

# THE URBAN PROSPECT

Housing, Planning and Economic Development in New York

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## DISPOSITION DISPUTES

While the late 1990s have witnessed the rapid escalation of development pressures throughout Manhattan, sizeable clusters of vacant land lie dormant in the surrounding boroughs. In neighborhoods of Central Brooklyn, the South Bronx, and portions of Southeastern Queens, many of these unused parcels languish in the city's real estate portfolio.

Widespread tax default and abandonment during the 1960s and 1970s, combined with earlier urban renewal acquisitions, resulted in the accumulation of an extensive public sector portfolio of vacant lands. Starting with the Koch administration's 10-year plan, the city began to dispose of its vacant properties in a manner that would encourage reuse and promote community revitalization. Infill housing projects using these lands have contributed to repopulation in many deserted communities. The city has also selected certain parcels for redevelopment as commercial space to expand economic opportunities and support residential development. As a result of this reinvestment, even the poorest areas are realizing some of the benefits of market expansion.

Compared to its predecessors, the Giuliani administration's policy has been marked by a free-market approach to land disposition. Although it has continued to transfer sites to housing developers for the construction of moderate and low-income housing, the operating philosophy has been that it is in the city's best interest to dispose of its inventory in as expedient a fashion as possible. Recent sales have been cycled through an unrestricted auction process, relying on market demand and established zoning to guide development. As market values continue to increase citywide and the inventory of vacant parcels dwindles, the remaining vacant land has greater strategic value than ever before. Increasingly, development professionals are asking whether the free-market approach results in the most beneficial use of the sites.

The Giuliani administration has drawn particular fire for its attempt to sell a small subset of its total vacant land holdings,

the Parks Department's Green Thumb program community gardens. In 1998, the city announced its intention to auction off a large number of them, inciting vehement protest from groups affiliated with the city's 700 gardens, as well as the non-profit organizations that provide them with technical and political assistance.

Tensions that announcement kindled between community gardeners and affordable housing advocates provoked a swift legal response, demonstrating the potential for conflict in a competitive land market. The New York City Coalition for the Preservation of Gardens, a group of advocacy organizations, Community Board representatives and elected officials filed a lawsuit in King's County State Supreme Court. They charged that the city misused the Urban Development Action Area Act (UDAAP) for disposition of the garden plots and that under state environmental laws, the sales should have been reviewed as if they constituted a comprehensive plan. After the Court determined the plaintiffs did not have standing to make the challenge, the State Attorney General's office took up the case on their behalf. In the presiding magistrate's opinion, and in a subsequent appeal by the City, the courts found that the sales might reasonably require a cumulative impact statement analyzing the consequences. The appellate division upheld the temporary injunction issued in March of 1999 on the sale or development of any community garden, pending the completion of a cumulative, or citywide, Environmental Impact Statement.

Sale of the city's other vacant properties, however, has continued apace. During the past year, the City Planning Commission approved the sale of approximately 250 city owned lots. By expediting disposition, the Giuliani administration hopes to reduce real estate management costs, return properties to the tax rolls and promote housing production. These efforts have met with substantial success when the land has been packaged as part of an Housing Preservation and Development (HPD) production program. There is some evidence, however, that properties sold to the

private sector without restriction do not necessarily return to productive use in a timely manner.

### **Real Estate Resale**

Although ownership of vacant public property is distributed among many different agencies, the Department of Citywide Administrative Services (DCAS) holds primary responsibility for its disposition. DCAS, formerly known as the Department of General Services, assumes ownership of vacant land slated for disposition, prepares disposition packages and holds periodic auctions of land designated for sale. HPD is also responsible for dispositions, but their actions most often involve the sale of occupied residential properties to a list of approved developers. Through disposition to community-based development organizations, for-profit managers, or the tenants themselves, occupied properties are preserved and privatized, albeit at great cost to the city. Long-standing policy toward vacant public lands takes a more straightforward approach to disposition.

Because there are theoretically no occupants to take into account, selling vacant parcels is much simpler than disposing of *in rem* housing. DCAS submits the proposed disposition packages for review through ULURP, where Community Boards and the Borough Presidents flag their objections, if any, before sending the matter to the City Planning Commission. If approved by the Planning Commission, the Mayor and City Council make the final determination that the properties may be offered for public auction.

