



Officers

Lynes R. Sloss
Chairman

Hans B. Jonassen
Vice Chairman

Robert W. Brown
Secretary

Sterling Scott Willis
Treasurer

President

Janet R. Howard

Board Members

Conrad A. Appel III
Robert C. Baird, Jr.

Virginia Besthoff
J. Herbert Boydston

Kim M. Boyle

Ralph O. Brennan
Christian T. Brown

Pamela M. Bryan
LaToya W. Cantrell

Joan Coulter

J. Kelly Duncan

Hardy B. Fowler
Aimee Adatto Freeman

Roy A. Glapion

Diedria B. Joseph

Maurice L. Lagarde III

Matthew P. LeCorgne

Mark A. Mayer

Carolyn W. McLellan

Henry O'Connor, Jr.

William A. Oliver

Thomas A. Oreck

Gregory St. Etienne

Andrew B. Wisdom

Honorary Board

Bryan Bell

Harry J. Blumenthal, Jr.

Edgar L. Chase III

Louis M. Freeman

Richard W. Freeman, Jr.

Ronald J. French

David Guidry

Paul M. Haygood

Diana M. Lewis

Anne M. Milling

R. King Milling

George H. Porter III

Edward F. Stauss, Jr.

**BUREAU OF
GOVERNMENTAL
RESEARCH**

938 Lafayette St., Suite 200

New Orleans, LA 70113

Phone 504-525-4152

Fax 504-525-4153

www.bgr.org

December 11, 2007

Dr. Edward J. Blakely
Mr. Ezra Rapport
Office of Recovery Management
City of New Orleans
1300 Perdido St. Rm. 8W03
New Orleans, LA 70112

Re: ORM Proposals on Blighted Property Issues

Dear Dr. Blakely and Mr. Rapport:

We understand that the Office of Recovery Management (ORM) intends to introduce, at a December 17 City Council committee meeting, certain proposals to address blighted property issues and the respective roles of ORM and the New Orleans Redevelopment Authority (NORA).

As you know, BGR has been working for some time on a study of blighted property redevelopment issues in New Orleans. We wanted to share some observations in advance of the December 17 presentation. Our comments cover seven issues: (1) program structure; (2) goals and strategy; (3) formal blight designation; (4) involuntary demolitions; (5) property acquisition challenges; (6) maintenance; and (7) property information.

Structure of Blighted Property Programs

The administration of local blighted property programs has historically been fragmented. Both NORA and the City (acting through the City Attorney's Office) have acquired and sold or donated blighted properties for redevelopment. The City's housing department has administered the process for declaring properties blighted and has overseen involuntary demolitions. The health department has also been involved in inspecting and citing vacant lots for blight. ORM is now involved in blighted property issues through its role in recovery planning and the allocation of resources.

This fragmentation has been confusing to the public and developers, and coordination between the entities has historically been poor. Because of these problems, we believe that blighted property programs should be consolidated, to the greatest extent possible, in one entity. In particular, a single entity should be the depository for all blighted properties, with responsibility for managing and eventually disposing of them. While this entity could be a department of City government, we

think it would be better to place these functions in a separate, independent entity focused solely on blight and redevelopment.

NORA is the obvious candidate for running the consolidated blight program. Its sole mission is the remediation and redevelopment of blighted properties and areas. It has most of the powers needed to acquire, manage and dispose of blighted property. It will soon have responsibility for 7,000 Road Home properties bought out by the State.

Our recommendation to make NORA the depository and manager of blighted properties comes with reservations. Because of NORA's troubled history and the fact that it is an unelected body, some controls and restrictions on its operations will be necessary. Among other controls, NORA and the City should jointly commit to specific strategies, procedures and performance standards. NORA's efforts should be consistent with the City's master land use plan and comprehensive zoning ordinance, and should be subject to meaningful public participation.

Some critical powers, including code enforcement, should remain with the City. NORA does not have the statutory authority to administer code enforcement. Such basic police powers generally belong with the City government, rather than an independent commission. One possible limited exception — foreclosure on blight liens — is discussed below. Within the City, code enforcement should be consolidated in a single department.

