



A Report from the Bureau
of Governmental Research



MENDING THE URBAN FABRIC

**Blight in New Orleans
Part II: Procedures for
Successful Redevelopment**

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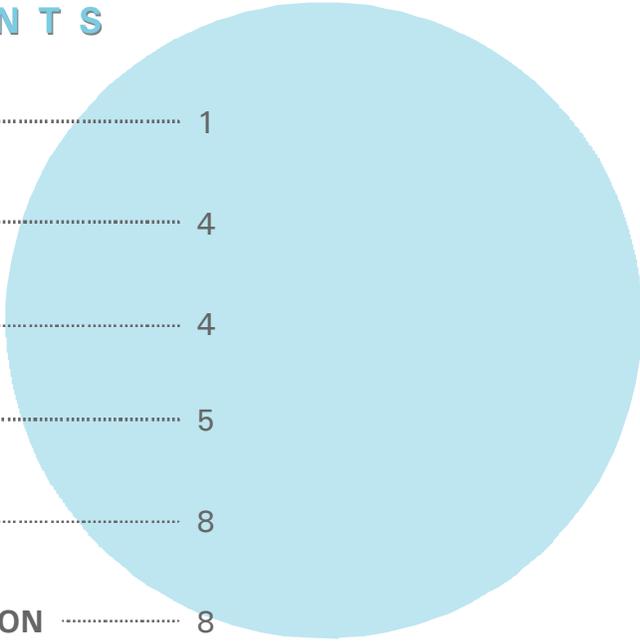


Bureau of Governmental Research
938 Lafayette St., Suite 200
New Orleans, Louisiana 70113

Photos by C. Davin Boldissar

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MENDING THE URBAN FABRIC

EXECUTIVE SUMMARY

For decades, blight has damaged the quality of life in New Orleans. Overnight, the 2005 disaster magnified the problem dramatically. Local government's efforts to deal with blight have been hampered by a multitude of long-standing structural, legal and administrative difficulties. They include: fragmentation of responsibilities; lack of strategic focus; anemic code enforcement; inadequate information systems; legal obstacles to the effective acquisition and disposition of properties; insufficient maintenance programs; and inadequate resources.

More so than in recent memory, local government is attempting to take by the horns the untamed bull that is blight in the Crescent City. The newly minted Office of Recovery and Development Administration (ORDA) has undertaken a partial consolidation of relevant functions in City Hall. It has articulated a strategy. It is pursuing comprehensive changes to code enforcement. With the New Orleans Redevelopment Authority (NORA), it has begun improving property information systems and addressing obstacles to blighted property acquisition and disposition. Coordination between NORA and the City has increased significantly, and blight remediation efforts now have more funding than in the past.

However, as this report demonstrates, local efforts need refinement in some cases and rethinking in others. Some problems remain altogether unaddressed.

Structure and Strategy. In Part I of this report, we recommended making NORA the depository for all blighted properties, with responsibility for managing and eventually disposing of them. Strategically, we recommended that the City and NORA give priority to blight remediation efforts in well-functioning areas and a very limited number of carefully chosen target zones. Addressing blight in functioning areas would improve the quality of life and increase the housing supply with a relatively modest investment of public resources. We also recommended that NORA and the City refrain from imposing redevelopment requirements that are unrelated to the basic goals of blight remediation and good quality development.

Code Enforcement Reforms. Historically, the City has poorly enforced its property maintenance codes. Bolder action is long overdue. The City, recognizing the inadequacy of the existing system, has embarked on a major overhaul. That overhaul contains many positive improvements, but it also poses risks of inconsistent enforcement and continued leniency. The risks stem from provisions allowing some property owners cited for blight to avoid or delay an administrative hearing or fine.

These provisions are designed to encourage property owners to take action on their own and to assist those who lack

the necessary resources. The goals are good. However, the provisions require an unprecedented level of management, coordination and discipline. If the execution of the program falls short, it increases the chance that a property will disappear from the code enforcement system unremediated. There is another problem. Under the planned program, many decisions will be made behind closed doors where neighbors will not have a sufficient opportunity to be heard. The City can mitigate some of the risks associated with the remediation options by keeping the decision making for cited properties in the context of an administrative hearing.

Code Enforcement Strategy. Strategically, the City plans to target most code enforcement resources to a limited number of areas. It will investigate complaints in other areas but follow through with enforcement action only if the property falls into the category of "urgent needs." The bottom line is that much of the city will be without effective code enforcement.

Code enforcement in New Orleans must contend with a number of factors, including the city's dramatic population loss. Code enforcement strategy must recognize that vastly different conditions throughout the City require different responses. For much of the City, holding property owners to high standards is both necessary and appropriate. For neighborhoods that remain devastated and largely abandoned as a result of the 2005 disaster, it may not be.

Competing needs and equities complicate the situation. On the one hand, property owners who have rebuilt their homes in largely abandoned areas will find their investment destroyed if their neighbors don't restore their properties. On the other hand, their investment can be salvaged only if other property owners devastated by the storm are compelled to reinvest in areas that may not be viable.

The City's proposed code enforcement strategy addresses the issue indirectly by ignoring code enforcement (with the exception of "urgent needs") outside of targeted areas. This has the effect of creating dual standards: one for target areas, another for all other areas, regardless of whether they are healthy, struggling or largely abandoned.

It would be far better to deal with differences in a clear, direct manner. The City could do so by establishing and applying a more basic standard in areas where severe devastation and abandonment make a requirement for full-scale investment unreasonable. In those areas, the City would require property owners to perform minimal property maintenance (such as the cleaning, gutting and securing required by the "Good Neighbor" ordinance). In other parts of New Orleans, the City would apply its standard property maintenance code requirements.

Involuntary Demolitions. Condemnations have been haphazard. Some sound buildings have been condemned, while some unsound ones have mysteriously escaped condemna-

tion. To address this situation, City Council has passed a new ordinance that will limit the City's remediation action to the minimum correction or abatement needed to eliminate the hazard. If applied correctly, this should help to prevent unwarranted demolitions.

Hurdles for Property Acquisition. Local government can acquire or force the sale of blighted properties in four ways: expropriation, tax sales or adjudication, foreclosure on code enforcement liens, or transfers of Road Home properties owned by the State. Expropriation and tax adjudication or sales suffer from serious legal and operational problems that limit their utility as tools for blight remediation. Local government has never fully tested lien foreclosure, which may also face legal problems.

Expropriation. Constitutional amendments passed in 2006 impose poorly conceived limitations on the acquisition and disposition of blighted properties. The amendments narrowly define blight and ban expropriation where the purpose is "for predominant use by" or "transfer of ownership to" private parties. The amendments also require the government to offer blighted properties back to the owner before selling them (unless the government holds the property for at least 30 years before sale). We recommend the repeal of these impediments to blighted property expropriation.

Tax Sales. The rehabilitation of properties sold at tax sales or adjudicated to the City is delayed by the lack of clear title. State legislation passed in 2007 partially solves the problem for NORA by allowing it to include multiple properties in a single suit to clear title. The Legislature could completely eliminate the problem by making tax sales and adjudication a judicial process.

Tax sales suffer from another weakness in that they attract speculators who do not intend to redevelop the property. To discourage speculators, we recommend amending State law to allow the City to place redevelopment covenants on properties sold at tax sales.

Lien Foreclosure. Lien foreclosure appears to offer a better vehicle than tax sales or expropriation for addressing blight in areas with an active market. It requires a minimum of legal procedure and small upfront costs. It avoids the transfer restrictions associated with expropriation. In addition, there is no redemption period to delay redevelopment. Unfortunately, current law does not allow the City or NORA to impose redevelopment covenants on properties sold through lien foreclosure. In addition, the City has raised some legal issues. We recommend addressing the weaknesses through amendments to State law and City ordinances.

Property Maintenance. NORA and the Louisiana Land Trust have a tentative agreement for maintenance of Road Home properties. NORA claims that it will maintain the small number of non-Road Home properties that it owns.

For other blighted properties in New Orleans, the City is relying on code enforcement to encourage owners to clean and maintain them. This will leave many properties undressed, since the City is currently planning only targeted code enforcement, conducted on a small scale. We recommend that the City develop a citywide plan for cleanup and maintenance of blighted properties.

