CITIZENS HOUSING AND PLANNING COUNCIL

THE URBAN PROSPECT

Housing, Planning and Economic Development in New York

May/June 1997 Volume 3, Number 3

City Resumes Anti-Abandonment Effort

Eighteen months after the Mayor announced a new strategy for preventing housing abandonment and for diverting tax-delinquent buildings from city ownership, major elements of the program have yet to be implemented. While sales of tax liens on some buildings have gone forward, plans to turn others over to new third party managers have been stalled by a number of legal and technical glitches.

Although housing professionals were generally encouraged by the city's new approach, announced in October 1995, many are becoming increasingly uneasy at the slow pace of implementation. That concern has been heightened by high-level staff changes at HPD, including the departures of Commissioners Deborah Wright and Lilliam Barrios-Paolli, as well as several assistant commissioners.

Recently appointed Commissioner Richard Roberts appears resolved to get the agency's anti-abandonment efforts back on track. The first test of the city's new in rem process is now underway in the Bronx.

Revenue First

One controversial component of the Giuliani Administration's strategy toward tax-delinquent properties was its tax lien sales. Since the sales generate revenue for the city, it is not surprising that it is the component that is furthest along.

At the Administration's request, the City Council passed legislation in 1996 aimed at facilitating the lien sales. The first sale was made last June, and included tax liens on 4,645 properties with an initial tax lien balance of $250 million. The sale was structured as a tax lien collaterized bond series underwritten by Morgan Stanley & Co. The tax liens are serviced by J. E. Robert Company, Inc. and Capital Asset Research Corporation, Ltd., which are responsible for encouraging repayment of the liens or for foreclosing on the properties, when necessary.

When the city originally proposed using lien sales as a tax enforcement device, Administration officials indicated that few low-end residential properties would be included. The 1996 lien sale included a surprisingly large number of residential properties, however, including 1,168 walk-up apartment buildings and nearly 500 elevator and other residential structures. Residential buildings comprised about 35 percent of the properties and about 23 percent of the value of the tax liens included in the first sale. The walk-up apartment buildings owed, on average, about $28,000 in taxes and charges, of which about one-quarter were water and sewer fees, and had an average lien-to-value ratio of about 19 percent.

Housing professionals have been concerned about the fate of residential buildings on which the tax liens are sold. When those properties are fundamentally sound and potentially profitable, privatization of tax collection through lien sales may prove to be effective and efficient. If a building's tax delinquency is indicative of a more general condition of financial distress, however, aggressive collection of the taxes may encourage postponement of necessary maintenance and repairs. In extreme cases, owners may reconcile themselves to eventual loss of the property and seek to extract as much of their original investment as possible prior to foreclosure. Moreover, once troubled buildings have been foreclosed upon, the servicers have no mandate to ensure that the buildings are sold to reputable housing managers.

Nevertheless, foreclosure on delinquent properties could have some housing preservation benefits. Properties purchased at foreclosure sale are freed of all existing encumbrances, whether or not the sale proceeds are sufficient to pay all lien holders. Buildings that were formerly over-leveraged or deep in tax arrears may thus generate for their new owners cash flow sufficient for proper maintenance.

Although some reporting requirements were written into the tax lien law, data on the performance of the first tax lien sale portfolio has yet to be made public. A second sale is underway, and although smaller in dollar value than the first, it reportedly contains a higher proportion of residential properties, including some 2,000 one- and two-family homes.

Averting In Rem

When the City Council passed the Administration's tax lien legislation, it placed some restrictions on the types of buildings that could be included. Local Law 37 of 1996, which gave the city new flexibility in conducting its tax foreclosure procedures, also prohibited the city from selling tax liens on distressed residential properties. "Distressed" is defined as any Class I or Class II property with a lien to value ratio of 15

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Public Housing Watch

The Limits of Reform

After years of pillorying public housing and slashing its budgets, Congress appears ready to make substantive changes in how public housing is managed and financed. Public housing reforms are likely to include block granting federal aid, and altering tenant preferences and rent structures. The proposed housing reforms and recently enacted welfare changes represent a profound transformation of social policy in favor of assistance that is more temporary in nature and demands more of its recipients.