We understand that the administration is contemplating moving code enforcement into ORM. This would be a mistake. ORM was created to manage the City's recovery. Code enforcement is a basic governmental function with citywide application, rather than a recovery function. Specifically, we are concerned that ORM may selectively use code enforcement to support ORM's 17 zones and other recovery-specific initiatives, rather than applying it on a comprehensive, citywide basis. Every part of the city needs aggressive and proactive code enforcement.

NORA and the City agency administering code enforcement should carefully coordinate their activities. Among other things, coordination is necessary to ensure that the City promptly consider and hold hearings on properties that NORA is seeking to remediate. Similarly, the City should ensure that it does not demolish buildings for which NORA has renovation plans.

Goals and Strategies

Goals

The basic goals of the City's blighted property program should be blight remediation and redevelopment of blighted areas. We are concerned that NORA and the City may intend to use the program for other ends, such as creating specific types of communities, favoring one type of development over another, and pursuing social goals that go far beyond blight remediation. For example, NORA's most recent RFP for property disposition favored developers that intend to do workforce training, plan to use environmentally sustainable techniques, would help "creat[e]

vibrant communities,” would use “sustainable ownership” models, and would produce “projects [that] will be affordable to potential purchasers and renters.”

Given the scale of the blight and the difficulty of attracting the massive investment needed to rebuild New Orleans, it would be a mistake to impose programmatic limitations unrelated to the basic goals of blight remediation and good quality development. Burdening the blight programs with restrictions designed to further supplementary goals will further impede and slow recovery by limiting the range of potential projects and the pool of interested developers.

To be clear, we are not suggesting that developers who seek to achieve goals beyond blight remediation — such as affordable housing and workforce training — should be prevented or stymied in their efforts. Instead, we are suggesting that redevelopment should not be limited to that type of development. The City and NORA need to cast a wide net to encourage development by the largest possible pool of individual, non-profit and for-profit developers.

Strategies

In order to address the pervasive blight in post-Katrina New Orleans, the City needs a comprehensive citywide strategy that takes into account the viability of different areas and limited available resources. The strategy should direct limited resources to the areas in which they would have the greatest impact in the near future. Local government should serve as a facilitator, making it as easy as possible for private parties to undertake redevelopment.

Cities that have pursued successful blight redevelopment have used different approaches in different types of areas. Those approaches include:

- *Market-Driven Strategy.* The local government entity acquires as many blighted properties as possible and puts them on the open market, where all purchasers are given an equal chance to seek these properties.
- *Targeted Strategy.* The local government entity acquires most or all blighted properties within a targeted zone. It then sells or transfers the properties to one or more developers for immediate redevelopment.
- *Land Banking.* The local government entity gradually acquires blighted properties within an area but does not redevelop them. Instead, it cleans up and holds the properties until there is a viable and feasible plan for the area. Land banking is often used to assemble large tracts of land for future development.

In well-functioning areas with scattered blight and a robust real estate market, the market-driven approach is the most effective. In more troubled, but functioning, areas plagued by clusters of blight, the targeted approach is generally the most effective. This should not, however, preclude the use of market-driven strategies in troubled areas where there is sufficient interest. In non-functioning areas with only scattered residents or businesses, land banking is generally the only feasible approach.

In general, the market-driven strategy is the least expensive and time consuming approach for the government. Most of the investment is provided by buyers. In contrast, land banking and the total redevelopment that often follows is the most expensive and time consuming strategy. In one example, Detroit spent \$25 million to acquire and assemble a tract of land, which it then sold to a developer for only \$1.4 million. Additional subsidies were required to induce the developer to redevelop the site, and work has continued on the site for nine years. Targeted zones are more expensive than market-driven strategies but may be much less expensive than land banking strategies, both overall and on a per-unit basis. A targeted strategy used in Richmond, Va., which covered 419 properties located in seven zones, cost approximately \$14 million in public funds.

NORA and the City have stated their intent to use only one of the three strategies above — a targeted strategy. They plan to use it in ORM's 17 zones and, in the case of NORA, a number of additional areas.

