property to the City proper need to be more carefully explored, especially in the case of PHA, where HUD’s controlling interest must be considered. Baltimore offers an example where Housing Authority did a mass transfer of property to the City.

reverter clauses to guarantee the intended outcomes); private broker offerings to list and show individual parcels; "rolling admissions" opportunity to allow developers to pitch deals for single or multiple parcels; and, for vacant lots located next to stable occupied properties, community gardens and side yards. The purpose designations must be consistent with and linked back to the city-wide land use planning and remapping being undertaken by the City Planning Commission, however, the Land Bank parcels should express a clear priority for the disposition of property at nominal consideration to support the development of affordable housing, a matter on which the City plan is mute. Parcels for market rate developments may be offered at below-market rates to promote the inclusion of an affordable "set-aside" and to achieve the goal of "equitable development," especially in gentrifying and strong market neighborhoods.

The Land Bank should look, feel, and act as much like the private real estate market as possible, with private broker participation in to-the-public sales, the use of standard agreements of sale, a guarantee of timely settlement terms, and the expedient ordering of appraisals, title searches, etc. The Land Bank will operate with full transparency, identifying on its public website the address of each property, a photo, the plan-designated "purpose" tag, the condition, age, ownership, data on tax delinquencies, reverter clauses, soft second mortgages, straw or deceased owners, etc., and a mapping function that will allow for a visual overview of its proximity to other vacant parcels along with a link to Google[®] "street view" to provide a virtual walking tour of the block. The BUILD database will also include a full disclosure of all transactions – new acquisitions, leases, and sales – the dates and values of those transactions, and the names and addresses of the parties involved.

Strategy 4: Make the Initiative Self-Sustaining

Paying for the expansion of housing preservation efforts, the escalation of code enforcement and abatement activity, and the establishment of the Land Bank and its ancillary systems will not be cheap. Fortunately, the City has already spent upwards of \$5.0 million on the development of the BUILD program, an essential component of the Land Bank structure, and significant new funding for housing preservation using NTI and Philadelphia Housing Trust funds has recently been authorized. But more funding will be needed to effectively capitalize the start-up of the Land Bank. Although the Land Bank will not be a new fully-staffed bureaucracy, it will nonetheless need to incur significant costs to acquire properties, including broker's fees, title searches, appraisals, transfer costs, and legal costs. The Land Bank will also need to complete the BUILD program, maintain its data and its public web-interface, and it will need to purchase contracted services for the daunting chore of stabilizing and maintaining tens of thousands of vacant properties. Some of the costs for these activities may be covered by savings achieved in the planned elimination of redundancies in the administration of City's housing agencies, and other costs may be deferred until settlement to be paid by the buyers. But in the early years of operation, when the level of activity will be intense, the City will need to provide the funds needed to operate the Land Bank until the income from the sale of properties begins to cover its costs. NTI funds have been all but exhausted, and CDBG funds are strained. Still, funding may be found in the full implementation of the existing "recycling agreement" that require a portion of the proceeds from the sale of condemned properties to be recycled back to fund new acquisitions. Similarly, the proceeds of Sheriff's sales for unclaimed property now revert to the State, but a legal argument may be made that these funds rightly belong to the City. Finally, paying for property acquisition will be an eligible use of funds from the proposed State Housing Trust Fund, once the State fund has been enacted and made operational.

The Land Bank must ultimately become self-sustaining by recycling a portion of the proceeds of all sales to pay for its operations. However, the Land Bank must never become an end in itself; a new self-preserving bureaucracy. In an effort to preclude this possibility, it must be established with a clear mission to become an income generator not only for its own operations or to pay into the City's General Fund, but to fund the City's Housing Trust Fund in support of housing preservation and affordable housing development and to help defray the costs related to the code enforcement and abatement efforts that help to generate its inventory. We recommend that the highest priority for the distribution of Land Bank proceeds be to support housing preservation and new affordable housing development; activities that are integral to the Land Bank's mission and to the long term solution of abandonment. Likewise, because existing public agencies that control large inventories of vacant properties have so often sought to sell their properties to the highest bidder, we feel compelled to warn against the urge to view the Land Bank's inventory purely as a balance sheet asset to be liquidated for the maximum cash return. Instead we recommend that the Land Bank assets be seen as the essential machinery of its business – housing and economic development – and those assets should not so much be liquidated as *reinvested* in the form of preferential offerings at below market prices to those who can demonstrate the technical capacity and a confirmed commitment of resources to develop affordable housing, especially those doing affordable or mixed income housing in gentrifying communities.

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