Before the disposition proceedings begin, however, other city agencies are given first option to determine if the parcels included could serve any of their objectives. This is the point at which HPD may claim parcels appropriate for the construction of new subsidized housing. If certain lots fit their criteria, HPD will reserve the vacant land for New York City Partnership housing or for another production program. The Partnership obtains the sites at nominal cost, which has enabled it to build approximately 18,000 new ownership and rental units over eighteen years.

The Giuliani administration is not the first to try to return land to private use. After all, most was gained through foreclosure for nonpayment of taxes, rather than through purposeful selection. Since the 1980s, the city has channeled the properties it deemed unnecessary for its own use back into the private sector. What concerns community and civic groups is the current emphasis on revenue generation rather than on strategic reuse of vacant land.

### **Weighing the Options**

The last comprehensive planning for vacant land parcels began during the Dinkins administration in 1992, when the Department of City Planning prepared Neighborhood Land

Disposition plans for twenty-four neighborhoods with the highest rates of abandonment. They recommended that larger parcels of contiguous or near contiguous lots be assembled for sale. Listing parcel by parcel, the plans proposed specific assemblages of vacant land to be packaged and sold in stages. The hope was that this would spur the construction of new housing, commercial structures and community facilities. Previous experience demonstrated that smaller, single-lot properties are more likely to remain undeveloped. This assessment was borne out by a recent study prepared by the Brooklyn Borough President's Office, which found that many lots that had been resold were still vacant, unkempt, and often used illegally for parking. The disposition reports also designated certain parcels for preservation as open space, many of which were existing community gardens.

Continuing into the Giuliani administration, the Department of City Planning researched how to best use the city's excess property holdings. Findings for neighborhoods such as South Jamaica, Bronx Park, Central Harlem and East New York were meant to guide the work of the interagency City Land Committee, a now defunct body that gave departments a common venue to review land sales decisions. The reports recommended that a large proportion of these lands be devoted to new housing, but also outlined basic standards for the retention of community gardens. Planners advised that many vacant lots used as gardens were integral parts of community life, and that where they did not meet basic criteria of size and proximity to other redevelopment that they be kept. DCAS planners confirmed that they still consult these reports as they recommend assemblages of land for auction, although there is no formal requirement that they do so. In the year 2000, most lots approved for auction by the Planning Commission were to be sold as part of larger packages.

The disposition policy has yielded some financial benefits for the city. Land sales in 1999 occurred at an accelerated pace, when, according to the Independent Budget Office, proceeds from vacant land sales nearly tripled from the 1998 total. In that year, sales made up approximately 0.07 percent of the city's total budget, or \$26,430,682. The untallied cost advantage to this strategy is the additional savings resulting from reduced management responsibilities. Proceeds from sales return to the general fund.

### **Little Green**

Within the city's holdings of vacant land, community gardens represent a small, but symbolically important, fraction of the total, less than 6 percent of vacant public land in each of the outer boroughs. A number of parties have sought to provide gardens with some sort of continuing legal protection. In addition to the State Attorney General's lawsuit, several

members of the City Council have introduced legislation to that end. Two such bills are currently awaiting hearing by the New York City Council's Committee on Parks and Recreation.

