CITIZENS HOUSING AND PLANNING COUNCIL

THE URBAN PROSPECT

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Giuliani Confronts In Rem Dilemma

Reviewing the city's community development plan in 1979, the City Planning Commission, then chaired by Robert F. Wagner, Jr., concluded with the following warning:

> *"The Commission fervently hopes the city will bring the in rem program under control. Otherwise the housing rehabilitation, economic development, and neighborhood projects that could and should be the city's Community Development Program will be supplanted by a quarter-of-a-billion-dollar in rem property management program."*

Fifteen years later, the Giuliani Administration became the city's third to grapple with the in rem housing dilemma — which has indeed become the drain that the Wagner planning commission feared. In Fiscal Year 1995, the Department of Housing Preservation and Development will spend about $255 million on property management functions against rent collections of some $80 million. Another $95 million in capital budget funds is allocated for the repair and rehabilitation of in rem buildings. As operating and capital budgets are cut in response to the city's fiscal emergency, its in rem obligations are squeezing other housing and community development efforts out of the budget picture.

Already straining to maintain services to its existing inventory, HPD is faced with the possibility of a huge intake of additional tax-foreclosed properties that it cannot possibly afford. The city has responded with an unofficial moratorium on new property vestings but has thus far not articulated a new approach to financially troubled housing.

Improvised Public Housing

The in rem program was originally devised as a strategy to stanch the contagion of housing abandonment that claimed some 350,000 apartments during the 1960s and 1970s. In 1976 the City Council enacted a law authorizing the city to foreclose on multiple dwellings after only one year of tax arrears. At first the city auctioned off the tax-foreclosed properties, but experience demonstrated that the new owners quickly lapsed into tax arrears themselves. A moratorium on residential building sales was declared in 1978, and by the end of that year HPD's inventory of occupied apartments was larger than that of the Chicago Housing Authority.

An improving economy helped abate building abandonment in the early 1980s, and HPD's inventory never reached its early projection of 83,000 occupied units. The city's stewardship helped to stabilize conditions in many foreclosed buildings, but their return to the private sector proved to be more difficult and expensive than anticipated. During the 1980s, dispositions by the agency's Division of Alternative Management barely offset an intake of about 2,000 units annually.

When the city first sought to use Community Development Block Grant funds to support in rem housing, the Carter Administration balked, ultimately relenting to pressure from New York's congressional delegation on the condition that the city would find alternatives to finance the program. The issue has been a source of friction between the city and HUD ever since. During the past five years the city has spent about two-thirds of its CDBG allocation of $1.3 billion on in rem operations.

In 1983 the Koch Administration decided to reserve all future vacancies in in rem buildings for homeless families. In ensuing years in rem housing became the principal placement resource for families in the city's shelter system, especially for troubled families screened out of Housing Authority and not-for-profit housing.

Homeless placements complicated attempts to privatize the in rem stock. The median income of in rem tenants *declined* from $6,865 in 1981 to $6,420 in 1992 while the portion on public assistance soared to 65 percent. These placements are also believed to have intensified the concentration of poverty in the handful of communities containing most in rem buildings.

Ironically, the policy has had some beneficial effect on HPD's finances. Since virtually all homeless families are public assistance recipients eligible for the maximum shelter grant ($286 for a family of three), new placements actually pay rents higher than the in rem average of $221 per month. Furthermore, HPD's rent collection rate of 79 percent (prior to legal action) is supported by the 40 percent of tenants who are on "direct vendor payments," whereby rent payments for

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welfare families are transferred directly from the Human Resources Administration to HPD.

Lacks and Lead

Recent developments raise the possibility that in rem management may soon become vastly more expensive. In 1990 the city posted a vacate order upon an in rem building in Bushwick, seeking to relocate tenants from the allegedly unsafe building to other in rem housing. Tenants brought suit contesting the evictions, charging that the vacate order was part of a renewed consolidation program aimed at reducing the in rem portfolio and that the condition of the building was a result of HPD's failure to comply with the Housing Maintenance Code and Multiple Dwelling Law.