While ideologically in step, these two reforms may actually work at cross purposes, as any diminution of tenant income caused by welfare reform could further jeopardize the economic and social health of public housing. The Council of Large Public Housing Authorities, a longtime advocate of housing reform, estimates that local housing authorities will suffer annual rent losses of $490 million due to welfare reform.

New York Not Moving To Work

To pilot some of the reforms currently under congressional consideration, HUD recently invited highly-rated public housing authorities (PHAs) to compete for the Moving to Work Demonstration Project (MTW). Selected PHAs will be allowed to design and implement more effective and cost-efficient approaches to managing their properties, while providing additional services to assist welfare families to work. PHAs can combine funding from operating, modernization, and tenant based Section 8 grants, as well as generate additional revenue by increasing rents and admitting new tenants with higher incomes. MTW requires that PHAs continue to serve the same number of low-income families and that rent policies and job training programs be designed to facilitate resident employment.

As the nation's largest and most venerable housing authority, NYCHA was considered so certain to participate in Moving to Work that the deadline was extended for two months to allow New York additional time to complete its application. When Moving to Work first appeared as a provision in the 1996 housing reform bill H.R. 2406, NYCHA was the only authority specifically named. After last year's reform bill was stalled, a scaled down version of MTW was passed with other temporary reform measures in an appropriations bill. Participation was reduced from 100 PHAs to 30, and no longer specifically mentioned NYCHA. In May, the final deadline for MTW came and went without a submission from NYCHA.

Public housing residents and their advocates vociferously opposed NYCHA's participation in MTW. The broad latitude granted in setting rents and selecting new tenants led some residents to fear a Thatcheresque sell-off of public housing. In spite of NYCHA's commitment to maintain rents at no more than 30 percent of tenant income, to invest $15 million in employment services for welfare recipients, and to slowly phase-in rent increases for new workers, many residents believed that the poor would be priced out of public housing.

Poor Women and Children First

Federal preferences favoring very low-income families, coupled with the local need to re-house homeless families, have contributed to NYCHA's increasingly impoverished tenant base. The number of working families in public housing has declined steadily in recent years, from nearly half of all families in 1985 to only 30 percent in 1996.

Out of 174,000 families officially residing in New York City public housing, more than 50,000 receive public assistance. An additional 100,000 persons live doubled-up in Housing Authority apartments. The concentration of poor residents combined with insufficient operating subsidies contribute to the physical disrepair and high levels of crime, drug use, unemployment, high school drop-out, and female headed households that have come to symbolize public housing.

NYCHA currently operates under a three tiered tenant selection criteria, wherein vacant units are evenly split among the elderly, those at less than 50 percent of median income (generally welfare recipients), and 50 to 80 percent of median (working people). As the number of public assistance tenants has increased, NYCHA has tried to better manage its social and economic environment by shifting its tenant selection criteria towards including more working people. Litigation and tenant resistance recently blocked several Housing Authority attempts to amend its tenant selection criteria.

Without changing its income criteria, NYCHA is increasing the number of working families admitted to public housing. Working families accounted for 35 percent of NYCHA's total admissions in the first four months of FY97 and in FY98 NYCHA plans to place an additional 3,200 employed families in public housing. The mean annual income of recently admitted working families is $16,500, and they pay average rents of $352 per month. Contrary to the fears of some policy makers and advocates that low-income families will no longer be eligible for public housing, newly admitted employed households have incomes averaging 25 percent lower than existing working tenants, who earn an average of $22,200 and

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pay monthly rents averaging at $410. Although these new working families pay nearly three times the rents charged to public assistance recipients, their real currency seems to be their potential to alter the social environment.

With turnover rates at a consistently low 4.5 percent each year, NYCHA must increase the work participation and incomes of its existing residents in order to achieve any real change in its tenancy.