Property Disposition. In Part I of this report, BGR recommended that NORA and the City pursue a market-driven strategy in well-functioning areas of the city with an active real estate market, and a targeted strategy in parts of the city that are troubled but functioning. When using a market-driven strategy, the local government acquires as many blighted properties as possible and gives all potential developers an equal chance to purchase them. When using a targeted strategy, the local government acquires blighted properties within a zone and transfers them to one or more developers for immediate redevelopment. Typically, this is done through a request for proposals (RFP) process.

NORA and the City intend to rely heavily on RFPs to move properties to developers. This is appropriate for a limited number of target areas where the City is seeking comprehensive, coordinated development. However, an RFP procedure is an unnecessary and unduly cumbersome method for promoting blight remediation in areas where there is market interest in individual properties. In those areas, we recommend that NORA and the City use an auction mechanism, with pre-qualification of bidders, to dispose of properties that they control. We also recommend the creation of uniform and transparent procedures for initiating lien foreclosure and expropriation (if constitutionally permissible) on behalf of developers.

When the City and NORA seek developers through an RFP, they should employ a rational scoring system and seek public input on proposals that have a significant impact on a neighborhood.

NORA and the City should impose and vigorously administer redevelopment covenants in all cases where it is legally feasible. State lawmakers and City Council should eliminate legal impediments to the imposition of redevelopment covenants.

Property Information. Citizens and government officials working on blighted property issues need access to certain basic property information, such as ownership, zoning and code enforcement history. The information is most useful when presented in a publicly accessible Geographic Information System (GIS). Currently, the quality of information is poor, and access to some information is limited. We recommend that the City expand its database to include needed information and provide proper staffing and technology to minimize errors. The City and NORA have already hired contractors to improve the GIS component.

Funding. To be effective, blight remediation programs need significant long-term funding. While funding has increased significantly since Hurricane Katrina, we believe that code enforcement remains understaffed and underfunded.

For a complete list of recommendations, see pages 15 to 18.

INTRODUCTION

Blight is one of the most serious problems confronting New Orleans. Blighted properties pose a serious impediment to the city's recovery by destabilizing neighborhoods, depressing property values and subjecting neighbors to health and safety hazards. They deter investment and increase the likelihood that neighboring properties will also deteriorate. They also represent a wasted opportunity to increase tax revenue in a city with troubled finances.

Unfortunately, New Orleans has a poor track record when it comes to blight remediation. A multitude of structural, legal and administrative difficulties have hobbled efforts. Problems include the following:

- *Fragmented Structure.* The administration of blighted property programs in New Orleans has been fragmented and uncoordinated.
- *Inadequate Goals and Strategies.* Local government has not articulated comprehensive, realistic goals and strategies for redeveloping blighted property.
- *Code Enforcement.* Code enforcement has historically been weak.
- *Involuntary Demolitions.* Involuntary demolitions have endangered blighted structures that should be saved and returned to commerce.
- *Acquisition Hurdles.* Numerous problems with acquisition processes prevent redevelopment.
- *Poor Maintenance and Cleanup.* NORA historically has not cleaned up and maintained the blighted property under its control.
- *Disposition Procedures.* The procedures for transferring properties to individuals and developers are arbitrary, opaque and uncompetitive.
- *Poor Information.* Poor record keeping and a lack of public access to basic property information impede redevelopment.
- *Funding Deficiencies.* Blighted property programs in New Orleans lack sufficient funding to address blight effectively.

Due to the complexity and scope of the issues, BGR decided to address them in a two-part report. In the first part, we dealt with the fundamental, overarching issues of program structure, and goals and strategies. In this, the second part, we address the remaining issues. Both reports are available on our web site, www.bgr.org.

As we noted in Part I, there is no single “silver bullet” that

METHODOLOGY

BGR conducted interviews with numerous professionals, including:

- *Staff of local government programs in New Orleans and other cities¹*
- *Urban planning and land use experts²*
- *For-profit and non-profit developers, attorneys and observers of the real estate market in New Orleans*

BGR reviewed reports and academic papers on blighted property programs and redevelopment, including reports on New Orleans and the cities listed below. BGR reviewed numerous documents and materials it obtained from NORA and the City.

In addition to New Orleans' programs, BGR's research focused on widely discussed programs in Philadelphia, Pittsburgh, Cleveland, Louisville, Richmond, Genesee County (containing Flint, Mich.) and Baltimore.

BGR also conducted physical surveys of hundreds of properties that NORA acquired.³

will solve New Orleans' blight problems. Instead, policy-makers must comprehensively address the entire range of issues. The process has begun, but much remains to be done.

BACKGROUND

Historically, several entities and departments administered parts of the blighted property programs in New Orleans. They include the New Orleans Redevelopment Authority (NORA), the City Attorney's Office Housing Law Unit, the City's Housing Department, the Department of Safety and Permits, the Health Department and, post-Katrina, the Office of Recovery Management. The end result of this fragmentation was confusion and a lack of focus. Recently, the Housing Department, Safety and Permits, and the Office of Recovery Management were placed under a newly created department called the Office of Recovery and Development Administration (ORDA).

In Part I of this report, we recommended addressing the fragmentation problem by making NORA the depository for all blighted properties with responsibility for managing and eventually disposing of them. We recommended leaving responsibility for the administration of tax sales, code enforcement and involuntary demolitions with City government.

We also recommended that NORA and the City focus on the basic goals of blight remediation and good quality redevelopment of blighted areas. While this might sound obvious, there are indications that the City and NORA intend to impose requirements unrelated to these basic goals. For example, NORA's most recent request for proposals for property disposition favored developers that intend to do workforce training, "creat[e] vibrant communities," use "sustainable ownership" models and produce "projects [that] will be affordable to potential purchasers and renters."⁴ We are not suggesting that developers who seek to achieve those goals should be discouraged. Rather, we are concerned that superimposing them might hinder recovery by limiting the range of potential projects and the pool of interested developers.

To achieve the goal of blight remediation, we recommended that NORA and the City adopt a comprehensive, city-wide set of strategies designed to facilitate private development and direct limited resources to viable areas where the potential for impact is greatest. This means giving priority to blight remediation efforts in well-functioning areas and in a very limited number of carefully chosen target zones. We also recommended that local government rely on a market-driven approach in areas with sufficient development interest and a targeted strategy in a very limited number of chosen target areas. For the full set of recommendations, see pages 15 to 18 of this report.

In this report, BGR uses the terms "blight" and "blighted" to refer to severely dilapidated or damaged properties, regardless of whether local government has formally designated them as such. BGR uses the term "developer" broadly to refer to all individuals and for-profit and non-profit entities engaged in redeveloping and rehabilitating blighted property.

CODE ENFORCEMENT

Code enforcement plays a critical role in blight remediation. Aggressive code enforcement encourages voluntary rehabilitation, while lax enforcement creates the perception that a community tolerates blight and property neglect. Aggressive enforcement puts pressure on negligent owners to repair or sell their properties. It also makes it easier for NORA or the City to acquire or force the sale of derelict properties and for developers to acquire and rehabilitate properties.

How Code Enforcement Works

New Orleans' property maintenance codes require property owners to maintain their properties or face consequences in the form of fines, liens and, in extreme cases, demolition or forced sale through expropriation or lien foreclosure. Enforcement begins with an inspection. If the inspector finds a violation, he issues a citation and schedules a hear-

ing before an administrative hearing officer. At the hearing, the hearing officer may find the property owner guilty and assess a fine. The City then places a lien on the property to secure payment. If the owner pays the fine, the City cancels the lien. If the owner does not, the City can foreclose on the liens, forcing a sale of the property by the Civil Sheriff.

The property maintenance codes impose responsibilities and define offenses. Offenses include the ownership of blighted property or property that is a public nuisance. When the hearing officer finds someone guilty of such ownership, he formally designates the property as blighted or a public nuisance.⁵ The formal blight designation allows NORA or the City to more easily acquire and dispose of the property using expropriation or tax adjudication. In the case of expropriation, it provides a legal basis for using the process, including a streamlined procedure known as "quick take."⁶ In the case of tax adjudicated property, the blight designation reduces the redemption period from three years to 18 months.⁷ A public nuisance designation, combined with an additional finding that a structure is in imminent danger of collapse and a menace to public safety, allows the City to demolish it.⁸

Lenient Enforcement

Code enforcement in New Orleans has been – and remains – lax. Prior to Hurricane Katrina, the City failed to pursue complaints aggressively.⁹ Of the properties that were inspected, relatively few were ever declared blighted.