We agree that a targeted strategy is appropriate for troubled areas. However, the City and/or NORA should at the same time energetically pursue a market-based strategy to eliminate blight in well-functioning areas and in troubled areas when appropriate. Addressing blight in functioning areas would improve the quality of life and increase the housing supply with a relatively modest investment of public resources. While land banking of properties (such as some of the 7,000 Road Home properties) will be unavoidable, land banking and the total redevelopment of nonfunctioning areas should take a backseat for now.

Formal Blight Designations

Code enforcement hearings sometimes result in properties being formally declared “blighted.” When a property is declared blighted, a fine is assessed and a lien (blight lien) is placed on the property to secure payment. The blight declaration and lien enables NORA or the City to more easily acquire the property using quick-take expropriation¹ or lien foreclosure. The blight designation also cuts in half the redemption period for tax adjudicated properties.

Unfortunately, the existing process for formally declaring properties blighted is deeply flawed. The problems begin with the legal definition of blight. The statutory standard is so unclear as to be almost meaningless, and it leads to inconsistent and unpredictable results at blight hearings.² To make

¹ Quick-take expropriation may be used against properties that are either formally designated blighted, or are “abandoned” under a separate standard. La. R.S. 19:136 et seq. The City has partially delegated the quick-take power to NORA. City of New Orleans Ord. No. 22,643 M.C.S. (May 3, 2007).

² La. R.S. 33:4720.59(B): “[B]lighted property shall include those commercial or residential premises, including lots[,] which have been declared vacant, uninhabitable, and hazardous. ... In determining whether any premises are vacant, uninhabitable, or hazardous, the hearing officer shall consider any or all of the following: (1) Any premises which because of physical condition are considered hazardous to persons or property. (2) Any premises declared to be a public nuisance. (3) Any premises declared to be a fire hazard. (4) Any premises declared to be vermin-infested or lacking in facilities or equipment required by the housing code of the city of New Orleans.” *See also* New Orleans City Code § 6-44.

matters worse, for much of 2006 and 2007 the city department responsible for code enforcement has used a second, entirely different standard for blight taken from the “Good Neighbor” ordinance.³

City and State lawmakers should create a single, clear and workable definition of blight. For guidance, they can turn to definitions in use in other jurisdictions. These definitions generally define blight as the presence of one of several conditions, including severe dilapidation, the presence of significant trash or debris, abandonment, and repeated illegal activity occurring on the property.

The definition of blight is only part of the problem. The hearing process is extremely lenient and many blighted properties escape being designated as such. In the 136 hearings BGR attended in 2007, properties were declared blighted only when the owner failed to appear at the hearing. In all cases when the owner appeared (sometimes without any reasonable excuse or explanation for the condition of the property), the matter was dismissed or deferred. To make matters worse, there is no discernible procedure or timeline to process citizen complaints, and it appears that many recent complaints have gone uninvestigated. The City should address these problems through aggressive enforcement and a formal timeline for processing complaints.

Involuntary Demolitions

The City department that administers code enforcement also administers involuntary demolitions, which are demolitions by the City of structures that pose a threat or health or safety. 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. Because new construction is often more expensive than renovation, demolitions may also impede redevelopment by increasing redevelopment costs.

Since Hurricane Katrina, the City has been condemning properties primarily under a post-Katrina ordinance that allows demolitions of storm and flood damaged property where there is an “imminent” threat to the public health, safety and welfare.⁴ The City’s use of this ordinance has been inconsistent, with some sound buildings being condemned, while some unsound buildings mysteriously escape condemnation.

City Council amended the governing ordinance in August 2007 to provide for better notice and to add procedures for contesting demolition. However, serious problems remain. The amended ordinance lacks clear standards, has a very tight deadline for contesting demolition, and lacks an appeals process.