In *Mattie Lacks et al v. The City of New York* the state Supreme Court ruled that the city is bound to comply with HMC and MDL requirements that all owners of residential properties keep their premises in "good repair" and that approval of the vacate order would by implication grant the city an exemption from those requirements. HPD claims that to remedy the existing backlog of in rem maintenance complaints would cost an immediate $60 million, and that to bring all in rem buildings up to code would require the full renovation of virtually every in rem building at a total estimated cost of $1 billion. A final decision in the case is still pending.

There is also growing concern about lead poisoning liability. With a poorly maintained portfolio of buildings disproportionately concentrated in areas of the city where risks of lead poisoning are most acute, and with the resources to pay huge settlements, the city represents a fat target for lead litigators. In 1993 a court awarded one in rem family $10 million in damages for the lead poisoning of a child who ingested paint chips.

Disposition and Opposition

The Giuliani Administration has established the reduction of the in rem inventory as one of its principal housing goals. Under Commissioner Deborah Wright, HPD is revamping the three-pronged disposition strategy employed during the Koch years.

The Tenant Interim Lease program (TIL) sells buildings to residents for $500 per unit. Since 1980 almost 500 buildings containing 10,700 units have been turned into TIL cooperatives. Although this is the most politically popular disposition alternative and has produced many success stories, there is some skepticism within housing circles about its ability to maintain high out-take volume. Some familiar with the program say that the most viable buildings have already been converted, that the city's homeless policies have diminished resident organizing potential, and that rampant drug dealing has destroyed tenant unity.

The Administration is attempting to rejuvenate the program by equalizing rehabilitation budgets with other programs (about $50,000 per unit) and by liberalizing program rules (for example, eliminating the requirement that 40 percent of resale profits be returned to the city). Simultaneously, HPD is requiring that an explicit time table be established for building out-take; if the timetable is not met, HPD can redirect the building into another program. Critics contend that the city is not providing tenants with enough notice before targeting buildings for other programs, and that additional money for tenant organizing could raise disposition volume significantly above the 500 units per year HPD is anticipating.

HPD's In Rem Inventory (units in occupied buildings)

Year	Alt Mgmt	Cntl Mgmt	Total
1980	7,487	38,933	46,420
1981	14,892	28,975	43,867
1982	12,558	31,488	44,046
1983	11,911	31,756	43,667
1984	11,890	34,471	46,361
1985	13,203	38,561	51,764
1986	13,611	39,632	53,243
1987	13,959	38,201	52,160
1988	14,494	37,355	51,849
1989	17,621	32,377	49,998
1990	14,800	33,851	48,651
1991	12,695	32,783	45,478
1992	10,806	32,801	43,607
1993	9,237	32,078	41,315
1994	8,606	30,358	38,964

Source: New York City Department of Housing Preservation and Development

The not-for-profit disposition approach has gone through several transformations: the Dinkins Administration supplanted the sluggish Community Management Program (CMP) with Neighborhood Ownership Works (NOW), which emphasizes fast-track private-sector rehabilitation prior to disposition to not-for-profits. Tenant and community groups have complained of a lack of input during rehabilitation, especially for rehabs done under the auspices of HPD's Department of Property Management (the agency's development arm also supervises some NOW jobs). The Giuliani Administration is consolidating the not-for-profit programs to dispose of 1,000 units per year.

During the Koch years the Private Ownership and Management Program (POMP), aimed at returning buildings to for-profit ownership and the tax rolls, was the leading disposition mechanism. The program was the target of relentless criticism by housing advocates who claimed that POMP owners displaced low-income tenants. A 1988 report by the City Comptroller did show a significant level of eviction proceedings in POMP buildings during the two-year management phase prior to disposition, but defenders of the program say this was necessary to eliminate drug dealing and

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HUD WATCH

Reinventing $1.5 Billion

November's Congressional election and President Clinton's plans to effect a major reorganization of the Department of Housing and Urban Development could jeopardize an annual funding stream of over $1.5 billion to New York City.