Post-disaster, the City applied a lower maintenance standard taken from an ordinance known as the "Good Neighbor" ordinance. That standard, which was part of the City's disaster response, requires only minimal property maintenance (cleaning, gutting and securing the premises).¹⁰ Even with the lower standard, enforcement problems continued. BGR attended 137 code enforcement hearings between March and August 2007.¹¹ In those hearings, the hearing officer declared properties blighted or a public nuisance only when the owner failed to appear. In every case in which the owner appeared, the hearing officer dismissed or deferred the matter. Deferrals were equivalent to dismissals, since the City did not reschedule those cases. The hearing officers accepted any explanation or excuse as a sufficient reason for dismissal or deferral. The City suspended code enforcement hearings for properties containing structures in September 2007 and restarted them in February 2008.

Overall, between Hurricane Katrina and February 2008, City hearing officers designated 1,736 properties as blighted, a public nuisance, or both.¹² They represent a fraction of the tens of thousands of blighted properties in New Orleans. According to the City, the Good Neighbor ordinance resulted in approximately 6,500 voluntary abatements by property owners.¹³

Planned Code Enforcement Changes

ORDA recognizes that the existing code enforcement program is not sufficient to meet the challenges in New Orleans. It proposed an overhaul of the City's property maintenance code for unoccupied structures. City Council passed the ordinance on March 20, 2008. ORDA also plans a new code enforcement strategy and procedures.

ORDA's planned overhaul is comprehensive and well organized, and would improve upon the current law and process in many respects. Among other improvements, ORDA contemplates:

- Consolidating different inspection and hearing processes into a single process
- Tightening up timelines for issuing judgments and recording liens
- Giving the City greater authority to enter properties and abate blighted conditions
- Increasing fines and penalties
- Creating electronic files and an electronic system for filing citations and liens
- Centralizing property information data
- Enhancing communication and cooperation among ORDA, the City Attorney's Office and NORA
- Creating a web interface to allow public tracking of enforcement actions

ORDA's strategy calls for organized code enforcement sweeps in target areas. These consist of ORDA's 17 target zones and "stabilizing areas" suggested by NORA, City Council and neighborhood groups. Outside those areas, the City intends to investigate complaints but pursue enforcement only on properties that are "urgent needs." The City defines these as properties that are severely damaged or pose a severe public safety threat. This is a high standard that will apply to only the very worst blighted properties. The others will be left to deteriorate without any government intervention. This approach leaves much of the city without effective code enforcement.

The targeted strategy is based in part on the City's assessment that its capacity to follow through to remediation is limited. The City argues that it does no good to enforce property maintenance codes against a large number of properties if the City and NORA lack the capacity to see enforcement through to rehabilitation. However, in focusing on that problem, the City ignores the capacity of the private sector and the City's ability to facilitate private activity through code enforcement. For example, declaring prop-

erties blighted helps private developers to acquire those properties through lien foreclosure, expropriation (if assisted by NORA or the City) and tax sales. It also puts pressure on negligent owners to sell.

Generally, under ORDA's proposed program, properties will proceed to administrative hearings. There, a hearing officer will determine whether the property owner is in violation of the code. If the officer finds a violation, he will assess fines and penalties and impose liens to secure payment. However, under the proposed program, there are a number of opportunities for property owners to avoid the administrative hearing or fines and penalties by agreeing to rehabilitation or maintenance:

- After being cited, a property owner may request that the inspector grant a 60-day delay of the hearing to abate the violation. If the code inspector agrees to the delay and finds the property abated upon re-inspection, the matter is closed.
- Alternatively, ORDA can divert properties to a technical assistance program run by a non-profit. Owners of diverted properties execute an agreement with the City to remedy code violations. The agreement contains timelines for remediation. Code enforcement monitors progress. Failure to comply would trigger a hearing.
- If a hearing officer finds the property owner in violation at the hearing, the City can enter into an agreement with him to do one of three things: fully rehabilitate the property, maintain it in an unoccupied state for the long-term, or sell it. The property owner chooses which of the three. This suspends the judgment finding the property owner in violation.

The procedural changes are designed to encourage property owners to remediate blighted conditions and to assist property owners who lack the necessary skills or resources. These are certainly good goals. However, these procedural changes also pose risks. Implementing them will require an unprecedented amount of management, coordination and discipline. If the execution of the program falls short, it increases the chance that property will disappear, unremediated, from the code enforcement system.

Risks stem from a number of program features. Under the first two remediation options listed above, code inspectors or other personnel (not the hearing officer) have the discretion to decide that the property is no longer in violation and close the matter. This reduces accountability, creates opportunities for leniency and increases the chance that a property will disappear from the code enforcement system.

Also, all three of the procedural changes noted above allow decisions to take place behind closed doors, outside of a public process. At an administrative hearing, the neighbor

may appear, present evidence and request a judgment finding a violation. Outside the hearing, the neighbor has no opportunity to be heard. If ORDA personnel decide to close the file on a property that remains blighted, the neighbors have to start over, filing a new complaint.

The third procedural change allows a property owner to escape a judgment by agreeing to do what he was supposed to be doing all the way along. It offers a new opportunity for delay and nonperformance. It also places the City in the undesirable position of relying on a rehabilitation agreement with an owner who has already failed to comply with the law. This suggests that enforcement will be unusually burdensome and consume significant resources for inspection and monitoring.

The City could mitigate some of the risks associated with the 60-day extension and the technical assistance program by keeping the decision making for cited properties in the hearing context. In the case of the 60-day extension, the hearing officer would determine whether abatement had occurred. In the case of a technical assistance program, the hearing officer would make the decision on referrals. Such cases should be deferred for a limited time specified in the diversion agreement, and not dismissed.

The City could minimize unnecessary delay and inject transparency by providing the hearing officers with criteria and limits on their discretion. At the hearing, if the evidence showed a violation, the hearing officer would be required to find a violation, unless the property owner established good cause to defer the hearing to a specific date a short time in the future. Good cause would be narrowly defined to include such things as significant work in progress or a pending Road Home application. All cases would remain in front of the hearing officer (deferred as necessary but only a limited number of times) until the property owner abated the problem or the hearing officer imposed a judgment finding a violation.

These limitations would eliminate unnecessary discretion and delay, while making allowances for challenging circumstances. They would encourage owners to rehabilitate their properties voluntarily, while at the same time keeping pressure on them to do so.

Dual Standards

Code enforcement in New Orleans must contend with a number of factors. Many property owners have been suddenly and unwittingly cast in the role of blighted property owners by the flooding. Some of them lack the resources or capability to address the problem. The City's proposal for a

technical assistance center recognizes this.

There is another factor the City must take into account in devising its code enforcement policy: the dramatic population loss. A realistic code enforcement strategy must face the fact that not all areas of the city will be coming back in the foreseeable future. It must recognize that vastly different conditions throughout the city require different responses.

For much of the city, a high maintenance standard is both necessary and appropriate. For neighborhoods that remain devastated and largely abandoned as a result of the 2005 disaster, it may not be.

For much of the city, a high maintenance standard is both necessary and appropriate. For neighborhoods that remain devastated and largely abandoned as a result of the 2005 disaster, it may not be.

Competing needs and equities complicate this situation. On the one hand, property owners who have rebuilt their homes in largely abandoned areas will find their investment destroyed if neighbors don't restore their properties. On the other hand, their investment can be salvaged only if other property owners devastated by the storm are compelled to reinvest in areas that may not be viable. Even that will provide only a partial cure, since many buildings, maintained or not, are likely to remain unoccupied. The situation is the unfortunate outcome of the government's laissez-faire approach to rebuilding.

The City's proposed code enforcement strategy addresses the issue indirectly by ignoring code enforcement (with the exception of "urgent need" properties) outside of targeted areas. This has the effect of creating dual standards: one for target areas, another for all other areas, regardless of whether they are healthy, struggling or nonviable.

It would be far better to deal with differences in a clear, direct manner. The City could do so by establishing and enforcing a more basic property maintenance standard in areas where severe devastation and abandonment make a requirement for full-scale investment unreasonable. In those areas, property owners would be required to perform minimal property maintenance (such as the cleaning, gutting and securing required by the "Good Neighbor" ordinance), but would not be subject to the full range of property maintenance requirements. In other parts of the city, the City would apply its standard property maintenance code requirements. The areas would be identified through even-handed application of an objective viability index.