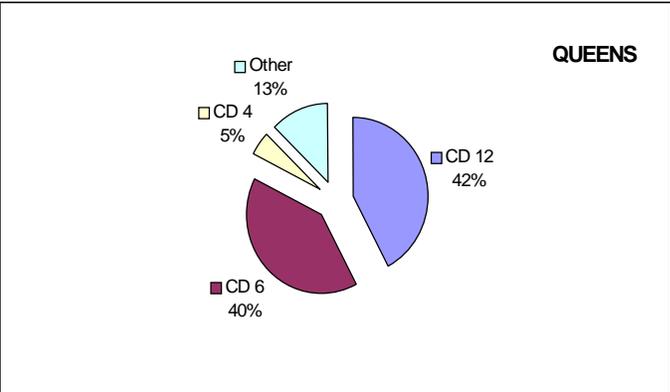
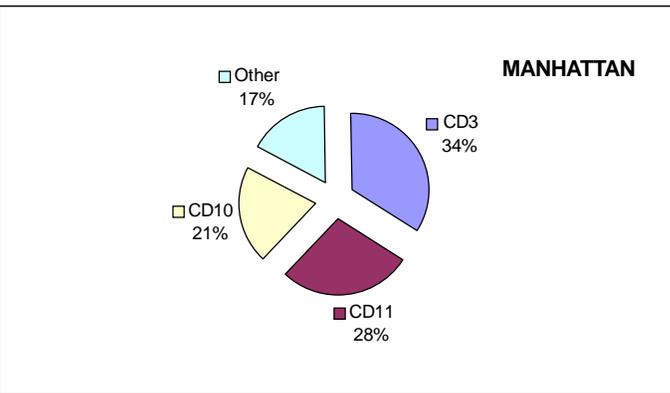
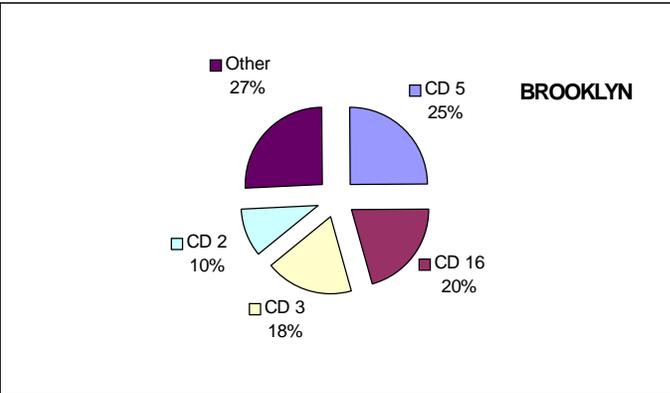
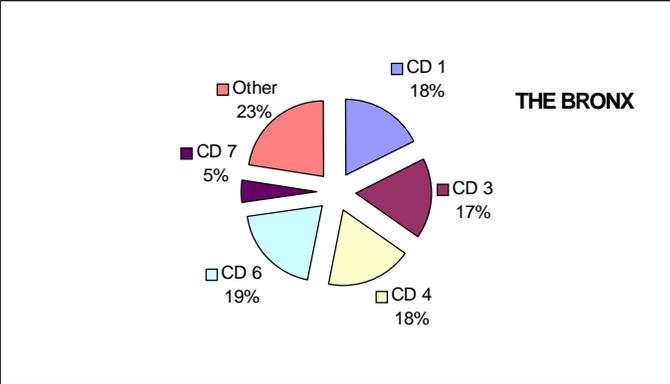
For almost 20 years, neighbors who could prove they had their block's support to maintain a garden were given the rights to use these public lands on a year-by-year basis. Many have grown to be surprising oases in a concrete landscape. Perhaps their greatest import though, is as a symbol of the ways residents banded together in the face of real estate disinvestment to reclaim their communities.

Since 1995, when the practice of licensing the use of these properties replaced leasing them to their caretakers, communities' hold on the gardens has been tenuous. The city has reserved the right to revoke the license whenever they feel the property is ripe for development. Throughout 1996 they did just that, with 1997 witnessing the demolition of several gardens. When the Giuliani administration subsequently transferred all gardens to the jurisdiction of HPD, its intentions were clear. HPD had already declared that it would discontinue the Green Thumb program for the parcels under its control. Proceedings began to put properties into the development pipeline. Despite public outcry, the licenses of most community gardens were cancelled.

Today, the gardens program is in a stasis imposed by the state injunction. This solution has proved congenial neither to gardeners nor to the properties' intended housing developers. By the Housing Partnership's estimation, the construction of approximately 800 housing units is being delayed by the injunction. The more than 1,000 city-owned zoning lots currently in use as community gardens also await an uncertain destiny.

The concentration of gardens closely corresponds to New York City's history of neighborhood abandonment and population loss. Approximately 60 percent of The Bronx's 155 community gardens are located in the South Bronx, and a similar percentage for Brooklyn can be found in Central Brooklyn. In Manhattan, where the contrast between wealth

**DISTRIBUTION OF GARDENS BY COMMUNITY BOARD DISTRICT**  
 Source: Green Thumb Community Gardens Database, 1998



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and poverty is even more extreme, more than 80 percent are located in the low-income areas of the Lower East Side and Central Harlem. Queens, with consistently lower rates of vacant lots than Brooklyn and The Bronx, has the fewest community gardens of the four most populous boroughs.