The Clinton Administration has announced that it intends to consolidate sixty housing and community development programs into eight for fiscal 1996 and then into three by fiscal 1998: a Community Opportunity Fund, an Affordable Housing Fund, and Housing Certificates for Families and Individuals.

Under Clinton's plan, the core of the Community Opportunity Fund will be the current Community Development Block Grant program. How the funds will be allocated among states and localities is a critical issue. The Administration would retain the 30-70 split between states and localities that currently is used in the CDBG program. The Congress, however, may want to funnel more of the money through state capitals, where Republicans now predominate, and away from big-city Democratic mayors. Another important question is whether there will be any changes in the type of activities eligible for funding.

The proposed Affordable Housing Fund would consolidate immediately the existing HOME and HOPE programs, Section 202 Elderly Housing, Section 811 Housing for the Disabled and the Lead Based Paint Hazard Reduction program, as well as several smaller programs. The various McKinney Act homeless programs, which were already slated for consolidation into a Homeless Block Grant for fiscal 1996, and the Housing Opportunities for People With Aids program would be incorporated in fiscal 1998. The Administration proposes to apply the 40-60 state-local split that is used in the HOME program, and says that the extent to which local jurisdictions would be required to match federal funding is a subject for "legislative discussion."

From New York City's perspective the most significant changes will come in the federal government's approach toward public housing, both because the city has, by far, the nation's largest public housing authority and because the proposed changes in this area are the most dramatic.

The Clinton Administration proposes to consolidate all public housing programs into two in fiscal 1996 -- a capital subsidy and an operating subsidy -- and to defund all public housing programs by 1998. Subsidies would then be given directly to public housing tenants in the form of portable certificates, which could be used to rent apartments in public housing projects or in the private market. The concept is to force public housing authorities to "compete for subsidized and unsubsidized low-income families in a competitive marketplace." A similar approach would be followed for Section 8 project-based housing, of which there is a large inventory in New York City.

The certificates would not automatically be distributed through public housing authorities, as is now the case, but would be allocated to localities who would then decide whether to distribute them through the local PHA or through community-based organizations.

How the President's proposals will be filtered through Congress is anyone's guess. The Administration has said that its consolidation plan will result in a HUD budget reduction of $800 million over five years, but Republicans are expected to seek much larger cuts. The appropriations subcommittees dealing with HUD will be chaired by Senator Christopher S. Bond of Missouri and Representative Jerry Lewis of California. New York housing professionals are hoping that Senator D'Amato, who now chairs the Banking and Urban Affairs Committee, and Rick A. Lazio, of Long Island, who will chair the Housing subcommittee in the House of Representatives, will look after the state's and city's interests. ■

HUD Appropriations to New York City
($ Millions)

Program	FY94 Appropriations National	FY94 Appropriations NYC
HOME	$1275.0	$82.2
Public Housing Development*	598.0	41.2
PH Modernization	3230.0	435.0
PH Operating Subsidy*	2620.8	470.0
Drug Elimination*	265.0	37.5
AIDS Housing	156.0	30.3
Section 8 Rental Asst.*	1055.6	126.0
McK: Supportive Housing*	334.0	29.2
McK: Emer. Shelter Grants	115.0	6.3
McK: Sec 8 Mod Rehab SRO*	150.0	2.4
McK: Shelter Plus Care*	123.8	4.6
Home Assistance Grants*	NA	NA
Severely Distressed PH*	758.2	0.0
Lead Abatement Grants*	150.0	0.0
Youthbuild*	48.0	1.3
CDBG	4400.0	277.7

** Projected Figures*
Source: New York City Office of Management and Budget

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restore rent collection from nonpaying tenants. The Dinkins Administration phased the program out, although it benefited from the disposition of nearly 6,000 units already in the pipeline.

While Mayor Giuliani has roundly criticized the decision to terminate POMP, his administration has not resurrected it. Rather, HPD has unveiled the Neighborhood Entrepreneurs Program (NEP), designed to turn ownership over to small minority-owned real estate firms.