Regardless of the standard, the City would strictly enforce the code in all parts of the city. The City would investigate all complaints and hearing officers would hear all cases without delay and within a strict timeline.

Pursuing code enforcement at this level may require ORDA to reallocate some of its resources from redevelopment

projects. We submit that fully funding this basic government functions on a citywide basis should take precedence over funding for specific projects.

Another Option

Some jurisdictions, such as Jefferson Parish, have created housing courts to address code enforcement issues. This converts code enforcement from an administrative procedure managed by a hearing officer into a judicial procedure managed by a judge. Using a judicial process would take advantage of formal, well-established State court procedures. However, it may be slower and less efficient, due to State court notice requirements, scheduling issues and other judicial procedures. In addition, it could increase costs. The City would have to commit resources for the City Attorney's Office to represent the City in court, and many property owners would also have to retain attorneys.

Recommendations

- The City should apply the regular property maintenance code in most of New Orleans. It should establish and apply a more limited property maintenance standard, such as the cleaning, gutting and securing required by the City's "Good Neighbor" ordinance, in areas where severe devastation and abandonment make a requirement for more investment unreasonable.
- City Council should clearly define, through ordinance, the applicable standards for property maintenance, objective criteria for determining the areas in which they apply, and the time period during which the standards would apply. Using the criteria, it should also designate the specific areas in which they apply.
- The City should conduct code enforcement, based on the applicable standard, aggressively on a citywide basis.
 - The City should investigate, acknowledge and document all code complaints citywide, within established timelines.
 - All code violations cited by inspectors should proceed to an administrative hearing within a strict time frame.
 - If the evidence shows code violations, the hearing officer should issue a judgment finding a violation, unless the property owner establishes good cause for deferring the hearing.
 - Good cause should be narrowly defined to include matters such as significant work in progress or a pending Road Home application.

- If a hearing is deferred, the hearing officer should reschedule the matter to a specific date a short time in the future.
- Hearing officers should defer cases only a limited number of times.
- All cases should remain in front of the hearing officer with scheduled hearing dates until the property owner abates the problem or the hearing officer imposes a judgment finding a violation.

INVOLUNTARY DEMOLITIONS

Like other cities, New Orleans has the power to demolish a structure without the owner's consent when the structure poses certain health or safety risks to the public. Some demolitions aid eventual redevelopment by clearing lots of structures that cannot be rehabilitated. Others weaken the integrity of neighborhoods by replacing good quality structures with vacant lots prone to trash and weeds.¹⁴

Since Hurricane Katrina, the City has been condemning properties primarily under a post-Katrina ordinance that allows demolition of storm- and flood-damaged property where there is an "imminent threat" to the public health, safety and welfare.¹⁵ The ordinance poses several problems. It defines "imminent threat" very broadly, and can be read to authorize demolition in cases where structures are ungutted or merely unsanitary. It has a very tight deadline for contesting demolition and lacks an appeals process. The City's use of this ordinance has been inconsistent, with some sound buildings being condemned, while some unsound ones have mysteriously escaped condemnation.

City Council recently passed a measure eliminating the existing "imminent threat" ordinance effective June 30, 2008. In its place, the council passed a new ordinance based on a model used in San Diego and other communities. That ordinance states that when an inspection reveals an imminent threat, ORDA may take one of several actions (including demolition) to address the threat, without notice to the property owner. The new ordinance contains an important limitation that its predecessor lacks. It allows the City to pursue only "the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard."¹⁶ If applied correctly, this should help to eliminate unwarranted demolitions. ORDA has informed BGR that it expects to pursue few, if any, demolitions under this ordinance.

HURDLES FOR PROPERTY ACQUISITION

New Orleans' blighted property programs, like those in other cities, focus mainly on the acquisition, maintenance

and transfer of properties. In New Orleans, government can acquire blighted properties through expropriation, tax adjudication and foreclosure on liens created through code enforcement proceedings. The Road Home program provides an additional source of properties. For more detail, see the sidebar.

New Orleans' traditional acquisition pipelines – tax adjudication and expropriation – suffer from serious legal and operational problems that must be resolved before those methods can be used to acquire and transfer significant numbers of properties. A third, lien foreclosure, has not been fully tested as of mid-March 2008. It may also face legal problems.

Tax Sales

From time to time the City holds tax sales to dispose of tax delinquent properties. Properties that do not sell are adjudicated, or transferred, to the City. There are two major problems with properties that pass through tax sales.

First, the tax sale and adjudication process does not confer clear title. This forces the eventual purchaser (or NORA, for properties it receives) to file a “quiet title” lawsuit to clear title, a process that adds significant cost and delay.²⁰ State lawmakers recognized the problem and in 2007 simplified the process for NORA by allowing it to include multiple properties in a single lawsuit.²¹ The need for a quiet title lawsuit could be completely eliminated by converting the tax sale into a judicial process in which a court formally transfers title from the tax delinquent former owner to a new owner. This would require State constitutional and statutory amendments.

Second, the City is required by law to offer tax delinquent properties for sale to purchasers willing to pay the back taxes.²² In many cases, the purchasers do not intend to redevelop the properties. They are speculators attracted by the low prices or the significant penalties and interest payable to the purchaser when the original owner redeems a property.

Other cities have addressed this issue through measures that make properties less attractive or accessible to speculators. For example, Louisville imposes a special tax on blighted properties, increasing the payment required at the tax sale.²³ Genesee County bundles properties at the tax sale, requiring bidders to bid on the entire bundle.²⁴ These methods paint with a broad brush, however, hindering both speculators and developers who intend redevelopment.

As an alternative, the City could require tax sale purchasers to execute covenants for redevelopment. This would weed out speculators without discouraging buyers who intend to redevelop properties. It would require a change in State statute and possibly an amendment to the State constitution.²⁵

PROPERTY ACQUISITION PROCEDURES

Local government in New Orleans has four pipelines for acquiring blighted property:

Road Home Transfers. *The State of Louisiana plans to transfer to local government bodies residential properties that it purchases through the Road Home program. NORA is the designated recipient for the thousands of Road Home properties in New Orleans.*

Expropriation. *Expropriation (also called eminent domain) is a basic power of government to take private property for certain purposes authorized by law, in exchange for compensation. The City and NORA both have the power to expropriate blighted property, although NORA's powers are narrower. Amendments to the Louisiana Constitution, passed in 2006, have severely limited expropriation.¹⁷*

Tax Adjudication. *The City Finance Department periodically offers tax delinquent properties for sale to the public. Successful purchasers receive title in exchange for payment of back taxes plus costs and interest.¹⁸ The City holds properties that do not sell; in legal terminology, these properties are “adjudicated” to the City. In many cases, these properties are blighted.*

Lien Foreclosure. *The City, through code enforcement proceedings, can impose fines and liens on property that is in violation of public health, housing, fire code, environmental or historic district ordinances. The City can then foreclose on the lien, forcing a sale of the property by the Civil Sheriff.¹⁹ The Sheriff sells the property to the highest bidder, which can be a private party, NORA or the City. The City had not fully tested the procedure as of mid-March 2008.*

Expropriation

Both the City and NORA have the power to take blighted property from an owner in exchange for compensation. Unfortunately, amendments to the Louisiana Constitution, passed in 2006, limit the utility of expropriation as a tool for blight remediation. The amendments, enacted in response to a U.S. Supreme Court decision known as *Kelo*, created a number of difficulties for expropriating blighted properties.

First, it narrowly defined the public purpose for which a property can be taken, limiting it to:

- A general public right to a definite use of the property
- Continuous public ownership of property for specific uses, including public buildings, roads and bridges, drainage and flood control, public parks, public utilities and port facilities

- The removal of a threat to public health or safety caused by the existing use or disuse of the property²⁶

While NORA asserts that all blighted properties will fall into the third category above, this is not necessarily true. For example, property that is vacant and dilapidated does not always constitute a threat to public health or safety.

Second, expropriation is prohibited if the purpose is “for predominant use by” or “for transfer of ownership to” private parties.²⁷ This could be interpreted as meaning that the government cannot expropriate if it intends to sell a property to a private party for redevelopment.