Prior to recent welfare and pending housing reforms, families in public housing transitioning from welfare to work would see little of their earnings, as both housing and public assistance heavily "taxed" each dollar earned. Under the old AFDC and public housing rules, a newly employed family gained only 18 cents for each additional dollar earned. Because public housing rules allow deductions for work related expenses, including transportation, child care and medical expenses, welfare rules have been the more significant obstacle to work. Nevertheless, a recent HUD sponsored survey of the employment efforts of seven PHAs found that many tenants were misinformed about the effects of employment on their housing eligibility and often mistrusted the local authority's efforts to assist them in finding work — suggesting that the very real barriers to work are reinforced by a resident culture of distrust that could limit the efficacy of proposed reforms.

Low-income single heads of household often contend with a mismatch in earning potential and family needs, the instability of the low-wage job market, and increased expenses related to work participation. Recent research by sociologist Kathryn Edin underscores the pivotal role public housing can play in welfare reform as the families she interviewed who received housing assistance were more likely to be employed than those struggling to pay market rents. Single parents in low-wage positions often experienced greater material hardship than those on welfare and the in-kind assistance they received, including housing and family support, was crucial to their employment status. Thus, while moving to work may have social gains for individual families and poor communities, it is unlikely that, at least in the short-term, many families will be financially better off.

The twining of public housing and public employment has its origins in the depression era Housing Act of 1937, which was as much intended to create jobs as it was to build affordable housing. Other legislative forebearers include Section 3, which requires contractors doing business with public housing authorities to hire residents whenever possible, and the Family Self-Sufficiency Program, under which families voluntarily commit to taking certain steps towards independence in exchange for additional services.

NYCHA provides a variety of vocational, educational, and social service programs to support families and assist residents in gaining employment. Programs range from Head Start for young children, alternative high schools and apprenticeship programs for youth, and job training for adults. Several short-term clerical and health care training programs specifically target welfare-reliant women, preparing participants for entry-level positions. The majority of participants in a recent clerical training program, offered in collaboration with the Wildcat Corporation, were successfully placed in jobs, although nearly half these positions were within the Housing Authority.

While most of NYCHA's direct expenditures on job training come through special grants, recent cuts, including reductions in modernization efforts and head count, will restrict the authority's ability to provide jobs for its residents. There are currently 3,600 welfare workers placed in the Housing Authority as part of the city's Work Experience Program (WEP), 700 of whom are residents.

PHAs Take The Hit

In two years New York City's public assistance caseload declined by a quarter of a million people. The city is not tracking families that leave the rolls, and does not know if families found secure employment or if they hover at the edge of financial disaster. The city's disinterest in monitoring those families could ultimately pit the savings of the city's social service agency against the increased costs of the Housing Authority, as NYCHA residents cut off public assistance become less able to pay rent. Subsisting on unreported or underground employment, and support from family, absent fathers and/or boyfriends, former welfare families could potentially cobble together the means for a frugal existence — of which the Housing Authority could only charge the minimum rent of $25.

NYCHA estimates that if half its public assistance households lose their benefits it will forfeit $28 million in annual rent revenue. While it is unlikely that so large a portion of recipients would lose benefits without gaining reported income, a more plausible 10 percent would represent an annual drop in rent collections of approximately $5.6 million. NYCHA would be hard pressed to replace this income, even if allowed to change its tenant preferences and rent structures. In a draft of its recently derailed Moving to Work application, the Housing Authority identified the potential for increasing revenue at seven of its high-performing developments (representing 3,316 units) at only $692,700 over three years.

Reductions in capital, operating and modernization funds, the elimination of new incremental Section 8's, and the mandatory delay before recaptured Section 8's can be reissued, restrict NYCHA's ability to serve its low-income residents and the more than 100,000 additional families occupying uneasy positions on its waiting lists. NYCHA has pursued public housing reforms that it believes will help to preserve existing public housing developments and generate new opportunities. Perhaps if public housing can be made to work and former welfare recipients are assisted to work — even if at low-wage or public sector jobs — Congress may provide the funding to support a safety net for poor working families.

Anti-Abandonment

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percent or more and that has five or more hazardous code violations per unit, or is subject to a lien or liens for city-performed emergency repairs totaling at least $1,000.