Not surprisingly, there is a strong negative correlation between concentration of community gardens and the benefits of real estate market expansion. Brooklyn, which experienced its highest rates of abandonment in Community Boards 3, 5, and 16 (Bedford Stuyvesant, East New York, Brownsville) is the garden heavyweight, weighing in at 295 active gardens. A majority of the borough's gardens are in these three community boards, whereas in The Bronx, which experienced much higher rates of abandonment in the 1970s and 1980s, the borough's 155 gardens are relatively evenly distributed throughout its southern and central regions. Manhattan's 180 gardens are almost exclusively located in Community Boards 3, 10, and 11.

With increased real estate investment from both the private and non-profit sectors, the number of vacant lots is declining citywide. And though the absorption rate may be slower, the Community Boards where these gardens are concentrated are no exception. In 1990, each of the three Brooklyn Community Boards with the highest number of gardens had land vacancy rates of around 15 percent, which now stand closer to 13 percent. The Bronx has experienced the most dramatic turnaround, largely due to the Partnership's New Homes program and the Nehemiah program. These programs were responsible for the redevelopment of hundreds of vacant lots, including some former gardens. A recent study sponsored by the Design Trust for Public Spaces found that between 1989 and 2000 in Bronx CB 3, the percentage of vacant lots declined from 22 percent to 14 percent.

Because of the gardens' size, even if they were to be developed, many have limited infill potential. The median square footage of Manhattan's gardens is the smallest. Most of its largely residential lots fall below the 4,000 square foot minimum required by HPD. As the Neighborhood Land Disposition reports concluded, small lots sold singly are often bought for speculative purposes and rarely contribute to the revitalization of the neighborhood.

In April 1999, purchases of approximately 115 community gardens by the Trust for Public Land and the New York Restoration Project secured these gardens as permanent open space. The largest beneficiaries of these private sector actions were the Lower East Side, Crown Heights, East Harlem, Mott Haven, and the Concourse neighborhoods of The Bronx. Many gardens were already operating Trust for Public Land programs. Although this diffused the immediate friction, it followed the erratic trend that garden preservation, and va-

cant land policy as a whole, have taken to date. The purchase was an emergency action to protect the gardens, rather than a strategic selection of neighborhood open space.

### **The Perils of Infighting**

Over a period spanning twenty years, the City of New York has attempted to dispose of real estate assets it accumulated as a result of widespread neighborhood abandonment. The current mayoral administration has taken the most aggressive approach to disposition so far — making provisions to rid itself of vacant properties through both negotiated sale and open auction. The existing system of filtering properties through city departments, however, may not be adequate to satisfy broader strategic objectives. Although it may help agencies attain their specific development goals, it seems to be less capable of promoting balanced neighborhoods.

The ongoing dispute between two natural allies, those advocating affordable housing and those seeking more open space, seems ludicrous when one considers that community gardens represent only 6 percent of city-owned vacant land. When HPD was charged with the licensing of gardens, this fragmented control over the Parks Department's Green Thumb program and blurred authority over the garden properties. Despite the city's intent to dispose of all vacant properties, neither agency has access to the total inventory for planning purposes. Without a venue to coordinate departmental needs, the disposition process has become an inherently contentious one for these departments and increasingly for other city interests.

The controversy reveals a lack of consensus regarding the desirable pattern of future development in the city's neighborhoods. The administration took the first steps toward adopting a new urban design strategy with its Unified Bulk Program proposal, an attempt to redefine the relationship of new development to the city's ancestral streetscapes. If the reform is passed, neighbors of vacant parcels will have greater confidence that infill development will meet basic standards of compatibility. The future of the Unified Bulk proposal is uncertain, however, and it represents only one facet of a comprehensive land use strategy.

By narrowing the focus of vacant land policy to a dispute over housing and gardens, the public debate is missing an opportunity to identify land use goals that embody modern neighborhood preferences. Without zoning reform that takes into account communities' changing needs, and a coherent strategy for the reuse of public real estate, the city may needlessly expend the redevelopment potential of its neighborhoods. If used strategically, these publicly owned lands can be an invaluable resource in the city's renewal.

*--Kimberly Miller*