Finally, before reselling the property, the expropriating entity must offer it at fair market value to the original owner or his heirs. If the owner refuses the offer, the expropriating entity must conduct a public sale.²⁸ Some owners will buy the property back, effectively negating the purpose of the expropriation.

In cases where the liens exceed the value of the property, the owner can reap a windfall under the resale restriction. To illustrate the windfall effect, consider the following example. If the liens total \$20,000 but the property is worth only \$10,000, the expropriating entity would pay \$10,000 to expropriate the property. The expropriation would cancel the liens. If the government wanted to sell the property immediately, it would have to offer it back to the original owner for \$10,000. Since it would have cost \$20,000 to pay off the liens before the expropriation, the property owner would reap a net benefit of \$10,000.

These restrictions create unnecessary complications and uncertainties for the expropriation of blighted properties. The uncertainties will ultimately be addressed through litigation. If the courts interpret the amendments in favor of the property owners, it will take another constitutional amendment to make expropriation a practical, reliable option for dealing with blighted property.

Lien Foreclosure

Lien foreclosure appears to offer a better vehicle than tax adjudication or expropriation for acquiring blighted properties in many cases. It has several advantages. It requires a minimum of legal procedure and small upfront costs. It avoids the transfer restrictions imposed on expropriation by the constitutional amendments of 2006. In addition, there is no redemption period to delay redevelopment.

Lien foreclosure has some limits on its utility. Because the properties are offered at auction, it is ill-suited for coordinated, targeted development of areas. Also, current law does not allow the City or NORA to impose redevelopment covenants on properties sold through lien foreclosure.

In 2007, the State Legislature amended the statutes govern-

ing lien foreclosure to streamline the procedure. As of mid-March 2008, the City had not yet attempted to use the streamlined procedure. In the face of the City administration’s inaction in commencing lien foreclosure, the City Council recently passed an ordinance requesting that the City initiate lien foreclosure on four specific properties. As of March 2008, the City has not yet commenced the actions.

City officials assert that, prior to lien foreclosure, the lien must appear on a tax bill that goes unpaid. This could take up to 18 months, turning lien foreclosure into a lengthy process. The City’s position derives from language in the lien foreclosure statute stating that liens shall be included in the next tax bill and paid along with the taxes. However, the same statute contains language that may provide an alternate foreclosure route independent of tax sale procedures.²⁹ The end result is an ambiguity, rather than a definitive obstacle. It is a risk that could be assumed or dealt with in a test case. Alternately, lawmakers could dispose of the issue with a statutory amendment explicitly stating that tax sale procedures do not apply to lien foreclosure proceedings.

Recommendations

■ Tax Adjudication.

- NORA should use the streamlined quiet title procedure for tax adjudicated properties.
- To confer clear title to both tax sale and adjudicated properties, State lawmakers should amend Louisiana law to make tax sale and adjudication a judicial process.
- State lawmakers should amend State law to allow the City to place redevelopment covenants on properties sold at tax sales.

■ **Expropriation.** State lawmakers should propose, and voters should adopt, an amendment to the Louisiana constitution removing the restrictions on blighted property expropriation imposed by the constitutional amendments of 2006.

■ **Lien Foreclosure.** The City and NORA should aggressively pursue lien foreclosure. To eliminate uncertainties surrounding it, State lawmakers should amend the lien foreclosure statute to make clear that the City can foreclose on a lien immediately after the City records it, without waiting for the lien to appear on a tax bill and go unpaid.

PROPERTY MAINTENANCE

Clean-up and maintenance of blighted properties is critical, especially in well-populated areas and damaged areas with a critical mass of redevelopment activity. The cleanup and

maintenance need not be extensive. In most cases, it will consist of mowing vacant lots, clearing out debris, and cleaning and boarding up structures. In unusual cases, more extensive work (such as a temporary roof or shoring) may be necessary to protect structures that will have significant value once renovated.

NORA and the Louisiana Land Trust, the State agency holding the Road Home properties, have reached a tentative agreement for the maintenance of Road Home properties. Under that agreement, properties can be handled in one of two ways. Under one scenario, the Land Trust will transfer Road Home properties to NORA in bundles of a few hundred properties at a time over a six-year time period. NORA will receive properties only after it has a disposition plan for them. During the six-year period, the Louisiana Land Trust will continue to maintain and provide security for Road Home properties it hasn't transferred, with NORA taking responsibility for properties it receives. As an alternative, the Land Trust may transfer the properties to NORA all at once or in large batches. If it does so, it will transfer to NORA sufficient funds to maintain the properties.

In the recent past, NORA did little rehabilitation, cleanup or maintenance on its properties. In a May 2007 survey of 98 properties held by NORA west of the Industrial Canal, BGR found that only 15 properties were being maintained. NORA asserts that it is now maintaining properties that it owns and is committed to doing so in the future.

The Land Trust's tentative maintenance agreement and NORA's commitment to maintain the properties it owns are good signs. However, they address only a portion of the blighted property in New Orleans.

For all other blighted properties, the City is relying on code enforcement to encourage property owners to clean up and maintain these properties. Reliance on code enforcement will leave many properties unaddressed, since the City's code enforcement efforts will be targeted and conducted on a small scale.

Recommendations

- NORA should follow through on its commitment to allocate the resources needed to clean and maintain the blighted properties that it controls.
- The City should develop a citywide plan for cleanup and maintenance of blighted properties.

HURDLES FOR PROPERTY DISPOSITION

In Part I of this report, BGR recommended that NORA and the City pursue a market-driven strategy in well-functioning areas of the city with an active real estate market, and a targeted strategy in parts of the city that are troubled but func-

tioning. When using a market-driven strategy, the local government acquires as many blighted properties as possible and gives all potential developers an equal chance to purchase them. When using a targeted strategy, the local government acquires blighted properties within a zone and transfers them to one or more developers for immediate redevelopment. Typically, this is done through a request for proposals (RFP) process.

NORA and the City intend to rely heavily on RFPs to move properties to developers. This is appropriate for a limited number of target areas where the City is seeking comprehensive, coordinated development. However, an RFP procedure is an unnecessary and unduly cumbersome method for promoting blight remediation in areas where there is market interest in individual properties. Other methods, discussed below, are better suited for use in those areas.

When Developers Seek Properties

Prior to Hurricane Katrina, NORA and the City dealt with blighted properties on an individual basis. The process for identifying the purchaser of the properties varied depending on whether the blighted property was already under the immediate control of NORA or the City.

Properties Controlled by NORA or the City. The City and NORA control thousands of Road Home and tax adjudicated properties. Prior to Hurricane Katrina, the City sold tax adjudicated properties through a first-come, first-served application process. NORA sold properties it held through a murky process based on private discussions with developers. Its process was unfair to other parties seeking the same properties.

In many cases, NORA did not properly screen buyers. As a result, some purchasers lacked sufficient resources to redevelop the properties. Others had been poor stewards of blighted properties in the past.

Post-Katrina, NORA and the City have no process in place for selling individual blighted properties to developers who request them. We suggest that NORA put in place a transparent and competitive auction process, structured to screen unqualified buyers. Under that process, once a developer expresses interest in a property, it would go up for sale at a regularly scheduled auction. That process would apply to all properties requested by developers, other than those within an active target zone (discussed below).³⁰ Such a process would address the problems identified above.

Properties Eligible for Lien Foreclosure or Expropriation. Developers also seek blighted properties that are not under the control of NORA or the City, but are eligible for expropriation or lien foreclosure. Prior to Hurricane Katrina, NORA initiated expropriations for such properties at developers' request. The City has done so both before and since Katrina.

NORA's procedures required a party seeking a property to file a formal application and cover the cost of the expropriation. The first applicant had the right to proceed on a property. However, NORA withheld some properties by refusing to accept or process applications for them. It did so on the basis that these properties were targeted for land banking efforts. In some cases, NORA was holding them for a particular developer or for an undefined project contemplated by NORA. As for the City, it expropriated properties on the basis of private discussions with developers who approached the City seeking tax adjudicated properties.

These programs suffered from a number of problems. First, procedures were not administered openly or fairly. NORA's application procedure was subject to numerous disputes as to who had applied first for a property. Second, properties that NORA withheld from interested developers languished in the system for long periods. This fostered cynicism and discouraged interest in the program. Third, as in the case of inventory properties, some applicants lacked financial resources or had poor track records when it came to rehabilitating blighted properties.