Prior to its initial lien sale, the city published a list of 7,000 properties that were eligible to be included. HPD ordered the Commissioner of Finance to remove from the sale 2,509 residential properties, of which 22 percent met the statutory criteria of distressed. About one-third of the properties were located in Central Harlem, the Lower East Side, Bedford Stuyvesant, Crown Heights, and Washington Heights. The excluded properties contained over 60,000 housing units, had an average lien value of about $39,000 and an average lien-to-value ratio of 11.5 percent. They had an average of 6.9 B and C code violations per unit and owed, on average, $1,232 to the city for emergency repairs preformed.

Properties excluded from the lien sales constitute the primary pool of troubled buildings that are subject to the city's new in rem foreclosure procedures. In order to avoid a renewed build-up of properties under city ownership and management, the 1996 law gave the city the power to deed properties directly to third party for-profit or not-for-profit owners once a judgement of foreclosure is obtained. The city intends to exercise this power for the first time during the coming several months.

One of the considerations that has prevented the city from initiating a foreclosure action until now is the number of properties involved, which is inflated by a backlog accumulated through four years in which no vestings were done. Until the 1996 legislative changes, the city could only undertake in rem foreclosure proceedings on a borough-wide basis; under the new law in rem proceedings can be conducted for tax classes and/or for individual tax map sections. However, even those categories have proven to be too large; critical tax map sections covering Harlem and central Brooklyn each contain about 600 residential buildings that would be caught in foreclosure actions. The city is now proceeding with a foreclosure action that includes about 200 buildings in a single tax map section of the Bronx, but intends to hold off on the Harlem and Brooklyn actions while it seeks further amendments to the law. The Administration recently submitted a bill to the City Council that would further reduce the geographic areas in which the city could conduct in rem foreclosure actions.

Going Private

Another obstacle to implementation of the 1996 law is the tight time frames mandated for third party transfers. The law requires that if the Department of Finance has not transferred title to either the city or to a third party within eight months of the time a judgement of foreclosure is obtained, the in rem action must be discontinued. Furthermore, the first four months constitute a mandatory redemption period during which owners, mortgagees and other interested parties have a right to redeem their properties. During this period title remains with the original owner, who is not required to permit potential third party owners or their lenders to inspect the property. Thus, there is only a four month window during which potential owners and their lenders can inspect a property, determine an appropriate scope of work, and close on a construction loan.

In order to minimize this problem, HPD intends to pre-qualify potential third party owners; a draft Request for Qualifications has been prepared and will be issued in the next several months. The agency is also considering enlisting a not-for-profit intermediary to act as a receiver for properties foreclosed on and not redeemed. That will allow additional time for permanent ownership and financing to be arranged.

Once new ownership is arranged, substantial rehabilitation work may be needed to return the buildings to profitability and to provide residents decent living conditions. HPD does not anticipate that rehabilitation financing will typically be provided through the Participation Loan (PLP) or similar program. In the agency's FY1998 capital budget recently approved by the City Council, the PLP program is budgeted at $19 million, about the same as for the current fiscal year. The city has, however, set aside $10 million in HDC reserves to provide permanent low-interest financing for the transferred buildings, which it expects will encourage private-sector institutions to provide construction loans.

Regulations governing dispositions of city-owned buildings permit rents to be restructured prior to disposition. Likewise, the statute authorizing Participation Loans allows rents to be increased to accommodate additional debt resulting from the rehabilitating work. Since rehabs done under the new in rem program will not generally be eligible under those laws, the city recently obtained amendments to the Urban Development Action Area Act (UDAAP) that will permit rent restructurings in some of the buildings transferred to new owners. Because City Council approval will be necessary, however, HPD will encourage the new owners to file for standard MCI rent increases instead.

Long-term tax relief for the buildings is another issue of concern. The buildings will be eligible for regular J-51 tax benefits, but would not automatically qualify for enriched benefits. In order to do so they would have to meet the various occupancy and scope of work tests in the law. The agency is currently rewriting the J-51 regulations and evaluating what changes might facilitate third party transfers.

HPD officials recognize that experimentation will be necessary to work out the kinks in the process. Their volume projections, however, anticipate that over 80 percent of owners will pay their taxes during the mandatory redemption period. If that does not happen, or if the buildings require more work than anticipated, HPD could find itself in yet another in rem quagmire. ■