HPD In Rem Sales by Program (units)

Year	TIL	POMP	CMP	Other	Total
1980	85	0	0	0	85
1981	254	516	102	758	1,630
1982	1,027	222	725	293	2,267
1983	1,521	964	306	258	3,049
1984	575	825	303	232	1,935
1985	410	1,001	492	554	2,457
1986	413	582	581	136	1,712
1987	325	554	153	30	1,062
1988	1,024	0	111	76	1,211
1989	542	644	309	88	1,583
1990	740	2,228	457	21	3,446
1991	1,429	1,085	472	21	3,007
1992	1,212	930	275	37	2,454
1993	1,127	1,725	622	38	3,512

Source: New York City Department of Housing Preservation and Development

In October 1994, HPD issued a Request for Qualifications (RFQ), through the New York City Housing Partnership, for participation in NEP. According to the Partnership, the RFQ generated 96 complete applications for ten sites available during the program's initial phase. Successful applicants will be awarded sites of at least 50 units in packages of occupied and vacant buildings adjacent or in near proximity to one another. For a three-year period the buildings will be transferred to a Housing Development Fund Company established by the Partnership. During that time the entrepreneur will be responsible for management and maintenance, and for selecting a general rehabilitation contractor, and will be allowed to purchase the buildings if performance guidelines are met. The Partnership will provide technical assistance to owners and will contract with not-for-profit organizations to work with tenants. The eventual sale price of the buildings will vary; a portion of the developer's fee will be credited towards purchase of the buildings.

The program requires that participants have a primary business located in a target neighborhood, that the principal live within the neighborhood, or that the business has generated at least 75 percent of its revenues from the neighborhood over the past three years. Applicants must also have at least 50 units under management and have the ability to commit $50,000 cash to the project or to obtain a letter of credit for that amount. They may not own more than 250 units of housing, have a maximum gross business revenue of more than $1.5 million, or a maximum personal net worth of more than $1.5 million, exclusive of primary personal residence.

The NEP, through which HPD plans to privatize 1,000 units annually, has quickly become a lightening rod for advocacy-group criticism. Much of the criticism seems driven by an ideological hostility to for-profit ownership of low-income housing, but there is also more wide-spread skepticism about the ability of inexperienced entrepreneurs to handle difficult rehabilitation projects with tenants in place.

A Larger In Rem Program?

There has also been some criticism of the Giuliani program from within the professional housing community. These critics point to the enormously successful Vacant Building rehabilitation program that utilized experienced private-sector developers, arguing that such expertise should be employed in occupied building dispositions as well. Others ask what role will be played by the city's two largest not-for-profit housing intermediaries: the Local Initiatives Support Corporation and the Enterprise Foundation.

Looming above these debates is the prospect of a significant increase in vestings of tax-delinquent buildings. CHPC, the Rent Guidelines Board and others have documented the effects of the city's economic slump on its low-income housing stock. Finance Department data reveal mounting property tax arrears; tax foreclosure filings were up by nearly 30 percent in 1993. Most alarmingly, the redemption rate, which was over 90 percent for years, has plummeted. The city's information systems do not permit a precise accounting, but informed estimates are that the city could vest more than 5,000 housing units immediately if it chose.

The city has not yet vested properties for which it filed foreclosure papers in 1992 and appears to have decided on an unannounced moratorium on residential property foreclosures. Nor has it articulated a long-term strategy to deal with financially troubled housing (including some TIL co-ops and not-for-profit housing). While HPD is implementing a system to permit early identification of troubled buildings, a truly comprehensive strategy would require the cooperation of other city agencies, including help from the Department of Environmental Protection on water and sewer charges and from the Finance Department on property tax assessments and adjustments.

A relatively cautious disposition strategy, in the absence of a radically new approach toward tax-delinquent housing, has some within the housing community predicting an increase in HPD's in rem inventory by the end of Giuliani's term. ■

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