The City and NORA could address these problems by putting in place uniform and transparent procedures for initiating expropriation or lien foreclosure for applicants. In the case of expropriation, this would mean a first-come, first-served application process that includes a fair mechanism for determining who applied first for a property. For lien foreclosure, this would mean a procedure by which the City initiates lien foreclosure on request and posts information about the foreclosure on its web site. To address past unfairness, all eligible properties would be subject to these procedures, with the limited exception of those located in an active target redevelopment area (discussed below). Those procedures could include timelines to keep applications moving along on a timely basis, as well as screening methods for applicants.

When NORA or the City Seeks Developers

In some circumstances, NORA or the City will seek developers for blighted properties. Since the storm, they have used RFPs for that purpose. In 2006, the City used an RFP to bundle and sell tax adjudicated properties scattered throughout the city. In 2007, NORA used an RFP (including a request for qualifications) to sell 28 properties broken into geographic clusters of three to four properties each. In that process, NORA ranked bidders. It then conducted a single-bid auction. However, NORA reserved the right to award properties to the most qualified bidder. NORA is currently developing RFPs for a number of areas, including Pontchartrain Park, the Irish Channel and the Hoffman Triangle in Central City.

The use of RFPs is common and appropriate for troubled areas where large-scale, coordinated intervention is necessary to attract development. It is unnecessarily cumbersome, however, in viable areas with an active real estate

market. In those areas, a market-based strategy, such as the auction mechanism described above, should suffice to place properties back in commerce.

The City and NORA could improve the transparency and fairness of their RFP processes by using a well-developed scoring system and publishing the results. While NORA qualified its applicants and used a scoring system under its most recent RFP, it did not make publicly available the list of qualified applicants or the scoring.³¹ The City also qualified its applicants and used a scoring system, but did not make the information public.

The City and NORA could ensure that the RFPs reflect the desires of businesses and residents by providing them with a formal opportunity to comment on the RFP before it is finalized. NORA asserts that it has circulated draft RFPs to neighborhood groups for comment. However, such groups are not necessarily representative of affected areas. Draft RFPs should also be submitted to the public at large for comment before NORA finalizes and uses them.

Redevelopment Covenants

As history indicates, transferring a property to a developer is not enough to guarantee its redevelopment. Blighted properties are often hard to rehabilitate because of their condition and the characteristics of the surrounding neighborhood. Many developers who acquire such properties act as speculators, holding the property without redevelopment in the hope that they can "flip" it for a higher price in the future.

NORA, in particular, has a history of selling properties to parties that fail to redevelop them. As Part I of this report discussed, BGR surveyed properties that NORA expropriated in 2002, most of which it had sold to developers. Almost half of these properties showed no redevelopment five years later, in mid-2007. This is a longstanding problem.

NORA has in the past used a redevelopment covenant that requires the developer to, within 270 days, either (i) demolish any structures and remove the blight; or (ii) repair the existing structure and remedy all code violations on the property. The City's covenant is similar, requiring the developer, within 270 days, to renovate, develop or subdivide the property in accordance with plans submitted by the developer. For its most recent sales, NORA has modified the covenant to require construction of a new structure within the 270-day period if the purchaser demolishes an existing structure.

NORA and the City can enforce the covenant through a legal device known as a right of reversion, which allows them to retake property if the developer breaches the covenant. NORA and the City have used this covenant in sales of tax adjudicated and expropriated properties.

NORA's enforcement of redevelopment covenants has been

extremely lax. Between 2002 and mid-2007, NORA expropriated and sold more than a thousand properties. In those six years it acted only 14 times to enforce redevelopment covenants. More recently, in late 2007 and early 2008, NORA re-inspected properties that it had sold between 1996 and the present. Based on the results of those inspections, it is in the process of initiating legal actions on approximately 15 properties (as of late March 2008).

Enforcing a redevelopment covenant is costly and time-consuming, but necessary to give a blight remediation program teeth. There are additional steps that the City or NORA could take to improve enforcement. The City could automatically schedule code enforcement inspections at the end of the covenant's redevelopment period. Also, the City and NORA could require the developer to pay a deposit at the time of sale, refundable upon completion of the redevelopment. The deposit would be forfeited (and used to pay enforcement expenses) if redevelopment did not occur.

While redevelopment covenants are essential to an effective blight remediation program, they must be carefully crafted to ensure that they are reasonable. NORA's recent modification requiring construction of a new structure is a case in point. The requirement to build a structure within 270 days is unrealistic in many cases and likely to discourage developers from purchasing properties. A longer timeframe may be more reasonable in the current environment.

Some developers have complained that the covenant prevents them from financing the property. This is because the right of reversion impairs a lender's security interest in the property. NORA and the City could address this by waiving the covenant at the closing table of a construction loan, as long as that loan requires completion of the project within the covenant's timeframe.

Both the City and NORA routinely impose redevelopment covenants when disposing of properties acquired through tax adjudication or expropriation. They could do the same for properties sold through lien foreclosure or at tax sales if State law were amended to allow it.

Recommendations

- The City and NORA should use competitive public auctions to dispose of properties sought by developers, with the exception of properties located in active target redevelopment zones. In those auctions:

- NORA and the City should require bidders to demonstrate financial capacity.
- NORA and the City should disqualify bidders who have been poor stewards of blighted property.

- NORA and the City should schedule auctions for particular properties only after potential bidders express interest in those properties.

- The City and NORA should establish uniform and transparent procedures for initiating expropriation or lien foreclosure sought by developers. The procedures should:

- Establish clear and mandatory timelines
- Require bidders to present evidence of financial capacity
- Disqualify bidders who have been poor stewards of blighted properties

- When using RFPs, the City and NORA should:

- Use a well-developed scoring system and make the scorecards publicly available
- Increase public input for proposals that have a significant impact on a neighborhood

- NORA and the City should impose redevelopment covenants in all cases where it is legally feasible. In addition, they should:

- Aggressively enforce redevelopment covenants
- Automatically schedule code enforcement inspections for properties they sell to developers
- Require redevelopment in a reasonable timeframe
- Require the developer to pay a deposit that would be forfeited if redevelopment does not occur within the stipulated time
- Allow for waiver of the redevelopment covenant where necessary for a construction loan, as long as that loan requires the same development timeline as the covenant

- State lawmakers and City Council should amend applicable tax sale and lien foreclosure laws and ordinances to allow the local government to require successful purchasers to execute redevelopment covenants.

PROPERTY INFORMATION

Developers, citizens and government officials working on blighted property issues need access to certain basic property information. Developers need information to plan development and identify opportunities. Citizens need it to address problems in their neighborhoods. Local government officials need information to plan and coordinate property acquisitions and dispositions. Five pieces of information are particularly important for each property:

- *Ownership.* The property owner of record and information on a pending transfer, if any, to the Louisiana Land Trust
- *Code enforcement history.* Citations for blight and other code violations, scheduled hearing dates and the results of hearings
- *Tax adjudication status.* Whether the property has been tax adjudicated and the identity of the party, if any, to whom the City or NORA has awarded the property
- *Zoning.* The zoning designation for the property (e.g., commercial, single family residential, etc.)
- *Assessed value.* The most recent assessment for the property

The information is most useful when presented in a publicly accessible Geographic Information System (GIS) that links the data to a parcel map. Ideally, that system would allow users to search by neighborhood or area and retrieve lists of properties using selected criteria. For example, a user should be able to search for all properties declared blighted within a given neighborhood.

The City maintains a GIS database, but it does not contain all of the information listed above. It provides only limited code enforcement and tax adjudication history.³² To get full tax adjudication or code enforcement information, one must search the City's property records one address at a time.³³

The quality of some of the data in the City's records is poor. In particular, tax adjudication data has contained many errors, including incorrect or garbled addresses and properties that were incorrectly listed as tax adjudicated. These errors have caused serious delays for redevelopment. The developers who recently received properties from the City have expended significant time and resources in title research, in part due to errors. The errors have also contributed to NORA's inaction in moving forward with tax adjudicated properties it received from the City.

The City and NORA have recognized the problems with the existing GIS system, and the City and NORA have engaged

contractors to work on them. These contractors plan to integrate the existing GIS system with data from code enforcement, the assessors, the Finance Department and other sources.