New Orleans does not need to reinvent the wheel in this area. A widely used model code, known as the International Property Maintenance Code (IPMC), includes a section governing involuntary demolitions of damaged or dangerous properties. At least 636 U.S. jurisdictions have adopted this model code. The IPMC includes clear standards, a reasonable time frame for property owners to contest demolition and an appeals process. We suggest that the City and City

³ New Orleans City Code §§ 26-261, 26-262.

⁴ New Orleans City Code § 26-263.

Council consider adopting the relevant provisions of the IPMC to replace the troubled ordinance currently on the books.

Property Acquisition

To have an effect on a blighted property, NORA or the City in many cases must acquire it. Currently, local government has four pipelines for acquiring properties. Three of these pipelines have serious problems that must be resolved before significant numbers of properties can be acquired through them.

The first pipeline, consisting of Louisiana Land Trust/Road Home properties, presents no significant acquisition challenges. The second pipeline consists of adjudicated properties acquired by the City for nonpayment of property taxes. These tax adjudicated properties are subject to a long, constitutionally mandated redemption period, which is generally three years, although the period is shortened for formally blighted or abandoned properties. As a practical matter, redevelopment is impossible during that time. Also, these properties lack clear title. This often forces the eventual purchaser to file a “quiet title” lawsuit, a process that adds significant cost and delay. Shortening the redemption period would require a constitutional amendment; the quiet title issue could be addressed through statutory and constitutional reform of the tax sale process.

The utility of the third pipeline, expropriation, has been severely limited by 2006 amendments to the Louisiana Constitution.⁵ These amendments allow expropriation of blighted properties only for a public use or when they pose a “threat to public health or safety.” Under this standard it appears that not all blighted properties may be expropriated. The amendments also impose severe restrictions on disposition. Before selling the property, the expropriating entity must offer the property at fair market value to the original owner. If this offer is refused, the expropriating entity must conduct a public sale. Worst of all, the amendments forbid expropriation of property if the purpose is “for predominant use by,” or “for transfer of ownership to,” private parties. These restrictions are so severe that they may render expropriation of blighted properties unworkable. We understand that NORA is attempting to set up a test case to get a ruling from the courts to clarify these restrictions. If the result of that test case is unfavorable, addressing the problem would require another constitutional amendment.

The last pipeline, foreclosure on blight liens, holds great promise. It would appear to avoid the impediments to disposition associated with tax adjudicated and expropriated properties. The method has not yet been successfully tested in court. We urge the City to move quickly to file a test case, and if it is successful, to use the method aggressively. We also suggest that the City explore transferring the blight liens to NORA (which may require a statutory change). This would enable NORA to act quickly on properties that it wants to acquire, without having to persuade the city to take action.

⁵ La. Const., Art. I, §4.

Dr. Edward Blakely
Mr. Ezra Rapport
December 11, 2007
Page 7

Maintenance

Maintenance and cleanup (where needed) is a critical interim step for neighborhood stabilization. Without proper maintenance of properties, neighborhoods will be unable to attract and retain residents and businesses.

NORA has recognized the importance of maintaining properties that it acquires. It estimates that the cost of maintaining (and demolishing, where appropriate) properties acquired from the Louisiana Land Trust (its first pipeline) will be approximately \$150 million over nine years. We are concerned about NORA's ability to generate or attract adequate funding for maintenance and urge ORM, when allocating resources, to direct adequate funds to NORA for this essential function.

Property Information

Potential developers and local government officials working on blighted property issues need access to at least five types of property information: ownership, formal blight status and history, tax adjudication status, zoning, and assessed value. Unfortunately, the City of New Orleans maintains only a rudimentary central database, which lacks much of this information. In addition, the quality of some data has been poor. In particular, incorrect and missing data on tax adjudications and formal blight designations have caused delays for redeveloping specific properties, discouraging investment and redevelopment.

Other cities have assembled the necessary data in a single GIS database which links the information to a parcel map. We understand that the City and NORA are working to expand the existing database or create a new, more extensive one. These efforts should focus on creating a publicly accessible GIS database that includes the five types of information listed above.

We appreciate your consideration of the points above. Please do not hesitate to call if you would like to discuss any of the issues raised in this letter.

Sincerely yours,

Janet R. Howard
President