Recommendations

- In order to ensure that developers and local government officials have access to needed property information, the City should:
 - Expand its GIS property database to include full tax adjudication status and code enforcement history
 - Provide proper staffing and technology to minimize errors in property information, including tax adjudication status
 - Frequently update its GIS property database

FUNDING

Program funding is critical to blight remediation. The property acquisition, maintenance and disposition activities discussed in this report require significant resources. The City's blighted property programs will need a stable and adequate source of funding to pursue these activities effectively.

NORA's 2008 Budget

NORA approved its 2008 budget in mid-March 2008. It totals \$17.9 million, and has two parts: an operations budget and a land assembly and disposition budget. The \$3.9 million operations budget is funded through a combination of Community Development Block Grants, Urban Development Action Grants and grants from private foundations. The \$14 million land assembly and disposition budget is funded through a combination of Community Development Block Grants, Urban Development Action Grants and property sales proceeds. Overall, the budget is far larger than in previous years.

NORA's land assembly and disposition budget assumes property sales proceeds of \$7.6 million. It assumes sales of 540 properties at an average price of \$12,000 each, plus \$2,000 per property for reimbursement of legal fees. As NORA acknowledges, these numbers are highly contingent on several variables, including acquisition and resale prices, and the pace of property transfers. The land assembly and disposition budget works like a revolving fund, in which proceeds from property sales will be used for subsequent property acquisition.

NORA's operations budget relies on grants from private foundations to pay for one-third of NORA's staff. The

grants, which total \$861,000, are scheduled to expire during 2008 and 2009. NORA is asking the foundations to renew the funding. In the long term, it hopes to replace the grants with proceeds from property sales.

ORDA's 2008 Budget

ORDA's budget for 2008 totals \$15.4 million. ORDA contemplates expenditures of approximately \$25 million over several years for various blight remediation projects within the 17 target recovery zones.³⁴

ORDA's 2008 budget contains \$2.9 million for code enforcement. It includes funding for 14 code inspectors. The budget for the Health Department provides for 15 additional code inspectors for vacant lots. The City has acknowledged that it has not adequately funded code enforcement in the past, but promises it will dedicate significant resources to it in the future. Despite the assurance, we remain concerned that code enforcement may be understaffed and underfunded.

We recognize that the City faces difficult financial circumstances and that reallocation of funding may be difficult. However, the City needs to ensure that code enforcement is fully funded and is able to operate aggressively on a city-wide basis.

Recommendations

- NORA should formulate a realistic and feasible plan to replace short-term grant funding with more reliable sources of revenue.
- The City should allocate to code enforcement the resources that are necessary for an aggressive, city-wide enforcement program.

CONCLUSION

Blight poses a serious impediment to New Orleans' recovery, economic development and quality of life.

Unfortunately, the City's blighted property programs have been hampered by a multitude of long-standing structural, legal and administrative difficulties. They include: fragmentation of responsibilities; lack of strategic focus; anemic code enforcement; inadequate information systems; legal obstacles to the effective acquisition and disposition of properties; insufficient maintenance programs; and inadequate resources.

The pieces of the puzzle are interrelated, and weaknesses in one part of the system negatively impact others. For example, lax code enforcement makes it more difficult for local government to acquire and transfer properties to developers. For this reason, local and State officials must compre-

hensively address the issues.

The City and NORA recognize the gravity of the blight problem and are making a serious effort to address it. ORDA has undertaken a partial consolidation of relevant functions in City Hall and is pursuing comprehensive changes to code enforcement. With NORA, it has begun improving property information systems and addressing obstacles to blighted property acquisition and disposition. Coordination between NORA and the City has increased significantly, and blight remediation efforts now have more funding than in the past.

However, local efforts need refinement in some cases and rethinking in others. Some problems remain altogether unaddressed.

Most notably, the strategies governing blight remediation and code enforcement are areas of concern. Both NORA and the City have been focusing their blight remediation efforts in areas targeted for coordinated infrastructure improvement, economic development and redevelopment of properties. The strategy is appropriate for flood-ravaged parts of the city that need coordinated effort to recover. However, it should not consume all available resources. Blight is a citywide problem, and code enforcement is a citywide responsibility. Neglecting that responsibility in areas other than target zones will have serious negative repercussions for New Orleans' health and recovery.

In the two parts of this report, we have made a number of recommendations addressing the wide range of challenges that New Orleans' blight programs face. Those recommendations are restated in full below.

ALL RECOMMENDATIONS (PARTS I AND II)

Program Structure

- Blighted property programs in New Orleans should be consolidated, to the greatest extent possible, in NORA. Specifically:
 - NORA should conduct all expropriations of blighted properties in New Orleans.
 - NORA should serve as the depository for all blighted properties, with responsibility for managing and eventually disposing of them.
- City government should retain responsibility for the administration of tax sales, code enforcement and involuntary demolitions.
- The State Legislature should amend NORA's enabling legislation:

- To require that NORA follow the City’s master land use plan and its comprehensive zoning ordinance
- To provide for meaningful public participation in NORA’s property acquisition and disposition decisions
- To establish strong conflict-of-interest rules for NORA’s board members and staff

- The City Council should amend the City ordinance governing the Office of Inspector General, and State lawmakers should amend NORA’s enabling legislation, to clearly give the Office of Inspector General oversight power over NORA.
- The City and NORA should jointly commit, through a cooperative endeavor agreement, to the allocation of responsibilities recommended in this report and to specific strategies, procedures and performance standards.
- To provide a means of enforcing NORA’s commitments, the City should retain a clearly defined right of reversion in properties it transfers to NORA.

Goals and Strategies

- NORA and the City should focus their blighted property programs, to the extent possible, on the goals of blight remediation and good quality redevelopment of blighted areas. NORA and the City should avoid program requirements that interfere with effective accomplishment of these goals.
- NORA and the City should adopt a comprehensive, citywide set of strategies that:
 - Facilitates private development
 - Directs limited resources to viable areas with the greatest potential for impact in the near future
 - Gives priority to blight remediation efforts in well-functioning areas and a limited number of carefully chosen target zones
 - Relies on a market-driven approach in areas with sufficient development interest
 - Acquires properties within chosen target areas for simultaneous redevelopment

- When identifying and prioritizing target zones, NORA and the City should use a public process with clear and limited criteria. Criteria should include proximity to well-functioning and up-and-coming areas, potential to encourage other development and the presence of existing redevelopment efforts.

Code Enforcement

- The City should apply the regular property maintenance code in most of New Orleans. It should establish and apply a more limited property maintenance standard, such as the cleaning, gutting and securing required by the City’s “Good Neighbor” ordinance, in areas where severe devastation and abandonment make a requirement for more investment unreasonable.
- City Council should clearly define, through ordinance, the applicable standards for property maintenance, objective criteria for determining the areas in which they apply and the time period during which the standards would apply. Using the criteria, it should also designate the specific areas in which they apply.
- The City should conduct code enforcement, based on the applicable standard, aggressively on a citywide basis.

- The City should investigate, acknowledge and document all code complaints citywide, within established timelines.
- All code violations cited by inspectors should proceed to an administrative hearing within a strict time frame.
- If the evidence shows code violations, the hearing officer should issue a judgment finding a violation, unless the property owner establishes good cause for deferring the hearing.
- Good cause should be narrowly defined to include matters such as significant work in progress or a pending Road Home application.
- If a hearing is deferred, the hearing officer should reschedule the matter to a specific date a short time in the future.
- Hearing officers should defer cases only a limited number of times.

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- All cases should remain in front of the hearing officer with scheduled hearing dates until the property owner abates the problem or the hearing officer imposes a judgment finding a violation.

- NORA and the City should disqualify bidders who have been poor stewards of blighted property.
- NORA and the City should schedule auctions for particular properties only after potential bidders express interest in those properties.

Hurdles for Property Acquisition

■ Tax Adjudication.

- NORA should use the streamlined quiet title procedure for tax adjudicated properties.
- To confer clear title to both tax sale and adjudicated properties, State lawmakers should amend Louisiana law to make tax sale and adjudication a judicial process.
- State lawmakers should amend State law to allow the City to place redevelopment covenants on properties sold at tax sales.

■ **Expropriation.** State lawmakers should propose, and voters should adopt, an amendment to the Louisiana constitution removing the restrictions on blighted property expropriation imposed by the constitutional amendments of 2006.

■ **Lien Foreclosure.** The City and NORA should aggressively pursue lien foreclosure. To eliminate uncertainties surrounding it, State lawmakers should amend the lien foreclosure statute to make clear that the City can foreclose on a lien immediately after the City records it, without waiting for the lien to appear on a tax bill and go unpaid.

Property Maintenance

- NORA should follow through on its commitment to allocate the resources needed to clean and maintain the blighted properties that it controls.
- The City should develop a citywide plan for cleanup and maintenance of blighted properties.

Hurdles for Property Disposition

■ The City and NORA should use competitive public auctions to dispose of properties sought by developers, with the exception of properties located in active target redevelopment zones. In those auctions:

- NORA and the City should require bidders to demonstrate financial capacity.

■ The City and NORA should establish uniform and transparent procedures for initiating expropriation or lien foreclosure sought by developers. The procedures should:

- Establish clear and mandatory timelines
- Require bidders to present evidence of financial capacity
- Disqualify bidders who have been poor stewards of blighted properties

■ When using RFPs, the City and NORA should:

- Use a well-developed scoring system and make the scorecards publicly available
- Increase public input for proposals that have a significant impact on a neighborhood

■ NORA and the City should impose redevelopment covenants in all cases where it is legally feasible. In addition, they should:

- Aggressively enforce redevelopment covenants
- Automatically schedule code enforcement inspections for properties they sell to developers
- Require redevelopment in a reasonable time-frame
- Require the developer to pay a deposit that would be forfeited if redevelopment does not occur within the stipulated time
- Allow for waiver of the redevelopment covenant where necessary for a construction loan, as long as that loan requires the same development timeline as the covenant

■ State lawmakers and City Council should amend applicable tax sale and lien foreclosure laws and ordinances to allow the local government to require successful purchasers to execute redevelopment covenants.

Property Information

- In order to ensure that developers and local government officials have access to needed property information, the City should:
 - Expand its GIS property database to include full tax adjudication status and code enforcement history
 - Provide proper staffing and technology to minimize errors in property information, including tax adjudication status
 - Frequently update its GIS property database

Funding

- NORA should formulate a realistic and feasible plan to replace short-term grant funding with more reliable sources of revenue.
- The City should allocate to code enforcement the resources that are necessary for an aggressive, city-wide enforcement program.

END NOTES

¹ BGR interviewed staff from NORA and the following departments in New Orleans: City Attorney's Office, Housing Department, Department of Finance, ORM and ORDA. BGR interviewed staff from the following programs and entities in other cities: Philadelphia Neighborhood Transformation Initiative, Pittsburgh Urban Redevelopment Authority, Cleveland Land Bank, Louisville Department of Housing and Community Development, Richmond Department of Community Development, Richmond Federal Reserve Bank, Genesee County Land Bank, Baltimore Department of Housing and Community Development, Homestead (Fla.) Community Redevelopment Authority, Detroit Economic Growth Corporation, and Milwaukee Department of Neighborhood Services.

² BGR interviewed experts from University of Michigan, University of Pennsylvania, Virginia Tech, Emory University, Johns Hopkins University, Wayne State University and Carnegie Mellon University.

³ These surveys included all properties west of the Industrial Canal owned by NORA as of May 2007 or expropriated by NORA in 2002 (NORA's most active year between 2000 and 2005).

⁴ NORA, *Request for Qualifications for Participation in "Demonstration Village" Redevelopment Initiative Conducted by New Orleans Redevelopment Authority*, July 2007, §§ 4-5.

⁵ New Orleans, Louisiana Code §§ 6-44, 26-165 (2007); New Orleans,

Louisiana Ordinance No. 23,046 M.C.S. (March 6, 2008), §§ 28-37, 28-38.

⁶ La. R.S. 19:136 *et seq.*

⁷ La. Const., art. VII, § 25(B)(2).

⁸ New Orleans, Louisiana Code § 26-166 (2007).

⁹ *See, e.g.*, Mayor Elect Marc H. Morial Transition Team, *Report to the Housing Task Force*, April 1994, p. 5; Mayor Elect C. Ray Nagin Transition Team, *Blighted Housing Task Force Report*, May 2002, p. 14.

¹⁰ New Orleans, Louisiana Code §§ 26-261, 26-262 (2007).

¹¹ Administrative hearings attended by BGR on March 21, April 25, June 28, July 19 and August 1, 2007.

¹² Presentations by ORDA before New Orleans City Council, Housing and Human Needs Committee, February 18 and March 3, 2008.

¹³ The City asserted that there were 6,662 abatements. *Ibid.*

¹⁴ *See, e.g.*, Mayor Elect C. Ray Nagin Transition Team, *op cit.*, p. 26 ("Vacant lots can be as much of a problem for neighborhoods as blighted buildings. And when the building is gone, the potential for redevelopment is greatly reduced.").

¹⁵ New Orleans, Louisiana, Code § 26-263 (2007); New Orleans,

Louisiana Ordinance No. 23,046 M.C.S. (March 6, 2008).

¹⁶ New Orleans, Louisiana Ordinance No. 23,046 M.C.S. (March 6, 2008), § 28-57.

¹⁷ La. Const. art. I, § 4; La. R.S. 19:136 *et seq.*, La. R.S. 33:4720.59, and New Orleans, Louisiana, Ordinance No. 22,643 M.C.S. (May 3, 2007).

¹⁸ La. R.S. 47:2101 *et seq.* The purchaser's title is subject to a right of redemption, allowing the original owner a period of time to reclaim the property by paying the back taxes, interest and costs.

¹⁹ La. R.S. 13:2575(C)(1), 2576.

²⁰ La. R.S. 47:2228, 47:2228.1, 13:4951. The suit may not be necessary, if the tax purchaser is able to convince its title insurer that the title is insurable without suit.

²¹ La. R.S. 33:4720.60.1.

²² La. Const., art. VII, § 25.

²³ Ky. Rev. Stat. §§ 91.285, 92.305, 132.012; Louisville-Jefferson County Metro Government Code of Ordinances § 38.09; 2007 tax rates downloaded from Jefferson County, Ky. Property Valuation Administrator, www.pvalouky.org/downloads/Tax_Rates_2007.

²⁴ The Genesee County Land Bank has the power to bundle all properties, but in practice only does so with the "lowest quality" properties (a majority of tax delinquent properties). Land Policy Institute, *Economic Impacts of Residential Property Abandonment and the Genesee County Land Bank in Flint, Michigan*, April 2007, pp. 17-20.

²⁵ State law sets forth the procedure for tax sales in detail, and State lawmakers would need to amend this procedure to explicitly allow for redevelopment covenants. La. R.S. 47:2183; La. Const., art. VII, § 25. Also, current law may not allow enforcement of such covenants through the traditional method, a right of reversion. La. C.C. arts. 2567-68.

²⁶ La. Const., art. I, § 4(B)(1)-(2).

²⁷ La. Const., art. I, § 4(B)(1).

²⁸ La. Const., art. I, § 4(H)(1). There is an exception if the government holds the property for at least 30 years before sale.

²⁹ "[F]ailure to pay the liens shall also cause such liens and privileges to be subject to enforcement in accordance with [the statute providing for lien foreclosure]." La. R.S. 13:2575(C)(2).

³⁰ Before they sell such properties, they are required to first offer them to a next door neighbor under the recently-enacted "Lot Next Door" ordinance. New Orleans, Louisiana Ordinance No. 22,605 M.C.S. (April 5, 2007). Properties that remain unsold become available for interested developers.

³¹ NORA informed BGR that all qualified bidders were awarded at least some properties, so the list of winning bidders was also the list of qualified bidders.

³² <http://gisweb.cityofno.com/cnogis>

³³ Some additional code enforcement history is available at a separate City web site, although this information is also limited. See <http://secure.cityofno.com/portal.aspx?load=~/services/safetyand-permits/permits/gnpwizard.aspx>

³⁴ Target Area Development Plans retrieved from <http://www.nolarecovery.com>. In addition, these documents indicate that ORDA plans an additional \$10 million in expenditures for citywide projects.



Bureau of Governmental Research
938 Lafayette St., Suite 200
New Orleans, Louisiana 70113

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